

Personal trading: Pre-clearance questions to consider for your program

A good code of ethics contains a specific policy directed at personal trading. Enforcing your rules can be helped by asking the right questions with your pre-clearance procedures.

Here are some questions others use – and visit our Web site for an even more extensive list [□](#), courtesy of **Tony Turner**, a principal at **Financial Tracking** in Greenwich, Conn. The sophistication of the questions/statements guarantees any firm will find some that fit its business.

TIP: “Make disclosures and certifications and attestations very convenient for the employee to complete,” recommends Turner.

Some firms put every request for a stock transaction through a decision tree, e.g., is the security on a restricted list, notes **John McGovern**, a securities consultant in New York. Among his favorite pre-clearance questions:

- What are pre- and post-trading windows on the buy/sell side?
- Is it a thinly traded stock?
- Does my current “access” position place me in an apparent conflict of interest?

Here’s a sample of Turner’s statements for employees to answer prior to pre-clearance:

- √ I do not have “material non-public information” about this security.
- √ I do not have confidential or sensitive information learned in the course of my duties for _____ about this security that is relevant to my decision to transact in this security.
- √ The intended transaction is not a short sale (or is a bona fide hedge against an existing position).
- √ The intended transaction is not an investment in an IPO or initial offer of bonds with warrants.
- √ The intended transaction is not a form of spread betting.
- √ The intended transaction is not a transaction in a derivative or other financial instrument that has the effect of evading the requirements of the company’s personal trading policy.
- √ I do not have knowledge or reason to believe that this security is under consideration for imminent purchase or sale by a fund manager for a client account.
- √ I have not within the past 60 days engaged in an

opposite direction transaction in the security for which I seek pre-clearance. ■

Couldn't attend?



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Acquisitions form one strategy to weather uncertain times

It began over lunch last May. **David Bottoms**, founder of **Oaktree Asset Management**, an RIA in New York, invited **Peter Raimondi**, president & CEO of **Banyan Partners**, an RIA in Palm Beach Gardens, Fla., to a meal to talk about Raimondi taking over Oaktree’s operations in nearby Boca Raton.

“He was interested in hiring me,” Raimondi recalls. By the time the check arrived, the two men were considering another idea: Raimondi buying Oaktree.

This was a heady reversal, considering Banyan Partners’ AUM stood around \$40 million while Oaktree’s towered over it at \$250 million. But Raimondi was intent on acquiring a larger firm to expand his two-year-old RIA, and Bottoms, who is in his 60s, had no succession plan.

After months of negotiations, Banyan completed the acquisition in January. Raimondi is bullish on the industry and believes “our firms are stronger together than they would be as individual standalones,” even in a “monster recession.” He concedes the economy makes nailing down an ROI difficult.

Timing hurt Bottoms and helped Raimondi. The sales price, which Raimondi declined to share, dropped 20% as the market plummeted last fall.

With the purchase came Oaktree’s name, clients and assets, but not its separate broker-dealer, **Financial Assets Corp.**, although Raimondi may add the brokerage later. Raimondi used his own capital to acquire Oaktree.

Clients learned of the change in mailed 5” x 7” envelopes that included the news, bios of Banyan staff, and a communications list.

Beyond the financials, Raimondi also looked into

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Acquisition (Continued from page 5)

Oaktree's people. "I interviewed most of the people in the firm," he says. "That was very important." He would ask what changes would you make in the firm, what things would you not change and listen to their personal stories as he prepared them for a new owner and culture. The interviews left Raimondi so impressed, he grew even more confident the combined firms would work.

The Boca Raton office will be moved to Banyan's headquarters, Raimondi will travel often to New York and Bottoms has agreed to stay on for at least three years.

Compliance structure

Banyan will continue to outsource most of its compliance work, although Raimondi selected Oaktree's CCO to be Banyan's as well.

The compliance, accounting and bookkeeping transitions have been made. Banyan also has changed Oaktree's investment style. It had used individual portfolio managers. Banyan employs a research and investment committee approach. Raimondi favors a committee that "puts out our investment ideas collectively."

Three members from Palm Beach Gardens and four from New York form the committee. They confer by teleconference twice a week and meet physically once a quarter. They gathered in Florida in January. ■

Guidance on answering custody question on Form ADV

Don't let Form ADV, Part II's question about the balance sheet throw you if your firm maintains custody.

Some wonder how to answer question 14 on Part II, especially if answers provided on Form ADV, Part I acknowledge custody. Before giving you guidance, here's a reminder of the question:

14. Balance Sheet. *Applicant must provide a balance sheet for the most recent fiscal year on Schedule G if applicant:*

- *has custody of client funds or securities (unless applicant is registered or registering only with the Securities and Exchange Commission); or*
- *requires prepayment of more than \$500 in fees per client and 6 or more months in advance*

Has applicant provided a Schedule G balance sheet? [yes, no]

The answer is straight-forward if your firm is registered or applying to register with the SEC: You don't have to provide a Schedule G balance sheet and can indicate "no."

But what if your firm is applying for state registration and the state doesn't require Schedule G? It's conceivable the state would permit the firm to simply check "no" to the Schedule G question but check with your state's securities division first to be sure. ■

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