

March 29, 2023

Via Electronic Submission

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**Re: File Number S7-02-23, Supplemental Standards of Ethical Conduct for
Members and Employees of the Securities and Exchange Commission**

Dear Secretary Countryman,

The University of Nevada, Las Vegas William S. Boyd School of Law Public Policy Clinic, on behalf of the Consumer Federation of America (CFA), writes to express its support for the proposed supplemental standards of ethical conduct for members and employees of the Securities and Exchange Commission. Achieving the Commission's tripartite mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital requires public confidence in the Commission's impartiality and integrity. Simply by nature of the Commission's work, Commission employees routinely handle confidential and material nonpublic information capable of moving markets. This comes with a risk that some employees might either use that knowledge for personal gain or otherwise attempt to shift Commission activities to benefit their personal holdings. While safeguards already exist to protect against the misuse of proprietary information, we support the Commission's decision to review and adjust its ethical rules.

The proposed measures will bolster public trust in the Commission's integrity, minimize conflicts of interest which might affect the Commission's work, and avoid inequitable trading based on material nonpublic information available to Commission employees. Moreover, these changes improve compliance mechanisms and streamline the compliance process for employees without compromising the efficacy of the current systems. We commend the Commission's efforts to bolster stability and fairness in the financial markets through the enhanced ethical standards and requirements proposed. For the reasons outlined below, we urge the Commission to adopt the proposed amendments.

I. Tailoring Existing Prohibitions on Financial Industry Sector Assets

The Commission has historically prohibited its employees from purchasing or owning any "security or other financial interest in an entity directly regulated by the Commission" to avoid any conflicts of interest or perceived impropriety.¹ The Commission now proposes to amend the definition of "entity directly regulated by the Commission" to include financial industry sector funds. This proposed expansion would encompass registered investment companies, common investment trusts of a bank, companies exempt from registration under the

¹ 5 CFR 4401.102(c)(1).

Investment Company Act of 1940, or other pooled investment vehicles with a stated policy of concentrating investments in entities directly regulated by the Commission.

This change recognizes that Commission employees owning financial industry sector funds may pose a substantial risk of conflicting with Commission work. Commission employees are uniquely situated to obtain material nonpublic information about the Commission's activities. Moreover, the Commission's regulatory and enforcement actions frequently move financial markets. Consequently, the requirements around employee trading should be effectively tailored to limit the opportunity for abusing non-public information or the risk that Commission staff will face an incentive to tilt the Commission's activities in any particular way because they hold a financial industry sector fund.

The proposal appropriately brings industry funds within the definition of "entities directly regulated by the Commission" to account for the high risk of conflict posed by financial industry sector funds. The stated purpose of the rule is to prevent any actual or perceived conflicts or appearance concerns with employee ownership of sector funds, while still allowing investments in mutual funds and ETFs so long as employees comply with regulatory exemptions. The change proposed is a sensible and necessary step in promoting ethical conduct and further preventing conflicts within the agency. Moreover, the proposed change is consistent with the Commission's risk-based approach and will help to further strengthen public trust in the Commission's work.

II. Eliminating Barriers Around Permissible Diversified Investment Funds

We also support the Commission's proposed modification to its pre-clearance and reporting requirements for Permissible Diversified Investment Funds (PDIFs). The Commission's existing policy requires employees to preclear securities transactions, confirm securities transactions by reporting them to the Commission within five business days of the transaction, and hold securities for at least 30 days before selling. While these safeguards serve a useful purpose, the current requirements for PDIFs appear unnecessarily burdensome for Commission employees given the minimal risk such assets pose.

The amendment would add PDIFs to the existing list of exempted securities, which includes diversified registered investment companies, money market funds, diversified pooled investment funds in employee benefit or pension plans, and prepaid college tuition plans. For securities which pose substantially lower risk for conflict, it's sensible for the Commission to adapt policies accordingly. Reducing the emphasis on preclearance and reporting for low-risk assets would preserve limited Commission resources and focus ethics compliance activities on trading that poses the most significant potential for conflicts. We believe that this change strikes an appropriate balance between safeguarding against conflicts of interest and minimizing unnecessary burdens on Commission staff.

III. Automated Reporting

Current rules require Commission employees to manually report securities transactions to the Office of Ethics and Compliance (OEC) within five business days of confirmation of the transaction. The rule amendment would instead authorize the Office of Ethics and Compliance

(OEC) to collect securities transactions and holdings data directly from financial institutions through a third-party automated electronic system. We believe that this change would increase efficiency and reduce the risk of human error.

The proposed amendment would eliminate the need for employees to manually submit brokerage or financial statements and instead create a system built on automated compliance. We also appreciate that the rule anticipates potential issues with automated reporting and allows an employee to comply through other means if they cannot obtain consent from their brokerage or financial institution. This ensures all employees can comply with the rule regardless of their bank or brokerage. Transitioning away from manual reporting reflects the widespread, modern trend toward efficiency through technology. This change would greatly reduce the burden on Commission employees and compliance staff, increase the accuracy and completeness of data, and facilitate compliance by allowing the OEC to indirectly verify employee holdings.

IV. Prohibit Purchases of Direct Listings

Finally, the proposal also seeks to expand limitations on Commission employee transactions in response to changing market realities. Existing rules already prohibit Commission employees from purchasing securities sold in an initial public offering (IPO) for seven calendar days after the IPO is effective. This is another policy that attempts to ensure employees do not use or appear to use material, non-public information to their advantage. Currently, direct listings fall outside the scope of the prohibition but still present similar concerns over the use of non-public information by employees. The amendment would expand the prohibition to include securities directly listed on an exchange.

Direct listings offer companies an alternative route to going public and have grown in popularity in recent years, with large companies like Spotify opting to directly list. Along this trend, the Commission anticipates the growing risk these listings pose with its current proposal. This proposed rule change strikes a reasonable balance. Commission employees are not prohibited from purchasing direct listings but simply must allow a grace period before purchasing as they would with IPOs. With growing national interest in direct listings, it's critical the Commission readjust its treatment of those listings with respect to employee transactions because the secondary market dynamics with direct listings are likely to be the same as with IPOs. This proposed limitation will benefit the integrity of capital markets and reduce the risk of actual or perceived conflicts of interest with respect to directly listed companies.

V. Conclusion

We support the proposal. The proposed amendments will update the Commission's ethical standards appropriately to cover financial industry sector funds and direct listings. The changes will also make the Commission's compliance process more efficient and ensure that limited Commission resources will be deployed more effectively. We appreciate the thoughtful consideration put in to modernize Commission ethics compliance and urge the Commission to approve the proposed amendments discussed above.

Sincerely,

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