



Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

March 10, 2023

Re: S7-01-23 Supplemental Standards of Ethical Conduct for Members and Employees of the Securities and Exchange Commission

Dear Ms. Countryman,

I am writing to urge the Commission to not adopt the proposed amendment to its supplemental ethics regulations that would authorize the Commission's Office of the Ethics Counsel ("OEC") to collect covered securities transactions and holdings data directly from financial institutions through a third-party automated electronic system to satisfy the requirements to report securities holdings and transaction information under 5 CFR 4401.102(f). The proposed amendment is misguided and should be abandoned for the following reasons.

First, the proposed amendment would place an unreasonable burden on Commission employees that is entirely unjustified. The Commission's proposing release states that "[a]lthough the automated transmission of brokerage statements and transaction information would be effectuated by a member or employee's broker or other financial institution, the broker is acting as an agent of the member or employee in transmitting the information, and the ultimate responsibility for complying with the reporting requirement is that of the employee." While the proposed amendment would permit the Commission's designated ethics official to grant exceptions in "exceptional circumstances," it is unreasonable to expect Commission employees to ensure that any broker-dealer or other relevant financial institution takes the steps necessary to provide transaction and holdings data to OEC as contemplated by the Commission under the proposed amendment. Individual Commission employees would have no leverage that would incentivize a broker-dealer or other financial institution to provide the required data directly to the Commission through an automated system, and the Commission's proposal does not explain why any broker-dealer or other financial institution would chose to do so if it is not required to under the regulation.

Presumably, providing data to the Commission via such a system would be costly for some broker-dealers who chose to facilitate such data transmission, and in some cases, would effectively require broker-dealers and other financial institutions to provide a bespoke service to Commission employees that they (broker-dealers and financial institutions) do not provide to their other customers. Additionally, the proposed amendment would place the onus on Commission employees to navigate any organizational obstacles that may exist at a broker-dealer

firm or other relevant financial institution that stand in the way of Commission employees' ability to comply with the proposed requirement.

In some cases, a Commission employee may own securities that are held by a bank or other financial institution that is not a brokerage firm, or an employee's securities may be held directly on the books of the issuer or the issuer's transfer agent via the Direct Registration System. While the proposing release references the direct electric transmission of holdings information to OEC by brokerage firms and other financial institutions, it is unclear whether the Commission has considered how the proposed amendment might impact the ability of Commission employees to ensure that the required holdings data will be transmitted in accordance with the rule when an employee's securities are not held at a brokerage firm. The proposing release states only that "OEC is aware that a number of private corporations have shifted to automated software systems that provide direct notification of securities transactions from an individual's broker or other financial institution." The release makes no attempt at quantifying or otherwise describing either how prevalent such systems are (or are not) across the various categories of financial services firms that may hold the relevant data, or how such systems are generally used.

Additionally, as noted in the proposing release, Commission employees are already required to provide copies of their brokerage statements to the Commission annually and certify that they have complied with that requirement. The proposing release even acknowledges that "this process has been successful." It is unclear what, if any, additional benefits the proposed amendment would provide beyond the existing requirement.

The proposing release states that the proposed amendment "would reduce the burden on employees and compliance staff, and improve data accuracy and completeness, by replacing the requirements for manually submitted account statements and manual transaction confirmations." Again, the proposed amendment would not reduce the burden on Commission employees, as Commission employees would be responsible for ensuring that their broker-dealer or other financial institution reports holdings on their behalf as required under the rule. It is not even clear how any Commission employee would go about verifying that a brokerage firm is transmitting transaction and holdings data in a manner that would satisfy the employee's responsibilities under the regulation, as the regulation would be amended.

The proposing release further states that the amendment "would also facilitate compliance by allowing the OEC to independently verify employee holdings and transactions [and] would reduce the risk of human error or oversight in reporting and reviewing of securities holdings and transactions." Notwithstanding this statement, OEC can verify employee holdings and transactions by simply reviewing the statements provided by an employee; it is the same data generated by the same firms. It is unclear what sort of "human error" the Commission is concerned about specifically. Again, the proposing release states that the manual submission of brokerage statements by Commission employees has been successful. With respect to the risk of human error in reviewing of securities holdings and transactions, it is unclear if the proposing

release is referring to review by OEC staff, or by the Commission employees whose data is being transmitted to OEC. If the proposing release intends to refer to human error by OEC staff tasked with reviewing the data, it is unclear why such errors would become less common if the data were transmitted electronically than it is under the current regulation. If the proposing release intends to refer to human error by Commission employees in connection with their existing reporting obligations, the Commission should explain precisely what sort of human error it is concerned about and what the basis for such concern may be.

Separately, the proposing release does not address how the Commission would ensure that the use of a third-party system to collect and store sensitive data relating to employee accounts, holdings and transactions would not increase the likelihood that such data would be compromised by the third-party operator of the system. In fact, the proposing release does discuss data security at all. Given the highly sensitive nature of the data that would be collected by the third-party system, the need for effective data-security measures to be taken to protect such information cannot be overstated. The Commission's apparent lack of regard for employee concerns regarding this issue is astonishing, particularly in light of previous breaches relating to sensitive personal information of Federal government employees that are well known to the Commission.

While I recognize that strong ethics regulations are necessary to ensure that Commission employees are not engaging in conduct that creates a conflict of interest, or an appearance of a conflict of interest, adopting the proposed amendment would not provide any meaningful progress toward that objective. Rather, the proposed amendment would serve only to impose undue burdens on Commission employees, and would potentially impose indirect costs on broker-dealers and certain other financial institutions that chose to facilitate the direct electronic transmission of data to OEC while acting as so-called "agents" of Commission employees. The Commission's proposal also would potentially expose highly sensitive personal financial information of Commission employees to a third-party, and it is unclear what measures, if any, the Commission would take to protect such information. For these reasons, the proposed amendment should not be adopted.

Respectfully submitted,

Anonymous