

## CONFLICTS OF INTEREST BOARD

### Adoption of Rules

The Conflicts of Interest Board adopted the following rule at its meeting on June 14, 1990:

#### Section 1. Definition of Blind Trust.

For purposes of Charter Section 2601(6), the term "blind trust" means a trust in which a public servant, or the public servant's spouse or unemancipated child, has a beneficial interest, the holdings and sources of income of which the public servant, the public servant's spouse and unemancipated child have no knowledge, and which meets the following requirements:

(a) The trust is under the management and control of a trustee who is a bank or trust company authorized to exercise fiduciary powers, a licensed attorney, a certified public accountant, a broker or an investment advisor, who is:

- (1) independent of any interested party;
  - (2) is not or has not been an employee of any interested party or any firm in which any interested party has a substantial investment, and is not a partner of, or involved in any joint venture or other investment with any interested party; and
  - (3) is not a relative of any party.
- (b) The trust instrument provides that:
- (1) the trustee in the exercise of his or her authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;
  - (2) the trust tax return shall be prepared by the trustee or his or her designee and such return and any information relating thereto (except as such information may be needed by an interested party in order to complete a personal tax return) shall not be disclosed to any interested party;
  - (3) no interested party shall receive any report on the holdings and sources of income of the trust, except periodic reports with respect to the total cash value of the trust or the net income or loss of the trust;
  - (4) there shall be no communications, direct or indirect, between the trustee and an interested party with respect to the trust unless such communication is in writing. Except as provided elsewhere in this subdivision, such written communications shall be limited to the general financial interest and needs of the interested party, including requests for distribution of cash or other unspecified assets of the trust;
  - (5) the interested parties shall make no effort to obtain, and shall take appropriate action to avoid, receiving information with respect to the holdings and the sources of income of the trust including obtaining a copy of any trust tax return file or any information relating thereto except as such information may be needed by an interested party in order to complete a personal tax return.

For purposes of this subdivision, the term "interested party" means a public servant, or the public servant's spouse or unemancipated child.

#### Section 2. Existing Trusts.

Any trust existing as of the effective date of these regulations shall be deemed a blind trust for purposes of these regulations if the trust instrument is amended to comply with the requirements of subdivision b of section 1 of these regulations and the trustee of the trust meets the requirements of subdivision a of such section, or, in the case of a trust instrument which does not by its terms permit amendment, if the trustee and the trust beneficiary (or, if the trust beneficiary is a dependent child, any other interested party) agree in writing that the trust shall be administered in accordance with the requirements of subdivision b of section 1 and the trustee of the trust meets the requirement of subdivision a of such section.

#### Section 3. Establishment and Dissolution of Blind Trust.

(a) The preparer of a blind trust instrument, or agreement entered into pursuant to section 1 of these regulations shall, within thirty days of the establishment of such trust or agreement, file an affidavit with the Conflicts of Interest Board stating that the blind trust instrument or trust as agreed to be administered pursuant to agreement, as the case may be, conforms to the requirements set forth in subdivision b of section 1 and that the trustee meets the requirements of subdivision a of such section.

(b) Within thirty days of the dissolution of a blind trust, the beneficiary of such trust or other interested party shall file an affidavit with the Conflicts of Interest Board stating that such blind trust has been dissolved and identifying the date of such dissolution.

#### Statement of Basis and Purpose of Regulation:

Pursuant to the authority vested in the Conflicts of Interest Board by Section 2601(6) of the New York City Charter and in accordance with the requirements of Section 1043 of the New York City Charter, the Conflicts of Interest Board is authorized to promulgate a rule concerning the definition of a blind trust, for the purpose of ensuring compliance by the City and all public servants with the applicable provisions of the conflicts of interest law. New York City Charter Section 2604(a)(1)(a) provides that no public servant shall have a position or an ownership interest in a firm which such public servant knows is engaged in business dealings with the agency served by such public servant. New York City Charter Section 2604(a)(1)(b) provides that no regular employee of the City shall have a position or an ownership interest in a firm which such regular employee knows is engaged in business dealings with the City. New York City Charter Section 2601(16) provides that an ownership interest which is held or acquired by a blind trust shall not be included in the definition of ownership interest.

Dated: September 14, 1990 Sheldon Oliensis  
Chair

The Conflicts of Interest Board adopted the following rule at its meeting on June 14, 1990:

#### Section 7. Definition of a Firm Whose Shares are Publicly Traded.

For purposes of Charter Section 2604(a)(1)(b), "a firm whose shares are publicly traded" means a firm which 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.

#### Statement of Basis and Purpose of Regulation:

Pursuant to the authority vested in the Conflicts of Interest Board by Section 2604(a)(1)(b) of the New York City Charter and in accordance with the requirements of Section 1043 of the New York City Charter, the Conflicts of Interest Board is authorized to promulgate a rule concerning the definition of a firm whose shares are publicly traded, for the purpose of ensuring compliance by the City and all public servants with the applicable provisions of the conflicts of interest law. New York City Charter Section 2604(a)(1)(b) provides that no regular employee of the City shall have an interest in a firm which such regular employee knows is engaged in business dealings with the City, except if such interest is in a firm whose shares are publicly traded.

Dated: September 14, 1990 Sheldon Oliensis  
Chair

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

### **Notice of Final Rules**

NOTICE IS HEREBY GIVEN PURSUANT TO AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Sections 1043, 2601(16), 2603(a), 2603(c)(4), and 2604(a) of the New York City Charter, that the Conflicts of Interest Board has adopted Board Rules amending its rules related to investments in publicly traded securities.

The proposed Rules were published in the City Record on December 23, 2020, and a public hearing was held on January 26, 2021. No comments were received. The Conflicts of Interest Board now adopts the following Rules.

### **Statement of Basis and Purpose**

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 amendments to Board Rules § 1-04 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.

#### *1. Investments Held in IRAs*

City Charter § 2601(16) establishes a definition of “ownership interest” in a firm but excludes “interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by the public servant, the public servant’s spouse,

domestic partner, or unemancipated child.” For purposes of this definition, Board Rules § 1-04(b) treats investments contained in an IRA, Roth IRA, Simplified Employee Pension IRA, or Keogh plan just like any other investments. Thus, for example, shares in a publicly-traded firm that are chosen by the public servant and held in their IRA are considered “ownership interests” within the meaning of City Charter § 2601(16).

## 2. *Ownership of Bonds*

Proposed Board Rules § 1-04(c)(1) codifies the general advice the Board provided in A.O. No. 1994-10, and reiterated in A.O. Nos. 1994-13, 2002-1, and 2009-7, that a public servant’s ownership of bonds issued by public entities is not a prohibited ownership interest in a “firm.” Specifically, City Charter § 2601(11) and Board Rules § 1-08, which codified A.O. No. 1994-10 pursuant to City Charter § 2603(c)(4), exclude certain public and quasi-public entities, including the City of New York and its agencies, from the definition of “firm.”

Nevertheless, the Board recognized in A.O. 2009-7 that a small group of public servants has personal and substantial responsibility in the issuance and management of City debt obligations. For these public servants, the purchase, ownership, or sale of City-issued bonds implicates City Charter § 2604(b)(2) prohibiting private interests that conflict with their official City duties, § 2604(b)(3) prohibiting a public servant’s use of their position to benefit themselves or any of their “associated” persons or firms, and § 2604(b)(4) prohibiting the use or disclosure of confidential information obtained as part of their City job. Board Rules § 1-04(c)(2) codifies this 2009 advice.

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

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

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