

November 24, 2020, Agenda – Open Meeting Matter
September 22, 2020, Agenda – Open Meeting Matter

To: The Board

From: Christopher M. Hammer *cmh*

Date: October 20, 2020

Re: Proposed Amendments to Board Rules § 1-04: Investments in Publicly Traded Securities

At its September 2020 Open Meeting, the Board considered proposed amendments to Board Rules § 1-04 regarding ownership of publicly traded securities. The proposed amendments defined “mutual fund” in Chapter 68 to include only diversified mutual funds and to exclude sector funds, mirroring the federal rule. The Board asked Staff to consult with the Office of the New York City Comptroller and the federal Office of Government Ethics (“OGE”) regarding this definition. The minutes for the Open Meeting are attached as **Exhibit 1**.

Staff discussed the proposal with the Comptroller’s Office and OGE and now recommends that the term “mutual fund” remain undefined. Sector funds do not typically disclose more than a few stocks that they own, and these disclosures often lag behind the fund’s actual investment decisions, making it impossible for the Board or a public servant to know with certainty all of the underlying holdings of a sector fund. Moreover, the Board is not asked about sector funds frequently, suggesting either that very few public servants are invested in sector funds or that they view them as diversified mutual funds for Chapter 68 purposes. Regardless, very few public servants, if any, would ever have investments in a sector fund of sufficient size to reach Chapter 68’s thresholds in any specific underlying holding.

New proposed Notices of Public Hearing and Opportunity to Comment, removing the definition of “mutual fund,” are attached as **Exhibit 2** (tracked version) and **Exhibit 3** (clean version). The proposed amendments have been informally reviewed by the New York City Law

Department; with the Board's approval, Staff will formally submit these proposed amendments to the Law Department and the Mayor's Office of Operations, as required by the City Administrative Procedure Act. See Charter Section 1043(d).

Minutes of the Open Meeting of the New York City Conflicts of Interest Board

Date: September 22, 2020

Present:

Board Members: Chair Jeffrey D. Friedlander and Members Fernando A. Bohorquez, Jr., Anthony W. Crowell, Wayne G. Hawley, and Nisha Agarwal

Board Staff: Ethan Carrier, Chad Gholizadeh, Ana Gross, Christopher Hammer, Gavin Kendall, Julia Lee, Carolyn Miller, Katherine Miller, Ari Mulgay, Yasong Niu, Jeffrey Tremblay, Clare Wiseman, and Juliya Ziskina.

Guests: None

The Board and Staff participated by videoconference pursuant to Executive Order No. 202 issued on March 7, 2020. The meeting was called to order by the Chair at approximately 9:32 a.m. The Chair stated that the meeting was being conducted pursuant to the New York State Open Meetings Law to discuss proposed amendments to Board Rules §§ 4-01 to 4-03, 1-04, and 1-01(i) to (m).

Board Rules §§ 4-01 to 4-03

After a brief introduction, the Chair asked for any comments by the Board or Staff. There were no comments. The Board unanimously agreed to adopt the proposed Notice of Adoption of Final Rule.

Board Rules § 1-04

After an introduction by Staff and discussion with the Board, the following change was agreed to by Board and Staff:

- § 1-04(b): add phrase to clarify that individual investments in sector-based mutual funds are to be considered for “ownership interest.”

Staff will consult with the Comptroller’s Office and other resources for further insight into current investment vehicles.

The Board agreed to continue discussions at a future open meeting.

Board Rules §§ 1-01(i) to (m)

After an introduction by Staff and discussion with the Board, the following changes were agreed to by Board and Staff:

- § 1-01(i)(1)(i): revise “supervisory or managerial public servants” in consultation with DCAS to exclude low level supervisors
- § 1-01(j)(1)(i)-(vi): condense the six conditions into three
- § 1-01(k)(3): remove prohibition on gifts from superiors; incorporate in (k)(4)

The Board agreed to continue discussions at a future open meeting.

The open meeting was adjourned at approximately 10:49 a.m.

Respectfully submitted,
Julia H. Lee
Recording Secretary

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Investments in Publicly Traded Securities

What are we proposing? The Conflicts of Interest Board proposes to amend its rules regarding investments in publicly traded securities.

When and where is the Hearing? The Conflicts of Interest Board will hold a public hearing on the proposed rule. The public hearing will take place by video conference at [] on [] and is accessible by:

- **Internet Video and Audio.** To access the hearing by Zoom, use the following URL: [].
- **Telephone.** To access the hearing by telephone, dial []. When prompted, use the following access code [] and password [].

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Conflicts of Interest Board through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rules@COIB.nyc.gov.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing may speak for up to three minutes. Please access the public hearing by Internet Video and Audio or by Telephone using the instructions above. It is recommended, but not required, that commenters sign up prior to the hearing by contacting the Conflicts of Interest Board by phone at (212) 437-0730 or by email at lee@coib.nyc.gov.

Is there a deadline to submit comments? Yes, you must submit written comments by [].

This hearing has the following accessibility option(s) available: The Zoom platform accommodates screen reader software. Simultaneous transcription or a sign-language interpreter are available upon request.

Do you need assistance to participate in the hearing? You must tell the Conflicts of Interest Board if you need a reasonable accommodation of a disability at the hearing, including if you need a sign language interpreter or simultaneous transcription. You can advise us by email at lee@coib.nyc.gov or by telephone at (212) 437-0730. You must tell us by [].

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. Copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public on the Conflicts of Interest Board's

EXHIBIT 2

website (<https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page>) as soon as practicable.

What authorizes the Conflicts of Interest Board to make this rule? Sections 1043, 2603(a), and 2603(c)(4) of the City Charter authorize the Conflicts of Interest Board to make this proposed rule. This proposed rule was not included in the Conflicts of Interest Board’s regulatory agenda for this Fiscal Year because it was not anticipated to be a subject of rulemaking at that time.

Where can I find the Conflicts of Interest Board’s rules? The Conflicts of Interest Board’s rules are in Title 53 of the Rules of the City of New York.

What rules govern the rulemaking process? The Conflicts of Interest Board must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of the Proposed Rule

City Charter § 2604(a)(1)(b) prohibits a regular employee of the City from having an ownership interest in a firm “engaged in business dealings with the city, except if such interest is in a firm whose shares are publicly traded, as defined by rule of the board.” The Board accordingly adopted Board Rules § 1-04 in 1990, defining a publicly traded firm as one that “offers or sells its shares to the public and is listed and registered with the Securities and Exchange Commission for public trading on national securities exchanges or over-the-counter markets.”

In the intervening thirty years, the Board has advised many public servants about the impact of the conflicts of interest provisions of Chapter 68 on their ownership interests in publicly traded securities, including six advisory opinions: A.O. Nos. 1994-10, 1994-13, 2002-1, 2007-4, 2009-7, and 2012-1. The proposed amendments to Board Rules § 1-04 would retain the definition of “publicly traded firm” as paragraph (a) and add new paragraphs (b), and (c), ~~and (d)~~ dealing, respectively, with ~~the ownership of mutual funds~~, investments held in individual retirement accounts (“IRAs”), and the ownership of bonds.

EXHIBIT 2

1 ~~1. *Ownership of Mutual Funds*~~

2 City Charter § 2601(16) excludes from the definition of ownership interest a mutual fund
3 comprised of investments that “are not controlled by the public servant [or] the public servant’s
4 spouse, domestic partner, or unemancipated child,” but does not define “mutual fund.” Proposed
5 Board Rules § 1-04(b) would define “mutual fund” for the purposes of this exclusion to include “a
6 management company, exchange traded fund, or unit investment trust registered with the
7 Securities and Exchange Commission, provided that the company, fund, or trust does not have a
8 stated policy of concentrating its investments in any particular business sector,” such as
9 pharmaceuticals or financial services. This proposed definition would mirror the distinction
10 contained in the rule for federal employees. ~~See 5 Code of Federal Regulations § 2640.201. Thus,~~
11 ~~as the proposed rule indicates, investments in diversified funds are not ownership interests for~~
12 ~~purposes of Chapter 68, while in contrast investments in sector funds are treated like any other~~
13 ~~ownership interest under Chapter 68.~~

14 ~~2.1. Investments Held in IRAs~~

15 City Charter § 2601(16) establishes a definition of “ownership interest” in a firm but
16 excludes “interests held in any pension plan, deferred compensation plan or mutual fund, the
17 investments of which are not controlled by the public servant, the public servant’s spouse,
18 domestic partner, or unemancipated child.” For purposes of this definition, proposed Board Rules
19 § 1-04(~~be~~) would treat investments contained in an IRA, Roth IRA, Simplified Employee Pension
20 IRA, or Keogh plan just like any other investments. Thus, for example, shares in a publicly-traded
21 firm that are chosen by the public servant and held in their IRA are considered “ownership
22 interests” within the meaning of City Charter § 2601(16).

23

EXHIBIT 2

1 3.2. Ownership of Bonds

2 Proposed Board Rules § 1-04(~~cd~~)(1) would codify the general advice the Board provided
3 in A.O. No. 1994-10, and reiterated in A.O. Nos. 1994-13, 2002-1, and 2009-7, that a public
4 servant’s ownership of bonds issued by public entities is not a prohibited ownership interest in a
5 “firm.” Specifically, City Charter § 2601(11) and Board Rules § 1-08, which codified A.O. No.
6 1994-10 pursuant to City Charter § 2603(c)(4), exclude certain public and quasi-public entities,
7 including the City of New York and its agencies, from the definition of “firm.” Nevertheless, the
8 Board recognized in A.O. 2009-7 that a small group of public servants has personal and substantial
9 responsibility in the issuance and management of City debt obligations. For these public servants,
10 the purchase, ownership, or sale of City-issued bonds implicates City Charter § 2604(b)(2)
11 prohibiting private interests that conflict with their official City duties, § 2604(b)(3) prohibiting a
12 public servant’s use of their position to benefit themselves or any of their “associated” persons or
13 firms, and § 2604(b)(4) prohibiting the use or disclosure of confidential information obtained as
14 part of their City job. Proposed Board Rules § 1-04(~~cd~~)(2) would codify this holding.

15
16 New material is underlined. [Deleted material is bracketed.]

17 **§ 1-04 Investments in Publicly Traded Securities [Definition of a Firm Whose Shares are**
18 **Publicly Traded].**

19 (a) **Definition of a Firm Whose Shares are Publicly Traded.** For purposes of Charter §
20 2604(a)(1)(b), “a firm whose shares are publicly traded” means a firm [which] that offers
21 or sells its shares to the public and is listed and registered with the Securities and Exchange
22 Commission for public trading on national securities exchanges or over-the-counter
23 markets.

EXHIBIT 2

1 ~~(b) **Mutual Funds.** For purposes of the definition of “ownership interest” in Charter §~~
2 ~~2601(16), the term “mutual fund” means a management company, exchange-traded fund,~~
3 ~~or unit investment trust registered with the Securities and Exchange Commission, provided~~
4 ~~that the company, fund, or trust does not have a stated policy of concentrating its~~
5 ~~investments in any particular business sector. Accordingly, investments in companies,~~
6 ~~funds, or trusts that do not have a stated policy of concentrating its investments in any~~
7 ~~particular business sector are not “ownership interests,” while investments in companies,~~
8 ~~funds, or trusts that have a stated policy of concentrating its investments in any particular~~
9 ~~business sector are ownership interests.~~

10 ~~(e)(b)~~ **Investments held in IRAs.** For purposes of Charter § 2601(16), an “ownership
11 interest” includes investments in firms held in an individual retirement account (“IRA”),
12 Roth IRA, Simplified Employee Pension IRA, or Keogh plan, provided that the investment
13 is not otherwise excluded from the definition of “ownership interest.”

14 ~~(d)(c)~~ **Public Debt Obligations.**

15 (1) Except as provided in paragraph (d)(2), for purposes of Charter § 2604(a)(1) and §
16 2601(11), a public servant is not prohibited from owning debt obligations issued by the
17 City or “other similar entities” as defined in Board Rules § 1-08.

18 (2) For purposes of Charter § 2604(b)(2), § 2604(b)(3), and § 2604(b)(4), a public servant,
19 prior to becoming personally and substantially involved in the issuance and/or
20 management of City debt obligations must divest their ownership in such debt
21 obligations, and for the duration of such involvement may not buy or hold such City
22 debt obligations on behalf of the public servant or an associated person or firm. For
23 purposes of Charter § 2604(b)(3), a public servant who is personally and substantially

EXHIBIT 2

1 involved in the issuance and/or management of City debt obligations may not trade, or
2 participate in trading, City debt obligations on behalf of, or for the account of, an
3 associated person or firm.

EXHIBIT 2

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Investments in Publicly Traded Securities

What are we proposing? The Conflicts of Interest Board proposes to amend its rules regarding investments in publicly traded securities.

When and where is the Hearing? The Conflicts of Interest Board will hold a public hearing on the proposed rule. The public hearing will take place by video conference at [] on [] and is accessible by:

- **Internet Video and Audio.** To access the hearing by Zoom, use the following URL: [].
- **Telephone.** To access the hearing by telephone, dial []. When prompted, use the following access code [] and password [].

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Conflicts of Interest Board through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rules@COIB.nyc.gov.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing may speak for up to three minutes. Please access the public hearing by Internet Video and Audio or by Telephone using the instructions above. It is recommended, but not required, that commenters sign up prior to the hearing by contacting the Conflicts of Interest Board by phone at (212) 437-0730 or by email at lee@coib.nyc.gov.

Is there a deadline to submit comments? Yes, you must submit written comments by [].

This hearing has the following accessibility option(s) available: The Zoom platform accommodates screen reader software. Simultaneous transcription or a sign-language interpreter are available upon request.

Do you need assistance to participate in the hearing? You must tell the Conflicts of Interest Board if you need a reasonable accommodation of a disability at the hearing, including if you need a sign language interpreter or simultaneous transcription. You can advise us by email at lee@coib.nyc.gov or by telephone at (212) 437-0730. You must tell us by [].

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. Copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public on the Conflicts of Interest Board's

EXHIBIT 3

website (<https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page>) as soon as practicable.

What authorizes the Conflicts of Interest Board to make this rule? Sections 1043, 2603(a), and 2603(c)(4) of the City Charter authorize the Conflicts of Interest Board to make this proposed rule. This proposed rule was not included in the Conflicts of Interest Board’s regulatory agenda for this Fiscal Year because it was not anticipated to be a subject of rulemaking at that time.

Where can I find the Conflicts of Interest Board’s rules? The Conflicts of Interest Board’s rules are in Title 53 of the Rules of the City of New York.

What rules govern the rulemaking process? The Conflicts of Interest Board must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of the Proposed Rule

City Charter § 2604(a)(1)(b) prohibits a regular employee of the City from having an ownership interest in a firm “engaged in business dealings with the city, except if such interest is in a firm whose shares are publicly traded, as defined by rule of the board.” The Board accordingly adopted Board Rules § 1-04 in 1990, defining a publicly traded firm as one that “offers or sells its shares to the public and is listed and registered with the Securities and Exchange Commission for public trading on national securities exchanges or over-the-counter markets.”

In the intervening thirty years, the Board has advised many public servants about the impact of the conflicts of interest provisions of Chapter 68 on their ownership interests in publicly traded securities, including six advisory opinions: A.O. Nos. 1994-10, 1994-13, 2002-1, 2007-4, 2009-7, and 2012-1. The proposed amendments to Board Rules § 1-04 would retain the definition of “publicly traded firm” as paragraph (a) and add new paragraphs (b) and (c) dealing, respectively, with investments held in individual retirement accounts (“IRAs”) and the ownership of bonds.

EXHIBIT 3

1 *1. Investments Held in IRAs*

2 City Charter § 2601(16) establishes a definition of “ownership interest” in a firm but
3 excludes “interests held in any pension plan, deferred compensation plan or mutual fund, the
4 investments of which are not controlled by the public servant, the public servant’s spouse,
5 domestic partner, or unemancipated child.” For purposes of this definition, proposed Board Rules
6 § 1-04(b) would treat investments contained in an IRA, Roth IRA, Simplified Employee Pension
7 IRA, or Keogh plan just like any other investments. Thus, for example, shares in a publicly-traded
8 firm that are chosen by the public servant and held in their IRA are considered “ownership
9 interests” within the meaning of City Charter § 2601(16).

10
11 *2. Ownership of Bonds*

12 Proposed Board Rules § 1-04(c)(1) would codify the general advice the Board provided in
13 A.O. No. 1994-10, and reiterated in A.O. Nos. 1994-13, 2002-1, and 2009-7, that a public servant’s
14 ownership of bonds issued by public entities is not a prohibited ownership interest in a “firm.”
15 Specifically, City Charter § 2601(11) and Board Rules § 1-08, which codified A.O. No. 1994-10
16 pursuant to City Charter § 2603(c)(4), exclude certain public and quasi-public entities, including
17 the City of New York and its agencies, from the definition of “firm.” Nevertheless, the Board
18 recognized in A.O. 2009-7 that a small group of public servants has personal and substantial
19 responsibility in the issuance and management of City debt obligations. For these public servants,
20 the purchase, ownership, or sale of City-issued bonds implicates City Charter § 2604(b)(2)
21 prohibiting private interests that conflict with their official City duties, § 2604(b)(3) prohibiting a
22 public servant’s use of their position to benefit themselves or any of their “associated” persons or

EXHIBIT 3

firms, and § 2604(b)(4) prohibiting the use or disclosure of confidential information obtained as part of their City job. Proposed Board Rules § 1-04(c)(2) would codify this holding.

New material is underlined. [Deleted material is bracketed.]

§ 1-04 Investments in Publicly Traded Securities [Definition of a Firm Whose Shares are Publicly Traded].

(a) Definition of a Firm Whose Shares are Publicly Traded. For purposes of Charter § 2604(a)(1)(b), “a firm whose shares are publicly traded” means a firm [which] that offers or sells its shares to the public and is listed and registered with the Securities and Exchange Commission for public trading on national securities exchanges or over-the-counter markets.

(b) Investments held in IRAs. For purposes of Charter § 2601(16), an “ownership interest” includes investments in firms held in an individual retirement account (“IRA”), Roth IRA, Simplified Employee Pension IRA, or Keogh plan, provided that the investment is not otherwise excluded from the definition of “ownership interest.”

(c) Public Debt Obligations.

(1) Except as provided in paragraph (d)(2), for purposes of Charter § 2604(a)(1) and § 2601(11), a public servant is not prohibited from owning debt obligations issued by the City or “other similar entities” as defined in Board Rules § 1-08.

(2) For purposes of Charter § 2604(b)(2), § 2604(b)(3), and § 2604(b)(4), a public servant, prior to becoming personally and substantially involved in the issuance and/or management of City debt obligations must divest their ownership in such debt obligations, and for the duration of such involvement may not buy or hold such City

EXHIBIT 3

1 debt obligations on behalf of the public servant or an associated person or firm. For
2 purposes of Charter § 2604(b)(3), a public servant who is personally and substantially
3 involved in the issuance and/or management of City debt obligations may not trade, or
4 participate in trading, City debt obligations on behalf of, or for the account of, an
5 associated person or firm.

EXHIBIT 3