

Seward & Kissel LLP

To: Our Investment Management
Clients and Friends

Re: Investment Manager's Duty to Report
Entertainment Provided to Union Personnel

Date: July 28, 2005

The U.S. Department of Labor ("DOL") is seeking to expand enforcement of requirements to report benefits provided to certain union personnel, including union personnel associated with pension plans. The DOL indicated in late June that investment managers that entertain union personnel (*e.g.*, during the course of marketing or for other reasons) are subject to reporting rules (*see* Office of Labor-Management Standards News No. 07-05, June 22, 2005).

After addressing these issues with investment management industry representatives, the DOL announced it would issue guidance in the near future on reporting such benefits (Office of Labor-Management Standards, Form LM-10 (Employer Reports) Advisory). Although firms are required to file reports within 90 days after the end of their fiscal year, the guidance is to include a grace period for compliance. Unless an investigation is pending or there are extraordinary circumstances, the DOL will not enforce reporting requirements until after the guidance has been issued and the full grace period has expired. In the meantime, the DOL urges affected parties to seek compliance assistance, inform the DOL of potential problems with compliance, and propose methods to increase compliance without imposing undue hardship.

Some highlights of the reporting requirement as interpreted by the DOL in June follow:

- ◆ Any employer that pays certain benefits to union personnel must report the benefits on Form LM-10. The employer is to file only one such form that includes all reportable benefits for the employer's fiscal year.
- ◆ Form LM-10 is publicly available and may be viewed on the DOL's website. It requires detailed information on expenditures, including the name, address, position, and employer/union address for the recipient; dates and amounts of payments or benefits; and the terms of any oral or written agreement. Reportable benefits include the value of travel, golf outings, dinners, holiday parties, sports tickets, and raffle prizes. Benefits are excluded from reporting if they meet all of the following: (1) worth \$25 or less, (2) sporadic or occasional, and (3) independent of the recipient's union status.
- ◆ Union personnel receiving such benefits are required to report them on Form LM-30. This form is also publicly available and may be viewed on the DOL's website.

- ◆ Benefits provided to representatives of unions that consist only of federal, state, and local government employees are excluded from reporting, with certain exceptions. These exceptions include unions of U.S. postal workers and unions that include non-government workers.
- ◆ Benefits provided to individuals not representing or employed by unions need not be reported.
- ◆ Benefits provided to union representatives from the personal funds of partners or employees of an investment management firm in apparent furtherance of the firm's business would seem reportable by the payor, absent DOL guidance to the contrary. Under the statute and regulations, the employer reporting obligation applies to any person acting directly or indirectly as an employer or as an agent of an employer and providing a benefit to a union representative.

We expect that future guidance will clarify the type of information to be required on Forms LM-10 filed under the DOL's new enforcement policy. If they have not yet done so, investment managers may wish to consider developing procedures to capture information prospectively on potentially reportable benefits to union representatives.

At present, firms would be well advised not to file a Form LM-10 until the DOL has issued its anticipated guidance. Thereafter, firms that have provided reportable benefits may wish to file a "best efforts" Form LM-10 to take advantage of protection offered against claims of reporting failure. When filing, benefit providers should ascertain whether any payments might not meet federal legal requirements.

Please feel free to call Sharon Vaino at (212) 574-1277 or any attorney in the Investment Management Group with any questions you may have.