

New York City Conflicts of Interest Board

Notice of Final Rules

NOTICE IS HEREBY GIVEN PURSUANT TO AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Sections 1043, 2601(16), 2603(a), 2603(c)(4), and 2604(a) of the New York City Charter, that the Conflicts of Interest Board has adopted Board Rules amending its rules related to investments in publicly traded securities.

The proposed Rules were published in the City Record on December 23, 2020, and a public hearing was held on January 26, 2021. No comments were received. The Conflicts of Interest Board now adopts the following Rules.

Statement of Basis and Purpose

City Charter § 2604(a)(1)(b) prohibits a regular employee of the City from having an ownership interest in a firm “engaged in business dealings with the city, except if such interest is in a firm whose shares are publicly traded, as defined by rule of the board.” The Board accordingly adopted Board Rules § 1-04 in 1990, defining a publicly traded firm as one that “offers or sells its shares to the public and is listed and registered with the Securities and Exchange Commission for public trading on national securities exchanges or over-the-counter markets.”

In the intervening thirty years, the Board has advised many public servants about the impact of the conflicts of interest provisions of Chapter 68 on their ownership interests in publicly traded securities, including six advisory opinions: A.O. Nos. 1994-10, 1994-13, 2002-1, 2007-4, 2009-7, and 2012-1. The amendments to Board Rules § 1-04 retain the definition of “publicly traded firm” as paragraph (a) and add new paragraphs (b) and (c) dealing, respectively, with investments held in individual retirement accounts (“IRAs”) and the ownership of bonds.

1. Investments Held in IRAs

City Charter § 2601(16) establishes a definition of “ownership interest” in a firm but excludes “interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by the public servant, the public servant’s spouse,

domestic partner, or unemancipated child.” For purposes of this definition, Board Rules § 1-04(b) treats investments contained in an IRA, Roth IRA, Simplified Employee Pension IRA, or Keogh plan just like any other investments. Thus, for example, shares in a publicly-traded firm that are chosen by the public servant and held in their IRA are considered “ownership interests” within the meaning of City Charter § 2601(16).

2. Ownership of Bonds

Proposed Board Rules § 1-04(c)(1) codifies the general advice the Board provided in A.O. No. 1994-10, and reiterated in A.O. Nos. 1994-13, 2002-1, and 2009-7, that a public servant’s ownership of bonds issued by public entities is not a prohibited ownership interest in a “firm.” Specifically, City Charter § 2601(11) and Board Rules § 1-08, which codified A.O. No. 1994-10 pursuant to City Charter § 2603(c)(4), exclude certain public and quasi-public entities, including the City of New York and its agencies, from the definition of “firm.”

Nevertheless, the Board recognized in A.O. 2009-7 that a small group of public servants has personal and substantial responsibility in the issuance and management of City debt obligations. For these public servants, the purchase, ownership, or sale of City-issued bonds implicates City Charter § 2604(b)(2) prohibiting private interests that conflict with their official City duties, § 2604(b)(3) prohibiting a public servant’s use of their position to benefit themselves or any of their “associated” persons or firms, and § 2604(b)(4) prohibiting the use or disclosure of confidential information obtained as part of their City job. Board Rules § 1-04(c)(2) codifies this 2009 advice.

New material is underlined. [Deleted material is bracketed.]

§ 1-04 [Definition of a Firm Whose Shares are Publicly Traded] Investments in Publicly Traded Securities.

(a) **Definition of a Firm Whose Shares are Publicly Traded.** For purposes of Charter § 2604(a)(1)(b), “a firm whose shares are publicly traded” means a firm [which] that offers or sells its shares to the public and is listed and registered with the Securities and Exchange Commission for public trading on national securities exchanges or over-the-counter markets.

(b) **Investments held in IRAs.** For purposes of Charter § 2601(16), an “ownership interest” includes investments in firms held in an individual retirement account (“IRA”), Roth IRA, Simplified Employee Pension IRA, or Keogh plan, provided that the investment is not otherwise excluded from the definition of “ownership interest.”

(c) **Public Debt Obligations.**

(1) Except as provided in paragraph (2) of this subdivision, for purposes of Charter § 2604(a)(1) and § 2601(11), a public servant is not prohibited from owning debt obligations issued by the City or “other similar entities” as defined in Board Rules § 1-08.

(2) For purposes of Charter § 2604(b)(2), § 2604(b)(3), and § 2604(b)(4), a public servant, prior to becoming personally and substantially involved in the issuance and/or management of City debt obligations, must divest their ownership in such debt obligations, and for the duration of such involvement may not buy or hold such City debt obligations on behalf of the public servant or an associated person or firm. For purposes of Charter § 2604(b)(3), a public servant who is personally and substantially involved in the issuance and/or management of City debt obligations may not trade, or participate in trading, City debt obligations on behalf of, or for the account of, an associated person or firm.