


June 14, 2023 – Open Meeting Matter

May 25, 2023 – Public Hearing

February 28, 2023 – Open Meeting

To: The Board

From: Katherine J. Miller 

Date: May 31, 2023

Re: Proposed Board Rules § 4-07: Procedures for the Enforcement of Penalties Against Late Filers of Annual Disclosure Reports

At its February 2023 Open Meeting, the Board authorized Staff to submit proposed Board Rules § 4-07 to the New York City Law Department and Mayor's Office of Operations ("MOO") for formal review. The Law Department and MOO requested clarifying and stylistic edits and, with these edits, certified the proposed Board Rules pursuant to the City Administrative Procedure Act. Having received no substantive edits, Staff published the proposed Board Rules in the City Record on April 25, 2023, and held a public hearing on May 25, 2023. No comments were received in advance of the hearing, nor did any members of the public testify or submit comments at the hearing.

Staff recommends the Board adopt the text of proposed Board Rules § 4-07. If approved by the Board, the Notice of Adoption will be published in the City Record, and the Board Rules will take effect 30 days after publication. See Charter Section 1043(f).

Attached are the following:

1. Minutes of the February 28, 2023, Open Meeting (**Exhibit 1**);
2. Proposed Notice of Adoption (**Exhibit 2**); and
3. Proposed Notice of Adoption tracked to the version reviewed by the Board in February 2023 (**Exhibit 3**).

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

Date: February 28, 2023

Present:

Board Members: Chair Milton L. Williams Jr. and Members Fernando A. Bohorquez Jr., Wayne G. Hawley, Ifeoma Ike, and Georgia M. Pestana

Board Staff: Anita Armstrong, Ethan A. Carrier, Christopher M. Hammer, Carolyn Lisa Miller, Katherine J. Miller, Jeffrey Nelson, Jeffrey Tremblay, Florence Watson, Maryann White, and Clare Wiseman

Guests: None

The open meeting was called to order by Special Counsel, Katherine J. Miller, at approximately 9:40 a.m. to discuss a proposed Board Rule regarding fines imposed pursuant to the Annual Disclosure Law.

Board Rules § 4-07

After a brief introduction by Staff and discussion among the Board and Staff, the proposed rule was adopted without any changes.

The open meeting was adjourned at approximately 9:45 a.m.

Respectfully submitted,
Christopher M. Hammer
Recording Secretary

New York City Conflicts of Interest Board

Notice of Adoption of Final Rules

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Sections 1043 and 2603 of the New York City Charter that the Conflicts of Interest Board has adopted Board Rules § 4-07 with the procedures for setting and enforcing fines against late filers of annual disclosure reports.

The proposed Rules were published in the City Record on April 25, 2023, and a public hearing was held on May 25, 2023. No comments were received. The Conflicts of Interest Board now adopts the following Rules.

STATEMENT OF BASIS AND PURPOSE

New York City's Annual Disclosure Law, found in New York City Administrative Code ("Admin. Code") § 12-110, requires certain individuals to file an annual disclosure report with the New York City Conflicts of Interest Board (the "Board") by a date set by the Board. Admin. Code § 12-110(g)(1) provides for penalties, specifically a fine, against required filers who submit their reports more than 7 calendar days after that date. Section 12-110(g)(1) sets a range for the fine (not less than \$250 and not more than \$10,000) and states that the factors to be considered by the Board in determining the fine include, but are not limited to: whether the filer submitted their report late in prior years and the length of the delay in filing. Board Rules § 4-07 provides notice and clarity regarding the amount of the fines imposed on late filers and the process by which the Board enforces that fine.

Specifically, the rule sets forth a fine schedule that takes into account the filer's history of late filing and how late the report at issue was submitted. The rule also sets forth the procedures for the enforcement of the fine, ensuring that late filers are provided notice and an opportunity to challenge the assessment of a fine before the Board issues a public order imposing a fine.

New material is underlined.

Section 1. Chapter 4 of Title 53 of the Rules of the City of New York is amended by adding a new section 4-07 to read as follows:

§ 4-07 Procedures for the Enforcement of Penalties Against Late Filers

(a) Applicability.

Pursuant to paragraph (1) of subdivision (g) of section 12-110 of the administrative code, this section sets forth the procedures for setting and enforcing fines against late filers who are not subject to the jurisdiction of any state law or collective bargaining agreement that provides for the conduct of disciplinary proceedings.

(b) Definition.

The term “late filer” means a person who was required to submit an annual disclosure report pursuant to subdivision (b) of section 12-110 of the administrative code and submitted their report to the Board more than 7 calendar days after the filing deadline set by the Board.

(c) Fine schedule.

All late filers will be required to pay a fine of \$250, plus:

- (1) An additional \$250 for every 30 calendar days after the filing deadline that the filer submitted their report.
- (2) An additional \$250 if the filer was a late filer in any of the previous 6 years.

(d) Commencement of an enforcement action.

An enforcement action will be commenced by sending a written Late Filer Notice to the filer’s last known email address. The Late Filer Notice will state:

- (1) the filing deadline set by the Board;

- (2) the date the filer submitted their report;
- (3) the amount of the fine, as determined by the fine schedule in this section;
- (4) the filer's right to be represented by an attorney or other person; and
- (5) that the filer has 30 calendar days from the date of the Late Filer Notice to either pay the fine or submit a response for consideration by the Board.

(e) Representation by an attorney or other person.

If a filer chooses to be represented by an attorney or any other person, the filer's representative must submit a written and signed Notice of Appearance to the Board. The appearance of a member in good standing of the bar of a court of general jurisdiction of any state or territory of the United States will be indicated by the designation "Attorney for (person represented)." The appearance of any other person will be indicated by the designation "Representative for (person represented)." The Board will not accept a response from or discuss the details of a notice or action under this section with a person who has not submitted a Notice of Appearance.

(f) Response.

A late filer has 30 calendar days from the date of the Late Filer Notice to pay the fine or submit a written response for consideration by the Board. The response is an opportunity for the late filer to provide an explanation of why they submitted the report late that they believe justifies a reduction of the fine or dismissal of the enforcement action. The response should include any supporting documentation.

(g) Board order or dismissal.

- (1) The Board will review the Late Filer Notice, any written response submitted by the late filer, and other relevant information to determine whether a violation has occurred and, if so, the appropriate fine. The Board may, with good cause shown, forgive some of the fine, provided that imposition of a partially forgiven fine will not result in a fine of less than \$250.
- (2) If the Board determines that a violation has occurred, the Board will issue an order stating its final findings and imposing a fine. Such order will be made public, but all underlying records, reports, memoranda, and files will remain confidential in accordance with subdivision (k) of section 2603 of the charter, except that annual disclosure reports and the dates they are filed will be available for public inspection pursuant to subdivision (e) of section 12-110 of the administrative code.
- (3) The order will be sent by first class mail to the late filer's last known residential address or actual place of business and to the late filer's representative, if applicable.
- (4) If the order imposes a fine, payment is due to the Board within 30 calendar days of the date of service. If the late filer does not pay the full amount within 30 calendar days, the Board will pursue all remedies, which may include garnishment of City wages or referral to the New York City Law Department for collection.
- (5) If the Board determines that the action should be dismissed, the Board will issue a written decision that dismisses the action. The decision will be sent to the filer and the filer's representative, if applicable, and will not be made public.

All underlying records, reports, memoranda, and files will remain confidential in accordance with subdivision (k) of section 2603 of the charter, except that annual disclosure reports and the dates they are filed will be available for public inspection pursuant to subdivision (e) of section 12-110 of the administrative code.

New York City Conflicts of Interest Board

Notice of Adoption of Final Rules

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Sections 1043 and 2603 of the New York City Charter that the Conflicts of Interest Board has adopted Board Rules § 4-07 with the procedures for setting and enforcing fines against late filers of annual disclosure reports.

The proposed Rules were published in the City Record on April 25, 2023, and a public hearing was held on May 25, 2023. No comments were received. The Conflicts of Interest Board now adopts the following Rules.

Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Procedures for the Enforcement of Penalties Against Late Filers of Annual Disclosure Reports

~~What are we proposing? The Conflicts of Interest Board is proposing to adopt rules for the procedures for setting and enforcing fines against late filers.~~

~~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 [TBD].~~

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

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

- ~~• **Website.** You can submit comments to the Conflicts of Interest Board through the NYC rules website at <http://rules.cityofnewyork.us>.~~
- ~~• **Email.** You can email comments to Rules@COIB.nyc.gov.~~
- ~~• **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing may speak for up to three minutes. It is recommended, but not required, that commenters sign up prior to the hearing by contacting the Conflicts of Interest Board by telephone at (212) 437-xxxx or by email at [TBD]. You can also sign up in the hearing room before the hearing begins on [date].~~

~~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,~~

including if you need a sign language interpreter. You can advise us by telephone at (212) 437-xxxx or by email at [TBD]. 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/>. 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 on the Conflicts of Interest Board's website (<https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page>) as soon as practicable.

~~What authorizes the Conflicts of Interest Board to make this rule?~~ Sections 1043 and 2603(d) of the City Charter authorize the Conflicts of Interest Board to make this proposed rule. These rules were included in the Conflicts of Interest Board's regulatory agenda for this Fiscal Year.

~~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

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Specifically, the rule sets forth a fine schedule that takes into account the filer's history of late filing and how late the report at issue was submitted. The ~~proposed~~ rule also sets forth the procedures for the enforcement of the fine, ensuring that late filers are provided notice and an opportunity to challenge the assessment of a fine before the Board issues a public order imposing a fine.

Text of Proposed Board Rules

New material is underlined.

Section 1. Chapter 4 of Title 53 of the Rules of the City of New York is amended by adding a new section 4-07 to read as follows:

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(a) Applicability.

Pursuant to ~~Administrative Code §~~ paragraph (1) of subdivision (g) of section 12-110(g)(1), of the administrative code, this section sets forth the procedures for setting and enforcing fines against late filers who are not subject to the jurisdiction of any state law or collective bargaining agreement that provides for the conduct of disciplinary proceedings.

(b) Definition.

The term "late filer" means a person who was required to submit an annual disclosure report pursuant to ~~Administrative Code § 12-110(b)~~ subdivision (b) of section 12-110 of the administrative code and submitted their report to the Board more than 7 calendar days after the filing deadline set by the Board.

(c) Fine schedule.

All late filers will be required to pay a fine of \$250, plus:

(1) An additional \$250 for every 30 calendar days after the filing deadline that the filer submitted their report.

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(d) Commencement of an enforcement action.

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- (3) The order will be sent by first class mail to the late filer's last known residential address or actual place of business and to the late filer's representative, if applicable.

- (4) If the order imposes a fine, payment is due to the Board within 30 calendar days of the date of service. If the late filer does not pay the full amount within 30 calendar days, the Board will pursue all remedies, which may include garnishment of City wages or referral to the New York City Law Department for collection.
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