

February 11, 2021, Agenda – Open Meeting Matter
November 24, 2020, Agenda – Open Meeting Matter
September 22, 2020, Agenda – Open Meeting Matter

To: The Board

From: Christopher M. Hammer *cmh*

Date: February 1, 2021

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

At its November 2020 Open Meeting, the Board authorized Staff to submit to the New York City Law Department and Mayor’s Office of Operations proposed amendments to Board Rules § 1-04 regarding ownership of publicly traded securities. The minutes to the Open Meeting are attached as **Exhibit 1**. The proposed amendments were certified pursuant to the City Administrative Procedure Act and were published in the City Record on December 23, 2020. A public hearing was held on January 26, 2021. No comments were received in advance of the hearing, nor did any member of the public testify in person at the public hearing.

Staff recommends that the Board adopt the proposed amendments as published, with stylistic edits to the Statement of Basis and Purpose to reflect that the amended rule is no longer a proposal. A tracked version of the proposed Notice of Adoption is attached as **Exhibit 2**, and a clean version is attached as **Exhibit 3**. Once approved by the Board, the Notice of Adoption will be published in the City Record and will take effect 30 days after publication. See Charter Section 1043(f).

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

Date: November 24, 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 9:35 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 §§ 1-04, 1-01(i)-(m), and 1-01(e).

Board Rules § 1-04

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

- § 1-04(c)(1): replace “(d)(2)” with “(c)(2)”

The Board unanimously agreed to adopt the proposed amendments as the final rule to be submitted to the Law Department and the Mayor’s Office of Operations for review.

Board Rules §§ 1-01(i), (j), (k), (l) and (m)

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

- § 1-01(k): revise to list permissive gifts from superiors to subordinates and between peers first.

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

Board Rules § 1-01(e)

After a brief introduction by Staff and discussions with the Board, the following change was agreed to by the Board and Staff:

- § 1-01(e)(1): add “otherwise prohibited as a valuable gift”

The Board unanimously agreed to approve the proposed amendments as the final rule to be submitted to the Law Department and the Mayor’s Office of Operations.

The open meeting was adjourned at approximately 10:26 a.m.

Respectfully submitted,
Julia H. Lee
Recording Secretary

New York City Conflicts of Interest Board

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

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.

~~**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 10:30 a.m. on Tuesday, January 26, 2021, and is accessible by:~~

- ~~● **Internet Video and Audio.** To access the hearing by Zoom, use the following URL: <https://us02web.zoom.us/j/85738424898?pwd=ZGxneTRje2UwNzRUSWhOdmlLaWlrQT09>.~~
- ~~● **Telephone.** To access the hearing by telephone, dial (929) 436-2866. When prompted, use the following access code 857-3842-4898 and password 838367.~~

~~**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) 437-0721 or by email at hammer@coib.nyc.gov.~~

~~**Is there a deadline to submit comments?** Yes, you must submit written comments by Tuesday, January 26, 2021.~~

~~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 hammer@coib.nyc.gov or by telephone at (212) 437-0721. You must tell us by Friday, January 22, 2021.~~

~~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 as soon as practicable on the Conflicts of Interest Board's website (<https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page>).~~

~~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.

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, ~~proposed~~ Board Rules § 1-04(b) ~~would~~ 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) ~~would~~ 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. ~~Proposed~~ Board Rules § 1-04(c)(2) ~~would~~ codify iesy 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.

New York City Conflicts of Interest Board

Notice of Final Rules

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