

“reasonable person” standard to use to determine whether a financial relationship requires disclosure and disqualification.

The Board also added two clarifying notes following EC8(a). The first note clarifies that for the purposes of applying this provision to members of an advisory group, those members shall not be considered to lack independence or objectivity with regard to advisory group matters merely because they (or their employer, business partners or clients) are subject to the direct or indirect oversight of the Board. The second note advises non-professional staff to seek the counsel of the Ethics Officer if they face circumstances concerning financial relationships that may affect their ability to perform their functions.

EC8(b) indicates that for a member of the Board, disclosure shall be made to all other members of the Board. For professional staff of the Board, disclosure shall be made to the Board Chair, or the person or persons designated by the Chair (e.g., the Ethics Officer).

EC8(c) restricts Board members and professional staff for a period of 12 months commencing on date of appointment or employment from participating in the making of a decision which is reasonably likely to have a material effect on the Board or professional staff member's former employer, business partner or client, when such prior employment terminated within five years from the date of appointment or employment with the Board.

Several commenters requested that the Board clarify that broad policy decisions are not “indirect effects.” In response to this suggestion the Board added language that indicates that participating in the making of a decision that affects a former employer, business partner or client to the same degree as similarly situated people or business organizations, does not constitute an “indirect” effect. This is meant to cover matters of general applicability to a broad class of persons.

EC9. Non-Public Information

EC9 restricts Board members and staff from disseminating or disclosing certain information. Subparagraph (a) provides that unless authorized by the Board, no Board member or staff shall disseminate or otherwise disclose any information obtained in the course and scope of his or her employment, and which has not been released, announced, or otherwise made available publicly and subparagraph (b) provides that the restriction in EC9 shall continue in

effect after the termination of employment or Board membership. As proposed, the restriction on disclosure of non-public information only applied for five years after the Board or professional staff member left the Board. Due to the importance of preserving confidential information, the Board decided to strengthen this provision by extending its application indefinitely.

EC10. Speaking for the Board

EC10 provides that, unless authorized to speak on behalf of the Board, Board members and professional staff shall include a disclaimer for any private publication or public statement by indicating that the views expressed are those of the author or speaker and do not necessarily reflect the view of the Board or other Board members or staff.

EC11. Ethics Officer

EC11 directs the Board to designate an Ethics Officer with the power and responsibilities identified in subparagraphs (a) through (c).¹¹

EC12. Post-Employment Restrictions

EC12 imposes certain post-employment restrictions on Board members and professional staff. Subparagraph (a)(1) prohibits Board members and professional staff from negotiating prospective employment with a public accounting firm, without first disclosing (pursuant to the procedures in section EC8(b)) the identity of the prospective employer and recusing himself or herself from all Board matters directly affecting that prospective employer.

Subparagraph (a)(2) was added at the request of several commenters and defines “negotiating prospective employment” to mean participating in an employment interview; discussing an offer of employment; or accepting an offer of employment, even if the precise terms are still to be developed. Submitting a resume or job application to a group of employers, or receiving an unsolicited inquiry of interest that is rejected, do not alone constitute “negotiating prospective employment.” This additional language is consistent with Regulations Concerning Post Employment Conflicts of Interest (5 CFR 2637.101 *et seq.*), to which federal government employees are subject.

Subparagraph (b) contains two restrictions on former Board members and professional staff. First, it restricts Board members and professional staff from practicing before the Board, and

the Commission with respect to Board-related matters, for one year following termination of employment or Board membership. Second, the Board added EC 12(b)(2), which provides that former Board members and professional staff shall not practice before the Board, or the Commission with respect to Board-related matters, on a particular matter in which the Board member or professional staff participated personally and substantially as a Board or staff member and which involved a specific party or parties at the time of such participation. The Board based this restriction on the comparable restriction applicable to federal government employees in 18 U.S.C. 207(a). Since this rule is limited to particular matters, it would not cover matters of general applicability, such as rulemakings the person participated in while at the Board.

EC13. Waiver

EC13 establishes a mechanism for the Board to waive any provision of the Ethics Code, provided the granting of the waiver would not otherwise be prohibited by law. EC13 provides that waivers must be requested in writing by the Board member or staff, and evaluated by the Ethics Officer and that the Board will only grant waiver requests after a finding that the waiver would not otherwise hinder the interests or reputation of the Board. Subject to section 101(g)(2) of the Act, the Board may delegate approval authority as to staff requests.

Several commenters suggested that the Board disclose waivers of its Ethics Code. In response to these comments, the Board decided to make waivers available to the public, subject to withholding information that would constitute a clearly unwarranted invasion of personal privacy.¹² The Board believes that this approach provides for transparency of the Board's administration of its Ethics Code, while still protecting individuals' privacy interests.

EC14. Certification

EC14 provides that Board members, staff, and designated contractors and consultants agree to comply with this Code at the commencement of their service with the Board and shall annually certify in writing their continuing compliance with it. The Board modified this provision to also apply to designated contractors and

¹¹ The powers and responsibilities described in these subparagraphs are self-explanatory and are not discussed below.

¹² This standard is based on, and consistent with, one of the exemptions to the Freedom of Information Act. See 5 U.S.C. 552(b)(6).