SECURITIES AND EXCHANGE COMMISSION

5 CFR Part 4401 and 17 CFR Part 200

[Release No. 34–62501]

Adoption of Supplemental Standards of Ethical Conduct for Members and Employees of the Securities and Exchange Commission and Revisions to the Commission's Ethics Rules

AGENCY: Office of Government Ethics and Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission with the concurrence of the Office of Government Ethics is adopting supplemental standards of ethical conduct for the Commission's members and employees. The new supplemental standards give guidance to Commission members and employees on permitted, prohibited, and restricted financial interests and transactions and on engaging in outside employment and activities. In addition, the Commission has revised its ethics rules to make them compatible with the Office of Government Ethics' government-wide ethics provisions and to reflect current Commission policies.

DATES: *Effective Date:* August 19, 2010.

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SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission with the concurrence of the Office of Government Ethics ("OGE") is adopting supplemental standards of ethical conduct for the Commission's members and employees. The Commission first adopted conduct regulations in 1953 "to restate the ethical principles which it believes should govern and have governed the conduct of members and employees and former members and employees." Subsequent comprehensive revisions in 1966 and 1980 were enacted to provide members, employees, special government employees, and former Commission members and employees with a comprehensive statement of standards of conduct which are dictated by applicable Federal law, Executive Orders, and the Commission's own requirements.[5]

Executive Order 12674, as amended by Executive Order 12731, authorized OGE to establish a single, comprehensive, and clear set of executive-branch standards of conduct. On August 7, 1992, OGE published the Standards of ethical conduct for employees of the executive branch, codified at 5 CFR part 2635, to establish uniform standards of ethical conduct for all executive branch employees.[6] With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs.

The Commission has responsibility for oversight of the securities industry and the protection of investors. These new supplemental standards are necessary to re-codify and provide guidance to Commission members and employees on permitted, prohibited, and restricted financial interests and transactions and on engaging in outside employment and activities. The Commission is also updating its existing ethics rules to conform to OGE's government-wide ethics obligations and reflect current Commission policies.

A. The Commission's supplemental standards are contained in new 5 CFR part 4401. New Rule 4401.101 (General) states that Commission members and employees must comply with 5 CFR part 2635 (Standards of ethical conduct for employees of the executive branch). New Rule 4401.101 further states that members and employees are subject to the Executive branch financial disclosure regulations, 5 CFR part 2634; the Office of Personnel Management's Employee responsibilities and conduct regulations at 5 CFR part 735; and 17 CFR part 200, subparts C and M, as amended, the Commission's Canons of ethics and the Regulation concerning conduct of members and employees and former members and employees.

New Rule 4401.102 (Prohibited and restricted financial interests and transactions) supersedes former Commission ethics rule 735–5 (Securities transactions). New Rule 4401.102(a) provides that the rule's provisions apply to all securities holdings or transactions effected directly or indirectly on behalf of the member or employee. The rule's requirements also extend to holdings and transactions of or on behalf of the member's or employee's spouse, unemancipated minor children, or persons for whom the member or employee serves as legal guardian.

New Rule 4401.102(b)(1) prohibits members and employees from purchasing or selling a security while in possession of material nonpublic information, as defined in 5 CFR 2635.703(b). Rule 2635.703(b) states that nonpublic information is information that the individual gains through his or her Federal position, which the person knows or reasonably should know is not available to the general public. Under this definition, nonpublic information includes information routinely exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552 or otherwise protected by statute, rule, or Executive Order; information that the Commission designates as confidential; and information that is not generally available to the public and that the Commission has not actually released or disseminated.[7]

New Rule 4401.102(b)(2) prohibits members or employees from recommending or suggesting the purchase or sale of a security either based on material nonpublic information about the security or which the member or employee cannot purchase or sell because of this rule's restrictions.

New Rule 4401.102(c) states that members and employees may not—

—Knowingly purchase or hold a security or other financial interest in an entity directly regulated by the Commission;

—Purchase a security in an initial public offering ("IPO") for seven calendar days after the IPO is effective, except for IPOs of shares in a registered investment company or other publicly traded or publicly available collective investment fund;

—Purchase or carry securities on margin;

—Sell securities short;[8]

—Enter into a financial relationship or obtain a loan from an entity or person directly regulated by the Commission and receive terms more favorable than would be available in like circumstances to members of the public, except as otherwise permitted

[5] *See, e.g.,* 45 FR 36064 (May 29, 1980).

[6] *See* 57 FR 35006–35067 (Aug. 7, 1992), as corrected at 57 FR 48557 (Oct. 27, 1992) and 57 FR 52583 (Nov. 4, 1992), with additional grace period extensions at 59 FR 4779–4780 (Feb. 2, 1994), 60 FR 6390–6391 (Feb. 2, 1995), 60 FR 66857–66858 (Dec. 27, 1995) and 61 FR 40950–40952 (Aug. 7, 1996).

[7] Prohibitions regarding disclosure or use of confidential or nonpublic information are set forth in Clause 30 of Schedule A of the Securities Act of 1933, 15 U.S.C. 77aa(30) and Securities Act Rules 122 and 406 (17 CFR 230.122, 230.406); sections 13(f)(3) and 24(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(3), 78x) and Exchange Act Rule 0–4 (17 CFR 240.24b–2); section 45(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–44) and Investment Company Act Rule 45a–1 (17 CFR 270.45a–1); and section 210(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–10).

[8] Short selling is defined in 17 CFR 242.200(a).

by 5 CFR 2635, subpart B (Gifts from outside sources);

—Engage in any transactions involving derivatives, except for transactions in shares in a registered investment company or other publicly traded or publicly available collective investment fund; or

—Purchase or sell any security of an entity that is under investigation by the Commission, a party to a proceeding before the Commission, or a party to a proceeding in which the Commission is a party.

New Rule 4401.102(d)(1) generally requires members and employees to clear any securities or related financial transaction. Currently, the Commission is clearing transactions through the Ethics Program System ("EPS") computer system. New Rule 4401.102(d)(2) provides that, if the member or employee obtains clearance of the transaction as provided in the rule, that clearance will be prima facie evidence that the member or employee did not knowingly purchase, sell, or hold a security of a regulated entity; improperly purchase an IPO or engage in a transaction in a derivative; or improperly purchase or sell a security of an entity subject to Commission investigation or enforcement action.

New Rule 4401.102(e) provides generally that members and employees must hold a security for a minimum of six months from the trade date.[9] Under new Rule 4401.102(e)(2), the holding period does not apply to securities that are sold for 90 percent or less of their original purchase price; securities with an initial term of less than six months that are held to term; or shares in money market funds. New Rule 4401.102(e)(3) requires members and employees to hold shares of registered investment companies for a minimum of 30 days from the purchase date.

New Rule 4401.102(f)(1) generally requires members and employees to report all securities holdings as required by the Designated Agency Ethics Official ("DAEO"). Currently, this reporting occurs through EPS. Also, members and employees must provide duplicate statements for every account containing reportable securities to the DAEO. Under new Rule 4401.102(f)(2) members and employees must report all purchases and sales within five days of receipt of confirmation of the transaction.[10] The reporting of purchases and sales is also done through EPS.

Consistent with current Commission standards, new Rule 4401.102(g)(1) excludes certain transactions and holdings from the rule's requirements. Certain holdings and transactions are excluded from the prohibition of new Rule 4401.102(c) and the prior clearance, holding period, and reporting requirements. These include:

—Transactions effected by the member's or employee's spouse on behalf of someone other than the member or employee, the spouse, their unemancipated minor child, or a person for whom the member or employee serves as legal guardian;

—Holdings or transactions effected by a member's or employee's legally separated spouse living apart from the member or employee (even if for their unemnacipated minor child) so long as the member or employee does not in fact control, advise with respect to, or have knowledge of these holdings and transactions;

—U.S. Government or Federal government agency securities;

—Investments in the Thrift Savings Plan or a government retirement plan administered by a Federal agency; and

—Certificates of deposit and comparable instruments issued by depository institutions subject to Federal regulation and Federal deposit insurance.

In accordance with existing standards, new Rule 4401.102(g)(2) provides that certain additional transactions are not prohibited by new Rule 4401.102(c) and excludes these holdings and transactions from the prior clearance and holding requirements. However, these interests must be reported in accordance with new Rule 4401.102(f).

This exclusion applies to:

—The holdings of a trust in which the member or employee (or the member's or employee's spouse, the member's or employee's unemancipated minor child, or person for whom the member or employee serves as legal guardian) is (i) solely a vested beneficiary of an irrevocable trust or (ii) solely a vested beneficiary of a revocable trust where the trust instrument expressly directs the trustee to make present, mandatory distributions of trust income or principal; provided, that the member or employee did not create the trust, has no power to control, and does not, in fact, control or advise with respect to the holdings and transactions of the trust or have knowledge of its holdings or transactions;

—The acceptance or reinvestment of stock dividends on securities already owned;

—The exercise of a right to convert securities; and

—The acquisition of stock or the acquisition or exercise of employee stock options or similar instruments received as compensation and issued by either (i) a member's or employee's former employer or (ii) the present or former employer of the member's or employee's spouse.

New Rule 4401.102(h) sets forth the circumstances under which members and employees may seek a waiver of the requirements of the rule.

New Rule 4401.103 supersedes in part Commission rule 735–4, 17 CFR 200.735–4 (Outside employment and activities) and sets forth the circumstances under which Commission members, employees, and special government employees may engage in outside employment or activities. New Rule 4401.103(a)(2) broadly defines employment to include any form of non-Federal employment or business relationship, involving the provision of personal service by the employee. The definition includes acting as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, writer, or speaker. The rule excludes participation in certain nonprofit religious, charitable, and civic organizations from the definition of employment unless the person (i) serves as an officer or director; (ii) provides professional services or advice; (iii) receives compensation (other than reimbursement for expenses) from the organization; or (iv) is an active participant as defined in 5 CFR 2635.502(b)(1)(v) on a committee of a professional organization whose interests may be substantially affected by the Commission.

New Rule 4401.103(b) encourages members and employees to participate in *pro bono* and community service so long as that service is consistent with OGE's requirements including 5 CFR parts 2634 (governing financial reporting) and 2635 (establishing the government-wide ethics standards), as well as the restrictions contained in 18 U.S.C. 203 (prohibiting seeking or receiving compensation for representational services before the Government), 205 (prohibiting assisting in prosecution of claims against or acting as attorney or agent before the Government), and 208 (prohibiting an employee's participation in matters

[9] This rule applies to securities purchased after Commission employment.

[10] Any person who receives a conditional offer of employment from the Commission must report all securities holdings after acceptance of that offer and before commencement of employment with the Commission on the prescribed form. These reports are currently received on SEC Form 682.

affecting the employee's own financial interest and those of certain specified persons and organizations).

Under new Rule 4401.103(d)(1), each employee must obtain prior approval before engaging in any outside employment, whether or not for compensation. New Rule 4401.103(c)(1)(i) provides that no employee may engage in any outside employment or activity that conflicts with Commission employment. New Rule 4401.103(c)(1)(iii) prohibits any employee from (i) outside employment on behalf of any entity regulated by the Commission; (ii) engaging in activity directly or indirectly related to the issuance, purchase, investment, or trading of securities or securities futures, except for securities holdings or transactions permitted by new Rule 4401.102; or (iii) engaging in work otherwise involved with the securities industry. Commission members are subject to the restrictions of Section 4(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78d(a).

Under new Rule 4401.103(d)(2), an employee's request for prior approval of any outside employment must be made both to the appropriate Division Directors, Office Heads, or Regional Directors as well as the Commission's Office of the General Counsel's Ethics Office. New Rule 4401.103(d)(3) requires that the request identify the proposed outside employer; describe the work to be performed, the duration of the employment, and any compensation to be received; and include a statement that the employee will disqualify himself or herself from matters involving the proposed employer.

Under new Rule 4401.103(d)(4), the request must be updated annually or if there is a significant change in either the nature of the employment or in the employee's position with the Commission. New Rule 4401.103(d)(5) provides that approval will be granted only if the outside employment does not involve conduct prohibited by law or regulation, including the government-wide ethics requirements in 5 CFR part 2635.

B. The Commission is separately amending its Regulation concerning conduct of Commission members and employees and former members and employees, 17 CFR 200–735–1 *et seq.* These amendments generally delete Commission requirements that are duplicative of OGE's government-wide requirements. The amendments also direct members, employees, special government employees, and former members and employees to the applicable ethics laws and regulations for ease of reference.

Certain Commission ethics requirements remain in effect. Under 17 CFR 200.735–3(b) (General provisions), a member or employee shall not engage in any personal business transaction or arrangement for personal profit which arises from his or her official position or authority or is based on nonpublic information obtained by virtue of that position or authority. The restrictions on release of nonpublic Commission documents contained in 17 CFR 200.735–3(b)(2) (Policy) (formerly Rule 735–3(b)(7)) also remain in effect. The Commission encourages its members and employees to engage in teaching, lecturing, and writing. Therefore, the provisions governing those activities, including the clearance of publications and speeches, contained in 17 CFR 200.735–4(b) and (d) (formerly Rules 735–4(b)(5) and (e)), continue.

The Commission will also continue to require any former member or employee who is retained or employed to represent any person before the Commission within two years of leaving the Commission to provide written notice of that representation. 17 CFR 200.735–8(b) (Practice by former members and employees of the Commission).

The amendments also replace references to the Director of Personnel with references to the General Counsel, the Commission's Office of the General Counsel's Ethics Office, and the Designated Agency Ethics Official to reflect current agency practice.

I. Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commission finds, in accordance with section 553(b)(3)(A) of the Administrative Procedure Act,[11] that these rules relate solely to agency organization, procedure, or practice. These rules are therefore not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act[12] therefore does not apply. Because these rules relate to "agency organization, procedure or practice that does not substantially affect the right or obligations of non-agency parties," they are not subject to the Small Business Regulatory Enforcement Fairness Act.[13] The rules do not contain any new collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.[14]

[11] 5 U.S.C. 553(b)(3)(A).

[12] 5 U.S.C. 601 *et seq.*

[13] 5 U.S.C. 804(3)(C).

[14] 44 U.S.C. 3501 *et seq.*

II. Costs and Benefits of the Amendments

Taken as a whole, the Commission and the public have a substantial interest in the integrity of the Commission's processes. Congress has directed the Commission to oversee the securities markets and securities professionals and to protect investors. To that end, the ethical standards contained in the rules enacted today require the Commission's members and employees to maintain high standards of honesty, integrity, and impartiality, and to avoid actual, or the appearance of, conflicts of interest.

In general, the costs of the procedures in the Commission's rules of practice fall largely on the Commission and its employees. As noted, the amendments set forth in this release relate to internal agency management. These rules re-codify pre-existing obligations on the Commission's members and employees with certain minor modifications. As such, the Commission believes that the costs imposed by compliance with these amended rules have not substantially increased from the obligations of Commission members and employees before these amendments.

III. Consideration of Burden on Competition

Section 23(a)(2) of the Exchange Act, 15 U.S.C. 78w(a)(2), requires the Commission, in making rules pursuant to any provision of the Exchange Act, to consider among other matters the impact any such rule would have on competition. The purposes of the Exchange Act include protection of interstate commerce and maintenance of fair and honest markets. The degree of trust that investors and the public have in the Commission and its employees is critical to these goals. The Commission and its employees must adhere to the highest standards of integrity and impartiality and avoid the appearance of conflicts of interest. These rules affect a relatively small number of persons. Therefore, the Commission has determined that the burden on competition is small and is necessary and appropriate in furtherance of the purposes of the Exchange Act.

Section 2(b) of the Securities Act, 15 U.S.C. 77b(b); Section 3(f) of the Exchange Act, 15 U.S.C. 78c(f); Section 2(c) of the Investment Company Act of 1940, 15 U.S.C. 80a–2(c); and Section 202(c) of the Investment Advisers Act of 1940, 15 U.S.C. 80b–2(c) require that the Commission consider efficiency, competition, and capital formation, in addition to the protection of investors, whenever it is required to consider or

determine whether an action is necessary or appropriate in the public interest. As noted above, these rules apply to a relatively small number of people and do not substantially alter their pre-existing obligations. The Commission believes that the amendments that the Commission is adopting today will have a small impact on competition, the capital markets, or capital formation.

IV. Statutory Basis for the Rules

These new supplemental rules and the amendments to the Commission's ethics rules are being adopted pursuant to statutory authority granted to OGE and to the Commission. These include 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); section 19 of the Securities Act of 1933, 15 U.S.C. 77s; section 23 of the Securities Exchange Act of 1934, 15 U.S.C. 78w; section 319 of the Trust Indenture Act of 1939, 15 U.S.C. 77sss; section 40 of the Investment Company Act of 1940, 15 U.S.C. 80a–39; and section 211 of the Investment Advisers Act of 1940, 15 U.S.C. 80b–11.

List of Subjects

5 CFR Part 4401

Administrative practice and procedure, Conduct and Ethics.

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government Agencies), Conduct and Ethics, Information and Requests, and Organization.

■ For the reasons set out in the preamble, Title 5 of the Code of Federal Regulations and Title 17, Chapter II, Part 200, are amended as follows:

TITLE 5—ADMINISTRATIVE PERSONNEL

■ 1. Add a new chapter XXXIV, consisting of part 4401 to read as follows:

CHAPTER XXXIV—SECURITIES AND EXCHANGE COMMISSION

PART 4401—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR MEMBERS AND EMPLOYEES OF THE SECURITIES AND EXCHANGE COMMISSION

Sec.

4401.101 General.
4401.102 Prohibited and restricted financial interests and transactions.
4401.103 Outside employment and activities.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159; 3 CFR 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547; 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403, 2635.803; 15 U.S.C. 77s, 78w, 77sss, 80a–37, 80b–11.

§ 4401.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to members and employees of the Securities and Exchange Commission ("Commission") and supplement the Standards of ethical conduct for employees of the executive branch contained in 5 CFR part 2635. Members and employees of the Commission are required to comply with 5 CFR part 2635 and this part. In addition, they are subject to the Executive branch financial disclosure regulations, 5 CFR part 2634; the Office of Personnel Management Employee responsibilities and conduct regulations at 5 CFR part 735; and the Commission's Canons of ethics and Regulation concerning conduct of members and employees and former members and employees, 17 CFR part 200, subparts C and M.

§ 4401.102 Prohibited and restricted financial interests and transactions.

(a) *Applicability.* The requirements of this section apply to all securities holdings or transactions effected, directly or indirectly, by or on behalf of a member or employee, the member's or employee's spouse, the member's or employee's unemancipated minor child, or any person for whom the member or employee serves as legal guardian. A member or employee is deemed to have sufficient interest in the securities holdings and transactions of his or her spouse, unemancipated minor child, or person for whom the member or employee serves as legal guardian that such holdings or transactions are subject to all the terms of this part.

(b) *In general.*

(1) Members and employees are prohibited from purchasing or selling any security while in possession of material nonpublic information regarding that security. Nonpublic information has the meaning as provided in 5 CFR 2635.703(b).

(2) Members and employees are prohibited from recommending or suggesting to any person the purchase or sale of security:

(i) Based on material nonpublic information regarding that security; or

(ii) That the member or employee could not purchase or sell because of the restrictions contained in this Rule.

(c) *Prohibited and restricted holdings and transactions.* Members and employees are prohibited from:

(1) Knowingly purchasing or holding a security or other financial interest in an entity directly regulated by the Commission;

(2) Purchasing a security in an initial public offering ("IPO") for seven calendar days after the IPO effective date, except that this prohibition does not apply to an IPO of shares in a registered investment company or other publicly traded or publicly available collective investment fund;

(3) Purchasing or otherwise carrying securities on margin;

(4) Selling securities short as defined in 17 CFR 242.200(a);

(5) Accepting a loan from, or entering into any other financial relationship with, an entity, institution or other person directly regulated by the Commission if the loan or financial relationship is governed by terms more favorable than would be available in like circumstances to members of the public, except as otherwise permitted by 5 CFR part 2635, subpart B (Gifts from outside sources);

(6) Engaging in transactions involving financial instruments that are derivatives of securities (that is, the value of the security depends on or is derived from, in whole or in part, the value of another security, or a group, or an index of securities), except that this prohibition does not apply to transactions in shares in a registered investment company or other publicly traded or publicly available collective investment fund; and

(7) Purchasing or selling any security issued by an entity that is:

(i) Under investigation by the Commission;

(ii) A party to a proceeding before the Commission; or

(iii) A party to a proceeding to which the Commission is a party.

(d) *Prior clearance of transactions in securities or related financial interests.*

(1) Except as set forth in paragraph (g) of this section, members and employees must confirm before entering into any security or other related financial transaction that the security or related financial transaction is not prohibited or restricted as to them by clearing the transaction in the manner required by the Designated Agency Ethics Official ("DAEO"). A member or employee will have five business days after clearance to effect a transaction.

(2) Documentation of the clearance of any transaction pursuant to this paragraph (d) shall be prima facie evidence that the member or employee has not knowingly purchased, sold, or held such financial interest in violation of the provisions of paragraphs (c)(1), (2), (6), or (7) of this section.

(3) The DAEO shall be responsible for administering the Commission's

clearance systems. The DAEO shall maintain a record of securities that members and employees may not purchase or sell, or otherwise hold, because such securities are the subject of the various prohibitions and restrictions contained in this section.

(e) *Holding periods for securities and related financial interests.*

(1) *General rule.* Except as set forth in paragraph (g) and in paragraphs (e)(2) and (3) of this section, members and employees must hold a security purchased after commencement of employment with the Commission for a minimum of six (6) months from the trade date.

(2) *General exceptions.* This holding period does not apply to:

(i) Securities sold for ninety percent (90) or less of the original purchase price;

(ii) Securities with an initial term of less than six (6) months that are held to term; and

(iii) Shares in money market funds, as defined in Rule 12d1–1(d)(2), 17 CFR 270.12d1–1(d)(2).

(3) *Exception for shares in registered investment companies.* Members and employees must hold shares in registered investment companies for a minimum of thirty (30) days from the purchase date.

(f) *Reporting requirements.*

(1) Except as set forth in paragraph (g) of this section, members and employees must:

(i) Report and certify all securities holdings according to the schedule required by the DAEO; and

(ii) Submit duplicate statements for every account containing reportable securities to the DAEO according to such procedures required by the DAEO.

(2) Members and employees must report all purchases, sales, acquisitions, or dispositions of securities within five (5) business days after receipt of confirmation of the transaction.

(3) Any person who receives a conditional offer of employment from the Commission must report all securities holdings after acceptance of that offer and before commencement of employment with the Commission on the form prescribed by the Commission.

(g) *Exceptions.*

(1) The following transactions are exempt from the requirements of paragraphs (c), (d), (e), and (f) of this section:

(i) Securities transactions effected by a member's or employee's spouse on behalf of an entity or person other than the member or employee, the member's or employee's spouse, the member's or employee's unemancipated minor child, or any person for whom the member or employee serves as legal guardian;

(ii) Securities holdings and transactions of a member's or employee's legally separated spouse living apart from the member or employee (including those effected for the benefit of the member's or employee's minor child), *provided that* the member or employee has no control, and does not, in fact, control, advise with respect to, or have knowledge of those holdings and transactions;

(iii) Securities issued by the United States Government or one of its agencies;

(iv) Investments in funds administered by the Thrift Savings Plan or by any retirement plan administered by a Federal government agency; and

(v) Certificates of deposit or other comparable instruments issued by depository institutions subject to Federal regulation and Federal deposit insurance.

(2) The following holdings and transactions are exempt from the requirements of paragraphs (c), (d), and (e), but these interests must be reported in accordance with this paragraph (f) of this section:

(i) The holdings of a trust in which the member or employee (or the member's or employee's spouse, the member's or employee's unemancipated minor child, or person for whom the member or employee serves as legal guardian) is:

(A) Solely a vested beneficiary of an irrevocable trust; or

(B) Solely a vested beneficiary of a revocable trust where the trust instrument expressly directs the trustee to make present, mandatory distributions of trust income or principal; provided, the member or employee did not create the trust, has no power to control, and does not, in fact, control or advise with respect to the holdings and transactions of the trust;

(ii) Acceptance or reinvestment of stock dividends on securities already owned;

(iii) Exercise of a right to convert securities; and

(iv) The acquisition of stock or the acquisition or the exercise of employee stock options, or other comparable instruments, received as compensation from an issuer that is:

(A) The member's or employee's former employer; or

(B) The present or former employer of the member's or employee's spouse.

(h) *Waivers.*

(1) Members may request from the Commission a waiver of the prohibitions or limitations that would otherwise apply to a securities holding or transaction on the grounds that application of the rule would cause an undue hardship. A member requests a waiver by submitting a confidential written application to the Commission's Office of the General Counsel's Ethics Office. The DAEO will review the request and provide to the Commission a recommendation for resolution of the waiver request. In developing a recommendation, the DAEO may consult, on a confidential basis, other Commission personnel as the DAEO in his or her discretion considers necessary.

(2) Employees may request from the DAEO a waiver of the prohibitions or limitations that would otherwise apply to a securities holding or transaction on the grounds that application of the rule would cause an undue hardship. An employee requests a waiver by submitting a confidential written application to the Commission's Office of the General Counsel's Ethics Office in the manner prescribed by the DAEO. In considering a waiver request, the DAEO, or his or her designee, may consult with the employee's supervisors and other Commission personnel as the DAEO in his or her discretion considers necessary.

(3) The Commission or the DAEO, as applicable, will provide written notice of its determination of the waiver request to the requesting member or employee.

(4) The Commission or the DAEO, as applicable, may condition the grant of a waiver under this provision upon the agreement to certain undertakings (such as execution of a written statement of disqualification) to avoid the appearance of misuse of position or loss of impartiality, and to ensure confidence in the impartiality and objectivity of the Commission. The Commission or DAEO, as applicable, shall note the existence of conditions on the waiver and describe them in reasonable detail in the text of the waiver-request determination.

(5) The grant of a waiver requested pursuant to this section must reflect the judgment that the waiver:

(i) Is necessary to avoid an undue hardship; and, under the particular circumstances, application of the prohibition or restriction is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise necessary to ensure confidence in the impartiality and objectivity of the Commission;

(ii) Is consistent with 18 U.S.C. 208 (Acts affecting a personal financial interest), 5 CFR part 2635 (Standards of ethical conduct for employees of the executive branch), and 5 CFR part 2640

(Interpretation, exemptions and waiver guidance concerning 18 U.S.C. 208); and

(iii) Is not otherwise prohibited by law.

(6) The determination of the Commission with respect to a member's request for a waiver is final and binding on the member.

(7) The determination of the DAEO with respect to an employee's request for a waiver may be appealed to the Commission, in accordance with the requirements of Rules 430 and 431 of the Commission's Rule of Practice, 17 CFR 201.430, 201.431. The determination of the DAEO or, if appealed, the Commission, is final and binding on the employee.

(8) Notwithstanding the grant of a waiver, a member or employee remains subject to the disqualification requirements of 5 CFR 2635.402 (Disqualifying financial interests) and 5 CFR 2635.502 (Personal and business relationships) with respect to transactions or holdings subject to the waiver.

(i) *Required disposition of securities.* The DAEO is authorized to require disposition of securities acquired as a result of a violation of the provisions of this section, whether unintentional or not. The DAEO shall report repeated violations to the Commission for appropriate action.

§ 4401.103 Outside employment and activities.

(a) *Definitions.* As used in this section:

(1) *Employee* is defined in 5 CFR 2635.102(h) and includes employees and special government employees of the Commission.

(2) *Employment* is defined broadly, as any form of non-Federal employment or business relationship, involving the provision of personal services by the employee. It includes services as an officer, director, employee, agent, attorney, accountant, consultant, contractor, general partner, trustee, teacher, writer, or speaker, but does not include participation in the activities of a nonprofit charitable, religious, professional, civic, or public service organization, unless such activities:

(i) Involve serving as an officer or director of the organization;

(ii) Involve providing professional services or advice to the organization;

(iii) Are for compensation, other than reimbursement of expenses; or

(iv) Involve serving as an active participant (as defined in 5 CFR 2635.502(b)(1)(v)) in a professional organization whose interests may be substantially affected by the Commission.

(3) *Professional services* means practicing a profession as the term "profession" is defined in 5 CFR 2636.305(b)(1).

(4) *DAEO* is the Designated Agency Ethics Official.

(b) *Pro bono and community service.* Subject to the prohibitions, restrictions and requirements contained in law and Federal regulations, including 18 U.S.C. 203 (Compensation to members of Congress, officers, and others in matters affecting the Government), 205 (Activities of officers and employees in claims against and other matters affecting the Government), and 208 (Acts affecting a personal financial interest), 5 CFR part 2634 (Executive branch financial disclosure), 5 CFR part 2635 (Standards of ethical conduct for employees of the executive branch), and paragraph (c) of this section, employees are encouraged to participate in matters involving improvement to their communities, and, when qualified, to provide professional *pro bono* services.

(c) *Prohibitions and restrictions on outside employment and activities.*

(1) *Prohibitions and restrictions on employees other than members.*

(i) No employee may engage in any outside employment or activities that conflict with employment with the Commission.

(ii) No employee shall engage in any outside employment, whether or not for compensation, without prior approval, in accordance with paragraph (d) of this section.

(iii) The Commission will not approve the following kinds of employment or activities:

(A) Employment with any entity regulated by the Commission;

(B) Employment or any activity directly or indirectly related to the issuance, purchase, sale, investment or trading of securities or futures on securities or a group of securities, except this prohibition does not apply to securities holdings or transactions permitted by § 4401.102 of this subpart; or

(C) Employment otherwise involved with the securities industry.

(2) *Prohibitions and restrictions on members.*

(i) Members of the Commission may engage in outside employment only to the extent permitted by Section 4(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78d(a). This provision does not preclude members from engaging in permitted securities transactions.

(ii) Notwithstanding the absence of a statutory prohibition, a member may not engage in any outside employment or activity, if such outside employment or activity would materially impair the member's ability to perform properly the member's duties. Such outside employment or activity includes such fiduciary relationships such as serving as a trustee, executor or corporate director.

(d) *Prior approval requirement.*

(1) An employee, other than a member or special government employee, must obtain written approval before engaging in any outside employment (whether or not for compensation).

(2) Requests for prior approval of outside employment shall be submitted in writing to the appropriate agency designee and to the Commission's Office of the General Counsel's Ethics Office. Agency designees include Division Directors, Office Heads and Regional Directors.

(3) The request shall include, at a minimum:

(i) The name and address of the prospective outside employer;

(ii) A description of the proposed outside employment, including the duties and services to be performed;

(iii) The expected duration of the outside employment;

(iv) The fee or other compensation, if any, to be received by the Commission employee for the outside employment; and

(v) A statement that the employee will disqualify himself or herself, if the request is approved, from participating in particular matters that could directly affect his outside employer during the period of the outside employment and, thereafter, from participating in particular matters involving specific parties, consistent with 5 CFR 2635.502 (Personal and business relationships).

(4) The employee shall submit an updated request for approval:

(i) Annually;

(ii) Upon a significant change in the nature or scope of the outside employment; or

(iii) Upon a significant change in the employee's official position at the Commission.

(5) Approval shall be granted only upon a determination by both the agency designee and Designated Agency Ethics Officers ("DAEO") or by the Commission, on appeal, pursuant to paragraph (d)(6) of this section, that the outside employment is not expected to involve conduct prohibited by law or Federal regulation, including 5 CFR part 2635 (Standards of ethical conduct for employees of the executive branch), and this part.

(6) An employee may appeal the disapproval of a request to engage in outside employment by the agency designee or by the Commission's Office of the General Counsel's Ethics Office to

the Commission in accordance with the requirements of Commission Rules 430 and 431 of the Commission's Rules of Practice, 17 CFR 201.430, 201.431. That appeal shall be submitted in writing to the Commission through the Commission's Office of the General Counsel's Ethics Office and shall explain why the employee believes that his or her request should be approved.

(e) Employees are required to submit proposed publications or prepared speeches relating to the Commission, or the statutes or rules it administers, to the Commission's Office of the General Counsel's Ethics Office for review, pursuant to the Commission's Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission, 17 CFR 200.735–4 (Outside Employment and Activities). Any such publication or speech must include the disclaimer prescribed in 17 CFR 200.735–4(c). Employees who wish to engage in teaching, writing or speaking for compensation should review the provisions of 5 CFR 2635.807 (Teaching, Speaking, and Writing).

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart M—Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

■ 2. The general authority citation for part 200, subpart M is revised to read as follows:

Authority: 15 U.S.C. 77s, 77sss, 78w, 80a–37, 80b–11; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 36; 5 CFR 735.104; 5 CFR 2634; and 5 CFR 2635, unless otherwise noted.

■ 3. § 200.735–1 is amended as follows:
■ a. Revising § 200.735–1 to read as follows; and
■ b. Removing footnote 1.

This revision reads as follows:

§ 200.735–1 Purpose.

This subpart sets forth the standards of ethical conduct required of members, employees and special Government employees, and former members and employees of the Securities and Exchange Commission.

■ 4. § 200.735–2(b) is revised to read as follows:

§ 200.735–2 Policy.

* * * * *

(b) For these reasons, members, employees, and special Government employees should at all times abide by the standards of ethical conduct for employees of the executive branch (codified in 5 CFR part 2635); the supplemental standards of ethical conduct for members and employees of the Securities and Exchange Commission (codified in 5 CFR part 4401); the standards of conduct set forth in this subpart; the Canons of ethics for members of the Securities and Exchange Commission (codified in subpart C of this part 200); and, in the case of a person practicing a profession as defined in 5 CFR 2636.305(b)(1), the applicable professional ethical standards.

■ 5. § 200.735–3 is amended by:
■ a. Revising paragraph (a);
■ b. Removing footnote 2 in paragraph (b)(1);
■ c. Removing paragraphs (b)(2) through (b)(6) and footnotes 3 and 4 in paragraphs (b)(3)(vi) and (b)(6) respectively;
■ d. Redesignating paragraph (b)(7) as paragraph (b)(2), removing footnote 5 in paragraph (b)(7)(i), redesignating footnote 6 in paragraph (b)(7)(iii) as footnote 1 and removing the words "section 22(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79y) and Rule 104 thereunder (17 CFR 250.104)" and removing the words "*But see,* section 171 of the Administrative Manual which authorizes the staff to divulge certain nonpublic information with Commission approval (n. 5, *supra*)." from the newly redesignated footnote 2 to newly redesignated paragraph (b)(2);
■ e. Removing paragraphs (b)(8) through (b)(12) and footnote 7 in paragraph (b)(8); and
■ f. Adding paragraphs (c), (d), (e), (f), (g), and (h).

The revision and additions read as follows:

§ 200.735–3 General provisions.

(a) A member or employee shall comply with the requirements of 5 CFR part 2635, subpart A (General provisions) and in particular with the provisions of 5 CFR 2635.101 (Basic obligations of public service); 2635.103 (Applicability to members of the uniformed services); and 2635.104 (Applicability to employees on detail).

* * * * *

(c) A member or employee shall comply with the requirements of 5 CFR part 2635, subpart B (Gifts from outside sources).

(d) A member or employee shall comply with the requirements of 5 CFR part 2635, subpart C (Gifts between employees).

(e) A member or employee shall comply with the requirements of 5 CFR part 2635, subpart D (Conflicting financial requirements);

(f) A member or employee shall comply with the requirements of 5 CFR part 2635, subpart E (Impartiality).

(g) A member or employee shall comply with the requirements of 5 CFR part 2635, subpart G (Misuse of position).

(h) No member or employee shall accept host-paid travel or reimbursement except as in accordance with the requirements of the Supplemental standards of ethical conduct for members and employees of the Securities and Exchange Commission (codified at 5 CFR 4401.103 (Outside Employment and Activities)); 5 CFR part 2635, subpart H (Outside Activities); and 31 U.S.C. 353 and 41 CFR 304–1.1 (Acceptance of payment from a non-Federal source for travel expenses).

■ 6. § 200.735–4 is amended by:
■ a. Revising paragraph (a) and removing footnote 8 to paragraph (a);
■ b. Removing paragraphs (b)(1) through (b)(4) and paragraphs (b)(6) through (b)(8);
■ c. Redesignating paragraph (b)(5) as paragraph (b); in redesignated paragraph (b), further redesginating paragraphs (i), (ii), and (iii) as paragraphs (b)(1), (2), and (3); and redesignating footnotes 9 and 10 in newly designated paragraphs (b) introductory text and (b)(3) as footnotes 2 and 3 respectively and removing the words "(*See* 17 CFR 200.735–4(b)(7))" from newly redesignated footnote 2;
■ d. Removing footnote 11;
■ e. Revising paragraph (c) and removing footnotes 12, 13, and 14;
■ f. Removing paragraph (d);
■ g. Redesignating paragraph (e) as paragraph (d) and removing footnote 15 in newly redesignated paragraph (d)(1) and adding new footnote 4 to newly redesignated paragraph (d)(1);
■ h. In newly redesignated paragraph (d)(1), removing the words "paragraph (b)(5)" and, in their place, adding "paragraph (b)", and revising newly redesignated paragraph (d)(2)(ii);
■ i. Redesignating paragraphs (f) and (g) as paragraphs (g) and (h);
■ j. Adding new paragraphs (e) and (f);
■ k. Removing footnote 16 in paragraph (g) and the authority citation at the end of the section.

The revisions and additions read as follows:

§ 200.735–4 Outside employment and activities.

(a) Members and employees shall comply with the requirements of the

Supplemental standards of ethical conduct for members and employees of the Securities and Exchange Commission (codified at 5 CFR 4401.103 (Outside employment and activities) and 5 CFR part 2635, subpart H (Outside activities)).

* * * * *

(c) If otherwise permitted by 18 U.S.C. 203 and 205, the provisions of these rules or of 5 CFR 4401.103 do not preclude an employee from acting as agent or attorney:

(1) For any Commission employee who is sued or under investigation in connection with his or her official duties;

(2) For any Commission employee who is the subject of disciplinary, loyalty, or other personnel administrative proceedings in connection with those proceedings; or

(3) For any Commission employee who raises claims or against whom allegations of wrongdoing are made pursuant to the Commission's Equal Opportunity regulations, if such representation is not inconsistent with the faithful performance of the employee's duties.

(d)(1) * * *[4]

(2) * * *

(ii) (A) A determination by the General Counsel that a proposed publication conforms to the requirements of the rule will not involve adoption of, or concurrence in, the views expressed. Therefore, such publication or speech shall include at an appropriate place or in a footnote or otherwise, the following disclaimer of responsibility:

The Securities and Exchange Commission disclaims responsibility for any private publication or statement of any SEC employee or Commissioner.

This [article, outline, speech, chapter] expresses the author's views and does not necessarily reflect those of the Commission, the [other] Commissioners, or [other] members of the staff.

(B) In appropriate cases, the above disclaimer may be modified by the General Counsel or the Commission to reflect the circumstances of an individual case. In addition, any publication or speech that reflects positions taken by the Commission shall set forth those positions accurately and, if it contains differences with Commission positions, it shall clearly state that such positions are those of the employee.

(e) With respect to host-paid travel, members and employees shall comply with the requirements of the Supplemental standards of ethical conduct for members and employees of the Securities and Exchange Commission (codified at 5 CFR 4401.103 (Outside employment and activities)); 5 CFR part 2635, subpart H (Outside Activities); and 31 U.S.C. 1353 and 41 CFR 304–1.1 (Acceptance of payment from a non-Federal source for travel expenses).

(f)(1) With respect to seeking or negotiating outside employment, members and employees shall comply with the requirements of the Supplemental standards of ethical conduct for members and employees of the Securities and Exchange Commission (codified at 5 CFR 4401.103 (Outside employment and activities)); 5 CFR part 2635, subpart F (Seeking other employment); 5 CFR part 2635, subpart H (Outside activities).

(2) Members and employees should be aware that 18 U.S.C. 208 (Acts affecting a personal interest) provides, among other things, that a member or employee is prohibited from participating personally and substantially in any particular matter in which, to his or her knowledge, the member or employee, his or her spouse, minor child, general partner, organization of which the employee is an officer, director, trustee, general partner or employee, or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest. This provision does not apply if the employee has received a written determination by an authorized official that the financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's government service.

(3) Members may follow the procedural provision contained in Part V, Section 503 of the Executive Order 11222.

* * * * *

■ 7. § 200.735–5 is amended by:

■ a. Revising § 200.735–5; and

■ b. Removing footnote 17 in paragraph (b)(1)(ii).

The revision reads as follows:

§ 200.735.5 Securities transactions.

Securities transactions by members and employees must comply with the provisions of 5 CFR 4401.102 (Prohibited and restricted financial interests and transactions).

■ 8. § 200.735–6 is amended by:

■ (a) Revising § 200.735–6; and

■ (b) Removing footnote 18.

The revision reads as follows:

§ 200.735–6 Action in case of personal interest.

Members and employees shall comply with the requirements of 5 CFR part 2640 (Interpretation, exemptions, and waiver guidance concerning 18 U.S.C. 208 (Acts affecting a personal interest)).

■ 9. § 200.735–7 is amended by:

■ (a) Revising 200.735–7;

■ (b) Removing footnote 19 in paragraph (c).

The revision reads as follows:

§ 200.735–7 Negotiation for employment.

Members and employees shall comply with the requirements of 18 U.S.C. 208 (Acts affecting a personal interest) and 5 CFR part 2635, subpart F (Seeking other employment). *See* § 200.735–4(f)(2) of this subpart.

■ 10. § 200.735–8 is amended as follows:

■ a. Revising paragraph (a) and removing footnotes 20 and 21 in paragraph (a);

■ b. Removing footnote 22 in paragraph (a)(4);

■ c. In paragraph (d)(1) removing the words "by paragraph (a)(1) of this section";

■ d. In paragraph (d)(2) removing the words "under paragraph (a)(1) of this section";

■ e. Redesignating footnote 23 in paragraph (d)(3) as footnote 5; and

■ f. Redesignating footnote 24 in paragraph (e) as footnote 6.

The revisions read as follows:

§ 200.735–8 Practice by former members and employees of the Commission.

(a) Members and employees and former members and employees shall comply with the requirements of 18 U.S.C. 207 and 5 CFR part 2641 (Post employment conflict of interest restrictions). Members and employees and former members and employees should be aware that, among other restrictions, 18 U.S.C. 207 generally prohibits a former member or employee from knowingly communicating to or appearing before a Federal agency with the intent to influence a particular matter involving specific parties in which that person personally and substantially participated while at the Commission.

* * * * *

■ 11. § 200.735–9 is revised to read as follows:

§ 200.735–9 Indebtedness.

Members and employees shall comply with the requirements of 5 CFR 2635.809 (Just financial obligations).

■ 12. § 200.735–10 is revised to read as follows:

[4] This paragraph (d), requiring review of prepared speeches or writings relating to the Commission does not apply to teaching activities.

§ 200.735–10 Miscellaneous statutory provisions.

Each member and employee is responsible for acquainting himself or herself with the statutory provisions listed in 5 CFR 2635.902 (Related statutes). A violation of any of these provisions is deemed a violation of this subpart M.

■ 13. § 200.735–11 is amended as follows:

■ a. Revising paragraph (a) and removing footnote 25 in paragraph (b);

■ b. Removing paragraphs (c) through (f);

■ c. Redesignating paragraph (g) as paragraph (c), removing the words "paragraph (c)" and in their place, adding the words "paragraph (a)" and removing the words "Director of Personnel" and in their place, adding the words "Commission's Office of the General Counsel's Ethics Office" in newly redesignated paragraph (c);

■ d. Redesignating paragraph (h) through (i) as paragraphs (d) through (e);

■ e. Removing paragraph (j);

■ f. Redesignating paragraphs (k) through (l) as paragraph (f) through (g);

■ g. In newly redesignated paragraph (d), removing each time they appear the words "Director of Personnel or the Assistant Director of Personnel" and, in their place, adding the words "Commission's Office of the General Counsel's Ethics Office"; and

■ h. In newly redesignated paragraph (e), removing the words "paragraph (c)" and in their place, adding the words "paragraph (a)"; and removing the words "Director of Personnel or the Assistant Director of Personnel" and, in their place, adding the words "Commission's Office of the General Counsel's Ethics Office".

The revision reads as follows:

§ 200.735–11 Statement of employment and financial interests.

(a) Members and employees shall file financial disclosure reports in accordance with the requirements of 5 CFR part 2634 (Executive branch financial disclosure).

* * * * *

■ 14. § 200.735–15(b), (e), and (f) are amended by removing the words "Director of Personnel" and, in their place, adding "Commission's Office of the General Counsel's Ethics Office".

■ 15. § 200.735–17 is amended by removing the words "the Executive Director, the Director of Personnel" and adding, in their place, "the General Counsel, the Designated Agency Ethics Official".

Dated: July 14, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

Robert I. Cusick,

Director, Office of Government Ethics.

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