

CHAPTER XXXIV—SECURITIES AND EXCHANGE COMMISSION

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PART 4400 [RESERVED]

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

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§ 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 trans-

actions 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 any 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 section.

(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, including a registered investment company, common investment trust of a bank, company exempt in part or in total from registration under the Investment Company Act of 1940, or other pooled investment vehicle that has a stated policy of concentrating investments in entities directly regulated by the Commission.

(2) Purchasing a security in an initial public offering (“IPO”) or direct listing prior to seven calendar days after the IPO or direct listing effective date;

(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, or an index of securities); 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 (5) business days after clearance to effect a transaction.

(2) Documentation of the clearance of any transaction pursuant to paragraph (d) of this section 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 paragraph (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 paragraphs (e) and (g) 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; and

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

(3) *Exception for shares in sector funds.* Members and employees must hold shares in sector mutual funds and sector unit investment trusts as those terms are defined at 5 CFR 2640.102(q), that are not otherwise prohibited under paragraph (c)(1) of this section 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 and in the manner required by the DAEO; and

(ii) Submit duplicate account 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, or if the member or employee complies with the reporting requirements of this section as authorized in paragraph (f)(4) of this section, in the manner and according to the schedule required by the DAEO.

(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.

(4) A member or employee may comply with the reporting requirements set forth in paragraphs (f)(1) and (2) of this section by authorizing the transmission of account statements, holdings, and transaction information from an employee’s brokerage or financial institution(s) to the DAEO through a Commission-approved, automated internal or third-party compliance system.

(g) *Exceptions.* (1) The following holdings and 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 unemancipated 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;

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

(vi)(A)(I) Mutual funds and unit investment trusts, as those terms are defined in 5 CFR 2640.102(k) and (u), that are diversified as that term is defined in 5 CFR 2640.102(a);

(2) Money market funds as defined in 17 CFR 270.2a-7 (Investment Company Act Rule under rule 2a-7);

(3) 529 plans as defined in the Internal Revenue Code, 26 U.S.C. 529.

(4) Diversified pooled investment funds held in an employee benefit plan as defined at 5 CFR 2640.102(c) or pension plan as defined in 5 CFR 2640.102(n).

(B) The exemption in this paragraph (g)(1)(vi) does not apply to other investments in pooled investment funds that are exempt from registration under the Investment Company Act of 1940, including hedge funds, private equity funds, venture capital funds, or similar non-registered investment funds.

(2) The following holdings and transactions are exempt from the require-

ments of paragraphs (c), (d), and (e) of this section, but these interests must be reported in accordance with 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, restrictions, or requirements 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 Ethics Counsel. 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, restrictions, or requirements that would otherwise apply to a securities holding