

## **New York City Conflicts of Interest Board**

### **Notice of Adoption of Final Rules**

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Section 1043 of the City Charter and Section 3-907 of the New York City Administrative Code, that the Conflicts of Interest Board has adopted Board Rules that (1) move its Rules regarding annual disclosure to a new Chapter 4; (2) adopt a new rule defining “other similar entity” as used in New York City Charter § 2601(11), which defines the term “firm”; and (3) adopt a new rule defining business or financial relationship for the purposes of Charter § 2604(b)(14).

The proposed Rules were published in the City Record on November 1, 2018, and a public hearing was held on December 5, 2018. No testimony or comments were received. The Conflicts of Interest Board now adopts the following Rules, including a conforming amendment in the text of the new § 1-10(a)(2) regarding the limit on purchases and sales of property between superiors and subordinates.

### **Statement of Basis and Purpose**

#### **Reorganization of Rules**

In the Section 1 of this rulemaking, the Board moves four sections of the Rules of the Board from Chapter 1, entitled “Conflicts of Interest,” to a new Chapter 4, entitled “Annual Disclosure”: Section 1-08, “Procedures for Obtaining an Extension of Time Within Which to File a Financial Disclosure Report”; Section 1-10, “Retention of Financial Disclosure Reports”; Section 1-14, “City Employees Holding Policymaking Positions for Purposes of the Financial Disclosure Law”; and Section 1-15, “City Employees Whose Duties Involve the Negotiation, Authorization, or Approval of Contracts and of Certain Other Matters”. These four sections, promulgated in 1992, 1994, 2003, and 2005 respectively, are an integral part of the administration of the Annual Disclosure Law set forth in Section 12-110 of the New York City Administrative Code and not relevant to determinations made about “conflicts of interest” under Chapter 68 of the City Charter. By creating a new Chapter 4, the Board’s Rules will be better organized, and each chapter of rules will be more clearly related to the other rules within such chapter. The text of the four relocated Board Rules remain otherwise unchanged.

#### **New Definition of “Other Similar Entity” within the definition of “Firm”**

The Board adopts a new definition of “other similar entity” within the definition of “firm,” to be numbered § 1-08. Several provisions of the City Charter are relevant to the new definition. At the threshold, City Charter § 2601(11) defines “firm” as follows:

‘Firm’ means sole proprietorship, joint venture, partnership, corporation and any other form of enterprise, but shall not include a public benefit corporation, local development corporation or other similar entity as defined by rule of the board.

Another key term, “interest,” is defined by §2601(12) to mean an “ownership interest in a firm or position with a firm.”

Moreover, the term “firm” is implicated by various provisions of City Charter §§ 2604(a) (“Prohibited interests”) and 2604(b) (“Prohibited conduct”). Charter § 2604(a)(1) proscribes a full-time public servant from having an interest in a firm which such person knows is engaged in business dealings with his or her agency (except as addressed by paragraph (3) of subdivision (a)). Charter § 2604(b)(1) addresses the issue of a public servant taking an action particularly affecting the interest of a firm in which they have an interest; paragraph (b)(3) prohibits a public servant from using or attempting to use his or her position to benefit himself or any person or firm associated with him or her; and paragraph (b)(5) bars a public servant from accepting any valuable gift (as defined by Board Rule § 1-01) from any person or firm which the public servant knows is or intends to become engaged in business dealings with the City.

As noted above, Charter § 2604(a)(1) prohibits a full-time public servant from having an ownership interest or position in a firm that is engaged in business dealings with the City. This means that any full-time public servant who wishes to have a second job with a firm that has business dealings with any City agency must obtain a waiver from the Board to have such an interest or position. Charter § 2601(11) already exempts public benefit corporations and local development corporations from the definition of “firm” and grants the Board the authority to exempt “similar entities” that it defines by rule.

The Board’s new Rule in § 1-08 clarifies the entities with which public servants may take positions, such as by taking a second job at the entity, serving on its board, or teaching a class as an adjunct teacher, without requiring a waiver of Charter § 2604(a)(1). The Board adopts this Rule because over the years it has advised numerous public servants that their proposed activities would not violate Chapter 68 because their prospective employer or ownership interest does not fall within the ambit of “firm” for the purposes of City Charter § 2601(11). *See, e.g.,* A.O. Nos. 1992-20, 1994-10, 1997-1, 1999-6, 2000-1, and 2005-2. The Board includes “New York State local public authorities,” as defined in the New York Public Authorities Law § 2(2), as entities exempted from the definition of “firm.” The Board also limits the definition of “local development corporation,” as used in Charter § 2601(11), to those local development corporations established by, affiliated with, sponsored by, or created by a unit of New York State government and not to include any private local development corporations. As stated in the Rule, the term “other similar entity” includes, but is not limited to, the listed entities; this list is not exclusive.

Public servants who have second jobs with entities that are not “firms” remain subject to other fundamental requirements of Chapter 68, including, but not limited to: their work for the other employing entity must be conducted at times when they are not required to perform services for the City (Charter § 2604(b)(2), Board Rules § 1-13(a)); they may not use City equipment, letterhead, personnel, or other City resources in connection with their second jobs at the employing entity (Charter § 2604(b)(2), Board Rules § 1-13(b)); they may not use their official City positions or titles to obtain any private advantage for themselves, the employing entity, or any of such entity’s clients (Charter § 2604(b)(3)); they may not disclose or use for private advantage any confidential information concerning the City (Charter § 2604(b)(4)); they

may not make any appearances before the City on behalf of the employing entity (Charter § 2604(b)(6)); and lastly, they may not be compensated by the employing entity for performing their official duties (Charter § 2604(b)(13)). Additionally, the Board will make a separate determination whether any given entity is a “local, state or federal agency” pursuant to Charter § 2604(d)(6) and therefore a public servant’s employment therein would be exempt from the post-employment restrictions of Chapter 68.

New Definition of “Business or Financial Relationship” as Used in City Charter § 2604(b)(14)

City Charter § 2604(b)(14) provides as follows: “No public servant shall enter into any business or financial relationship with another public servant who is a superior or subordinate of such public servant.” Charter § 2604(b)(14) recognizes the potential for coercion or favoritism that exists when co-workers who occupy different positions in a City government office hierarchy, in which one person has authority over another, enter into business or financial relationships.

The Board has repeatedly been asked to provide advice about whether public servants may enter into certain relationships with their co-workers, supervisors, and subordinates. Its numerous advisory opinions on this topic include A.O. Nos. 1992-28 (prohibiting a subordinate from representing a superior as his attorney); 1998-12 (prohibiting superiors from selling anything to subordinates but permitting subordinates to sell a limited amount of commercial and charitable projects to a superior); 2001-3 (reiterating that a subordinate and a superior may not enter into an attorney-client relationship); 2003-6 (advising that a public servant may be compensated for voluntarily working on his or her superior’s political campaign); 2004-2 (advising that a superior and subordinate cannot participate in the same savings club); 2004-3 (advising that any financial relationship between a community board member and a member of the community board’s staff is prohibited); 2012-5 (reiterating that a public servant may be compensated for voluntarily working on his or her superior’s political campaign and advising that a superior and subordinate may volunteer on the same campaign and in that capacity one may supervise the other); 2013-1 (advising that while it generally violates Chapter 68 for superiors to solicit or accept gifts from their subordinates, superiors can do so long as such gift-giving is not extremely frequent or extravagant; furthermore, public servants can accept gifts from their peers); 2017-5 (advising that participation by a superior and subordinate in the same lottery pool was an impermissible financial relationship).

Moreover, numerous enforcement actions have been initiated over the years that have resulted in fines for public servants found to have violated this prohibition. Examples include COIB Case Nos. 2016-057 (2017) (a New York City Department of Education (“DOE”) Superintendent paid a \$3,000 fine for having sold her house to a teacher she supervised as her Principal); 2016-600 (2017) (a DOE Principal was issued a public warning letter for being regularly driven to and from work by a subordinate); 2015-858(a) (2017) (a former Director of Contracts and Construction in the New York City Department of Transportation’s Traffic Division paid a \$4,000 fine for, over the course of three years, lending and repaying his subordinate more than \$40,000); and 2016-902 and 902a (2017) (a DOE Assistant Principal and

a teacher whom he supervised at the school found to have entered into an impermissible financial relationships by cohabitating and were fined \$3,750 and \$1,752, respectively).

The Board has made one small substantive change to Board Rules § 1-10(a)(2) since its publication in the City Record. In this paragraph, it was the Board's intention to codify the advice given in Advisory Opinion No. 1998-12 regarding the sale of property. In keeping with that intention, and in order to be more consistent with the other provisions of the Rule, Board Rules § 1-10(a)(2) has been revised to remove the one-year cap.

The Board therefore adopts this Rule to clarify which relationships between superiors and their subordinates are deemed to be business or financial relationships for the purposes of Charter § 2604(b)(14) and are therefore prohibited. This section prohibits a public servant from entering into any of the enumerated relationships with any other public servant who either is supervised by him/her or is supervising his/her work, or who has the power to direct his/her work, or whose work he/she directs, or whose terms and conditions of employment the superior public servant has the power to affect or who could affect the terms and conditions of the subordinate public servant's employment. As stated in the Rule, the term "business or financial relationship" includes, but is not limited to, the listed relationships; this list is not exclusive.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Title 53 of the Rules of the City of New York is amended by adding a new Chapter 4, entitled "Annual Disclosure".

§ 2. Section 1-08 of Title 53 of the Rules of the City of New York, entitled "Procedures for Obtaining an Extension of Time Within Which to File a Financial Disclosure Report", is renumbered as § 4-01 of Chapter 4 of such title, as added by section 1 of this rulemaking.

§ 3. Section 1-10 of Title 53 of the Rules of the City of New York, entitled "Retention of Financial Disclosure Reports", is renumbered as §4-02 of Chapter 4 of such title, as added by section 1 of this rulemaking.

§ 4. Section 1-14 of Title 53 of the Rules of the City of New York, entitled "City Employees Holding Policymaking Positions for Purposes of the Financial Disclosure Law", is renumbered as § 4-03 of Chapter 4 of such title, as added by section 1 of this rulemaking.

§ 5. Section 1-15 of Title 53 of the Rules of the City of New York, entitled "City Employees Whose Duties Involve the Negotiation, Authorization, or Approval of Contracts and of Certain Other Matters", is renumbered as § 4-04 of Chapter 4 of such title, as added by section 1 of this rulemaking.

§ 6. Chapter 1 of Title 53 of the Rules of the City of New York is amended by adding a new § 1-08 to read as follows:

§1-08 Definition of “other similar entity” within the definition of “firm”.

(a) For the purposes of Charter § 2601(11), the term “other similar entity” includes, but is not limited to, any of the following entities:

- (1) local, state, and federal governments and their agencies;
- (2) New York State public authorities;
- (3) New York local public authorities;
- (4) the United Nations;
- (5) the United States Postal Service;
- (6) the State University of New York;
- (7) the City University of New York;
- (8) the Brooklyn Public Library;
- (9) the Queens Public Library; and
- (10) charter schools created pursuant to New York State Education Law Article 56.

(b) For the purposes of Charter § 2601(11), the term “local development corporation” includes only local development corporations affiliated with, sponsored by, or created by New York State government or by a New York county, city, town, or village.

§ 7. Chapter 1 of Title 53 of the Rules of the City of New York is amended by adding a new § 1-10 to read as follows:

§1-10 Prohibited Business or Financial Relationships Between a Superior and a Subordinate.

(a) For purposes of Charter § 2604(b)(14), the term “business or financial relationship” between a superior and subordinate includes but is not limited to:

- (1) outstanding loans collectively amounting to \$25.00 or more;
- (2) a purchase or sale of any property valued at \$25.00 or more;
- (3) the leasing of any property;
- (4) cohabitation;
- (5) participation in a lottery pool;
- (6) participation in a savings club;
- (7) shared ownership of real property or any other property worth more than \$100.00;
- (8) shared ownership of financial instruments;
- (9) shared ownership interest in a firm other than a publicly traded company;
- (10) shared ownership interest in a cooperative apartment building with fewer than six units;
- (11) employer-employee, consultant, contractor, attorney-client, agent-principal, brokerage, or other similar relationships;
- (12) establishing a trust or serving as a trustee of a trust in which one of them or a person associated with one of them has a beneficial interest; and
- (13) payment of each other’s recurring expenses such as rent or payments for a vehicle.

(b) Expenses for activities related to public servants' City jobs which are shared between public servants, including superiors and subordinates, such as expenses related to a carpool or a coffee club, will not be deemed a "business or financial relationship" within the meaning of Charter § 2604(b)(14) if:

(1) the benefit is shared by the participants; and

(2) each public servant bears a fair proportion of the expense or effort involved for the activity.

§ 8. The titles of sections 1-14 and 1-15 of Chapter 1 of Title 53 of the Rules of the City of New York are amended to read, respectively, as follows:

§1-14 [City Employees Holding Policymaking Positions for Purposes of the Financial Disclosure Law] Reserved.

§1-15 [City Employees Whose Duties Involve the Negotiation, Authorization, or Approval of Contracts and of Certain Other Matters] Reserved.