

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Investments in Publicly Traded Securities

What are we proposing? The Conflicts of Interest Board proposes to amend its rules regarding investments in publicly traded securities.

When and where is the Hearing? The Conflicts of Interest Board will hold a public hearing on the proposed rule. The public hearing will take place by video conference at 10:30 a.m. on Tuesday, January 26, 2021, and is accessible by:

- **Internet Video and Audio.** To access the hearing by Zoom, use the following URL: <https://us02web.zoom.us/j/85738424898?pwd=ZGxneTRjc2UwNzRUSWhOdmlLaWlrQT09>.
- **Telephone.** To access the hearing by telephone, dial (929) 436-2866. When prompted, use the following access code 857 3842 4898 and password 838367.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Conflicts of Interest Board through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to rules@coib.nyc.gov.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing may speak for up to three minutes. Please access the public hearing by Internet Video and Audio or by Telephone using the instructions above. It is recommended, but not required, that commenters sign up prior to the hearing by contacting the Conflicts of Interest Board by phone at (212) 437-0721 or by email at hammer@coib.nyc.gov.

Is there a deadline to submit comments? Yes, you must submit written comments by Tuesday, January 26, 2021.

This hearing has the following accessibility option(s) available: The Zoom platform accommodates screen reader software. Simultaneous transcription or a sign-language interpreter are available upon request.

Do you need assistance to participate in the hearing? You must tell the Conflicts of Interest Board if you need a reasonable accommodation of a disability at the hearing, including if you need a sign language interpreter or simultaneous transcription. You can advise us by email at hammer@coib.nyc.gov or by telephone at (212) 437-0721. You must tell us by Friday, January 22, 2021.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. Copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public as soon as practicable on the Conflicts of Interest Board's website (<https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page>).

What authorizes the Conflicts of Interest Board to make this rule? Sections 1043, 2603(a), and 2603(c)(4) of the City Charter authorize the Conflicts of Interest Board to make this proposed rule. This proposed rule was not included in the Conflicts of Interest Board's regulatory agenda for this Fiscal Year because it was not anticipated to be a subject of rulemaking at that time.

Where can I find the Conflicts of Interest Board's rules? The Conflicts of Interest Board's rules are in Title 53 of the Rules of the City of New York.

What rules govern the rulemaking process? The Conflicts of Interest Board must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of the Proposed Rule

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 proposed amendments to Board Rules § 1-04 would 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, proposed Board Rules § 1-04(b) would treat 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) would codify 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. Proposed Board Rules § 1-04(c)(2) would codify 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.

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS

253 BROADWAY, 10th FLOOR

NEW YORK, NY 10007

212-788-1400

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Rules Governing Investments in Publicly Traded Securities

REFERENCE NUMBER: COIB-21

RULEMAKING AGENCY: Conflicts of Interest Board

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

December 9, 2020
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Rules Governing Investments in Publicly Traded Securities

REFERENCE NUMBER: 2020 RG 102

RULEMAKING AGENCY: Conflicts of Interest Board

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: December 9, 2020