


August 22, 2018 Agenda – Open Meeting Matter

To: The Board
From: Chad H. Gholizadeh 
Date: August 10, 2018
Re: Proposed Board Rules

Pursuant to City Charter § 2603(a), the Board is empowered to “promulgate rules as are necessary to implement and interpret the provisions of this chapter, consistent with the goal of providing clear guidance regarding prohibited conduct.” However, despite having this rulemaking authority, the Board has infrequently promulgated new rules or amended its existing rules in recent decades. Instead, it has chosen to respond to requests for advice from public servants by issuing advisory opinions interpreting what Chapter 68 would require in specific scenarios. This Board practice is the subject of a proposed amendment to Charter § 2603(c) pending at the City Council. In response to the introduction of this legislation, Staff began reviewing the Board’s existing rules and advisory opinions with the goal of summarizing and consolidating into rules the Board’s already existing interpretations of Chapter 68. Here, Staff proposes to promulgate two new Board Rules codifying the Board’s long-standing interpretations in two subject areas and to create a new chapter for the Board’s Annual Disclosure rules. Staff has consulted informally with the New York City Law Department about the proposed rules and, with the Board’s approval, will formally submit them to the Law Department and Mayor’s Office of Operations, as required by the City Administrative Procedure Act. See Charter § 1043(d).

Attached are the following:

- 1) Staff’s Proposed Draft Board Rules and Commentary (**Exhibit 1**); and

2) Staff's Proposed Draft Board Rules without Commentary (**Exhibit 2**).

Analysis & Discussion

(1) The Board's New Rules

Staff initially identified two subjects amenable to rules that would gather all the Board's interpretations of Chapter 68, as reflected in its advisory opinions, into a single list. The first defines entities that are not "firms" for the purposes of Charter § 2601(11).¹ As described in greater detail in the commentary to the proposed rule, the term "firm" is present in several sections of Chapter 68. See Commentary at 3. Over the years the Board has advised numerous public servants that their proposed positions would not violate Chapter 68 because the prospective employer is not a "firm" for the purposes of Charter § 2604(a).² See, e.g., Advisory Opinion Nos. 1992-20, 1994-10, 1997-1, 1999-6, 2000-1, and 2005-2. Additionally, Charter § 2601(11) specifically invites the Board to issue a rule to define "other similar entity," which the Board has never done. Staff's proposed Rules §1-08 would encapsulate the Board's historic interpretations of the term "other similar entities." Rules §1-08 lists the entities the Board has previously exempted from the definition of "firm" in its advisory opinions in a format that public servants will be able to easily access and understand as part of their compliance with Chapter 68.

The second proposed rule defines "business or financial relationship" for the purposes of Charter § 2604(b)(14).³ Charter § 2604(b)(14) seeks to eliminate the potential for coercion or

¹ Charter § 2601(11) states: "'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."

² Charter § 2601(11) states: "[N]o public servant shall have an interest in a firm which such public servant knows is engaged in business dealings with the agency served by the public servant; provided, however, that, subject to paragraph one of subdivision b of this section, an appointed member of a community board shall not be prohibited from having an interest in a firm which may be affected by an action on a matter before the community or borough board[.]"

³ Charter § 2604(b)(14) states: "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."

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 with each other. The Board has frequently advised public servants about whether certain relationships with their superior or subordinate are “business or financial relationships” for purposes of Charter § 2604(b)(14) and has fined public servants for entering into such relationships. See Commentary at 5-6 (citing and describing advisory opinions and enforcement dispositions). The proposed rule would codify these existing Board interpretations regarding prohibited relationships between superiors and their subordinates, enabling public servants to consult a single rule if they are unclear if their proposed conduct with a superior or subordinate complies with Charter § 2604(b)(14).

(2) Creation of Chapter 4

Finally, Staff proposes creating a new Chapter 4 in the Rules of the Board titled “Annual Disclosure” and relocating the existing four sections that deal exclusively with annual disclosure to this new Chapter. By relocating these annual disclosure rules to Chapter 4, the Board’s rules will be better organized, and each section of rules will be more clearly related to the other rules in its Chapter. The text of the four relocated sections remains otherwise unchanged. Staff proposes to reserve Sections 1-14 and 1-15 for future use.

Recommendation

Staff recommends that the Board approve the proposed Board Rules and Commentary for submission to the Law Department and the Mayor’s Office of Operations for review and approval pursuant to Charter § 1043(d).

New York City Conflicts of Interest Board

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Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Annual Disclosure, the Definition of “Firm”, and Business or Financial Relationships

What are we proposing? The Conflicts of Interest Board is proposing to amend its rules by: relocating its rules regarding annual disclosure to a new Chapter 4, adding a new definition for “other similar entity” as used in New York City Charter § 2601(11), which defines the term “firm,” and adopting a rule defining business or financial relationship for the purposes of Charter § 2604(b)(14).

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 at [time] on [date]. The hearing will be at [location].

This location has the following accessibility option(s) available: []

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 [] at Rules@COIB.nyc.gov
- **Mail.** You can mail comments to Chad H. Gholizadeh, Assistant Counsel, Conflicts of Interest Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.
- **Fax.** You can fax comments to the Conflicts of Interest Board at (212) 437-0705.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 437-xxxx. You can also sign up in the hearing room before the hearing begins on [date]. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit written comments by [date].

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. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 437-0723. You must tell us by [date].

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/>. A few days after the hearing, 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 at the Conflicts of Interest Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.

1 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043, 2601(11) and
2 2603(a) of the City Charter authorize the Conflicts of Interest Board to make this proposed rule. This
3 proposed rule was not included in the Conflicts of Interest Board’s regulatory agenda for this Fiscal
4 Year because it was not contemplated when the Conflicts of Interest Board published the agenda.

5
6 **Where can I find the Conflicts of Interest Board’s rules?** The Conflicts of Interest Board’s rules are
7 in Title 53 of the Rules of the City of New York.

8
9 **What rules govern the rulemaking process?** The Conflicts of Interest Board must meet the
10 requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made
11 according to the requirements of Section 1043 of the City Charter.

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13 **STATEMENT OF BASIS AND PURPOSE**

14 City Charter § 2603(a) grants general rulemaking authority to the Conflicts of Interest
15 Board (the “Board”):

16 [t]he [B]oard shall promulgate rules as are necessary to implement and
17 interpret the provisions of this chapter, consistent with the goal of
18 providing clear guidance regarding prohibited conduct.

19 In the Section One of this rulemaking, the Board proposes to move four sections of the
20 Rules of the Board from Chapter 1, titled “Conflicts of Interest,” to a new Chapter 4, titled
21 “Annual Disclosure,” to wit: Section 1-08: Procedures for Obtaining an Extension of Time
22 within which to File a Financial Disclosure Report; Section 1-10: Retention of Financial
23 Disclosure Reports; Section 1-14: City Employees Holding Policymaking Positions for Purposes
24 of the Financial Disclosure Law; and Section 1-15: City Employees Whose Duties Involve the
25 Negotiation, Authorization, or Approval of Contracts and of Certain Other Matters. The four
26 sections, enacted in 1992, 1994, 2003, and 2005 respectively, are necessary for the
27 administration of the Annual Disclosure Law contained in Section 12-110 of the New York City
28 Administrative Code and not relevant to a determination about “conflicts of interest” under
29 Chapter 68 of the City Charter. By creating a Chapter 4, the Board’s rules will be better
30 organized, and each chapter of rules will be more clearly related to the other rules in its chapter.

1 The text of the four relocated Board Rules remain otherwise unchanged. The Board proposes to
2 reserve Sections 1-14 and 1-15 for future use.

3 Several provisions of the City Charter are relevant to the proposed rulemaking in Section
4 Two. At the threshold, City Charter § 2601(11) defines “firm” as follows:

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

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

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

21 As noted above, § 2604(a)(1) prohibits a full-time public servant from having an
22 ownership interest or position in a firm that is engaged in business dealings with the City. This
23 means that any full-time public servant who wishes to have a second job with a firm that has
24 business dealings with any City agency must obtain a waiver from the Board to have such an
25 interest. Charter § 2601(11) already exempts public benefit corporations and local development

1 corporations from the definition of “firm” and grants the Board the authority to exempt “similar
2 entities” that it defines by rule.

3 The Board is proposing this rule because over the years it has advised numerous public
4 servants that their proposed activities would not violate Chapter 68 because their prospective
5 employer or ownership interest does not fall within the ambit of “firm” for the purposes of City
6 Charter § 2601(11). See, e.g., A.O. Nos. 1992-20, 1994-10, 1997-1, 1999-6, 2000-1, and 2005-
7 2. However, public servants who have second jobs with entities that are not “firms” remain
8 subject to other fundamental requirements of Chapter 68, including, but not limited to: their work
9 for the other employing entity must be conducted at times when they are not required to perform
10 services for the City (Charter § 2604(b)(2), Board Rules § 1-13(a)); they may not use City
11 equipment, letterhead, personnel, or other City resources in connection with their second jobs at
12 the employing entity (Charter § 2604(b)(2), Board Rules § 1-13(b)); they may not use their
13 official City positions or titles to obtain any private advantage for themselves, the employing
14 entity, or any of such entity’s clients (Charter § 2604(b)(3)); they may not disclose or use for
15 private advantage any confidential information concerning the City (Charter § 2604(b)(4)); they
16 may not make any appearances before the City on behalf of the employing entity (Charter §
17 2604(b)(6)); and lastly, they may not be compensated by the employing entity for performing
18 their official duties (Charter § 2604(b)(13)).

19 Regarding the proposed changes in Section 3, New York City Charter § 2604(b)(14)
20 provides: “No public servant shall enter into any business or financial relationship with another
21 public servant who is a superior or subordinate of such public servant.” Charter § 2604(b)(14)
22 recognizes the potential for coercion or favoritism that exists when co-workers who occupy
23 different positions in a City government office hierarchy, in which one person has authority over

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

20 Moreover, numerous enforcement actions have been initiated over the years that have
21 resulted in fines for public servants found to have violated this prohibition. Examples include
22 COIB Case Nos. 2016-057 (2017) (a New York City Department of Education ("DOE")
23 Superintendent paid a \$3,000 fine for having sold her house to a teacher she supervised as her

1 Principal); 2016-600 (2017) (a DOE Principal was issued a public warning letter for being
2 regularly driven to and from work by a subordinate); 2015-858(a) (2017) (a former Director of
3 Contracts and Construction in the New York City Department of Transportation’s Traffic
4 Division paid a \$4,000 fine for, over the course of three years, lending and repaying his
5 subordinate more than \$40,000); and 2016-902 and 902a (2017) (a DOE Assistant Principal and
6 a teacher whom he supervised at the school found to have entered into an impermissible
7 financial relationships by cohabitating and were fined \$3,750 and \$1,752, respectively).

8 The Board therefore proposes this new rule to clarify which relationships between
9 superiors and their subordinates are deemed to be business or financial relationships for the
10 purposes of Charter § 2604(b)(14) and are therefore prohibited. This section would prohibit a
11 public servant from entering into any of the enumerated relationships with any other public
12 servant who either is supervised by him/her or is supervising his/her work, or who has the power
13 to direct his/her work, or whose work he/she directs, or whose terms and conditions of
14 employment the superior public servant has the power to affect or who could affect the terms and
15 conditions of the subordinate public servant’s employment.

16

17 New material is underlined.

18 [Deleted material is in brackets.]

19 **Section 1.** Title 53 of the Rules of the City of New York is amended by adding a Chapter
20 4 to read as follows:

21 §4-01 Procedures for Obtaining an Extension of Time within which to File a Financial
22 Disclosure Report

23 (a) Bases for obtaining an extension of time to file.

1 (1) A person required to file a financial disclosure report with the Conflicts of Interest
2 Board (the "Board") pursuant to §12-110 of the Administrative Code of the City
3 of New York (the "Administrative Code") may be granted an extension of time
4 within which to file a report or portion thereof upon a showing of justifiable cause
5 or undue hardship.

6 (2) A finding of justifiable cause or undue hardship shall not be based on periods of
7 annual leave, attendance at conferences or meetings, or other pre-scheduled or
8 voluntary absences from work.

9 (b) General procedures.

10 (1) A request for an extension of time within which to file a financial disclosure
11 report or portions thereof which is due by May first shall be postmarked, or
12 delivery made to the Board, no later than April fifteenth of the year in which such
13 report is to be filed. Where Administrative Code §12-110 requires the filing of
14 such report at a time other than on or before May first, a request for extension of
15 time within which to file shall be postmarked, or delivery made to the Board, no
16 later than fifteen days prior to such filing deadline.

17 (2) The request for an extension of time shall be mailed to the Board by certified mail
18 or shall be delivered by hand and, upon request, a receipt may be issued upon
19 acceptance of such delivery.

20 (3) The request for an extension of time within which to file a financial disclosure
21 report or portions thereof due to justifiable cause or undue hardship shall contain
22 the following information:

- 1 i. The name of the person making such request and his or her home address
2 and work address;
- 3 ii. The title of the position or job classification and name of the agency by
4 which he or she is employed;
- 5 iii. Explanation of justifiable cause or undue hardship in the form of a written
6 statement with copies of any necessary supporting documents such person
7 wishes the Board to consider;
- 8 iv. Where the filer is seeking an extension to answer a portion of the report on
9 the grounds that certain information is not yet available, the request shall
10 state what information is not available. Documentation, if available, shall
11 be provided in support of such request (for example, a copy of an
12 application to the Internal Revenue Service for an automatic extension of
13 time within which to file one's income tax return); and
- 14 v. The additional time requested and the date by which such person intends
15 to comply with the filing requirements.

16 (c) Time limitations upon extensions.

- 17 (1) The Board shall not grant an extension of time to file a financial disclosure report
18 or portions thereof due to justifiable cause or undue hardship for a period greater
19 than four months from the original date the report was due.
- 20 (2) An individual who is seeking an extension of time to answer a portion of the
21 financial disclosure report shall nevertheless file his or her report on or before
22 May first, or at such other time required by Administrative Code §12-110,
23 containing all the information required by such report, except for that information

1 which is not available. A supplemental statement providing information not
2 previously available shall be filed on the date set by the Board. Failure to file such
3 supplemental statement, or the filing of an incomplete or deficient supplemental
4 statement, shall subject the reporting person to the penalties set forth in
5 Administrative Code §12-110(h).

6 (d) Board action.

7 (1) Upon receipt of a timely request for an extension of time within which to file a
8 financial disclosure report or portions thereof, the Board shall review the material
9 filed to determine whether an extension is appropriate.

10 (2) The Board may in its discretion request, in writing, additional information from
11 the person making the request. Such additional information shall be submitted to
12 the Board within ten business days of the date of the Board's request. In the event
13 the Board does not receive the additional information within ten business days, it
14 may make a determination on the basis of the information it has available.

15 (3) The Board shall give written notice of its determination to the person making the
16 request.

17 i. In the event the request for an extension of time within which to file a
18 financial disclosure report or portions thereof is approved, such report
19 shall be filed on or before the date indicated by the Board in its
20 determination.

21 ii. In the event the request for an extension of time within which to file a
22 financial disclosure report or portions thereof is denied, such report shall
23 be filed before or on the due date set forth in Administrative Code §12-

1 110 or such date as may thereafter be established by the Board in its
2 determination.

3 (4) The Board may delegate to its Executive Director the authority to act pursuant to
4 this rule.

5 §4-02 Retention of Financial Disclosure Reports

6 (a) Definitions. As used in this Rule, the following terms shall have the respective
7 meanings set forth below:

8 (1) "Administrative Code" shall mean the Administrative Code of the City of
9 New York.

10 (2) "Board" shall mean the New York City Conflicts of Interest Board,
11 established pursuant to §2602 of the New York City Charter.

12 (3) "Financial Disclosure Report" shall mean any financial disclosure report filed
13 or on file with the Board pursuant to §12-110 of the Administrative Code,
14 including reports previously filed with the Office of the City Clerk and
15 transferred to the Board's custody.

16 (4) "Prior Financial Disclosure Report" shall mean any Financial Disclosure
17 Report which, as of the effective date of this Rule, has been retained by the
18 Board for a period in excess of six years from December 31 of the calendar
19 year to which such Report relates.

20 (b) Retention of Financial Disclosure Reports.

21 (1) Whenever a Financial Disclosure Report is filed with the Board, it shall be
22 retained by the Board for a period commencing on the date such Report was
23 filed with the Board and expiring on the sixth anniversary of December 31 of

1 the calendar year to which such Report relates. The period during which the
2 Board is required to retain a Financial Disclosure Report, pursuant to this
3 paragraph (1), is hereinafter referred to as the "Required Retention Period" for
4 such Report.

5 (2) (i) Except as provided in subparagraphs (ii) and (iii) below, upon expiration of
6 the Required Retention Period for a Financial Disclosure Report, pursuant to
7 paragraph (1) above, the Board shall either (i) destroy such report, or (ii) if
8 requested by the individual who filed such report, return such report to such
9 individual. Any request that the Board return such report must be made in
10 writing to the Board not later than 10 days prior to the expiration of such
11 period.

12 i. Notwithstanding the provisions of subparagraph (i), if a law
13 enforcement agency requests that the Board retain a Financial
14 Disclosure Report for an additional period of time beyond the
15 expiration of its required retention period, for purposes of an ongoing
16 investigation, the Board shall retain such report for such additional
17 period, provided the request is made in writing and is submitted to the
18 Board not later than 10 days prior to the expiration of such required
19 retention period. Upon expiration of such additional period of time, the
20 Board shall either (i) destroy such report, or (ii) if requested by the
21 individual who filed such report, return such report to such individual.
22 Any such request must be made in accordance with the provision of
23 subparagraph (i) above.

1 ii. Notwithstanding the provisions of subparagraph (i), all reports shall be
2 retained by the Board for a period of not less than one year from the
3 date such report was filed with the Board.

4 (3) In accordance with the provisions of subdivision (e) of Administrative Code
5 §12-110, as amended by Local Law No. 93 of 1992, the retention period
6 established in paragraph (1) is intended to supersede, and shall be observed by
7 the Board in lieu of, the retention periods set forth in such subdivision (e).

8 (4) Notwithstanding any other provision of this section, the Board shall be
9 entitled, upon the effective date of the Rule, to destroy immediately all Prior
10 Financial Disclosure Reports then in its possession.

11 §4-03 City Employees Holding Policymaking Positions for Purposes of the Financial

12 Disclosure Law

13 (a) For purposes of Administrative Code §12-110(b)(3)(a)(3), a City employee shall be
14 deemed to hold a policymaking position, and therefore be required to file a Financial
15 Disclosure Report, if such employee is charged with substantial policy discretion within
16 the meaning of Section 1-02 of Title 53 of the Rules of the City of New York.

17
18 §4-04 City Employees Whose Duties Involve the Negotiation, Authorization, or

19 Approval of Contracts and of Certain Other Matters

20 (a) For purposes of Administrative Code §12-110(b)(3)(a)(4), a City employee shall be
21 deemed to have duties that involve the negotiation, authorization, or approval of
22 contracts, leases, franchises, revocable consents, concessions, and applications for zoning

- 1 changes, variances, and special permits if the employee performs any of the following
2 duties:
- 3 (1) Determines the substantive content of a request for proposals or other bid request
4 or change order;
- 5 (2) Makes a determination as to the responsiveness of a bid or the responsibility of a
6 vendor or bidder;
- 7 (3) Evaluates a bid;
- 8 (4) Negotiates or determines the substantive content of a contract, lease, franchise,
9 revocable consent, concession, or application for a zoning change, variance, or
10 special permit or change order
- 11 (5) Recommends or determines whether or to whom a contract, lease, franchise,
12 revocable consent, concession, or application for a zoning change, variance, or
13 special permit or change order should be awarded or granted;
- 14 (6) Approves a contract, lease, franchise, revocable consent, or concession or change
15 order on behalf of the City or any agency subject to Administrative Code §12-
16 110; or
- 17 (7) Determines the content of or promulgates City procurement policies, rules, or
18 regulations.
- 19 (b) Clerical personnel and other public servants who, in relation to the negotiation,
20 authorization, or approval of contracts, leases, franchises, revocable consents,
21 concessions, and applications for zoning changes, variances, and special permits, perform
22 only ministerial tasks shall not be required to file a Financial Disclosure Report pursuant
23 to Administrative Code §12-110(b)(3)(a)(4). For example, public servants who are under

1 the supervision of others and are without substantial personal discretion, and who
2 perform only clerical tasks (such as typing, filing, or distributing contracts, leases,
3 franchises, revocable consents, concessions, or zoning changes, variances, or special
4 permits or calendaring meetings or who identify potential bidders or vendors) shall not,
5 on the basis of such tasks alone, be required to file a financial disclosure report.
6 Similarly, public servants who write a request for proposals, bid request, change order,
7 contract, lease, franchise, revocable consent, concession, or application for a zoning
8 change, variance, or special permit or procurement policy, rule, or regulation under the
9 direction of a superior but who do not determine the substantive content of the document
10 shall not, on the basis of such tasks alone, be required to file a Financial Disclosure
11 Report.

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13
14 **Section 2.** Chapter 1 of Title 53 of the Rules of the City of New York is amended by
15 amending § 1-08 to read as follows:

16 §1-08 [Procedures for Obtaining an Extension of Time within which to File a Financial
17 Disclosure Report

18 (a) Bases for obtaining an extension of time to file.

19 (1) A person required to file a financial disclosure report with the Conflicts of Interest
20 Board (the "Board") pursuant to §12-110 of the Administrative Code of the City
21 of New York (the "Administrative Code") may be granted an extension of time
22 within which to file a report or portion thereof upon a showing of justifiable cause
23 or undue hardship.

1 (2) A finding of justifiable cause or undue hardship shall not be based on periods of
2 annual leave, attendance at conferences or meetings, or other pre-scheduled or
3 voluntary absences from work.

4 (b) General procedures.

5 (1) A request for an extension of time within which to file a financial disclosure
6 report or portions thereof which is due by May first shall be postmarked, or
7 delivery made to the Board, no later than April fifteenth of the year in which such
8 report is to be filed. Where Administrative Code §12-110 requires the filing of
9 such report at a time other than on or before May first, a request for extension of
10 time within which to file shall be postmarked, or delivery made to the Board, no
11 later than fifteen days prior to such filing deadline.

12 (2) The request for an extension of time shall be mailed to the Board by certified mail
13 or shall be delivered by hand and, upon request, a receipt may be issued upon
14 acceptance of such delivery.

15 (3) The request for an extension of time within which to file a financial disclosure
16 report or portions thereof due to justifiable cause or undue hardship shall contain
17 the following information:

18 i. The name of the person making such request and his or her home address
19 and work address;

20 ii. The title of the position or job classification and name of the agency by
21 which he or she is employed;

- 1 iii. Explanation of justifiable cause or undue hardship in the form of a written
2 statement with copies of any necessary supporting documents such person
3 wishes the Board to consider;
- 4 iv. Where the filer is seeking an extension to answer a portion of the report on
5 the grounds that certain information is not yet available, the request shall
6 state what information is not available. Documentation, if available, shall
7 be provided in support of such request (for example, a copy of an
8 application to the Internal Revenue Service for an automatic extension of
9 time within which to file one's income tax return); and
- 10 v. The additional time requested and the date by which such person intends
11 to comply with the filing requirements.

12 (c) Time limitations upon extensions.

- 13 (1) The Board shall not grant an extension of time to file a financial disclosure report
14 or portions thereof due to justifiable cause or undue hardship for a period greater
15 than four months from the original date the report was due.
- 16 (2) An individual who is seeking an extension of time to answer a portion of the
17 financial disclosure report shall nevertheless file his or her report on or before
18 May first, or at such other time required by Administrative Code §12-110,
19 containing all the information required by such report, except for that information
20 which is not available. A supplemental statement providing information not
21 previously available shall be filed on the date set by the Board. Failure to file such
22 supplemental statement, or the filing of an incomplete or deficient supplemental

1 statement, shall subject the reporting person to the penalties set forth in
2 Administrative Code §12-110(h).

3 (d) Board action.

4 (1) Upon receipt of a timely request for an extension of time within which to file a
5 financial disclosure report or portions thereof, the Board shall review the material
6 filed to determine whether an extension is appropriate.

7 (2) The Board may in its discretion request, in writing, additional information from
8 the person making the request. Such additional information shall be submitted to
9 the Board within ten business days of the date of the Board's request. In the event
10 the Board does not receive the additional information within ten business days, it
11 may make a determination on the basis of the information it has available.

12 (3) The Board shall give written notice of its determination to the person making the
13 request.

14 i. In the event the request for an extension of time within which to file a
15 financial disclosure report or portions thereof is approved, such report
16 shall be filed on or before the date indicated by the Board in its
17 determination.

18 ii. In the event the request for an extension of time within which to file a
19 financial disclosure report or portions thereof is denied, such report shall
20 be filed before or on the due date set forth in Administrative Code §12-
21 110 or such date as may thereafter be established by the Board in its
22 determination.

1 (4) The Board may delegate to its Executive Director the authority to act pursuant to
2 this rule.]

3 Definition of “other similar entity” within the definition of “firm”.

4 For the purposes of Charter § 2601(11), the term “other similar entity” means any of the
5 following entities:

6 (a) local, state, and federal governments and their agencies;

7 (b) New York State public authorities;

8 (c) New York local public authorities;

9 (d) the United Nations;

10 (e) the United States Postal Service;

11 (f) the State University of New York;

12 (g) the City University of New York;

13 (h) the Brooklyn Public Library;

14 (i) the Queens Public Library; and

15 (j) charter schools created pursuant to New York State Education Law Article 56.

16 **Section 3.** Chapter 1 of Title 53 of the Rules of the City of New York is amended by
17 amending § 1-10 to read as follows:

18 §1-10 [Retention of Financial Disclosure Reports

19 (a) Definitions. As used in this Rule, the following terms shall have the respective
20 meanings set forth below:

21 (1) "Administrative Code" shall mean the Administrative Code of the City of
22 New York.

- 1 (2) "Board" shall mean the New York City Conflicts of Interest Board,
2 established pursuant to §2602 of the New York City Charter.
- 3 (3) "Financial Disclosure Report" shall mean any financial disclosure report filed
4 or on file with the Board pursuant to §12-110 of the Administrative Code,
5 including reports previously filed with the Office of the City Clerk and
6 transferred to the Board's custody.
- 7 (4) "Prior Financial Disclosure Report" shall mean any Financial Disclosure
8 Report which, as of the effective date of this Rule, has been retained by the
9 Board for a period in excess of six years from December 31 of the calendar
10 year to which such Report relates.
- 11 (b) Retention of Financial Disclosure Reports.
- 12 (1) Whenever a Financial Disclosure Report is filed with the Board, it shall be
13 retained by the Board for a period commencing on the date such Report was
14 filed with the Board and expiring on the sixth anniversary of December 31 of
15 the calendar year to which such Report relates. The period during which the
16 Board is required to retain a Financial Disclosure Report, pursuant to this
17 paragraph (1), is hereinafter referred to as the "Required Retention Period" for
18 such Report.
- 19 (2) (i) Except as provided in subparagraphs (ii) and (iii) below, upon expiration of
20 the Required Retention Period for a Financial Disclosure Report, pursuant to
21 paragraph (1) above, the Board shall either (i) destroy such report, or (ii) if
22 requested by the individual who filed such report, return such report to such
23 individual. Any request that the Board return such report must be made in

1 writing to the Board not later than 10 days prior to the expiration of such
2 period.

3 i. Notwithstanding the provisions of subparagraph (i), if a law
4 enforcement agency requests that the Board retain a Financial
5 Disclosure Report for an additional period of time beyond the
6 expiration of its required retention period, for purposes of an ongoing
7 investigation, the Board shall retain such report for such additional
8 period, provided the request is made in writing and is submitted to the
9 Board not later than 10 days prior to the expiration of such required
10 retention period. Upon expiration of such additional period of time, the
11 Board shall either (i) destroy such report, or (ii) if requested by the
12 individual who filed such report, return such report to such individual.
13 Any such request must be made in accordance with the provision of
14 subparagraph (i) above.

15 ii. Notwithstanding the provisions of subparagraph (i), all reports shall be
16 retained by the Board for a period of not less than one year from the
17 date such report was filed with the Board.

18 (3) In accordance with the provisions of subdivision (e) of Administrative Code
19 §12-110, as amended by Local Law No. 93 of 1992, the retention period
20 established in paragraph (1) is intended to supersede, and shall be observed by
21 the Board in lieu of, the retention periods set forth in such subdivision (e).

1 (4) Notwithstanding any other provision of this section, the Board shall be
2 entitled, upon the effective date of the Rule, to destroy immediately all Prior
3 Financial Disclosure Reports then in its possession.]

4 Prohibited Business or Financial Relationships

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

- 7 (1) outstanding loans collectively amounting to \$25.00 or more;
8 (2) a purchase or sale of any property valued at \$25.00 or more within a 12-month
9 period;
10 (3) the leasing of any property;
11 (4) cohabitation;
12 (5) participation in a lottery pool;
13 (6) participation in a savings club;
14 (7) shared ownership of real property;
15 (8) shared ownership of financial instruments;
16 (9) shared ownership interest in a firm other than a publicly traded company;
17 (10) shared ownership interest in a housing cooperative or condominium
18 apartment with fewer than six units;
19 (11) employer-employee, consultant, contractor, attorney-client, agent-
20 principal, brokerage, or other similar relationships;
21 (12) serving as a trustee of a trust established by another public servant or in
22 which another public servant or a public servant’s associated person has a
23 beneficial interest; and

1 (13) payment of another public servant’s recurring expenses such as rent or
2 payments for a vehicle.

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

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

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

10
11 **Section 4.** Chapter 1 of Title 53 of the Rules of the City of New York is amended by
12 amending § 1-14 to read as follows:

13 §1-14 Reserved. [City Employees Holding Policymaking Positions for Purposes of the
14 Financial Disclosure Law

15 (a) For purposes of Administrative Code §12-110(b)(3)(a)(3), a City employee shall
16 be deemed to hold a policymaking position, and therefore be required to file a
17 Financial Disclosure Report, if such employee is charged with substantial policy
18 discretion within the meaning of Section 1-02 of Title 53 of the Rules of the City
19 of New York.]

20
21 **Section 5.** Chapter 1 of Title 53 of the Rules of the City of New York is amended by
22 amending § 1-15 to read as follows:

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

3 (c) For purposes of Administrative Code §12-110(b)(3)(a)(4), a City employee shall be
4 deemed to have duties that involve the negotiation, authorization, or approval of
5 contracts, leases, franchises, revocable consents, concessions, and applications for zoning
6 changes, variances, and special permits if the employee performs any of the following
7 duties:

8 (1) Determines the substantive content of a request for proposals or other bid request
9 or change order;

10 (2) Makes a determination as to the responsiveness of a bid or the responsibility of a
11 vendor or bidder;

12 (3) Evaluates a bid;

13 (4) Negotiates or determines the substantive content of a contract, lease, franchise,
14 revocable consent, concession, or application for a zoning change, variance, or
15 special permit or change order

16 (5) Recommends or determines whether or to whom a contract, lease, franchise,
17 revocable consent, concession, or application for a zoning change, variance, or
18 special permit or change order should be awarded or granted;

19 (6) Approves a contract, lease, franchise, revocable consent, or concession or change
20 order on behalf of the City or any agency subject to Administrative Code §12-
21 110; or

22 (7) Determines the content of or promulgates City procurement policies, rules, or
23 regulations.

1 (d) Clerical personnel and other public servants who, in relation to the negotiation,
2 authorization, or approval of contracts, leases, franchises, revocable consents,
3 concessions, and applications for zoning changes, variances, and special permits, perform
4 only ministerial tasks shall not be required to file a Financial Disclosure Report pursuant
5 to Administrative Code §12-110(b)(3)(a)(4). For example, public servants who are under
6 the supervision of others and are without substantial personal discretion, and who
7 perform only clerical tasks (such as typing, filing, or distributing contracts, leases,
8 franchises, revocable consents, concessions, or zoning changes, variances, or special
9 permits or calendaring meetings or who identify potential bidders or vendors) shall not,
10 on the basis of such tasks alone, be required to file a financial disclosure report.
11 Similarly, public servants who write a request for proposals, bid request, change order,
12 contract, lease, franchise, revocable consent, concession, or application for a zoning
13 change, variance, or special permit or procurement policy, rule, or regulation under the
14 direction of a superior but who do not determine the substantive content of the document
15 shall not, on the basis of such tasks alone, be required to file a Financial Disclosure
16 Report.]
17

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Chapter 1: Conflicts of Interest

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

Board Rules § 1-10. Prohibited Business or Financial Relationships.

Board Rules § 1-14. Reserved.

Board Rules § 1-15. Reserved.

Chapter 4: Annual Disclosure

Board Rules § 4-01. Procedures for Obtaining an Extension of Time within which to File a Financial Disclosure Report.

Board Rules § 4-02. Retention of Financial Disclosure Reports.

Board Rules § 4-03. City Employees Holding Policymaking Positions for Purposes of the Financial Disclosure Law.

Board Rules § 4-04. City Employees Whose Duties Involve the Negotiation, Authorization, or Approval of Contracts and of Certain Other Matters.

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

For the purposes of Charter § 2601(11), the term “other similar entity” means any of the following entities:

- (a) local, state, and federal governments and their agencies;
- (b) New York State public authorities;
- (c) New York local public authorities;
- (d) the United Nations;
- (e) the United States Postal Service;
- (f) the State University of New York;
- (g) the City University of New York;
- (h) the Brooklyn Public Library;

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- (i) the Queens Public Library; and
- (j) charter schools created pursuant to New York State Education Law Article 56.

Board Rules § 1-10. Prohibited Business or Financial Relationships.

- (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 within a 12-month period;
 - (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;
 - (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 housing cooperative or condominium apartment with fewer than six units;
 - (11) employer-employee, consultant, contractor, attorney-client, agent-principal, brokerage, or other similar relationships;
 - (12) serving as a trustee of a trust established by another public servant or in which another public servant or a public servant’s associated person has a beneficial interest; and
 - (13) payment of another public servant’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:

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- (1) the benefit is shared communally by the participants; and
- (2) each public servant bears a fair proportion of the expense or effort involved for the activity.

Board Rules §1-14 Reserved.

Board Rules §1-15 Reserved.

Board Rules § 4-01 Procedures for Obtaining an Extension of Time within which to File a Financial Disclosure Report

- (a) Bases for obtaining an extension of time to file.
 - (1) A person required to file a financial disclosure report with the Conflicts of Interest Board (the "Board") pursuant to §12-110 of the Administrative Code of the City of New York (the "Administrative Code") may be granted an extension of time within which to file a report or portion thereof upon a showing of justifiable cause or undue hardship.
 - (2) A finding of justifiable cause or undue hardship shall not be based on periods of annual leave, attendance at conferences or meetings, or other pre-scheduled or voluntary absences from work.
- (b) General procedures.
 - (1) A request for an extension of time within which to file a financial disclosure report or portions thereof which is due by May first shall be postmarked, or delivery made to the Board, no later than April fifteenth of the year in which such report is to be filed. Where Administrative Code §12-110 requires the filing of such report at a time other than on or before May first, a request for extension of time within which to file shall be postmarked, or delivery made to the Board, no later than fifteen days prior to such filing deadline.
 - (2) The request for an extension of time shall be mailed to the Board by certified mail or shall be delivered by hand and, upon request, a receipt may be issued upon acceptance of such delivery.
 - (3) The request for an extension of time within which to file a financial disclosure report or portions thereof due to justifiable cause or undue hardship shall contain the following information:
 - i. The name of the person making such request and his or her home address and work address;

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- ii. The title of the position or job classification and name of the agency by which he or she is employed;
- iii. Explanation of justifiable cause or undue hardship in the form of a written statement with copies of any necessary supporting documents such person wishes the Board to consider;
- iv. Where the filer is seeking an extension to answer a portion of the report on the grounds that certain information is not yet available, the request shall state what information is not available. Documentation, if available, shall be provided in support of such request (for example, a copy of an application to the Internal Revenue Service for an automatic extension of time within which to file one's income tax return); and
- v. The additional time requested and the date by which such person intends to comply with the filing requirements.

(c) Time limitations upon extensions.

- (1) The Board shall not grant an extension of time to file a financial disclosure report or portions thereof due to justifiable cause or undue hardship for a period greater than four months from the original date the report was due.
- (2) An individual who is seeking an extension of time to answer a portion of the financial disclosure report shall nevertheless file his or her report on or before May first, or at such other time required by Administrative Code §12-110, containing all the information required by such report, except for that information which is not available. A supplemental statement providing information not previously available shall be filed on the date set by the Board. Failure to file such supplemental statement, or the filing of an incomplete or deficient supplemental statement, shall subject the reporting person to the penalties set forth in Administrative Code §12-110(h).

(d) Board action.

- (1) Upon receipt of a timely request for an extension of time within which to file a financial disclosure report or portions thereof, the Board shall review the material filed to determine whether an extension is appropriate.
- (2) The Board may in its discretion request, in writing, additional information from the person making the request. Such additional information shall be submitted to the Board within ten business days of the date of the Board's request. In the event the Board does not receive the additional information within ten business days, it may make a determination on the basis of the information it has available.

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- (3) The Board shall give written notice of its determination to the person making the request.
 - i. In the event the request for an extension of time within which to file a financial disclosure report or portions thereof is approved, such report shall be filed on or before the date indicated by the Board in its determination.
 - ii. In the event the request for an extension of time within which to file a financial disclosure report or portions thereof is denied, such report shall be filed before or on the due date set forth in Administrative Code §12-110 or such date as may thereafter be established by the Board in its determination.
- (4) The Board may delegate to its Executive Director the authority to act pursuant to this rule.

Board Rules § 4-02 Retention of Financial Disclosure Reports

- (a) Definitions. As used in this Rule, the following terms shall have the respective meanings set forth below:
 - (1) "Administrative Code" shall mean the Administrative Code of the City of New York.
 - (2) "Board" shall mean the New York City Conflicts of Interest Board, established pursuant to §2602 of the New York City Charter.
 - (3) "Financial Disclosure Report" shall mean any financial disclosure report filed or on file with the Board pursuant to §12-110 of the Administrative Code, including reports previously filed with the Office of the City Clerk and transferred to the Board's custody.
 - (4) "Prior Financial Disclosure Report" shall mean any Financial Disclosure Report which, as of the effective date of this Rule, has been retained by the Board for a period in excess of six years from December 31 of the calendar year to which such Report relates.
- (b) Retention of Financial Disclosure Reports.
 - (1) Whenever a Financial Disclosure Report is filed with the Board, it shall be retained by the Board for a period commencing on the date such Report was filed with the Board and expiring on the sixth anniversary of December 31 of the calendar year to which such Report relates. The period during which the Board is required to retain a Financial Disclosure Report, pursuant to this

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paragraph (1), is hereinafter referred to as the "Required Retention Period" for such Report.

- (2) (i) Except as provided in subparagraphs (ii) and (iii) below, upon expiration of the Required Retention Period for a Financial Disclosure Report, pursuant to paragraph (1) above, the Board shall either (i) destroy such report, or (ii) if requested by the individual who filed such report, return such report to such individual. Any request that the Board return such report must be made in writing to the Board not later than 10 days prior to the expiration of such period.
 - i. Notwithstanding the provisions of subparagraph (i), if a law enforcement agency requests that the Board retain a Financial Disclosure Report for an additional period of time beyond the expiration of its required retention period, for purposes of an ongoing investigation, the Board shall retain such report for such additional period, provided the request is made in writing and is submitted to the Board not later than 10 days prior to the expiration of such required retention period. Upon expiration of such additional period of time, the Board shall either (i) destroy such report, or (ii) if requested by the individual who filed such report, return such report to such individual. Any such request must be made in accordance with the provision of subparagraph (i) above.
 - ii. Notwithstanding the provisions of subparagraph (i), all reports shall be retained by the Board for a period of not less than one year from the date such report was filed with the Board.
- (3) In accordance with the provisions of subdivision (e) of Administrative Code §12-110, as amended by Local Law No. 93 of 1992, the retention period established in paragraph (1) is intended to supersede, and shall be observed by the Board in lieu of, the retention periods set forth in such subdivision (e).
- (4) Notwithstanding any other provision of this section, the Board shall be entitled, upon the effective date of the Rule, to destroy immediately all Prior Financial Disclosure Reports then in its possession.

Board Rules §4-03 City Employees Holding Policymaking Positions for Purposes of the Financial Disclosure Law

- (a) For purposes of Administrative Code §12-110(b)(3)(a)(3), a City employee shall be deemed to hold a policymaking position, and therefore be required to file a Financial Disclosure Report, if such employee is charged with substantial policy discretion within the meaning of Section 1-02 of Title 53 of the Rules of the City of New York.

Board Rules § 4-04 City Employees Whose Duties Involve the Negotiation, Authorization, or Approval of Contracts and of Certain Other Matters

- (a) For purposes of Administrative Code §12-110(b)(3)(a)(4), a City employee shall be deemed to have duties that involve the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances, and special permits if the employee performs any of the following duties:
- (1) Determines the substantive content of a request for proposals or other bid request or change order;
 - (2) Makes a determination as to the responsiveness of a bid or the responsibility of a vendor or bidder;
 - (3) Evaluates a bid;
 - (4) Negotiates or determines the substantive content of a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order
 - (5) Recommends or determines whether or to whom a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order should be awarded or granted;
 - (6) Approves a contract, lease, franchise, revocable consent, or concession or change order on behalf of the City or any agency subject to Administrative Code §12-110; or
 - (7) Determines the content of or promulgates City procurement policies, rules, or regulations.
- (b) Clerical personnel and other public servants who, in relation to the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances, and special permits, perform only ministerial tasks shall not be required to file a Financial Disclosure Report pursuant to Administrative Code §12-110(b)(3)(a)(4). For example, public servants who are under the supervision of others and are without substantial personal discretion, and who perform only clerical tasks (such as typing, filing, or distributing contracts, leases, franchises, revocable consents, concessions, or zoning changes, variances, or special permits or calendaring meetings or who identify potential bidders or vendors) shall not, on the basis of such tasks alone, be required to file a financial disclosure report. Similarly, public servants who write a request for proposals, bid request, change order, contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or procurement policy, rule, or regulation under the direction of a superior but who do not determine the substantive content of the document

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shall not, on the basis of such tasks alone, be required to file a Financial Disclosure Report.