Dear Secretary Countryman:

Thank you for the opportunity to submit comments on the proposal to revise the supplemental standards of ethical conduct for members and employees of the SEC.

Thank you to the staff who worked on the proposal. I am sure that they were required to manage constantly shifting guidance on what topics the proposal should cover, and how those topics should be addressed. I know that this leadership style makes it an achievement to get a release out the door at all, and that they probably had to make some compromises compared to what they would have preferred. I hope the staff reviewing this comment letter know that their work is appreciated and that, even though many commenters have concerns with all or part of the proposal, this comment is offered because I share the staff's goal of making the final rule better. I understand that the staff did not make the final decision on what should be included.

I note that numerous commenters have submitted comments regarding the proposed electronic reporting requirement. I agree with those commenters' concerns. In particular:

1. To the extent that it moves forward with the electronic reporting requirement, the Commission should keep this functionality in-house. Just look at what happened with the TSP last summer for an example of what happens when you rely on contractors. As other commenters have noted, the particular requirements of the SEC might mean that many of the contractors who would be best-suited to handle this process might be disqualified from bidding (or nonetheless choose not to bid), which I understand is how we ended up with the bizarre workaround we use for the supplemental retirement plan. I do not believe it's reasonable to expect that a contractor would be able to build and operate the system effectively. Even if the contractor can get the system up and running in the first place, I am concerned that China and Russia will have all our data about an hour after the first reports are sent.
2. I agree that it's possible that certain firms, such as retirement plans or small brokers without a big back office, will have trouble complying with this requirement. Unless there is an automatic method for people to get an exemption and submit paper copies of their statements, the rule is going to effectively be a prohibition on employees' use of those firms.[1] The ethics office should not be put in the position of being required to grant exemptions for those firms on a discretionary basis. Doing so will suck up their resources. Also, staff in the ethics office is in a challenging position and may feel like it's a no-win proposition if they grant an exemption from the electronic reporting requirement. Instead, I agree with other commenters who have noted it's likely that waivers will only go to senior people who have some pull within the agency. Instead of *permitting* the ethics office to grant exemptions, the ethics office should be *required* to grant an exemption if an employee self-certifies that the broker does not have the capability to set up the electronic reporting, or if the employee self-certifies that they have good-faith cybersecurity concerns regarding electronic reporting. If an employee self-certifies, they should be permitted to submit

[1] For example, I'm aware that many 457 plan providers use pretty ancient software and it's a challenge even to get *paper* statements from those firms. Without a self-executing exemption, these employees could effectively be prevented from saving for retirement. For example, the Commission should review its records for people who previously worked for (or whose spouses work for) the City of New York and still have retirement plan assets there to see what a nightmare the system is already; if these plans can't even handle *paper* statements, it's unreasonable to expect that they could handle electronic reporting.

paper statements as we do already. In addition, accounts should be exempt from the reporting requirement altogether if an employee certifies that the only securities in those accounts are securities that fit within one or more exemptions in paragraph (g). This will save time in the ethics office because they'll only have to review accounts where there is a reasonable possibility of a conflict of interest.

I also note that several commenters have stated that the proposal affects non-government employee third-parties, such as member/employee spouses and minor children. Commenters have raised concerns about whether the proposal complies with the APA, the RFA/SBREFA, and the PRA. I urge the Commission to consider whether the proposal complies with these statutes. I also urge the Commission to consider whether it has the statutory authority to regulate these non-government parties at all, and whether their privacy interests have appropriately been considered.

Finally, in addition to echoing commenters' concerns regarding the electronic reporting requirement, compliance with certain statutes, and statutory authority in general, I want to note that several of the definitions may need some changes. In particular:

1. paragraph (g)(1)(vi)(A)(2) exempts money market funds as defined in rule 2a-7. Money market funds are already part of the definition of mutual fund in 5 CFR 2640.102(k), so this separate reference may be unnecessary (unless the Commission is purposely trying to make the rule evergreen in case MMFs are ever removed from 5 CFR 2640.102(k));
2. if the Commission retains the reference to money-market funds, it should also add a reference to ETFs. Even though these are also already part of the definition of "mutual fund" in 5 CFR 2640.102(k), if the Commission is going to do a separate reference to a common type of investment in one place, it should finish the job and also explicitly reference ETFs;
3. to the extent the Commission retains the carveout in paragraph (g)(1)(vi)(B) (it should not retain this carveout; see below), it should be revised to refer to private funds as defined in the Volcker rule, *i.e.*, funds relying on sections 3(c)(1) or 3(c)(7) of the Investment Company Act. If the Commission does not make this change, it could inadvertently pick up funds that it seems like it does not intend to pick up, such as REITs relying on section 3(c)(5);
4. I urge the Commission to rethink the carveout in paragraph (g)(1)(vi)(B) more broadly. I acknowledge that investments in these funds have long been frowned on within the SEC, but it's unclear why the Commission is regulating investments in funds managed by third parties which are not registered or required to be registered with the Commission. To the extent the Commission retains this carveout, it should explain the particular conflicts associated with investments in these funds, and why they differ from other funds, such as actively managed mutual funds. Any distinction between these investments is very arbitrary,[2] and the Commission

[2] For example, why is it appropriate to allow employees invest in the Fidelity Contrafund without pre-clearance, even though it frequently invests in pre-IPO securities alongside venture capital funds? Or why is it appropriate to allow employees to invest in ARKK without pre-clearance, even though it's making concentrated bets in a limited number of generally small-cap issuers similar to what you'd get in a private equity fund? I note that ARKK is "non-diversified" as that term is understood under the 40 Act, but seems like it would qualify as "diversified" under 5 CFR 2640.102(a) because it does not have a stated policy of investing in a particular industry, business, or country, and instead just says it invests in "domestic and foreign equity securities of companies that are relevant to the Fund's investment theme of disruptive innovation," which I think is far too vague to count as focusing on a particular industry.

should reconsider whether it is appropriate, or instead is motivated by animus against a particular type of investment;

5. I urge the Commission to ask the Office of the Federal Register to closely read the release to check if there are any typos in the reg text. In particular, about halfway down on page 20 of the release, after paragraph (g)(1)(vi)(B), there is a paragraph designated as (2), which begins "The following holdings and transactions are exempt from the requirements of paragraphs (c), (d), and (e) of this section . . ." I believe that paragraph was supposed to be designated as (h); and
6. I urge the Commission to consider whether securities received by operation of law, including as a result of a will or a divorce, should be added to paragraph (i). Like securities that are part of a trust, these are unlikely to cause conflicts, and you can't exactly pre-clear when someone dies and leaves you some stock. Securities received in these and similar situations should be required to be reported, but transactions should not be required to be pre-cleared.

Sincerely,

SEC Employee