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CHECKLIST OF KEY COMPLIANCE OBLIGATIONS FOR SEC-REGISTERED INVESTMENT ADVISERS

This is one of a series of memos issued by the Investment Funds Practice Group of Gibson Dunn to investment advisers to “private funds” that may be required to register under the Investment Advisers Act of 1940 as a result of amendments included in the Dodd-Frank Wall Street Reform and Consumer Protection Act. [Click here](#) to access the other memos.

Once registered with the SEC, investment advisers become generally subject to ongoing Advisers Act compliance obligations. The following table highlights some of these key compliance obligations and identifies the applicable section of or rule under the Advisers Act.

ISSUE	REQUIREMENTS
Advertising and other Client Communications	Rule 206(4)-1 provides that certain types of advertising and client communications may violate the anti-fraud provisions of Section 206(4). The Rule restricts, among other things, the use of performance data, client testimonials and past recommendations.
Advisory Contracts	Section 205 imposes various restrictions on the terms of contracts between the adviser and its clients. Further, Section 215 provides that no provision of a contract may purport to waive compliance with the Advisers Act.
Antifraud Requirements	Advisers are subject to the broad anti-fraud provisions of Sections 206 and 207.
Custody/Possession of Client Assets	Advisers with custody of client assets are subject to Rule 206(4)-2, which is designed to safeguard client assets.
Disclosure	Advisers are required under Rule 203-1 to provide periodic disclosures to clients through the completion of Form ADV.
Fiduciary Duties	Advisers are deemed to have fiduciary duties of loyalty and care to their clients.
Gifts and Gratuities	The Advisers Act does not expressly prohibit gifts and gratuities, but restrictions to prevent conflicts of interest may be required under an adviser’s fiduciary duties.

ISSUE	REQUIREMENTS
Insider Trading/Code of Ethics/Personal Trading by Access Persons/Chinese Wall Procedures	Section 204A requires written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the adviser and any person associated with the adviser.
Inspections and Exams	Under Section 204, the books and records of advisers are subject to inspections by the SEC inspection staff on a regular and “for cause” basis.
Political contributions / “pay to play”	Rule 206(4)-5 imposes restrictions on advisers designed to prohibit “pay to play” practices. Advisers may also be subject to applicable state laws.
Proxy Voting	Rule 206(4)-6 regulates an adviser’s voting of proxies on behalf of clients.
Recordkeeping	Rule 204-2 requires advisers to maintain an extensive set of records on its activities and its compliance program. The records are subject to inspection by the SEC staff. Additional record keeping requirements may be established for private funds by July 21, 2011 following SEC rulemaking.
Self-Dealing Provisions	Section 206(3) and Rule 206(3)-2 impose restrictions on principal and agency cross trade transactions.
Solicitation and Finders Fee Arrangements	Rule 206(4)-3 restricts the use by advisers of solicitors to obtain clients. These restrictions generally do not apply to solicitations to investors in private funds.
Supervisors and Supervisory Procedures and Controls, including accounting and operational controls, appointment of Chief Compliance Officer and annual compliance reviews.	Under Rule 206(4)-7 an adviser must adopt and implement written policies and procedures designed to prevent violations of the federal securities laws, review its compliance policies and procedures annually for their adequacy and effectiveness, and identify a chief compliance officer.

[Click here](#) for a discussion of the requirement for investment advisers to register with the SEC and the limited set of exemptions from registration.

[Click here](#) for information on the SEC registration process and the recently amended Form ADV.

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[Click here](#) for a discussion of the principal regulatory consequences that follow from SEC registration.



Gibson Dunn lawyers are available to assist in addressing any questions you may have regarding these issues. Please contact any of the following, or the Gibson Dunn lawyer with whom you work:

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