

March 31, 2023

SEC Secretary, Vanessa A. Countryman
The Securities Exchange Commission
100F Street, NE Washington, DC 20549

Re: File No. S7-02-23 Supplemental Standards of Ethical Conduct for Members and Employees of the Securities and Exchange Commission

Dear Secretary Countryman and Director Rounds III,

Thank you for allowing public comments and the availability of the *Federal Register* version of this proposal. In review of the proposed amendments, I commend the Securities Exchange Commission (SEC) and the Office of Government Ethics (OGE) that these amendments are considered. This letter is intended to contribute to analyzing the pros and cons, as well as any recommendations in regards to the 5 proposed rules jointly issued with the OGE to the SEC's Supplemental Standards:

I. Prohibit Ownership of Financial Industry Sector Funds

I agree that SEC employee ownership of sector funds that are directly regulated by the Commission should be prohibited to prevent insider trading, maintain independence, and improve consistency of the SEC's risk based approach. It is the code that the SEC rule 10b-5 prohibits corporate officers, directors, and other inside employees from using confidential corporate information to gain a profit or even avoid a loss when trading in company stocks. Moreover, on the SEC website, an insider is either "an officer, director, a 10% stockholder and anyone who possesses inside information"¹ by a relationship with a company. Therefore, a new amendment to finally restrict mutual funds, particularly exchange-traded funds (ETF) is a necessary reasonable restraint in order to live up to the rule 10b-5, especially if ETFs are registered with and regulated by the SEC with rules.

In other words, the SEC is a control in itself to reduce the residual risk of insider trading or any other securities fraud. With such power the SEC has to regulate ETFs, it is fair to the public investors that SEC employees no longer own ETFs, especially SEC employees who are a part of the process of the regulation in order to prevent insider trading or any advantage just by regulating with ETFs. Therefore, it is a duty for an SEC employee to follow the SEC's mission which is "to protect the investors, maintain fair, orderly, and efficient markets, and facilitate capital formation"¹. Thus, all SEC employees should be submissive to amendments to promote

¹ <https://www.sec.gov/strategic-plan/about>

² <https://www.sec.gov/about/careers/sec-compensation>

³ https://www.oge.gov/web/OGE.nsf/about_what-we-do

this mission along with the SEC's values of "integrity, excellence, accountability, teamwork, fairness, and effectiveness"¹ even if that means giving up a certain right because being affiliated with the SEC or having the privilege to significantly influence fellow SEC workers than the public can to change a regulation should require independence from ETFs that this proposal promotes. Furthermore, although the SEC employees could only invest in permissible diversified funds, the pros do outweigh the cons in terms of checks and balances to prevent securities fraud by an SEC employee.

It is recommended; however, to the counsel that the SEC should provide compensation or increased employee benefits to make up for their lost opportunity to invest in financial industry sector funds in order to prevent high turnover or even employees going on strike. Perhaps, transaction fees that the U.S. Treasury requires stock exchanges and broker-dealers to pay can be allocated to help compensate SEC employees with increased salaries. According to the SEC website, it shows the base pay ranges in 2022 that the minimum base pay was \$22,087 while the salary cap including locality pay was \$261,400². If regular U.S. citizens and businesses who qualify can reap profits from financial sector funds while the SEC regulators of these investors are not allowed to, this prompts the need to compensate employees better for the work they do to promote the SEC's mission statement. Overall, this part of the proposal is necessary but SEC employees may feel limited with their salaries and what they can invest in, and as well as the burdens of divesting once this proposal is passed that should give rise to increased compensation for the trade offs they are subjected to in order to promote ethical markets.

II. The Elimination of Pre-clearance, Reporting, and Holding Requirements for Permissible Diversified Investment Funds

Particularly, since this proposal mentioned that by applying a risk-based approach it would "appropriately tailor compliance activities to address trading and holdings that pose the most significant potential for conflicts of interest." This is relevant because the existing rule is that SEC employees can own diversified investments that are permitted by the SEC which is considered an internal control, but these other controls such as pre-clearance, reporting, and holding requirements are an extra 3 levels of safety on investments that already pose low residual risks, such as prepaid college as the this proposal previously mentioned. Therefore, it seems the risks and controls have been evaluated for this proposal that by allowing SEC employees and the OEC to no longer be burdened with pre-clearance, reporting, and holding requirements for permissible diversified investments would also improve the SEC's operations to better focus on compliance for investments that pose higher residual risks. Thus, from an internal audit perspective, despite losing those 3 controls that help prevent securities fraud, having the appropriate amount of controls with just only permission of the SEC themselves who evaluated and decided which investments are permitted ethically, will still be the only reasonable control

left that still effectively reduces the residual risks of such permissible diversified funds while also focusing on improving the operations of the SEC.

III. Automated Reporting

To reiterate, the Office of Ethics and Compliance (OEC) must reconcile precleared trades that are permissible to employees and members through their manual reports, but due to this proposed amendment that would instead allow the OEC to collect their securities transactions and holdings data from financial institutions through a third-party by an automated electronic system instead is definitely an enhancement compared to manual reporting of securities transactions. According to the proposal, submitting manually has the downside of being a burden and is vulnerable to human error. Moreover, these benefits are worth the change to require automated reporting from third parties to produce reports of investments the SEC allows its employees to have.

In addition, I appreciate that this proposal allows that the Designated Agency Ethics Official (DAEO) can let an employee provide “required information through another means if they cannot obtain consent from their brokerage or financial institution” because the con of relying on third parties is giving up control. It is best to leave an alternative option remain when a third party option is not possible or is burdensome. In addition, there is sometimes an expense to use a third party to produce automated reports that making automated reports not entirely an absolute is agreeably a great decision to allow an SEC employee to adapt when needed.

IV. Prohibit Purchases of Direct Listed Assets

Indeed there is a key difference between direct listing vs. initial public offerings (IPO) that essentially they have different goals. A direct listing is a stakeholder selling an existing stock to the public while an IPO sells new stock shares to the public. However, one common trait between the two is they both issue stock to the public which means a direct listing should be treated with the same existing rule applied when an SEC employee is not allowed to purchase an IPO until after 7 days because technically a direct listing is regulated by the SEC. Therefore, in order to discourage insider trading or conflicts of interest of being directly regulated, SEC employees should no longer be able to purchase direct listings right away until after 7 days like the proposal mentions. Furthermore, the benefit of this limitation supports integrity but the trade off is that SEC employees will lose their right to purchase direct listings right away. In spite of that, this proposal should be passed because a direct listing without limitations for preventive measures is needed to close this control gap.

V. Technical Corrections

Yes, I do agree that the Commission should make definitional and technical changes to its rules by updating the language once the Office of the Ethics Counsel (OEC) is no longer part of the Office of General Counsel because separating these offices will help each one focus more on their speciality. For instance, the OEC can fully concentrate on SEC matters while the OGC can focus on being the legal team of the department of health and human services. Both can refer to each other while the amended changes are written in the standards or rules that reflect this update. Furthermore, I do want to mention that the current format of the Code of Federal Regulations such as CFR § 240.12b-2, which provides definitions, is appropriate and fairly helps readers understand the proceedings codes with keywords defined that should be kept and updated reflecting amendments.

Conclusion

Accordingly, the Office of Government Ethics is competent to jointly work together in the matters of the SEC because the OGE is not just any third party, it is a credible agency within the executive branch that was created in 1978. It is noteworthy that on the OGE's website on the *What We Do* page, it mentions that, "public service is a public trust, **requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.**"³ according to Principle 1 of The 14 Principles of Ethical Conduct for Employees of the Executive Branch. Furthermore, the Commission, with the concurrence of OGE, is an effective double duo to enhance the ethical standards through these proposals that the SEC employees and society can rely on to make the world a better place from harm's way of securities fraud. Of course, I hope any recommendations I mentioned will be taken into consideration to further help SEC employees feel that they are appreciated for their duty to the SEC above their private gain.

Sincerely,

Nakai Freeland