

PART 4400 [RESERVED]

PART 4401—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR MEMBERS AND EMPLOYEES OF THE SECURITIES AND EXCHANGE COMMISSION

Sec.

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AUTHORITY: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159; 3 CFR 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547; 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403, 2635.803; 15 U.S.C. 77s, 78w, 77sss, 80a-37, 80b-11.

SOURCE: 75 FR 42273, July 20, 2010, unless otherwise noted.

§ 4401.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to members and employees of the Securities and Exchange Commission (“Commission”) and supplement the Standards of ethical conduct for employees of the executive branch contained in 5 CFR part 2635. Members and employees of the Commission are required to comply with 5 CFR part 2635 and this part. In addition, they are subject to the Executive branch financial disclosure regulations, 5 CFR part 2634; the Office of Personnel Management Employee responsibilities and conduct regulations at 5 CFR part 735; and the Commission’s Canons of ethics and Regulation concerning conduct of members and employees and former members and employees, 17 CFR part 200, subparts C and M.

§ 4401.102 Prohibited and restricted financial interests and transactions.

(a) *Applicability.* The requirements of this section apply to all securities holdings or transactions effected, directly or indirectly, by or on behalf of a member or employee, the member’s or employee’s spouse, the member’s or employee’s unemancipated minor child, or any person for whom the member or employee serves as legal guardian. A member or employee is deemed to have sufficient interest in

the securities holdings and transactions of his or her spouse, unemancipated minor child, or person for whom the member or employee serves as legal guardian that such holdings or transactions are subject to all the terms of this part.

(b) *In general.* (1) Members and employees are prohibited from purchasing or selling any security while in possession of material nonpublic information regarding that security. Nonpublic information has the meaning as provided in 5 CFR 2635.703(b).

(2) Members and employees are prohibited from recommending or suggesting to any person the purchase or sale of security:

(i) Based on material nonpublic information regarding that security; or

(ii) That the member or employee could not purchase or sell because of the restrictions contained in this Rule.

(c) *Prohibited and restricted holdings and transactions.* Members and employees are prohibited from:

(1) Knowingly purchasing or holding a security or other financial interest in an entity directly regulated by the Commission;

(2) Purchasing a security in an initial public offering (“IPO”) for seven calendar days after the IPO effective date, except that this prohibition does not apply to an IPO of shares in a registered investment company or other publicly traded or publicly available collective investment fund;

(3) Purchasing or otherwise carrying securities on margin;

(4) Selling securities short as defined in 17 CFR 242.200(a);

(5) Accepting a loan from, or entering into any other financial relationship with, an entity, institution or other person directly regulated by the Commission if the loan or financial relationship is governed by terms more favorable than would be available in like circumstances to members of the public, except as otherwise permitted by 5 CFR part 2635, subpart B (Gifts from outside sources);

(6) Engaging in transactions involving financial instruments that are derivatives of securities (that is, the value of the security depends on or is derived from, in whole or in part, the value of another security, or a group,

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or an index of securities), except that this prohibition does not apply to transactions in shares in a registered investment company or other publicly traded or publicly available collective investment fund; and

(7) Purchasing or selling any security issued by an entity that is:

(i) Under investigation by the Commission;

(ii) A party to a proceeding before the Commission; or

(iii) A party to a proceeding to which the Commission is a party.

(d) *Prior clearance of transactions in securities or related financial interests.* (1) Except as set forth in paragraph (g) of this section, members and employees must confirm before entering into any security or other related financial transaction that the security or related financial transaction is not prohibited or restricted as to them by clearing the transaction in the manner required by the Designated Agency Ethics Official (“DAEO”). A member or employee will have five business days after clearance to effect a transaction.

(2) Documentation of the clearance of any transaction pursuant to this paragraph (d) shall be prima facie evidence that the member or employee has not knowingly purchased, sold, or held such financial interest in violation of the provisions of paragraphs (c)(1), (2), (6), or (7) of this section.

(3) The DAEO shall be responsible for administering the Commission’s clearance systems. The DAEO shall maintain a record of securities that members and employees may not purchase or sell, or otherwise hold, because such securities are the subject of the various prohibitions and restrictions contained in this section.

(e) *Holding periods for securities and related financial interests—(1) General rule.* Except as set forth in paragraph (g) and in paragraphs (e)(2) and (3) of this section, members and employees must hold a security purchased after commencement of employment with the Commission for a minimum of six (6) months from the trade date.

(2) *General exceptions.* This holding period does not apply to:

(i) Securities sold for ninety percent (90) or less of the original purchase price;

(ii) Securities with an initial term of less than six (6) months that are held to term; and

(iii) Shares in money market funds, as defined in Rule 12d1–1(d)(2), 17 CFR 270.12d1–1(d)(2).

(3) *Exception for shares in registered investment companies.* Members and employees must hold shares in registered investment companies for a minimum of thirty (30) days from the purchase date.

(f) *Reporting requirements.* (1) Except as set forth in paragraph (g) of this section, members and employees must:

(i) Report and certify all securities holdings according to the schedule required by the DAEO; and

(ii) Submit duplicate statements for every account containing reportable securities to the DAEO according to such procedures required by the DAEO.

(2) Members and employees must report all purchases, sales, acquisitions, or dispositions of securities within five (5) business days after receipt of confirmation of the transaction.

(3) Any person who receives a conditional offer of employment from the Commission must report all securities holdings after acceptance of that offer and before commencement of employment with the Commission on the form prescribed by the Commission.

(g) *Exceptions.* (1) The following transactions are exempt from the requirements of paragraphs (c), (d), (e), and (f) of this section:

(i) Securities transactions effected by a member’s or employee’s spouse on behalf of an entity or person other than the member or employee, the member’s or employee’s spouse, the member’s or employee’s unemancipated minor child, or any person for whom the member or employee serves as legal guardian;

(ii) Securities holdings and transactions of a member’s or employee’s legally separated spouse living apart from the member or employee (including those effected for the benefit of the member’s or employee’s minor child), *provided that* the member or employee has no control, and does not, in fact, control, advise with respect to, or have knowledge of those holdings and transactions;

(iii) Securities issued by the United States Government or one of its agencies;

(iv) Investments in funds administered by the Thrift Savings Plan or by any retirement plan administered by a Federal government agency; and

(v) Certificates of deposit or other comparable instruments issued by depository institutions subject to Federal regulation and Federal deposit insurance.

(2) The following holdings and transactions are exempt from the requirements of paragraphs (c), (d), and (e), but these interests must be reported in accordance with this paragraph (f) of this section:

(i) The holdings of a trust in which the member or employee (or the member's or employee's spouse, the member's or employee's unemancipated minor child, or person for whom the member or employee serves as legal guardian) is:

(A) Solely a vested beneficiary of an irrevocable trust; or

(B) Solely a vested beneficiary of a revocable trust where the trust instrument expressly directs the trustee to make present, mandatory distributions of trust income or principal; provided, the member or employee did not create the trust, has no power to control, and does not, in fact, control or advise with respect to the holdings and transactions of the trust;

(ii) Acceptance or reinvestment of stock dividends on securities already owned;

(iii) Exercise of a right to convert securities; and

(iv) The acquisition of stock or the acquisition or the exercise of employee stock options, or other comparable instruments, received as compensation from an issuer that is:

(A) The member's or employee's former employer; or

(B) The present or former employer of the member's or employee's spouse.

(h) *Waivers.* (1) Members may request from the Commission a waiver of the prohibitions or limitations that would otherwise apply to a securities holding or transaction on the grounds that application of the rule would cause an undue hardship. A member requests a waiver by submitting a confidential

written application to the Commission's Office of the General Counsel's Ethics Office. The DAEO will review the request and provide to the Commission a recommendation for resolution of the waiver request. In developing a recommendation, the DAEO may consult, on a confidential basis, other Commission personnel as the DAEO in his or her discretion considers necessary.

(2) Employees may request from the DAEO a waiver of the prohibitions or limitations that would otherwise apply to a securities holding or transaction on the grounds that application of the rule would cause an undue hardship. An employee requests a waiver by submitting a confidential written application to the Commission's Office of the General Counsel's Ethics Office in the manner prescribed by the DAEO. In considering a waiver request, the DAEO, or his or her designee, may consult with the employee's supervisors and other Commission personnel as the DAEO in his or her discretion considers necessary.

(3) The Commission or the DAEO, as applicable, will provide written notice of its determination of the waiver request to the requesting member or employee.

(4) The Commission or the DAEO, as applicable, may condition the grant of a waiver under this provision upon the agreement to certain undertakings (such as execution of a written statement of disqualification) to avoid the appearance of misuse of position or loss of impartiality, and to ensure confidence in the impartiality and objectivity of the Commission. The Commission or DAEO, as applicable, shall note the existence of conditions on the waiver and describe them in reasonable detail in the text of the waiver-request determination.

(5) The grant of a waiver requested pursuant to this section must reflect the judgment that the waiver:

(i) Is necessary to avoid an undue hardship; and, under the particular circumstances, application of the prohibition or restriction is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise necessary to ensure confidence in

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the impartiality and objectivity of the Commission;

(ii) Is consistent with 18 U.S.C. 208 (Acts affecting a personal financial interest), 5 CFR part 2635 (Standards of ethical conduct for employees of the executive branch), and 5 CFR part 2640 (Interpretation, exemptions and waiver guidance concerning 18 U.S.C. 208); and (iii) Is not otherwise prohibited by law.

(6) The determination of the Commission with respect to a member’s request for a waiver is final and binding on the member.

(7) The determination of the DAEO with respect to an employee’s request for a waiver may be appealed to the Commission, in accordance with the requirements of Rules 430 and 431 of the Commission’s Rule of Practice, 17 CFR 201.430, 201.431. The determination of the DAEO or, if appealed, the Commission, is final and binding on the employee.

(8) Notwithstanding the grant of a waiver, a member or employee remains subject to the disqualification requirements of 5 CFR 2635.402 (Disqualifying financial interests) and 5 CFR 2635.502 (Personal and business relationships) with respect to transactions or holdings subject to the waiver.

(i) *Required disposition of securities.* The DAEO is authorized to require disposition of securities acquired as a result of a violation of the provisions of this section, whether unintentional or not. The DAEO shall report repeated violations to the Commission for appropriate action.

§ 4401.103 Outside employment and activities.

(a) *Definitions.* As used in this section:

(1) *Employee* is defined in 5 CFR 2635.102(h) and includes employees and special government employees of the Commission.

(2) *Employment* is defined broadly, as any form of non-Federal employment or business relationship, involving the provision of personal services by the employee. It includes services as an officer, director, employee, agent, attorney, accountant, consultant, contractor, general partner, trustee, teacher, writer, or speaker, but does

not include participation in the activities of a nonprofit charitable, religious, professional, civic, or public service organization, unless such activities:

(i) Involve serving as an officer or director of the organization;

(ii) Involve providing professional services or advice to the organization;

(iii) Are for compensation, other than reimbursement of expenses; or

(iv) Involve serving as an active participant (as defined in 5 CFR 2635.502(b)(1)(v)) in a professional organization whose interests may be substantially affected by the Commission.

(3) *Professional services* means practicing a profession as the term “profession” is defined in 5 CFR 2636.305(b)(1).

(4) *DAEO* is the Designated Agency Ethics Official.

(b) *Pro bono and community service.* Subject to the prohibitions, restrictions and requirements contained in law and Federal regulations, including 18 U.S.C. 203 (Compensation to members of Congress, officers, and others in matters affecting the Government), 205 (Activities of officers and employees in claims against and other matters affecting the Government), and 208 (Acts affecting a personal financial interest), 5 CFR part 2634 (Executive branch financial disclosure), 5 CFR part 2635 (Standards of ethical conduct for employees of the executive branch), and paragraph (c) of this section, employees are encouraged to participate in matters involving improvement to their communities, and, when qualified, to provide professional *pro bono* services.

(c) *Prohibitions and restrictions on outside employment and activities—(1) Prohibitions and restrictions on employees other than members.*

(i) No employee may engage in any outside employment or activities that conflict with employment with the Commission.

(ii) [Reserved]

(iii) No employee shall undertake the following types of employment or activities:

(A) Employment with any entity regulated by the Commission;

(B) Employment or any activity directly or indirectly related to the issuance, purchase, sale, investment or

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trading of securities or futures on securities or a group of securities, except this prohibition does not apply to securities holdings or transactions permitted by § 4401.102;

(C) Employment otherwise involved with the securities industry; or

(D) Employment otherwise in violation of any applicable law, rule or regulation.

(2) *Prohibitions and restrictions on members.* (i) Members of the Commission may engage in outside employment only to the extent permitted by Section 4(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78d(a). This provision does not preclude members from engaging in permitted securities transactions.

(ii) Notwithstanding the absence of a statutory prohibition, a member may not engage in any outside employment or activity, if such outside employment or activity would materially impair the member's ability to perform properly the member's duties. Such outside employment or activity includes such

fiduciary relationships such as serving as a trustee, executor or corporate director.

(d) Employees are required to submit proposed publications or prepared speeches relating to the Commission, or the statutes or rules it administers, to the Commission's Office of the General Counsel's Ethics Office for review, pursuant to the Commission's Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission, 17 CFR 200.735-4 (Outside Employment and Activities). Any such publication or speech must include the disclaimer prescribed in 17 CFR 200.735-4(c). Employees who wish to engage in teaching, writing or speaking for compensation should review the provisions of 5 CFR 2635.807 (Teaching, Speaking, and Writing).

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