

February 28, 2023 – Open Meeting Matter

To: The Board

From: Katherine J. Miller



Date: February 22, 2023

Re: Proposed Board Rules § 4-07: Procedures for the Enforcement of Penalties Against Late Filers of Annual Disclosure Reports

The Annual Disclosure Law authorizes the New York City Conflicts of Interest Board to impose a fine on required filers who submit their annual disclosure report to the Board more than one week after their due date. See New York City Administrative Code § 12-110(g)(1). Based on the Board's more than 30 years of experience imposing and collecting fines from late filers, Staff proposes the Board adopt written procedures to provide notice and an administrative structure for filers. The proposed Board Rule would establish a fine schedule and set forth the Board's process to enforce those fines. As part of that process, the proposed Board Rule would ensure that filers have an opportunity to be heard by the Board before the Board determines whether the filer violated the Annual Disclosure Law and the fine to be imposed. Filers would be able to use the proposed Board Rule to calculate their fine for filing late and to navigate the fine enforcement process.

Attached as **Exhibit 1** is the Draft Notice of Public Hearing and Opportunity to Comment. With the Board's approval, Staff will formally submit the proposed Board Rules to the New York City Law Department and the Mayor's Office of Operations for review and approval as required by the City Administrative Procedure Act. See Charter § 1043(d).

1 **New York City Conflicts of Interest Board**

2
3 **Notice of Public Hearing and Opportunity to Comment on Proposed Rules**
4 **Regarding Procedures for the Enforcement of Penalties Against Late Filers of**
5 **Annual Disclosure Reports**
6

7 **What are we proposing?** The Conflicts of Interest Board is proposing to adopt rules for
8 the procedures for setting and enforcing fines against late filers.
9

10 **When and where is the Hearing?** The Conflicts of Interest Board will hold a public
11 hearing on the proposed rule. The public hearing will take place at [time] on [date]. The
12 hearing will be at [TBD].
13

14 This location has the following accessibility option(s) available: [TBD]
15

16 **How do I comment on the proposed rules?** Anyone can comment on the proposed
17 rules by:
18

- 19 • **Website.** You can submit comments to the Conflicts of Interest Board through the
20 NYC rules website at <http://rules.cityofnewyork.us>.
21
- 22 • **Email.** You can email comments to Rules@COIB.nyc.gov.
23
- 24 • **By Speaking at the Hearing.** Anyone who wants to comment on the proposed
25 rule at the public hearing may speak for up to three minutes. It is recommended,
26 but not required, that commenters sign up prior to the hearing by contacting the
27 Conflicts of Interest Board by telephone at (212) 437-xxxx or by email at [TBD].
28 You can also sign up in the hearing room before the hearing begins on [date].
29

30 **Is there a deadline to submit comments?** Yes, you must submit written comments by
31 [date].
32

33 **Do you need assistance to participate in the hearing?** You must tell the Conflicts of
34 Interest Board if you need a reasonable accommodation of a disability at the hearing,
35 including if you need a sign language interpreter. You can advise us by telephone at (212)
36 437-xxxx or by email at [TBD]. You must tell us by [date].
37

38 **Can I review the comments made on the proposed rules?** You can review the
39 comments made online on the proposed rules by going to the website at
40 <http://rules.cityofnewyork.us/>. Copies of all comments submitted online, copies of all
41 written comments, and a summary of oral comments concerning the proposed rule will
42 be available to the public on the Conflicts of Interest Board's website
43 ([https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-](https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page)
44 [hearings.page](https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page)) as soon as practicable.
45

1 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043
2 and 2603(d) of the City Charter authorize the Conflicts of Interest Board to make this
3 proposed rule. These rules were included in the Conflicts of Interest Board’s regulatory
4 agenda for this Fiscal Year.

5
6 **Where can I find the Conflicts of Interest Board’s rules?** The Conflicts of Interest
7 Board’s rules are in Title 53 of the Rules of the City of New York.

8
9 **What rules govern the rulemaking process?** The Conflicts of Interest Board must meet
10 the requirements of Section 1043 of the City Charter when creating or changing rules.
11 This notice is made according to the requirements of Section 1043 of the City Charter.

12 **STATEMENT OF BASIS AND PURPOSE**

13 New York City’s Annual Disclosure Law, found in New York City Administrative
14 Code (“Admin. Code”) § 12-110, requires certain individuals to file an annual disclosure
15 report with the New York City Conflicts of Interest Board (the “Board”) by a date set by
16 the Board. Admin. Code § 12-110(g)(1) provides for penalties, specifically a fine, against
17 required filers who submit their reports more than 7 calendar days after that date. Section
18 12-110(g)(1) sets a range for the fine (not less than \$250 and not more than \$10,000)
19 and lists two factors to be considered by the Board in determining the fine: whether the
20 filer submitted their report late in prior years and the length of the delay in filing. Proposed
21 Board Rules § 4-07 would provide notice and clarity regarding the amount of the fines
22 imposed on late filers and the process by which the Board enforces that fine. The
23 proposed rule sets forth a fine schedule that takes into account the filer’s history of late
24 filing and how late the report at issue was submitted. The proposed rule also sets forth
25 the procedures for the enforcement of the fine, ensuring that late filers are provided notice
26 and an opportunity to challenge the assessment of a fine before the Board issues a public
27 order imposing a fine.

28 **Text of Proposed Board Rules**

29 New material is underlined.

1 **§ 4-07 Procedures for the Enforcement of Penalties Against Late Filers**

2 (a) Applicability.

3 Pursuant to Administrative Code § 12-110(g)(1), this section sets forth the
4 procedures for setting and enforcing fines against late filers who are not subject to
5 the jurisdiction of any state law or collective bargaining agreement that provides
6 for the conduct of disciplinary proceedings.

7 (b) Definition.

8 The term “late filer” means a person who was required to submit an annual
9 disclosure report pursuant to Administrative Code § 12-110(b) and submitted their
10 report to the Board more than 7 calendar days after the filing deadline set by the
11 Board.

12 (c) Fine schedule.

13 All late filers will be required to pay a fine of \$250, plus:

14 (1) An additional \$250 for every 30 calendar days after the filing deadline that the
15 filer submitted their report.

16 (2) An additional \$250 if the filer was a late filer in the previous 6 years.

17 (d) Commencement of an enforcement action.

18 An enforcement action will be commenced by sending a written Late Filer Notice
19 to the filer’s last known email address. The Late Filer Notice will state:

20 (1) the filing deadline set by the Board;

21 (2) the date the filer submitted their report;

22 (3) the amount of the fine, as determined by the fine schedule in this section;

23 (4) the filer’s right to be represented by an attorney or other person; and

1 (5) that the filer has 30 calendar days from the date of the Late Filer Notice to either
2 pay the fine or submit a response for consideration by the Board.

3 (e) Representation by an attorney or other person.

4 A filer may choose to be represented by an attorney or any other person. The
5 filer's representative must submit a written and signed Notice of Appearance to the
6 Board. The appearance of a member in good standing of the bar of a court of
7 general jurisdiction of any state or territory of the United States will be indicated by
8 the designation "Attorney for (person represented)." The appearance of any other
9 person will be indicated by the designation "Representative for (person
10 represented)." The Board will not accept a response from or discuss the details of
11 a notice or action under this section with a person who has not submitted a Notice
12 of Appearance.

13 (f) Response.

14 A late filer has 30 calendar days from the date of the Late Filer Notice to pay the
15 fine or submit a written response for consideration by the Board. The response is
16 an opportunity for the late filer to provide an explanation of why they submitted the
17 report late, including any supporting documentation, that they believe justifies a
18 reduction of the fine or dismissal of the enforcement action.

19 (g) Board order or dismissal.

20 (1) The Board will review the Late Filer Notice, any written response submitted by
21 the late filer, and other relevant information to determine whether a violation
22 has occurred and, if so, the appropriate fine. The Board may, with good cause

1 shown, forgive some of the fine, provided that imposition of a partially forgiven
2 fine does not result in a fine of less than \$250.

3 (2) If the Board determines that a violation has occurred, the Board will issue an
4 order stating its final findings and imposing a fine. This order will be made
5 public, but all underlying records, reports, memoranda, and files will remain
6 confidential in accordance with Charter § 2603(k), except that annual
7 disclosure reports and the dates of their filing are available for public inspection
8 pursuant to Administrative Code § 12-110(e).

9 (3) The order will be sent by first class mail to the late filer's last known residential
10 address or actual place of business and to the late filer's representative, if
11 applicable.

12 (4) If the order imposes a fine, payment is due to the Board within 30 calendar
13 days of the date of service. If the late filer does not pay the full amount within
14 30 calendar days, the Board will pursue all remedies, which may include
15 garnishment of City wages or referral to the New York City Law Department for
16 collection.

17 (5) If the Board determines that the action should be dismissed, the Board will
18 issue a written decision that dismisses the action. The decision will be sent to
19 the filer and the filer's representative, if applicable, and will not be made public.
20 All underlying records, reports, memoranda, and files will remain confidential in
21 accordance with Charter § 2603(k), except that annual disclosure reports and
22 the dates of their filing are available for public inspection pursuant to
23 Administrative Code § 12-110(e).