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Division of Investment Management Offers Guidance for Form 13F Confidential Treatment Requests

On October 2, the Division of Investment Management of the U.S. Securities and Exchange Commission (“Division”) published a Guidance Update for institutional investment managers seeking confidential treatment of information filed on Form 13F. This guidance expands upon guidance issued by the Division in 1998 for requesting confidential treatment of 13F information and provides Form 13F filers, such as investment advisers, with valuable guidelines for successfully obtaining such relief.

FORM 13F

Under Section 13(f) of the Exchange Act, institutional investment managers with discretion over \$100 million or more in Reportable Securities (i.e., exchange-traded or NASDAQ-quoted equities, including equity options and warrants, closed-end funds and certain convertible debt securities) are required to complete and submit Form 13F to the SEC on a quarterly basis. These 13F filings, which contain detailed information about an adviser’s positions, are made public via the SEC’s EDGAR database. However, pursuant to Rule 24b-2 under the Exchange Act, advisers may seek to delay or prevent public disclosure of holdings and related information on Form 13F by submitting a confidentiality request (a “CT Request”). The SEC receives hundreds of CT Requests from advisers and other 13F filers every year, which are generally based upon a claim that public disclosure of

holdings would allow competitors to identify proprietary trading strategies and programs.

THE OLD GUIDANCE

According to previous guidance published by the Division in 1998, there are five categories of information that must be submitted as part of a CT Request premised upon protecting a strategy or investment program:

- details about the specific investment program being followed with respect to a Reportable Security and its ultimate objective;
- an explanation of how the public would be able to discern the Institutional Manager’s strategy with respect to the Reportable Security from the data reported on Form 13F;
- information demonstrating that the program is ongoing, so that public disclosure would be premature;
- a demonstration of the likelihood of substantial harm to the Institutional Manager’s competitive position in the Reportable Security if the CT Request is not granted; and
- the period of time for which confidential treatment is requested.

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THE NEW GUIDANCE

The Guidance Update provides 15 additional types of information relevant to these five categories that should be helpful to advisers seeking confidential treatment. For example, the Division suggests that CT Requests should specifically explain how each Reportable Security covered by the request is relevant to protecting a program, rather than submitting broad requests for all holdings with little or no explanation. The Division also suggests that advisers explain that the program is ongoing, and disclose and explain any transactions made in furtherance of the program from the end of the quarter being reported up until the date of the CT Request. Additionally, the Division recommends that advisers provide a description and comparison of any prior instances of market reaction to its public disclosure of holdings.

WHAT IAS NEED TO KNOW

Advisers and other 13F filers seeking confidential treatment of 13F information should carefully review the Guidance Update and incorporate the suggested information into their CT Requests, where applicable. A copy of the Guidance Update is available by [clicking here](#) and a copy of the Division's 1998 guidance is available by [clicking here](#). Please feel free to contact us if you have any questions regarding Form 13F or any other SEC-related matters.

This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.