SECURITIES AND EXCHANGE COMMISSION

5 CFR Part 4401

[Release No. 34-96768; File No. S7-02-23]

RIN 3209-AA15

Supplemental Standards of Ethical Conduct for Members and Employees of the Securities and Exchange Commission

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission"), with the concurrence of the Office of Government Ethics ("OGE"), is jointly issuing with OGE this proposed rule for Commission members and employees. This proposed rule would amend the existing Supplemental Standards of Ethical Conduct for Members and Employees of the Securities and Exchange Commission ("Supplemental Standards") jointly issued by SEC and OGE, would supplement the Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards) issued by OGE, and is necessary and appropriate to address ethical issues unique to the SEC. The Commission is proposing to revise transaction and reporting requirements for certain assets that pose a low risk of conflicts of interest or appearance concerns, and to prohibit employee ownership of sector funds that have a stated policy of concentrating their investments in entities directly regulated by the Commission. Further, the Commission proposes to authorize collection of covered securities transactions and holdings data from financial institutions through a third-party automated compliance system. The Commission also proposes to correct certain technical matters and adjust its transaction and reporting requirements to provide the flexibility necessary to implement a third-party automated compliance system.

DATES: Comments should be received on or before March 31, 2023.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's internet comment form (https://www.sec.gov/rules/submitcomments.htm); or
- Send an email to rule-comments@sec.gov. Please include File Number S7-02-23 on the subject line.

Paper comments:

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-02-23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (https://www.sec.gov/rules/proposed.shtml). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at www.sec.gov to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Richard Ufford or Jay Bragga, Office of the Ethics Counsel, (202) 551-5170, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1050.

SUPPLEMENTARY INFORMATION: The Commission is proposing to amend 5 CFR 4401.102 (Rule 102), its Supplemental Standards.

I. Background

On August 7, 1992, OGE published the OGE Standards. *See* 57 FR 35006-35067, as corrected at 57 FR 48557, 57 FR 52483, and 60 FR 51167, with additional grace period extensions for certain existing provisions at 59 FR 4779-4780, 60 FR 6390-6391, and 60 FR 66857-66858. The OGE Standards, codified at 5 CFR part 2635, effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel.

Section 2635.105 of the OGE Standards authorizes an agency, with the concurrence and joint issuance of OGE, to adopt agency-specific supplemental regulations that are necessary and appropriate to properly implement its ethics program. The Commission has previously adopted supplemental regulations—found at 5 CFR part 4401—in 2010 with the concurrence and joint issuance of OGE. *See* 75 FR 42273, July 20, 2010, as amended at 76 FR 19902, Apr. 11, 2011. The Commission now seeks to amend those existing supplemental regulations for the reasons set forth below. The Commission, with OGE's concurrence, has determined that the following proposed revisions to the supplemental regulations are appropriate and necessary for successful implementation of the SEC's ethics program in light of its unique programs and operations.

II. Proposed Amendments

The Commission, with the concurrence of OGE, is proposing to amend its Supplemental Standards to (1) prohibit employee ownership of sector funds that have a stated policy of concentrating investments in entities directly regulated by the Commission (referred to herein as "Financial Industry Sector Funds"), (2) eliminate pre-clearance, reporting, and holding period

requirements for certain diversified investments (referred to herein as "Permissible Diversified Investment Funds"), (3) enhance consistency, timeliness, and accountability in employee reporting of purchases, sales, acquisitions, and dispositions of securities by authorizing the Commission to collect such information automatically from the employee's brokerage or financial institution(s) through a third-party automated compliance application, (4) clarify that the limitation on purchasing securities that are part of an initial public offering (IPO) until seven days after the IPO also applies to direct listings of securities, and (5) make other structural and technical corrections to the regulations.

The SEC's revised supplemental rule would retain several important compliance controls, which are among the most extensive compliance restrictions in the Federal Government, including pre-clearance, confirmation, and reporting of covered transactions (such as stocks, bonds, and sector mutual funds), required minimum holding periods, and mandatory annual certification of compliance.

A. Prohibited Ownership of Financial Industry Sector Funds

The Commission is responsible for regulating the trading of securities, investigating securities fraud and manipulations, requiring registration of brokers, dealers, and investment advisers, and supervising the activities of entities it regulates for compliance with the securities laws. 17 CFR 200.1. To ensure that the public can have the utmost trust in these activities, the Commission has long prevented employees from purchasing or owning any "security or other financial interest in an entity directly regulated by the Commission." 5 CFR 4401.102(c)(1). The Commission is proposing to amend § 4401.102(c)(1) to explicitly prohibit employee ownership of certain Financial Industry Sector Funds by expanding the scope of "entities directly regulated by the Commission" to include registered investment companies, common investment trusts of a bank, companies exempt in part or in total from registration under the Investment Company Act of 1940, or other pooled investment vehicles that have a stated policy of concentrating their

investments in entities directly regulated by the Commission. The purpose of this proposed amendment is to avoid conflicts and appearance concerns with employee ownership of sector funds that invest in entities the SEC directly regulates such as registered broker dealers and investment advisers. The existing rule prohibits employees from purchasing or holding securities issued by such entities. Investments in mutual funds (including exchange-traded funds), however, are permissible, provided employees comply with OGE's regulatory exemptions pursuant to 18 U.S.C. 208(b)(2) found in 5 CFR 2640.201(b), which restrict participation in matters affecting one or more holdings of a sector fund. Consistent with the Commission's risk-based approach, the proposed revision recognizes Financial Industry Sector Funds pose a substantial risk of conflicting with SEC work. Thus, to guard against actual and perceived conflicts and appearance concerns, the Commission proposes to expand the existing prohibition to include investments in sector funds that focus on entities directly regulated by the agency. In accordance with 5 CFR 2635.403(d), affected employees will be given a reasonable period of time to divest Financial Industry Sector Funds. Except in cases of unusual hardship, as determined by the agency, a reasonable period shall not exceed 90 days from the date divestiture is first directed. Affected employees may be eligible for a Certificate of Divestiture under section 1043 of the Internal Revenue Code and 5 CFR part 2634, subpart J.

B. Eliminating Preclearance, Reporting, and Holding Requirements for Permissible Diversified Investment Funds

The SEC's existing supplemental regulations require employees to pre-clear all securities transactions and to confirm securities transactions by reporting them to the SEC within five business days after receipt of confirmation of the transaction. This current requirement applies to all securities not explicitly exempted, including diversified mutual funds and other diversified investment products that pose little or no conflicts of interest for members and employees. These diversified investment products, referred to herein as "Permissible Diversified Investment Funds"

include diversified registered investment companies (including open and closed-end mutual funds and unit investment trusts), money market funds, as defined in 17 CFR 270.2a-7(Investment Company Act Rule 2a-7), 529 plans, as defined in the Internal Revenue Code, 26 U.S.C. 529, and diversified pooled investment funds held in employee benefit plans or pension plans.

To the extent that such funds qualify as diversified mutual funds or diversified unit investment trusts in accordance with 5 CFR 2640.201(a), OGE has already provided broad exemptions from criminal financial conflict of interest law, 18 U.S.C. 208, that permit employees to participate in particular matters that could affect the underlying holdings of such funds or the funds themselves. *See* 5 CFR 2640.201(a), (d). Other Permissible Diversified Investment Funds may pose little or no conflict of interest concerns, such as pre-paid college tuition plans authorized by States under section 529 of the Internal Revenue Code and collective investment trusts that are commonly held in defined contribution retirement plans. As a result, the SEC's current pre-clearance and reporting requirements, as applied to Permissible Diversified Investment Funds, have proven disproportionately burdensome for both SEC employees and the SEC's Office of the Ethics Counsel (OEC) staff, given the minimal risks such assets pose for most SEC employees. In order to shift agency ethics compliance resources to better focus on relatively higher-risk trading and reporting of equities and the detection of any prohibited holdings, the Commission is proposing to modify its rules to reduce the emphasis on reporting and pre-clearing of Permissible Diversified Investment Funds, assets that pose substantially lower ethics risk. This risk-based approach would appropriately tailor compliance activities to address trading and holdings that pose the most significant potential for conflicts of interest. Based thereon, the SEC is proposing to add a new paragraph (g)(1)(vi) to eliminate the preclearance, reporting, and holding requirements for Permissible Diversified Investment Funds and to modify existing paragraphs (c)(2) and (6), and paragraphs (e)(2) and (3), to reflect the changes regarding such funds. These changes would not apply to any sector funds, including Financial Industry

Sector Funds, as described above, or to any other entities directly regulated by the Commission, or to any private equity, venture capital, hedge fund, or similar pooled investment instruments.

C. Automated Reporting of Purchases, Sales, Acquisitions, and Dispositions of Securities

Currently, members and employees are required to report transactions of securities to the OEC within five business days after receipt of confirmation of the transaction so that ethics officials can reconcile precleared trades. This reporting requirement is authorized under 5 CFR 4401.102(f) and constitutes an additional supplemental confidential reporting requirement authorized by OGE pursuant to section 107 of the Ethics in Government Act of 1978, as amended, and 5 CFR 2634.103. Reporting is currently conducted by members and employees through the Commission's Personal Trading Compliance System and relies on employees to manually confirm and also provide evidence of transactions through submission of brokerage or other financial institution account statements. Although this process has been successful, requiring employees to manually submit transaction and brokerage data is burdensome and presents the opportunity for human error. Moreover, OEC is aware that a number of private corporations have shifted to automated software systems that provide direct notification of securities transactions from an individual's broker or other financial institution.

The Commission therefore proposes to amend paragraph (f) of the regulation to authorize OEC to collect covered securities transactions and holdings data directly from financial institutions through a third-party automated electronic system to satisfy the requirements to report securities holdings and transaction information. This amendment would reduce the burden on employees and compliance staff, and improve data accuracy and completeness, by replacing the requirements for manually submitted account statements and manual transaction confirmations. It would also facilitate compliance by allowing the OEC to independently verify employee holdings and transactions. Further, it would reduce the risk of human error or oversight in reporting and reviewing of securities holdings and transactions.

The Commission has consulted with OGE on the proposal to authorize OEC to require members and employees to comply with the reporting requirements in paragraph (f) through a third-party automated compliance system. OGE has advised that the proposed system is consistent with section 107 of the Ethics in Government Act, which permits OGE (and agencies, subject to OGE approval) to impose additional confidential financial disclosure requirements on officers and employees of the executive branch. Although the automated transmission of brokerage statements and transaction information would be effectuated by a member or employee's broker or other financial institution, the broker is acting as an agent of the member or employee in transmitting the information, and the ultimate responsibility for complying with the reporting requirement is that of the employee. To ensure that all employees are able to comply with the reporting requirement, the Commission is proposing to provide that the Designated Agency Ethics Official (DAEO) may permit a member or employee to provide the required information through another means if they cannot obtain consent from their brokerage or financial institution to use the third-party automated compliance system. In exceptional circumstances, the DAEO may permit any member or employee to report the required holding and transaction information outside of any eventual automated personal trading compliance system such as where OEC has determined under the specific facts that use of the automated system is not possible or would result in significant undue hardship.

The Commission is also proposing to revise transaction reporting deadlines to provide necessary flexibility to adjust for securities transactions and holdings data obtained as proposed from financial institutions though a third-party automated compliance system. The Commission proposes to modify the existing five business day reporting requirement to require all employees to report transactions in the manner and according to the schedule required by the DAEO. It is OEC's hope that any eventual automated third-party compliance system would allow for trade notifications sooner than the current five day requirement, and this amendment would maintain

flexibility for the DAEO to require earlier (or permit later) reporting for SEC employees, as appropriate, using an automated third-party compliance system.

D. Prohibit Purchases of Direct Listed Assets

Members and employees of the Commission are currently prohibited from purchasing a security in an initial public offering ("IPO") for seven calendar days after the IPO is effective, except for IPOs of shares in a registered investment company or other publicly traded or publicly available collective investment fund. This restriction ensures that employees do not use, or appear to use, material, non-public information to their advantage in purchasing such securities.

The Commission believes that securities that are directly listed on an exchange present the same appearance concerns and risks as securities offered in a traditional IPO, given that direct listings are typically accompanied by the filing of a registration statement, as in a traditional IPO. For that reason, the Commission proposes to expand the limitation found at paragraph (c)(2) of the regulation to prohibit a member or employee from purchasing securities that are directly listed to an exchange for seven calendar days after the direct listing effective date.

The Commission also proposes to remove the current exception to the prohibition on purchasing within seven calendar days for IPO shares in a registered investment company or publicly traded or publicly available collective investment fund because the Commission's proposed exception for Permissible Diversified Investment Funds in paragraph (g) would cover IPO shares in a registered investment company or publicly traded or publicly available collective investment fund.

E. Technical Corrections

Finally, the Commission is proposing to make certain definitional and technical changes to its rules, which include updating language to reflect that the Office of the Ethics Counsel is no longer part of the Office of General Counsel.

III. Request for Public Comment

We request and encourage any interested person to submit comments on any aspect of the proposed amendments, other matters that might have an impact on the proposed amendments, and suggestions for additional changes. Comments are of particular assistance if accompanied by analysis of the issues addressed in those comments and any data that may support the analysis. We urge commenters to be as specific as possible.

IV. Administrative Law Matters

The Commission finds, in accordance with section 553(b)(3)(A) of the Administrative Procedure Act ("APA"),[1] that the proposed amendments relate solely to agency organization, procedure, or practice. They are therefore not subject to the provisions of the APA requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act of 1980[2] therefore does not apply. Nevertheless, we have determined that it would be useful to publish the proposed amendments for notice and comment before adoption. Because the proposed rule relates to "agency organization, procedure or practice that does not substantially affect the right or obligations of non-agency parties," the proposed rule is not subject to the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(3)(C)). The proposed rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995.[3]

V. Economic Analysis

The Commission is sensitive to the economic effects of its rules, including the costs and benefits that result from its rules.[4] As discussed further below, we expect the economic effects of

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1 5 U.S.C. 553(b)(3)(A).

2 5 U.S.C. 601 *et seq*.

3 44 U.S.C. 3501 *et seq*.

4 Section 2(b) of the Securities Act, section 3(f) of the Exchange Act, section 2(c) of the Investment Company Act, and section 202(c) of the Advisers Act require us, when engaging in rulemaking, to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, and to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. 15 U.S.C. 77b(b), 78c(f), 80a-2(c), 80b-2(c). In addition,

the proposed amendments would be limited. The amendments do not substantially alter preexisting requirements and are directed at internal procedures that apply only to Commission members and employees. Thus, we expect these changes would not impose any costs on parties other than the Commission and its members and employees, or if there are any such costs, we expect those costs to be negligible. We further believe that the changes would not have any significant impact on the functioning of securities markets, and so would have minimal, if any, effects on efficiency, competition, and capital formation. Where possible, we have attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from the proposed amendments.

As explained above, the proposed amendments would allow the DAEO flexibility to adjust transaction and reporting requirements for securities and holdings data obtained as proposed from financial institutions through a third-party automated compliance system and eliminate disproportionately burdensome compliance requirements for assets that pose minimal ethics risk, while expanding the scope of the Supplemental Standards to include certain funds that pose relatively higher ethics risk. We discuss below the potential benefits, costs, and economic effects of three significant categories of proposed amendments to the Supplemental Standards: (1) prohibiting employees from holding Financial Industry Sector Funds; (2) eliminating the preclearance, reporting, and holding period requirements for Permissible Diversified Investment Funds; (3) authorizing OEC to collect covered securities transactions data directly from financial institutions through a third-party automated electronic system and adjusting transaction reporting deadlines to account for implementation of such systems; and (4) prohibiting purchases of direct listed assets for seven calendar days after the direct listing effective date. In addition, the

section 23(a)(2) of the Exchange Act requires the Commission to consider the effects on competition of any rules the Commission adopts under the Exchange Act and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. 15 U.S.C. 78w(a)(2).

proposed amendments make certain definitional and technical changes that we believe would not have a substantial economic effect.

A. Proposed Amendments Concerning Financial Industry Sector Funds

The Commission is proposing to explicitly prohibit employee ownership of Financial Industry Sector Funds by expanding the scope of "entities directly regulated by the Commission," and excluding Financial Industry Sector Funds from the exception for Permissible Diversified Investment Funds. The existing rules prohibit members and employees from purchasing or holding securities of entities directly regulated by the Commission, but not Financial Industry Sector Funds that focus on investing in entities directly regulated by the Commission. Investments in Financial Industry Sector Funds, however, are subject to preclearance, reporting, and holding period requirements in the Supplemental Standards.

The proposed amendments could enhance the integrity of the capital markets by further guarding against the perception of improper use of nonpublic information by SEC employees. Expanding the prohibition to include investments in Financial Industry Sector Funds would reduce the risk of actual or perceived conflicts of interests and could bolster investor confidence in capital markets.

The cost to implementing this amendment would be borne mostly by the members and employees who currently hold these funds, as the Commission would require members and employees to sell, or otherwise divest, these types of assets. We do not have sufficient information to quantify the total effects associated with such divestment. Finally, we expect that implementing the proposed amendments would not add significant technical and administrative costs to the Commission as compliance would be accomplished via the Commission's existing compliance system with minimal upgrade costs.

B. Proposed Amendments Concerning Permissible Diversified Investment Funds

The Commission is proposing to modify its rules to eliminate the preclearance, reporting, and holding period requirements for Permissible Diversified Investment Funds by making them exempt from such requirements under Rule 102(g)(1). Under the current rule, Commission members and employees are required to preclear all trades in Permissible Diversified Investment Funds and confirm any such executed transactions. Commission members and employees are required to hold Permissible Diversified Investment Funds for at least 30 days before selling.

The proposed amendments would benefit Commission members and employees by removing certain procedural requirements that currently apply to their purchases and sales of Permissible Diversified Investment Funds and consequently reducing delays in executing investment choices. The magnitude of the benefits, however, would depend on how implementing the proposed amendments would affect individual members' and employees' investment decisions and portfolios, which is difficult to predict.

We do not expect that the proposed amendments would impose costs on the Commission, its members and employees, or the public. Because Permissible Diversified Investment Funds are diversified and therefore eligible for most applicable regulatory conflicts exemptions, we expect that the proposed exemption would add no significant risk of real or perceived conflicts of interest, and would allow the Commission to focus on employees' holdings or transactions that present more significant conflicts and appearance concerns.

C. Proposed Amendments Concerning Automated Reporting of Purchases, Sales, Acquisitions, and Dispositions of Securities and Related Adjustment of Transaction Reporting Deadlines

The Commission is proposing to amend Rule 102(f) to authorize OEC to collect covered securities transactions and holdings data directly from financial institutions through a third-party automated electronic system to satisfy the requirements to report securities holdings and

transaction information and to modify the existing five-business-days reporting requirement to require all members and employees to report transactions that are not exempt under Rule 102(g)(1) in the manner and according to the schedule required by the DAEO.

We do not expect the proposed amendments to result in significant economic effects to the Commission or members of the public. The proposed amendments would benefit Commission members and employees by reducing their reporting costs because manual submission of transaction data would no longer be necessary.[5] In addition, the proposed amendments could enhance the integrity of Commission operations by allowing more effective OEC oversight of member and employee activity through improved data accuracy and completeness and independent verification of employee holdings and transactions. The proposed amendments may provide more or less time for Commission members and employees to report the transactions depending on the schedule set by the DAEO.

The costs of implementing an automated electronic reporting system would be borne mostly by the Commission, including both initial costs of setting up the system and ongoing maintenance costs. We do not expect that the proposed amendments will impose costs on the public.

D. Proposed Amendments Concerning Prohibiting Purchases of Direct Listed Assets

The Commission is proposing to expand the limitation in Rule 102(c)(2) to prohibit a member or employee from purchasing securities that are directly listed on an exchange for seven calendar days after the direct listing effective date.

The Commission believes that the proposed limitation could benefit the integrity of the capital markets by further guarding against the perception of improper use of nonpublic information by SEC employees. Expanding the prohibition to include direct listed assets would

5 *See* Section II.0, *supra*.

reduce the risk of actual or perceived conflicts of interests and could bolster investor confidence in capital markets.

The costs from implementing this amendment would be borne mostly by the members and employees who may otherwise have purchased securities that are directly listed on an exchange insofar as the proposed limitation will restrict their investment options. We do not expect that the proposed amendments will impose costs on the Commission or the public.

We request comment on all aspects of our economic analysis, including the potential costs and benefits of proposed amendments. Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views.

Statutory Basis and Text of Rule

These amendments to the Commission's ethics rules are being proposed pursuant to statutory authority granted to OGE and to the Commission. These include 5 U.S.C. 7301; 5 U.S.C. Ch 131 . (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 2634.103, 5 CFR 2634.201(f); 5 CFR 2635.105, 2635.403, 2635.803; 15 U.S.C. 77s, 78w, 77sss, 80a-37, 80b-11.

List of Subjects in 5 CFR Part 4401

Administrative practice and procedure, Conflict of interests, Ethical conduct, Government employees, Government ethics, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the SEC, with the concurrence of OGE, is proposing to amend title 5 of the Code of Federal Regulations, chapter XXXIV, part 4401, as follows:

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

1. The authority citation for part 4401 is revised to read as follows:

Authority: 5 U.S.C. 7301; 5 U.S.C. Ch 131. 15 U.S.C. 77s, 78w, 77sss, 80a-37, 80b-11; 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 2634.103, 2634.201(f), 2635.105, 2635.403, and 2635.803.

2. Revise § 4401.102 to read as follows:

§ 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, 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 business days after clearance to effect a transaction.

(2) Documentation of the clearance of any transaction pursuant 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), 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 report and certify all securities holdings according to the schedule and in the manner required by the DAEO;

(2) Members and employees must report all purchases, sales, acquisitions, or dispositions of securities 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) The DAEO may require members and employees to comply with the reporting requirements in this section by authorizing their brokerage or financial institution(s) to provide automatic transmission of brokerage statements and transaction information through a third-party automated compliance system. The DAEO may permit a member or employee to provide the required information through another means if they cannot obtain consent from their brokerage or financial institution to use the third-party automated 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)*(1)* 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 requirements 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 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 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 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 Ethics Counsel 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 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 17 CFR 201.430 and 201.431 (Rules 430 and 431 of the Commission's Rule of Practice). 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.

By the Securities and Exchange Commission.

Dated: January 30, 2023.

Vanessa A. Countryman,

Secretary.

Emory A. Rounds, III.,

Director, Office of Government Ethics.