


**October 19, 2018, Agenda – Open Meeting Matter A-2**

September 21, 2018, Agenda – Open Meeting Matter

August 22, 2018, Agenda – Open Meeting Matter

To: The Board

From: Chad H. Gholizadeh 

Date: October 4, 2018

Re: Proposed Board Rules

As directed by the Board at its September meeting, Staff formally submitted to the Law Department and Mayor’s Office of Operations, as required by the City Administrative Procedure Act (Charter § 1043(d)), the proposed rules defining entities that are not “firms” for the purposes of Charter § 2601(11), defining “business or financial relationship” for the purposes of Charter § 2604(b)(14), and creating a new Chapter 4 for the Board’s annual disclosure rules. The Law Department made small stylistic edits including adding section headers and streamlining the proposed rule changes by not requiring the rules sections being moved to the new Chapter 4 to be reprinted. On October 3, 2018, both the Law Department and the Mayor’s Office of Operations provided their certifications to the Rules, as revised by the Law Department.

Staff recommends that the Board accept the Law Department’s edits and authorize Staff to publish the proposed rule in the City Record for public comment in advance of a public hearing.

Attached are the following:

- 1) Minutes of the August 22, 2018, Open Meeting (**Exhibit 1**);
- 2) Minutes of the September 21, 2018, Open Meeting (**Exhibit 2**);
- 3) Proposed Draft Board Rules and Commentary, with changes by the Law Department tracked (**Exhibit 3**); and
- 4) Proposed Draft Board Rules and Commentary, with the certifications from the Law Department and the Mayor’s Office of Operations (**Exhibit 4**).

## Minutes of the Open Meeting of the New York City Conflicts of Interest Board

**Date:** August 22, 2018

**Location:** Baker Hostetler, 45 Rockefeller Plaza, 14<sup>th</sup> Fl., New York, New York

**Present:**

Board Members: Chair Richard Briffault and Members Fernando A. Bohorquez, Jr., Anthony Crowell, Jeffrey D. Friedlander, and Erika Thomas

Board Staff: Evan Berkow, Ethan Carrier, Chad Gholizadeh, Amber Gonzalez, Chris Hammer, Gavin Kendall, Julia Lee, Carolyn Miller, Katherine Miller, Summer Payton, Jeff Tremblay, Michele Weinstat, and Clare Wiseman.

Guests: None

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The meeting was called to order by the Chair at approximately 9:45 a.m. The Chair stated that the meeting was being conducted pursuant to the New York State Open Meetings Law and designated the undersigned as the Recording Secretary for purposes of the meeting.

The Chair stated that the meeting was called to consider Staff's proposed amendments to Title 53 of the Rules of the City of New York.

After a brief introduction by a member of the Board Staff on the proposed amendments to the rules, the Chair then asked for any comments by the Board or Staff concerning the proposed amendment to Title 53 of the Rules of the City of New York.

**Comments:**

The following comments constitute the changes as agreed upon by the Board and Staff:

- Creation of Chapter 4 in the Rules of the Board titled "Annual Disclosure" and the renumbering of Board Rules §§ 1-08, 1-10, 1-14, and 1-15 to Board Rules §§ 4-01, 4-02, 4-03, and 4-04: No comments.
- Proposed Board Rules § 1-08: To modify introduction of § 1-08 to read: "For the purposes of Charter § 2601(11), the term "other similar entity" includes, but is not limited to, any of the following entities:"; Staff to provide more information on the definition of New York local public authorities in § 1-08(c).
- Proposed Board Rules § 1-10: To modify title to: "Prohibited Business or Financial Relationships between Superior and Subordinate"; to modify § 1-10(a)(7) to read "shared ownership of real property or any other property valued at \$100.00 or more"; to delete § 1-10(a)(10); to modify § 1-10(a)(12) to read "establishing a trust or serving as a trustee of a trust in which one of the public servants or a person associated with one of the public servants is a beneficiary"; in § 1-10(a)(13), to replace "another public servant's" with "each other's"; to delete "communally" in § 1-10(b)(1)
- Proposed reserving of Board Rules §§ 1-14 and 1-15 for future use: No comments.

The Board also requested that Staff amend the language in the Statement of Basis and Purpose to provide a better explanation for proposed Board Rules § 1-08.

Upon motion duly made and seconded, the Board unanimously voted to continue the discussion at the next Board meeting.

The open meeting was adjourned at approximately 10:35 a.m.

Respectfully submitted,

Julia H. Lee  
Recording Secretary

## **Minutes of the Open Meeting of the New York City Conflicts of Interest Board**

**Date:** September 21, 2018

**Location:** Baker Hostetler, 45 Rockefeller Plaza, 11<sup>th</sup> Fl., New York, New York

**Present:**

Board Members: Chair Richard Briffault and Members Fernando A. Bohorquez, Jr., Anthony Crowell, Jeffrey D. Friedlander, and Erika Thomas

Board Staff: Evan Berkow, Ethan Carrier, Chad Gholizadeh, Amber Gonzalez, Christopher Hammer, Gavin Kendall, Julia Lee, Carolyn Miller, Katherine Miller, Summer Payton, Jeff Tremblay, Michele Weinstat, and Clare Wiseman.

**Guests:** Stephanie Blattmachr

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The meeting was called to order by the Chair at approximately 9:35 a.m. The Chair stated that the meeting was being conducted pursuant to the New York State Open Meetings Law and designated the undersigned as the Recording Secretary for purposes of the meeting.

The Chair stated that the meeting was called to consider Staff's proposed amendments to Title 53 of the Rules of the City of New York in continuation of the Open Meeting on August 22, 2018 and Board Rules § 1-13.

After a brief introduction by a member of the Board Staff on the proposed amendments to the rules, the Chair then asked for any comments by the Board or Staff concerning the proposed amendments to Title 53 of the Rules of the City of New York.

**Comments:**

The following comments constitute further changes as agreed upon by the Board and Staff:

- Proposed Board Rules § 1-08: Retain language of § 1-10(a)(3) as it refers to "local public authorities."
- Proposed Board Rules § 1-08: Addition of language defining "local development corporation" in § 1-08(b).
- Proposed Board Rules § 1-10: Retain language of § 1-10(a)(10) as it refers to cooperative apartment buildings.
- Statement of Basis and Purpose: Addition of language providing definitions of New York State local authorities and local development corporations; addition of a sentence that "As stated in Rules § [ ], this list "includes but not limited to" and thus is not exhaustive." as cited in §§ 1-08(a) and 1-10(a) in the paragraphs pertaining to the respective rules.

Upon motion duly made and seconded, the Board unanimously voted to pass Staff's proposed amendments to Title 53 of the Rules of the City of New York with modifications as discussed in the August 22, 2018, Open Meeting and today as the final rule.

The Chair stated that the meeting was called to consider Staff's proposed amendments to Board Rules § 1-13.

After a brief introduction by a member of the Board Staff on the proposed amendments to Board Rules § 1-13, the Chair then asked for any comments by the Board or Staff concerning the proposed amendments to Board Rule § 1-13.

**Comments:**

The following comments constitute the changes as agreed upon by the Board and Staff:

- § 1-13(e)(1): Revise beginning of sentence to state: "An agency head may designate a public servant to perform work..."
- §§1-13(e)(1)(a) and 1-13(e)(2): Replace the word "demonstrable" with "demonstrated"
- § 1-13(e)(a): Delete the word "that"
- § 1-13(e)(1)(c): Revise to state as follows: "the written designation is disclosed to the Conflicts of Interest Board within thirty days and will be posted on the Board's website."
- § 1-13(e)(2): Insert language after "written approval" to state who will be giving written approval
- § 1-13(e)(3): Revise language to clarify the role of elected officials in the approval process
- Statement of Basis and Purpose: Add an explanation of discretionary funding and sponsorship as referenced in § 1-13(e)(1)(b), including citation to the applicable Advisory Opinion, and why "district attorney" is mentioned separately from "elected official" in § 1-13(e)(3).

Upon motion duly made and seconded, the Board unanimously voted to continue the discussion at the next Board meeting.

The open meeting was adjourned at approximately 10:20 a.m.

Respectfully submitted,

Julia H. Lee  
Recording Secretary

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 § 2603(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.

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

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

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

### STATEMENT OF BASIS AND PURPOSE

~~City Charter § 2603(a) grants general rulemaking authority to the Conflicts of Interest Board (the "Board"):~~

~~{t}he {B}oard shall 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.~~

#### Reorganization of rules

In the Section ~~One~~1 of this rulemaking, the Board proposes to move four sections of the Rules of the Board from Chapter 1, ~~entitled~~ "Conflicts of Interest," to a new Chapter 4, ~~entitled~~ "Annual Disclosure," ~~to wit:~~; Section 1-08, "Procedures for Obtaining an Extension of Time ~~within which~~Within Which to File a Financial Disclosure Report"; Section 1-10, "Retention of Financial Disclosure Reports"; Section 1-14, "City Employees Holding Policymaking Positions for Purposes of the Financial Disclosure Law"; and Section 1-15, "City Employees Whose Duties Involve the Negotiation, Authorization, or Approval of Contracts and of Certain Other Matters." ~~The~~. These four sections, ~~enacted~~promulgated in 1992, 1994, 2003, and 2005 respectively, are ~~necessary for an integral part of~~ the administration of the Annual Disclosure Law ~~contained~~set forth in Section 12-110 of the New York City Administrative Code and not relevant to a ~~determination~~determinations made about "conflicts of

interest" under Chapter 68 of the City Charter. By creating a new Chapter 4, the Board's rules will be better organized, and each chapter of rules will be more clearly related to the other rules ~~in its~~within such chapter. The text of the four relocated Board Rules remain otherwise unchanged. ~~The Board proposes to reserve Sections 1-14 and 1-15 for future use.~~

Proposed definition of "Other Similar Entity" within the definition of "Firm"

~~The Board proposes a new definition of "other similar entity" within the definition of~~ "firm", to be numbered § 1-08. Several provisions of the City Charter are relevant to the proposed rulemaking ~~in Section Two~~new definition. At the threshold, City Charter § 2601(11) defines "firm" as follows:

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'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.

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

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



As noted above, Charter § 2604(a)(1) prohibits a full-time public servant from having an ownership interest or position in a firm that is engaged in business dealings with the City. This means that any full-time public servant who wishes to have a second job with a firm that has business dealings with any City agency must obtain a waiver from the Board to have such an interest. Charter § 2601(11) already exempts public benefit corporations and local development corporations from the definition of “firm” and grants the Board the authority to exempt “similar entities” that it defines by rule.

The Board proposes this new rule to clarify the entities at which public servants may take positions, such as by taking a second job at the entity, serving on its board, or teaching a class as an adjunct teacher, without requiring a waiver of Charter § 2604(a)(1). The Board is proposing this rule because over the years it has advised numerous public servants that their proposed activities would not violate Chapter 68 because their prospective employer or ownership interest does not fall within the ambit of “firm” for the purposes of City Charter § 2601(11). See, e.g., A.O. Nos. 1992-20, 1994-10, 1997-1, 1999-6, 2000-1, and 2005-2. The Board proposes to include “New York State local public authorities,” as defined in the New York Public Authorities Law § 2(2), as entities exempted from the definition of “firm.” The Board also proposes to limit the definition of “local development corporation,” as used in Charter § 2601(11), to those local development corporations established by, affiliated with, sponsored by, or created by a unit of New York State government and not to include any private local development corporations. As stated in the rule, the term “other similar entity” includes, but is not limited to, the listed entities; this list is not exclusive.

Public servants who have second jobs with entities that are not “firms” remain subject to other fundamental requirements of Chapter 68, including, but not limited to: their work for the

other employing entity must be conducted at times when they are not required to perform services for the City (Charter § 2604(b)(2), Board Rules § 1-13(a)); they may not use City equipment, letterhead, personnel, or other City resources in connection with their second jobs at the employing entity (Charter § 2604(b)(2), Board Rules § 1-13(b)); they may not use their official City positions or titles to obtain any private advantage for themselves, the employing entity, or any of such entity's clients (Charter § 2604(b)(3)); they may not disclose or use for private advantage any confidential information concerning the City (Charter § 2604(b)(4)); they may not make any appearances before the City on behalf of the employing entity (Charter § 2604(b)(6)); and lastly, they may not be compensated by the employing entity for performing their official duties (Charter § 2604(b)(13)). Additionally, the Board will make a separate determination whether any given entity is a "local, state or federal agency" pursuant to Charter § 2604(d)(6) and therefore a public servant's employment therein would be exempt from the post-employment restrictions of Chapter 68.

Regarding the proposed changes in Section 3, New York Proposed section regarding business and financial relationships between superior and subordinate public servants

City Charter § 2604(b)(14) provides as follows: "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." Charter § 2604(b)(14) recognizes the potential for coercion or 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. The Board has repeatedly been asked to provide advice about whether public servants may enter into certain relationships with their co-workers, supervisors, and subordinates. Its numerous advisory opinions on this topic include A.O. Nos. 1992-28

(prohibiting a subordinate from representing a superior as his attorney); 1998-12 (prohibiting superiors from selling anything to subordinates but permitting subordinates to sell a limited amount of commercial and charitable projects to a superior); 2001-3 (reiterating that a subordinate and a superior may not enter into an attorney-client relationship); 2003-6 (advising that a public servant may be compensated for voluntarily working on his or her superior's political campaign); 2004-2 (advising that a superior and subordinate cannot participate in the same savings club); 2004-3 (advising that any financial relationship between a community board member and a member of the community board's staff is prohibited); 2012-5 (reiterating that a public servant may be compensated for voluntarily working on his or her superior's political campaign and advising that a superior and subordinate may volunteer on the same campaign and in that capacity one may supervise the other); 2013-1 (advising that while it generally violates Chapter 68 for superiors to solicit or accept gifts from their subordinates, superiors can do so long as such gift-giving is not extremely frequent or extravagant; furthermore, public servants can accept gifts from their peers); 2017-5 (advising that participation by a superior and subordinate in the same lottery pool was an impermissible financial relationship).

Moreover, numerous enforcement actions have been initiated over the years that have resulted in fines for public servants found to have violated this prohibition. Examples include COIB Case Nos. 2016-057 (2017) (a New York City Department of Education ("DOE") Superintendent paid a \$3,000 fine for having sold her house to a teacher she supervised as her Principal); 2016-600 (2017) (a DOE Principal was issued a public warning letter for being regularly driven to and from work by a subordinate); 2015-858(a) (2017) (a former Director of Contracts and Construction in the New York City Department of Transportation's Traffic Division paid a \$4,000 fine for, over the course of three years, lending and repaying his

subordinate more than \$40,000); and 2016-902 and 902a (2017) (a DOE Assistant Principal and a teacher whom he supervised at the school found to have entered into an impermissible financial relationships by cohabitating and were fined \$3,750 and \$1,752, respectively).

The Board therefore proposes this new rule to clarify which relationships between superiors and their subordinates are deemed to be business or financial relationships for the purposes of Charter § 2604(b)(14) and are therefore prohibited. This section would prohibit a public servant from entering into any of the enumerated relationships with any other public servant who either is supervised by him/her or is supervising his/her work, or who has the power to direct his/her work, or whose work he/she directs, or whose terms and conditions of employment the superior public servant has the power to affect or who could affect the terms and conditions of the subordinate public servant's employment. As stated in the rule, the term "business or financial relationship" includes, but is not limited to, the listed relationships; this list is not exclusive.

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[Deleted material is in brackets.]

Section 1, Title 53 of the Rules of the City of New York is amended by adding a new Chapter 4 to read as follows, entitled "Annual Disclosure".

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§ 1-01- § 2. Section 1-08 of Title 53 of the Rules of the City of New York, entitled "Procedures for Obtaining an Extension of Time within which to File a Financial Disclosure Report

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(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 extensionChapter 4 of time within which to file a report or portion thereof upon a showing of justifiable cause or undue hardship.~~

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~~(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.~~

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~~(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;~~
- ~~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.~~

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~~(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.~~

~~(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,~~ as added by section 1 of this rulemaking.

~~§ 4-02-§ 3. Section 1-10 of Title 53 of the Rules of the City of New York, entitled "Retention of Financial Disclosure Reports", is renumbered as § 4-02 of Chapter 4 of such title, as added by section 1 of this rulemaking.~~

(a) ~~Definitions. As used in this Rule, § 4. Section 1-14 of Title 53 of the following terms shall have the respective meanings set forth below:~~

(1) ~~"Administrative Code" shall mean the Administrative Code Rules 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.~~

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~~(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 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.~~

~~§4-03, entitled "City Employees Holding Policymaking Positions for Purposes of the  
Financial Disclosure Law", is renumbered as § 4-03 of Chapter 4 of such title, as added by  
section 1 of this rulemaking.~~

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~~(a) For purposes of Administrative Code §12-110(b)(7)(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 § 5, Section 1-0215 of Title 53 of the Rules of the City of New York;~~

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~~§ 4.04~~, entitled "City Employees Whose Duties Involve the Negotiation, Authorization, or Approval of Contracts and of Certain Other Matters", is renumbered as § 4.04 of Chapter 4 of such title, as added by section 1 of this rulemaking.

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

~~Section 2-~~ § 6, Chapter 1 of Title 53 of the Rules of the City of New York is amended by ~~amending~~adding a new § 1-08 to read as follows:

~~§1-08 (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;~~
- ~~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.~~

~~(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.~~

§1-08 Definition of "other similar entity" within the definition of "firm".

(a) For the purposes of Charter § 2601(11), the term "other similar entity" includes, but is not limited to, any of the following entities:

- (1) local, state, and federal governments and their agencies;
- (2) New York State public authorities;
- (3) New York local public authorities;
- (4) the United Nations;
- (5) the United States Postal Service;
- (6) the State University of New York;
- (7) the City University of New York;
- (8) the Brooklyn Public Library;
- (9) the Queens Public Library; and
- (10) charter schools created pursuant to New York State Education Law Article 56.



(b) For the purposes of Charter § 2601(11), the term "local development corporation" includes only local development corporations affiliated with, sponsored by, or created by New York State government or by a New York county, city, town, or village.

~~Section 3~~ § 7. Chapter 1 of Title 53 of the Rules of the City of New York is amended by ~~amending~~ adding a new § 1-10 to read as follows:

~~§ 1-10 [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 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.~~

§1-10 Prohibited Business or Financial Relationships Between a Superior and a Subordinate

(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 or any other property worth more than \$100.00;
- (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 cooperative apartment building with fewer than six units
- (11) employer-employee, consultant, contractor, attorney-client, agent-principal, brokerage, or other similar relationships;
- (12) establishing a trust or serving as a trustee of a trust in which one of them or a person associated with one of them has a beneficial interest; and
- (13) payment of each other'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:

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

(2) each public servant bears a fair proportion of the expense or effort

involved for the activity.

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~~Section 4-~~ § 8. The titles of sections 1-14 and 1-15 of Chapter 1 of Title 53 of the Rules of the City of New York are amended by amending § 1-14 to read, respectively, as follows:

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

~~(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.~~

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

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

~~(e) 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;~~
- ~~(d) 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~~

Draft of Proposed Rulemaking

~~COB~~ Final 9/24/28/18

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

## New York City Conflicts of Interest Board

### **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.



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

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

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

## **STATEMENT OF BASIS AND PURPOSE**

### Reorganization of rules

In the Section 1 of this rulemaking, the Board proposes to move four sections of the Rules of the Board from Chapter 1, entitled "Conflicts of Interest," to a new Chapter 4, entitled "Annual Disclosure": Section 1-08, "Procedures for Obtaining an Extension of Time Within Which to File a Financial Disclosure Report"; Section 1-10, "Retention of Financial Disclosure Reports"; Section 1-14, "City Employees Holding Policymaking Positions for Purposes of the Financial Disclosure Law"; and Section 1-15, "City Employees Whose Duties Involve the Negotiation, Authorization, or Approval of Contracts and of Certain Other Matters". These four sections, promulgated in 1992, 1994, 2003, and 2005 respectively, are an integral part of the administration of the Annual Disclosure Law set forth in Section 12-110 of the New York City Administrative Code and not relevant to determinations made about "conflicts of interest" under Chapter 68 of the City Charter. By creating a new Chapter 4, the Board's rules will be better organized, and each chapter of rules will be more clearly related to the other rules within such chapter. The text of the four relocated Board Rules remain otherwise unchanged.

### Proposed definition of "Other Similar Entity" within the definition of "Firm"

The Board proposes a new definition of “other similar entity” within the definition of “firm”, to be numbered § 1-08. Several provisions of the City Charter are relevant to the proposed new definition. At the threshold, City Charter § 2601(11) defines “firm” as follows:

‘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.

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

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

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

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

The Board proposes this new rule to clarify the entities at which public servants may take positions, such as by taking a second job at the entity, serving on its board, or teaching a class as an adjunct teacher, without requiring a waiver of Charter § 2604(a)(1). The Board is proposing this rule because over the years it has advised numerous public servants that their proposed activities would not violate Chapter 68 because their prospective employer or ownership interest does not fall within the ambit of “firm” for the purposes of City Charter § 2601(11). See, e.g., A.O. Nos. 1992-20, 1994-10, 1997-1, 1999-6, 2000-1, and 2005-2. The Board proposes to include “New York State local public authorities,” as defined in the New York Public Authorities Law § 2(2), as entities exempted from the definition of “firm.” The Board also proposes to limit the definition of “local development corporation,” as used in Charter § 2601(11) , to those local development corporations established by, affiliated with, sponsored by, or created by a unit of New York State government and not to include any private local development corporations. As stated in the rule, the term “other similar entity” includes, but is not limited to, the listed entities; this list is not exclusive.

Public servants who have second jobs with entities that are not “firms” remain subject to other fundamental requirements of Chapter 68, including, but not limited to: their work for the other employing entity must be conducted at times when they are not required to perform services for the City (Charter § 2604(b)(2), Board Rules § 1-13(a)); they may not use City equipment, letterhead, personnel, or other City resources in connection with their second jobs at the employing entity (Charter § 2604(b)(2), Board Rules § 1-13(b)); they may not use their official City positions or titles to obtain any private advantage for themselves, the employing

entity, or any of such entity's clients (Charter § 2604(b)(3)); they may not disclose or use for private advantage any confidential information concerning the City (Charter § 2604(b)(4)); they may not make any appearances before the City on behalf of the employing entity (Charter § 2604(b)(6)); and lastly, they may not be compensated by the employing entity for performing their official duties (Charter § 2604(b)(13)). Additionally, the Board will make a separate determination whether any given entity is a "local, state or federal agency" pursuant to Charter § 2604(d)(6) and therefore a public servant's employment therein would be exempt from the post-employment restrictions of Chapter 68.

Proposed section regarding business and financial relationships between superior and subordinate public servants

City Charter § 2604(b)(14) provides as follows: "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." Charter § 2604(b)(14) recognizes the potential for coercion or 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. The Board has repeatedly been asked to provide advice about whether public servants may enter into certain relationships with their co-workers, supervisors, and subordinates. Its numerous advisory opinions on this topic include A.O. Nos. 1992-28 (prohibiting a subordinate from representing a superior as his attorney); 1998-12 (prohibiting superiors from selling anything to subordinates but permitting subordinates to sell a limited amount of commercial and charitable projects to a superior); 2001-3 (reiterating that a subordinate and a superior may not enter into an attorney-client relationship); 2003-6 (advising that a public servant may be compensated for voluntarily working on his or her superior's

political campaign); 2004-2 (advising that a superior and subordinate cannot participate in the same savings club); 2004-3 (advising that any financial relationship between a community board member and a member of the community board's staff is prohibited); 2012-5 (reiterating that a public servant may be compensated for voluntarily working on his or her superior's political campaign and advising that a superior and subordinate may volunteer on the same campaign and in that capacity one may supervise the other); 2013-1 (advising that while it generally violates Chapter 68 for superiors to solicit or accept gifts from their subordinates, superiors can do so long as such gift-giving is not extremely frequent or extravagant; furthermore, public servants can accept gifts from their peers); 2017-5 (advising that participation by a superior and subordinate in the same lottery pool was an impermissible financial relationship).

Moreover, numerous enforcement actions have been initiated over the years that have resulted in fines for public servants found to have violated this prohibition. Examples include COIB Case Nos. 2016-057 (2017) (a New York City Department of Education ("DOE") Superintendent paid a \$3,000 fine for having sold her house to a teacher she supervised as her Principal); 2016-600 (2017) (a DOE Principal was issued a public warning letter for being regularly driven to and from work by a subordinate); 2015-858(a) (2017) (a former Director of Contracts and Construction in the New York City Department of Transportation's Traffic Division paid a \$4,000 fine for, over the course of three years, lending and repaying his subordinate more than \$40,000); and 2016-902 and 902a (2017) (a DOE Assistant Principal and a teacher whom he supervised at the school found to have entered into an impermissible financial relationships by cohabitating and were fined \$3,750 and \$1,752, respectively).

The Board therefore proposes this new rule to clarify which relationships between superiors and their subordinates are deemed to be business or financial relationships for the

purposes of Charter § 2604(b)(14) and are therefore prohibited. This section would prohibit a public servant from entering into any of the enumerated relationships with any other public servant who either is supervised by him/her or is supervising his/her work, or who has the power to direct his/her work, or whose work he/she directs, or whose terms and conditions of employment the superior public servant has the power to affect or who could affect the terms and conditions of the subordinate public servant's employment. As stated in the rule, the term "business or financial relationship" includes, but is not limited to, the listed relationships; this list is not exclusive.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Title 53 of the Rules of the City of New York is amended by adding a new Chapter 4, entitled "Annual Disclosure".

§ 2. Section 1-08 of Title 53 of the Rules of the City of New York, entitled "Procedures for Obtaining an Extension of Time Within Which to File a Financial Disclosure Report", is renumbered as § 4-01 of Chapter 4 of such title, as added by section 1 of this rulemaking.

§ 3. Section 1-10 of Title 53 of the Rules of the City of New York, entitled "Retention of Financial Disclosure Reports", is renumbered as §4-02 of Chapter 4 of such title, as added by section 1 of this rulemaking.

§ 4. Section 1-14 of Title 53 of the Rules of the City of New York, entitled "City Employees Holding Policymaking Positions for Purposes of the Financial Disclosure Law", is renumbered as § 4-03 of Chapter 4 of such title, as added by section 1 of this rulemaking.

§ 5. Section 1-15 of Title 53 of the Rules of the City of New York, entitled “City Employees Whose Duties Involve the Negotiation, Authorization, or Approval of Contracts and of Certain Other Matters”, is renumbered as § 4-04 of Chapter 4 of such title, as added by section 1 of this rulemaking.

§ 6. Chapter 1 of Title 53 of the Rules of the City of New York is amended by adding a new § 1-08 to read as follows:

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

(a) For the purposes of Charter § 2601(11), the term “other similar entity” includes, but is not limited to, any of the following entities:

- (1) local, state, and federal governments and their agencies;
- (2) New York State public authorities;
- (3) New York local public authorities;
- (4) the United Nations;
- (5) the United States Postal Service;
- (6) the State University of New York;
- (7) the City University of New York;
- (8) the Brooklyn Public Library;
- (9) the Queens Public Library; and
- (10) charter schools created pursuant to New York State Education Law Article 56.

(b) For the purposes of Charter § 2601(11), the term “local development corporation” includes only local development corporations affiliated with, sponsored by, or created by New York State government or by a New York county, city, town, or village.

§ 7. Chapter 1 of Title 53 of the Rules of the City of New York is amended by adding a new § 1-10 to read as follows:

§1-10 Prohibited Business or Financial Relationships Between a Superior and a Subordinate

(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 or any other property worth more than \$100.00;
- (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 cooperative apartment building with fewer than six units
- (11) employer-employee, consultant, contractor, attorney-client, agent-principal, brokerage, or other similar relationships;
- (12) establishing a trust or serving as a trustee of a trust in which one of them or a person associated with one of them has a beneficial interest; and



(13) payment of each other'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:

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

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

§ 8. The titles of sections 1-14 and 1-15 of Chapter 1 of Title 53 of the Rules of the City of New York are amended to read, respectively, as follows:

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

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

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

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

**RULE TITLE:** Amendment of Financial Disclosure and Other Rules

**REFERENCE NUMBER:** 2018 RG 111

**RULEMAKING AGENCY:** Conflicts of Interest Board

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

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

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: October 3, 2018

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

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

**RULE TITLE: Amendment of Financial Disclosure and Other Rules**

**REFERENCE NUMBER: COIB-4**

**RULEMAKING AGENCY: Conflicts of Interest Board**

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

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

/s/ Shevani Patel  
Mayor's Office of Operations

October 3, 2018  
Date