

United States Office of Government Ethics

Compliance Division

Ethics Program Review

U.S. Securities and Exchange Commission

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the U.S. Securities and Exchange Commission (SEC) ethics program in November 2012. The results of the review indicated that SEC’s ethics program appears to be effectively administered and in compliance with applicable laws, regulations, and policies.

Highlights

- The SEC Chairman established the Ethics Office as an independent office, elevating the profile of the ethics program at the SEC.
- The DAEO administers an annual self-assessment measuring the effectiveness of the SEC’s ethics program, allowing the Ethics Office to strategically deploy limited resources where they will be most effective.
- The SEC utilizes written procedures to manage the advice and counsel element of the ethics program.
- The SEC Chairman requires senior officials to consult with the ethics office prior to seeking employment and encourages all employees to do so as well.

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Objectives, Scope, and Methodology

OGE provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance. The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating (1) agency compliance with ethics requirements as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program. OGE has the authority to evaluate the effectiveness of executive agency ethics programs. See Title IV of the Ethics in Government Act, 5 U.S.C. app. § 402, and 5 C.F.R. part 2638.

To assess the SEC's ethics program, OGE examined a variety of documents provided by the DAEO, other documents that the SEC submitted to OGE, including the 2011 annual questionnaire, public and confidential financial disclosure reports from 2011 and 2012, and a sample of the ethics advice and counseling rendered to SEC employees. Members of OGE's Compliance Division met with the DAEO, the Director of Human Resources, and the Counsel to the Inspector General to seek clarification on issues that arose through analysis of documentation and to verify data collected.

Program Administration

Congress established the SEC in 1934 to enforce securities laws, promote stability in the markets, and protect investors. The SEC's mission therefore is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. This includes overseeing the key participants in the securities world, such as securities exchanges, securities brokers and dealers, investment advisors, and mutual funds. The agency's responsibilities also include promoting the disclosure of important market-related information, maintaining fair dealing, and protecting against fraud.

The SEC consists of five presidentially appointed, Senate-confirmed (PAS) Commissioners, with staggered five-year terms. One of the five Commissioners is designated by the President as Chairman of the Commission, and is the agency's chief executive. To ensure non-partisanship, by law, no more than three of the Commissioners may belong to the same political party. The agency's functional responsibilities are organized into five Divisions and 19 Offices, each of which is headquartered in Washington, D.C. The SEC's approximately 3,500 staff are located in Washington, D.C. and in 11 Regional Offices throughout the country.

In 2011, the Ethics Office at the SEC was established as an independent office reporting directly to the Chairman. This independence was established in response to the September 2011 SEC Inspector General report that recommended that the Ethics Counsel report directly to the Chairman, rather than to the General Counsel.¹ The Ethics Office is headed by the Ethics Counsel who serves as the DAEO while the Assistant Ethics Counsel serves as Alternate DAEO (ADAEO). The DAEO and ADAEO are assisted by a staff of 11 officials, including a Program Analyst for Public Financial Disclosure, a Program Manager for Confidential Financial

¹ SEC Report of Investigation, Case Number OIG-560.

Disclosure, a Chief Compliance Officer, and three Assistant Ethics Counsels. We found that the DAEO takes an active role in the daily operations of the ethics program, and closely oversees the various ethics-related program elements within the Ethics Office.

We were also informed by the DAEO that the Chairman has been very supportive of and has taken an active interest in the ethics program at the SEC. For example, the Chairman was instrumental in providing additional staff to the Ethics Office, made the Ethics Office report directly to the Chairman, elevated the DAEO position to the Senior Executive Service, and includes the DAEO in senior staff meetings. The Chairman's office also monitored the Ethics Office's responsibility to implement the actions required by the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act),² that was assigned to the Ethics Office under SEC Administrative Regulation 1-3. Additionally, the DAEO reported having frequent access to leadership and generally having leadership support.

Self Assessment Survey

In an effort to assess the effectiveness of the SEC's ethics program and to ensure that the program is meeting the agency's needs, the DAEO conducts an annual self-assessment survey of SEC employees. The self-assessment survey is anonymous and open to all SEC employees. The 2012 edition of the survey had 659 respondents. Among other things, the survey evaluated respondents' awareness of available ethics personnel, satisfaction with ethics advice they received, and familiarity with available information on the SEC's supplemental regulations.

Ethics officials designed the survey to be useful for ethics program evaluation and also user-friendly for the respondents. The survey consisted of nine "Yes" or "No" questions with additional space for comments. Notably, 92 percent of respondents asserted that they knew the name of an ethics official at SEC. Additionally, 68 percent of respondents claimed that they had sought advice from the Ethics Office in the last year. Of the respondents that sought advice from the Ethics Office, 88 percent reported satisfaction with the timeliness of the Ethics Office's response. The DAEO characterized the self-assessment surveys as tools to measure the effectiveness of the ethics program and allocate resources.

Overall, the self-assessment survey results indicated that SEC employees are very aware of the ethics program and key ethics issues such as the criminal statutes on ethics and the SEC's supplemental regulations. The self-assessment survey also provides the Ethics Office insight into where it can further improve employees' ethical awareness, like promoting the SEC's intranet page and its supplemental regulations.

² Pub. L. 112-105, S. 2038, 126 Stat. 291, enacted April 4, 2012.

Model Practices

OGE tries to identify model practices that other agencies should consider adopting. The following are model practices regarding the overall administration of the ethics program at SEC:

- The SEC Chairman established the Ethics Office as an independent office, elevating the profile of the ethics program at SEC.
- The SEC Chairman issued an agency-wide directive that clearly delineates the responsibilities relating to the implementation of the STOCK Act.
- The annual employee ethics survey is a useful tool for the Ethics Office to assess program effectiveness and strategically deploy limited resources where they will be most effective.

Financial Disclosure

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level Federal officials demonstrate that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (OGE Form 278). Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions to facilitate internal agency conflict of interest reviews (OGE Form 450). Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of officers and employees. *See* 5 C.F.R. § 2634.104(b).

Written Procedures

The SEC has separate, comprehensive written procedures for the administration of the public and confidential financial disclosure systems as required by Section 402(d)(1) of the Ethics in Government Act. In addition to covering statutorily required information, the procedures delineate specific responsibilities by position and title and specify the types of positions within the agency that are required to file either a public financial disclosure report or a confidential financial disclosure report.

The procedures outline the roles and responsibilities of the DAEO, the Program Analyst for Public Financial Disclosure, the Program Manager for Confidential Financial Disclosure, the Assistant Ethics Counsels, and the Ethics Program Assistant. For example, the Program Analyst for Public Financial Disclosure oversees the day-to-day operations for collecting, reviewing, and maintaining custody of public financial disclosure reports. The responsibilities of the Program Manager for Confidential Financial Disclosure are similarly outlined. The procedures also identify the DAEO as responsible for ensuring an effective agency-wide financial disclosure system exists. By identifying individual responsibilities, the SEC's written procedures help provide a basis for relatively simple succession planning.

Public Financial Disclosure

The SEC has 165 public financial disclosure filers, including 5 PAS Commissioners. The public financial disclosure system is centralized. We were informed that new filers are identified by the Program Analyst for Public Financial Disclosure who conducts weekly checks of the SEC's Human Resources system to identify any new employees. The Program Analyst also maintains contact with the administrative officers who process personnel matters and other human resources staff to ensure that potential new filers have been identified. Once filers are identified, their names are maintained in a master list that is updated through the process just described. We were also informed that the Program Analyst provides reminders to filers of their requirement to file their applicable financial disclosure report. All public reports are submitted via email to the Ethics Office, undergo an intermediate review by the Program Analyst for Public Financial Disclosure, and are subsequently certified by the DAEO.

To evaluate the effectiveness of SEC's public system, OGE examined a sample of 50 public financial disclosure reports that were required to be filed in 2012. The sample consisted of 40 annual, 6 new entrant and 4 termination reports. All 50 of the public financial disclosure reports sampled were filed by the submission deadline. OGE found that 96% of the sample reports were reviewed and certified by ethics officials by the 60-day certification deadline. The two public financial disclosure reports that were certified beyond the 60-day deadline were certified only a few days later and did not indicate any systemic problems. SEC ethics officials' review of public financial disclosure reports was noticeably detailed. The review team noted extensive evidence of ethics officials' analysis, research, and communication with report filers.

Confidential Financial Disclosure

The SEC has 2,904 confidential financial disclosure filers. Processes for identifying and maintaining the list of confidential filers are similar to those described above for the public financial disclosure system and are performed by the Program Manager for Confidential Financial Disclosure. However, unlike the public financial disclosure system, the review process for reports under the confidential financial disclosure system is decentralized. The DAEO believes that supervisory Division Directors, Office Heads, Regional Directors, and District Administrators are better positioned to evaluate confidential financial disclosure reports for potential conflicts of interest for regional personnel.

To evaluate the effectiveness of the SEC's confidential system, OGE examined a sample of 99 confidential financial disclosure reports that were required to be filed in 2012. The sample consisted of 89 annual reports and 10 new entrant reports.

Ninety-four percent of the sampled reports were filed by employees by the required submission date. Seventy-nine percent of the sampled reports were subsequently reviewed and certified by supervisors by the certification deadline. Prior to the review team's evaluation of the financial disclosure systems, the DAEO alerted the review team that delayed supervisory certification of reports may be an issue. OGE's review of the sample indicated that late supervisory certification centered on certain individual supervisors and was not a systemic problem. The DAEO requested ideas from the review team to encourage individual supervisors to improve review and

certification timeliness. The review team suggested regularly updating senior SEC staff on regional supervisors' review and certification progress during senior staff meetings as a possible approach to ensure timely review of the confidential reports.

Suggestion

- Continue efforts to improve the late certifications of confidential financial disclosure reports.

Education and Training

An ethics training program is essential to raising awareness among employees about ethics laws and rules and informing them of agency ethics officials' availability to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation for all employees and annual ethics training for covered employees. OGE found the SEC's education and training program to be in compliance with the requirements of the applicable OGE regulations, including documenting annually its ethics training plan and satisfying both OGE's initial and annual training requirements.

Initial Ethics Orientation

OGE regulation requires that all new employees receive agency ethics official contact information, along with the following material within 90 days of beginning work for an agency: (1) the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards) and any agency supplemental Standards to keep or review; or (2) summaries of the Standards, any agency supplemental Standards, and the Principles of Ethical Conduct (the Principals) to keep. Employees must also receive one hour of official duty time to review the material. See 5 C.F.R. § 2638.703.

New employee orientations occur bi-weekly and are conducted by the Human Resources Department. The Ethics Office takes part in that general orientation by providing an initial ethics orientation which consists of a 45-minute classroom presentation. New employees must sign-in via roster sheets to certify that they have attended initial ethics orientation, received a copy of the Standards, and are expected to spend a minimum of one hour familiarizing themselves with the material. In addition to the verbal presentation and the Standards, new employees are provided a link to the SEC-produced *Handbook: Standards of Ethical Conduct for Employees of the Executive Branch*, a plain-English ethics guide which further supplements the initial ethics orientation material.³ The review team examined the initial ethics orientation presentation provided to new employees and found it in compliance with 5 C.F.R. § 2638.703.

³ All SEC employees can also request a physical copy of *Handbook: Standards of Ethical Conduct for Employees of the Executive Branch*.

The review team examined the signed certification forms for the 18 new SEC employees identified within our sample of public and confidential financial disclosure report filers and verified all 18 filers received initial ethics orientation with the 90-day deadline. In addition, the process wherein the Program Analysts for Financial Disclosure perform weekly checks to identify new employees and obtain sign-in verifications of completed initial ethics orientation from the HR office appears reasonable to ensure that initial ethics orientation is provided, as required. Therefore, based on our understanding of the initial ethics orientation process, determined through interviews with the DAEO and the Director of Human Resources, the review team is reasonably confident that initial ethics orientation is provided to new employees within the 90 days of entry on duty.

Annual Ethics Training

According to the DAEO, ethics officials present live annual ethics training for public financial disclosure filers. Ethics officials refer to the list of public filers to identify employees who require live ethics training. Filers are then notified primarily through e-mail of the available training sessions. Each session has a sign-in sheet that is collected by ethics officials at the end of the training session. The sign-in sheet is then compared to the list of filers to verify training completion and identify any employees who still require training. For the five SEC Commissioners, the DAEO conducts one-on-one annual ethics training sessions. The SEC's in-person ethics training material met the content requirements of 5 C.F.R. § 2638.704.

The DAEO also explained that confidential filers' annual ethics training begins in October and is usually completed by November. The SEC provided web-based ethics training through an electronic learning managing system. The web-based ethics module meets the content requirements of 5 C.F.R. § 2638.705. Once a filer completes the annual training in the electronic learning managing system, the system automatically records training completion. The Ethics Office can access the system to identify which filers have not completed the training for a given calendar year.

In addition to the web-based training, we were informed that the Ethics Office strives to ensure that all confidential filers receive in-person training approximately once every three years. To achieve this, the Ethics Office divides the universe of confidential filers into groups and rotates which group will receive in-person training each year. During the year that a filer receives in-person training, the Ethics Office manually inputs into the electronic learning managing system that the training was "instructor-led." To verify whether annual training was provided in 2011, we asked SEC's ethics officials to provide the training verifications for 133 public and confidential financial disclosure report filers. We found that all 133 filers selected for verification received annual training as required.

The review team also reviewed two ethics presentations tailored specifically for procurement officials and interns. The tailored presentations were also in compliance with 5 C.F.R. § 2638.704 and 705.

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. See 5 C.F.R. § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. See 5 C.F.R. § 2638.204.

In October 2010, the SEC's Chairman issued a directive requiring that senior officers seek ethics counseling prior to seeking post-governmental employment. The directive also encouraged all SEC employees to behave in accordance with this policy. The SEC's ethics counseling process was further strengthened following the 2011 SEC Inspector General report. The report recommended that the Ethics Office implement appropriate policies and procedures to ensure that advice rendered is "well-reasoned, complete, objective and consistent" and that significant matters are documented.⁴ Responding to that recommendation, the current DAEO implemented written procedures to govern the advice and counsel element of the ethics program. The procedures provide guidance on incoming counsel requests, consultation when issues are novel, complex, or affect senior SEC employee, and documentation standards for both routine and significant ethics advice.

OGE reviewed 52 samples of ethics counsel provided by 5 ethics staff members between February 2011 and September 2012. The sample reviewed reflected primarily email counseling with some counsel provided through formal memoranda or further discussed by telephone. Ethics officials typically responded to ethics counseling requests in the sample within a few days of receiving the requests. Advice and counsel appeared to provide a level of analysis consistent with the type of questions asked, with formal memoranda providing the most extensive analysis. OGE observed advice and counsel covering a wide range of ethics topics including financial conflicts of interest, impartiality, gifts, public and confidential financial disclosure, outside activities, seeking employment, and post-government employment.

Model Practices

OGE tries to identify model practices that other agencies should consider adopting. The following are model practices regarding the ethics counseling program at SEC:

- SEC has written procedures to administer the advice and counsel element of the ethics program.
- SEC's Chairman issued a directive that requires senior officials to consult with the ethics office prior to seeking employment and encourages all employees to do so as well.

⁴ The Inspector General's report's scope fell under the tenure of the previous DAEO and covered advice rendered in 2009.

Agency-Specific Ethics Rules

In August 2010, the SEC, with the concurrence of OGE, adopted supplemental standards of ethical conduct for its Commissioners and employees. (See 5 C.F.R. § 4401) These standards include prohibitions on transactions involving a security based on material nonpublic information, transactions involving a security directly regulated by the commission, and transactions involving a security of an entity either under investigation by the SEC, is party to a proceeding before the SEC, or party to a proceeding in which the SEC is a party. As a result SEC personnel are required to clear any securities transaction or holding with the DAEO.

In order to implement the reporting and clearance aspect of the supplemental regulation, SEC utilizes the web-based Personal Trading Compliance System (PTCS) to streamline the clearance process for SEC employees. We were informed that all SEC personnel have access to this system and can initiate the clearance process by using the system prior to engaging in a security transaction. In addition, the Ethics Office's financial disclosure personnel check this system to ensure that securities reported on the financial disclosure reports are not prohibited.

Conflict Remedies

The Ethics in Government Act expressly recognizes the need for PAS nominees to address actual or apparent conflicts of interest by requiring written notice of the specific actions to be taken in order to alleviate the conflict of interest. These actions are documented in a PAS nominee's ethics agreement. Current SEC PAS officials completed all actions required to be taken pursuant to their ethics agreements, in accordance with 5 C.F.R. § 2634.802(b). All requisite evidence of action taken was also submitted timely to OGE, in accordance with 5 C.F.R. § 2634.802(a). During our on-site portion of the review, the DAEO told the review team that some non-PAS employees have entered into ethics agreements in the form of screening arrangements. The review team collected samples of these screening arrangements, which documented potential conflicts and identified individuals to screen the non-PAS employees from those potential conflicts.

Section 208 of Title 18 generally prohibits an employee from participating in a particular matter in which he has a personal or imputed financial interest. Section 208(b) contains specific provisions allowing waivers of the prohibitions contained in section 208(a), provided certain requirements are met. The DAEO is aware of the requirement to consult with OGE before issuing a waiver of 18 U.S.C. § 208. The SEC consulted with OGE, as required, on both waivers issued in 2012.

Enforcement

The SEC reported one disciplinary actions based wholly or in part upon violations of the Standards (5 C.F.R. part 2635) in 2011. The SEC reported no disciplinary actions based wholly or in part upon violations of the criminal conflict of interest statutes (18 U.S.C §§ 203, 205, 207, 208, and 209) or the Standards (5 C.F.R. part 2635).

In 2011, the Ethics Office made two referrals to the Office of the Inspector General (OIG) of potential violations of the criminal conflict of interest statutes. One of the referrals was further elevated by the OIG to the Department of Justice (DOJ) as a potential violation of the criminal conflict of interest statutes. As of January 2012, OGE has not been notified of DOJ action on this referral.

The review team met with the SEC's Counsel to the Inspector General regarding the relationship with the SEC ethics office. The OIG is responsible for concurrent notification to DOJ and OGE for referrals of potential violations of the criminal conflict of interest statutes. The OIG works closely with the ethics office and obtains guidance from the ethics office to ensure that any ethics discussions are accurately conveyed in OIG reports. Finally, OIG interfaces with the ethics office on cases and investigations that have an ethics component to gain access to financial disclosure forms and advice rendered.

1353 Travel Acceptances

The SEC permits its employees to accept payments from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under the authority of the General Services Administration (GSA) regulation at 41 C.F.R. chapter 304, implementing 31 U.S.C. § 1353. In May 2011, the SEC revised an internal administrative regulation (SECR 5-11), essentially creating written procedures to administer and implement 31 U.S.C. § 1353. The written procedures define terminology and assign responsibilities to SEC personnel, including the Ethics Office, which must review and approve, if appropriate, all requests that involve reimbursement from non-Federal sources. The SEC has submitted timely to OGE both semiannual reports due in 2011.

Agency Comments

SEC provided the following comments to this report via email on February 12, 2013:

The SEC appreciates the time and effort OGE expended on the Ethics Program Review and thanks the OGE staff for their diligence. The SEC appreciates OGE's identification of model practices at the SEC and looks forward to continuing to coordinate closely with OGE in the future. The SEC also appreciates OGE's suggestions for continued growth and is actively pursuing efforts to improve the timeliness of certification of confidential financial disclosure reports by coordinating with senior leadership, increasing outreach to 450 reviewers and increasing training opportunities.