March 24, 2023

Thank you for the opportunity to comment on proposed changes to the Commission's Supplemental Standards of Ethical Conduct for Members and Employees. As a member of Commission staff, I strongly support requirements for members and employees of the Commission to avoid securities transactions and holdings that create conflicts of interest with the Commission's mission. I also strongly support requirements to demonstrate our compliance with high ethical standards by confidentially reporting our securities transactions and holdings directly to the Commission. I cannot, however, support the proposal to authorize third-party automated reporting of members' and employees' financial transactions. And while I support the Commission's effort to reduce costs from existing requirements for preclearance and reporting of lower risk diversified investment funds, I respectfully recommend further analysis of the proposal before eliminating these requirements.

The proposal to authorize third-party automated reporting of members' and employees' financial transactions does not consider the substantial risk of significant economic and legal harm to Commissioners and staff. At its core, the proposal is an attempt to coerce staff and their families to share highly sensitive financial data with an as-yet unknown third party with whom staff presumably would have no contractual or customer relationship. This sensitive data is currently maintained primarily by entities who are registered with the Commission and subject to extensive customer information protection requirements under Regulation S-P, Regulation S-ID and, if adopted, recently proposed rules regarding cybersecurity. The proposal would require staff to consent to transferring that data instead to a third party, presumably after waiving all legal protections and indemnifying the transferring financial institution. According to the proposal, that third party would not be required to be registered with the Commission and would not be required to have a securities customer relationship with staff, and thus would not be subject to the same stringent customer protection requirements that currently apply to this data. This transfer would put staff's sensitive financial and personal data at risk of unauthorized disclosure, misuse and theft. In comparison, FINRA Rule 3210 generally requires associated persons of FINRA-member broker-dealers to hold all financial accounts at their employer unless the employer consents to an account held away, but the employer—crucially—is itself registered with the Commission and subject to the Commission's extensive customer information protection requirements with respect to those employee accounts. Moreover, under the current reporting system staff provides their financial information directly to the Commission and in an unstructured data format that is less attractive to bad actors who would misuse it, while the proposal presumably would require the third party to collect this data from financial institutions in a machine-readable format that would be more easily abused by bad actors. For these reasons, the proposed third-party automated compliance system risks discouraging employment with the Commission and harming the Commission's ability to recruit and retain highly qualified personnel. Contrary to the proposal's conclusion, these entirely predictable effects risk a significant impact on the functioning of securities markets and on efficiency, competition and capital formation.

To address these shortcomings, the proposal should be amended to:

- Require the third-party recipient of staff and their families' financial and personal information to be registered with the Commission as an investment adviser and/or broker-dealer and to enter into an agreement with the Commission, which staff and their families would be able to enforce if necessary, to treat that information as if it were customer information;

- Provide for the Commission to fully reimburse staff and related persons whose financial information is transferred via the planned third-party automated compliance system for any damages arising out of the financial institution's erroneous transfer of information; the third party's maintenance, disclosure or misuse of that information; and any fees charged by the financial institution in connection with the information transfer;

- Require that the third party promptly disclose to staff a human-readable copy of all information that their financial institution transfers to the third party, to allow staff to ensure that overly broad financial information, such as transactions and holdings in bank accounts, credit cards or loan accounts held at the same institution, and/or unnecessary personally identifiable information, such as login credentials or a spouse or child's Social Security number, are not transferred to the third party—or, if they are, to allow staff and the Commission to act immediately to mitigate the harms of the unauthorized disclosure and prevent future breaches;

- Consistent with the proposal's declaration that staff's financial institution would act as staff's agent in transmitting information, include rights for staff to correct erroneous information and to require deletion of overly broad information transferred to the third party in error;

- Clarify which legal rights staff and their families would be expected to waive to obtain their financial institution's consent to participate in the third-party automated compliance system, and explain why the Commission's interest in reducing the costs of the current reporting system outweighs the interests of staff and their families in these legal rights, particularly when alternative means of providing the information already exist;

- Clarify that staff and their families would not be expected to indemnify the transferring financial institution against claims or damages arising from the institution's participation in the third-party automated compliance system;

- Clarify that a financial institution's refusal to participate in the third-party automated compliance system would always provide a sufficient basis for the DAEO to allow affected staff to provide the required information through another means (i.e., that the Commission will not prohibit staff or their families from doing business with entities who

refuse to participate, such as smaller entities who cannot afford to absorb the costs of the automated compliance system); and

- Clarify which items, if any, of financial data and personally identifiable information about staff and their families not currently provided via the current reporting system would be required to be transferred via the third-party automated compliance system and explain the Commission's interest in obtaining it.

The proposal to eliminate preclearance and reporting requirements for lower risk diversified investment funds is laudable in its goal to reduce the costs of the Commission's ethics compliance program, but this aspect of the proposal requires further analysis before adoption. In particular:

- The proposal would eliminate preclearance and reporting requirements for all 529 plans, without regard to whether the investments in those plans are in fact diversified investment funds. 529 plans generally could contain a wide range of investments that may or may not be sufficiently diversified.

- The proposal states that the Office of Government Ethics has provided an exemption from the criminal financial conflict of interest law, 18 USC 208, with respect to diversified mutual funds and diversified unit investment trusts. The proposal would eliminate preclearance and reporting requirements for these instruments, but also for money market funds, 529 plans and diversified pooled investment funds held in employee benefit plans or pension plans. While these investments do indeed appear to be lower risk (except for 529 plans that hold non-diversified investments), the proposal risks giving staff the false impression that all these investments would be permissible holdings under the criminal financial conflict of interest law. If the Commission wishes to eliminate these preclearance and reporting requirements, the Office of Government Ethics should simultaneously provide an exemption from the criminal conflict of interest law for the same investments. The Commission should not eliminate preclearance and reporting requirements for securities that are not exempt from the criminal financial conflict of interest law.

- The proposed text of section 4401.102(c)(1) prohibits purchasing or holding a security or other financial interest in as few as one entity directly regulated by the Commission, while purchasing or holding the newly added categories of investments would be prohibited only if the investment vehicle has a stated policy of concentrating investments in entities (plural) directly regulated by the Commission. This rule text appears to inadvertently permit purchasing or holding an investment vehicle with a stated policy of concentrating investments in only one entity directly regulated by the Commission. This result would appear to be contrary to the proposal's intended goals.

Respectfully submitted by a member of Commission staff.