

OFFICE OF GOVERNMENT ETHICS
SECURITIES AND EXCHANGE COMMISSION

5 CFR Part 4401

[Release No. 34-64172]

Amendment of outside employment and activities section of the SEC's Supplemental Standards of Ethical Conduct for Members and Employees of the Securities and Exchange Commission

AGENCIES: Securities and Exchange Commission and Office of Government Ethics.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission with the concurrence of the Office of Government Ethics is amending its Supplemental Standards of Conduct for Members and Employees to eliminate a recently established prior approval requirement for outside employment.

DATES: Effective Date: [Insert date 30 days after date of publication in the Federal Register]

FOR FURTHER INFORMATION CONTACT: Shira Pavis Minton, Ethics Counsel, Office of the General Counsel, (202) 551-5170, Securities and Exchange Commission, 100 F Street N.E., Washington, DC 20549-1050.

I. Supplementary Information

The Securities and Exchange Commission with the concurrence of the Office of Government Ethics ("OGE") is amending its Supplemental Standards of Conduct for Members and Employees to eliminate a recently established prior approval requirement for outside employment. Staff members of the SEC are already subject to strict limitations regarding the type of employment they are allowed to undertake, and staff regularly seeks advice from the ethics office prior to taking any outside employment. In addition, the requirement appears to be largely cumulative of other measures without providing significant additional benefits. These other measures include the requirement that SEC staff members submit proposed publications or

prepared speeches relating to the Commission (or to the statutes or rules it administers) to the General Counsel for review. These measures also include current financial disclosure regulations and current substantive regulations prohibiting conflicting outside employment. The requirement to obtain prior approval for outside employment has not identified any conflicts or otherwise enhanced the ethics program.

II. Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commission finds, in accordance with section 553(b)(3)(A) of the Administrative Procedure Act,¹ that these rules relate solely to agency organization, procedure, or practice. These rules are therefore not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act² therefore does not apply. Because these rules relate to “agency organization, procedure or practice that does not substantially affect the right or obligations of non-agency parties,” they are not subject to the Small Business Regulatory Enforcement Fairness Act.³ The rules do not contain any new collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.⁴

III. Costs and Benefits of the Amendments

Taken as a whole, the Commission and the public have a substantial interest in the integrity of the Commission’s processes. Congress has directed the Commission to oversee the securities markets and securities professionals and to protect investors. To that end, the ethical standards contained in the rules enacted today require the Commission’s members and employees

¹ 5 U.S.C. 553(b)(3)(A).

² 5 U.S.C. 601 *et seq.*

³ 5 U.S.C. 804(3)(C).

⁴ 44 U.S.C. 3501 *et seq.*

to maintain high standards of honesty, integrity, and impartiality, and to avoid actual, or the appearance of, conflicts of interest.

In general, the costs of the procedures in the Commission's rules of practice fall largely on the Commission and its employees. As noted, the amendments set forth in this release relate to internal agency management. These rules re-codify pre-existing obligations on the Commission's members and employees with certain minor modifications. As such, the Commission believes that the costs imposed by compliance with these amended rules have not substantially increased from the obligations of Commission members and employees before these amendments.

IV. Consideration of Burden on Competition

Section 23(a)(2) of the Exchange Act, 15 U.S.C. § 78w(a)(2), requires the Commission, in making rules pursuant to any provision of the Exchange Act, to consider among other matters the impact any such rule would have on competition. The purposes of the Exchange Act include protection of interstate commerce and maintenance of fair and honest markets. The degree of trust that investors and the public have in the Commission and its employees is critical to these goals. The Commission and its employees must adhere to the highest standards of integrity and impartiality and avoid the appearance of conflicts of interest. These rules affect a relatively small number of persons. Therefore, the Commission has determined that the burden on competition is small and is necessary and appropriate in furtherance of the purposes of the Exchange Act.

Section 2(b) of the Securities Act, 15 U.S.C. § 77b(b); Section 3(f) of the Exchange Act, 15 U.S.C. § 78c(f); Section 2(c) of the Investment Company Act of 1940, 15 U.S.C. § 80a-2(c); and Section 202(c) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-2(c) require that the Commission consider efficiency, competition, and capital formation, in addition to the protection of investors, whenever it is required to consider or determine whether an action is necessary or

appropriate in the public interest. As noted above, these rules apply to a relatively small number of people and do not substantially alter their pre-existing obligations. The Commission believes that the amendments that the Commission is adopting today will have a small impact on competition, the capital markets, or capital formation.

V. Statutory Basis and Text of the Rule

This amendment to the Commission's ethics rules is being adopted pursuant to statutory authority granted to OGE and to the Commission. These include 5 U.S.C. § 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); section 19 of the Securities Act of 1933, 15 U.S.C. § 77s; section 23 of the Securities Exchange Act of 1934, 15 U.S.C. § 78w; section 319 of the Trust Indenture Act of 1939, 15 U.S.C. § 77sss; section 40 of the Investment Company Act of 1940, 15 U.S.C. § 80a-39; and section 211 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-11.

List of Subjects

5 CFR Part 4401

Supplemental Standards of Ethical Conduct for Members and Employees of the SEC.

For the reasons set out in the preamble, Title 5, Chapter XXXIV of the Code of Federal Regulations is amended as follows:

PART 4401—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR MEMBERS AND EMPLOYEES OF THE SECURITIES AND EXCHANGE COMMISSION

1. The authority citation for Part 4401 continues to read as follows:

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159; 3 CFR 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547; 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403, 2635.803; 15 U.S.C. 77s, 78w, 77sss, 80a-37, 80b-11.

* * * * *

2. Section 4401.103 is amended by:

- a. Removing and reserving paragraph (c)(1)(ii);
- b. Revising paragraph (c)(1)(iii);
- c. Removing paragraph (d); and
- d. Redesignating paragraph (e) as paragraph (d).

The revision reads as follows:

§ 4401.103 Outside employment and activities.

* * * * *

(c) ***

(1) ***

(iii) No employee shall undertake the following types of employment or activities:

(A) Employment with any entity regulated by the Commission;

(B) Employment or any activity directly or indirectly related to the issuance, purchase, sale, investment or trading of securities or futures on securities or a group of securities, except this prohibition does not apply to securities holdings or transactions permitted by §4401.102;

(C) Employment otherwise involved with the securities industry; or

(D) Employment otherwise in violation of any applicable law, rule or regulation.

By the Commission.

Elizabeth M. Murphy
Secretary

Robert I. Cusick
Director, Office of Government Ethics

Dated: April 4, 2011