

[Securities Regulation Daily Wrap Up, SEC NEWS AND SPEECHES— Commission proposes to freshen staff ethics rules, \(Jan. 31, 2023\)](#)

Securities Regulation Daily Wrap Up

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The amended rules would take into consideration new situations and new types of securities purchases and holdings while also adopting a risk-based approach to ethics compliance.

In an effort to modernize the SEC's ethics rules for its own staff, the Commission has proposed to include new types of securities offerings and other financial interests among the things staff either may not do or would have to obtain pre-clearance to participate in in order to ensure the impartiality of their work for the agency. The SEC-specific ethics rules to be amended by the rulemaking function as a supplement to a separate set of ethics rules that apply across federal agencies. It should be noted that interested persons should read the supplemental materials in the rulemaking release because some terminology used to describe the amendments does not also appear in the proposed rule text, for example, the phrases "Financial Industry Sector Funds" and "Permissible Diversified Investment Funds." The amendments were jointly proposed by the SEC and the Office of Government Ethics with public comments due by the later of March 31, 2023, or 30 days after publication in the *Federal Register* (Supplemental Standards of Ethical Conduct for Members and Employees of the Securities and Exchange Commission, [Release No. 34-96768](#), January 30, 2023).

Modernization, automated reporting. The existing rules already prohibit or restrict many transactions and specifically provide that SEC officials and employees cannot purchase or hold a security or other financial interest in any entity that is regulated directly by the Commission. The list of prohibited or restricted transactions would be expanded to include a range of funds the rulemaking release refers to as "Financial Industry Sector Funds:" (1) registered investment companies; (2) common investment trusts of a bank; (3) any company with a partial or total exemption under the Investment Company Act; and (4) any pooled investment vehicle with a stated policy of concentrating its investments in entities that are directly regulated by the Commission.

SEC staff would be given up to 90 days to divest from sector funds that would be banned under the proposed amendments.

Exemptions from the pre-clearance, reporting, and holding period requirements would be expanded for what the proposal calls "Permissible Diversified Investment Funds" to include: (1) mutual funds and unit investment trusts; (2) money market mutual funds; (3) 529 plans; and (4) diversified pooled investment funds held in an employee benefit plan. A note to the proposed rule, however, reiterates that the exemptions would not apply to other types of pooled investment funds, including sector funds, Financial Industry Sector Funds, hedge funds, private equity funds, and venture capital funds.

The rulemaking release explained that exemptions for these types of funds "may pose little or no conflict of interest concerns" and that administration of the related pre-clearance and reporting requirements for these holdings had become burdensome, thus justifying a shift to a risk-based approach in which the ethics rules emphasize higher risk investment activities by SEC staff.

The generally applicable six-month holding period (measured from the trade date) would be clarified in the case of Permissible Diversified Investment Funds. As a result, these types of investments would have to be held for at least 30 days before they could be sold.

The proposed amendments also would address newer types of offerings beyond traditional IPOs, such as direct listings. Thus, SEC officials and employees would be barred from buying securities in an IPO or direct listing before seven days after the effectiveness of the IPO or direct listing. According to the proposing release, direct

listing purchases have the same appearance of impropriety concerns and related risks that attend purchases in traditional IPOs.

Finally, the proposal would allow the Designated Agency Ethics Official (DAEO) to require SEC staff to authorize their brokerage or financial institution to provide automatic transmission of brokerage statements and transaction information through a third-party automated compliance system. But an exception could be made if an employee is unable to obtain the consent of their brokerage or financial institution.

Public trust. A [press release](#) accompanying the proposal reiterated that SEC staff already must comply with existing pre-clearance rules and that existing rules also bar transactions in companies under investigation by the SEC, short selling, transactions in derivatives, and purchasing or carrying securities on margin.

“We at the Securities and Exchange Commission are entrusted by the public to oversee the U.S. capital markets,” said SEC Chair Gary Gensler. “These amendments, if adopted, would help ensure that the SEC honors the trust that the public has placed in us.”

The release is [No. 34-96768](#).

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