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March 30, 2017

TO: J. Christopher Giancarlo, Acting Chairman
Sharon Y. Bowen, Commissioner

FROM: Judith A. Ringle, Deputy Inspector General and Chief Counsel *R*

SUBJECT: Investigation into Potential Violation of 18 U.S.C. § 208 – Acts Affecting a Personal Financial Interest

Attached is an OIG report of investigation into an allegation that an employee may have a conflict between his duties and his financial interests. The matter was referred by the Office of General Counsel Ethics group. We are recommending no action be taken against the employee. We are recommending enhancements to the financial disclosure review process.

Please keep in mind that this version of the report is confidential and un-redacted; we are available at your convenience to discuss.

Attachments: ROI with Attachment #1 and Addendum

Cc (with attachment): A. Roy Lavik, Inspector General
Daniel Davis, General Counsel and CFTC Designated Ethics Official

**Investigation into Potential Violation of 18 U.S.C. § 208:
Acts Affecting a Personal Financial Interest**

**Prepared by the
Office of the Inspector General
Commodity Futures Trading Commission**

March 30, 2017

This Report has been redacted by the Commodity Futures Trading Commission under Freedom of Information Act Exemptions 4 and 6, 5 U.S.C. §552(b)(4) and (6), not by the CFTC OIG.

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BACKGROUND

18 U.S.C. § 208 broadly prohibits government employees from participating personally and substantially in matters where the employee has a financial interest.¹ 18 U.S.C. § 216 prescribes penalties: violation of 18 U.S.C. § 208 is a misdemeanor, and a “willful” violation may constitute a felony with a maximum sentence of five years.²

On September 13, 2016, the ethics office³ at the Commodity Futures Trading Commission (“CFTC”) held its annual training [REDACTED]. Immediately after the training, an employee self-reported to CFTC ethics officials facts that may constitute a violation of 18 U.S.C. § 208.

The employee was hired in [REDACTED]. At this time, the employee’s spouse owned approximately \$50,000 of [REDACTED] stock. [REDACTED] is charged with the regulation of [REDACTED] and the employee had – in the course of his normal duties – been assigned matters involving [REDACTED].

After the training and conversation with ethics officials, the employee decided to sell the stock. The employee completed the sale the next day; by September 15, 2016, he had notified CFTC ethics officials that his spouse was divested of all stock in [REDACTED]. On November 8, 2016, the ethics officials presented these facts to the Office of the Inspector General (“OIG”). Because the potential violation was no longer ongoing, the Inspector General determined to prioritize other matters. On February 28, 2017, the Inspector General opened an investigation.⁴

¹ 18 U.S.C. § 208(a): Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest— Shall be subject to the penalties set forth in section 216 of this title.

² 18 U.S.C. § 216(a) The punishment for an offense under section 203, 204, 205, 207, 208, or 209 of this title is the following: (1) Whoever engages in the conduct constituting the offense shall be imprisoned for not more than one year or fined in the amount set forth in this title, or both. (2) Whoever willfully engages in the conduct constituting the offense shall be imprisoned for not more than five years or fined in the amount set forth in this title, or both.

³ CFTC’s ethics office is in the Office of General Counsel. Information on the ethics program is available to all CFTC employees at: <http://cftcnet/Operations/Additional-Services/Ethics/Pages/default.aspx>.

⁴ OIG has independent authority to investigate all instances of fraud, waste, and abuse within the agency. Inspector General Act of 1978 § 4. Citations to confidential sources have been removed from this report.

SCOPE & METHODOLOGY

Our investigation began with a review of documents provided by the ethics officials. We then researched 18 U.S.C. § 208 and related ethics regulations. Because the employee had self-reported, we elected to treat the inquiry as non-criminal and began our interviews with the employee. The employee cooperated fully. At the end of the interview, we requested additional documents, including trading records and copies of certain work-product.

We interviewed the employee's supervisors, as well as staff in [REDACTED] the [REDACTED] [REDACTED] and the Office of General Counsel. We completed our investigation by examining the employee's trading records and assessing the impact, if any, that his work may have had on [REDACTED]. We determined not to refer this matter to the Justice Department, and we do not recommend any action against the employee.

STATUTES & REGULATIONS⁵

The following statutes and ethics regulations apply.⁶

18 U.S.C. § 208,⁷ Acts Affecting a Personal Financial Interest. This statute prohibits:

- (1) An employee of an independent agency of the United States Government;
- (2) From participating personally and substantially in a matter;
- (3) Which to his knowledge;
- (4) The employee or spouse has a financial interest.

5 C.F.R. § 2635.101,⁸ Basic Obligation of Public Service. Sets forth responsibility of federal employees to adhere to certain ethical principles. When a circumstance is not expressly covered, it places the burden on the employee to apply the principles to determine whether their conduct is proper.

5 C.F.R. § 2635.502,⁹ Personal and Business Relationships. Sets forth responsibility of federal employees to avoid appearance of conflict of interest. Regarding work on matters related to a financial interest, requires employees not to participate in the matter if a reasonable person with knowledge of the relevant facts would question the employee's impartiality.

⁵ According to an ethics official, CFTC has no internal policies directly on point. However, there are "guidance documents" produced and distributed semi-regularly by the ethics office to keep CFTC employees informed of their ethical responsibilities. We have not reproduced these here.

⁶ Our summaries are intended as a guide for the reader and not as formal legal interpretations of the relevant statute or regulation.

⁷ See *supra* n.1. Available at: <https://www.law.cornell.edu/uscode/text/18/208>.

⁸ Available at: <https://www.law.cornell.edu/cfr/text/5/2635.101>.

⁹ Available at: <https://www.law.cornell.edu/cfr/text/5/2635.502>.

17 C.F.R. § 140.735-2a,¹⁰ Prohibited Interests. Prohibits employees from holding certain financial interests. 17 C.F.R. § 140.735-2a(d)(1) provides an exception to the general rule, permitting retention or passive acquisition if the interest was obtained prior to employment with CFTC or acquired by a spouse prior to marriage.

FINDINGS

We have divided our findings into three sections. First, we present the employee's history and his interactions with ethics officials. Second, we analyze the stock held in [REDACTED]. And third, we review the employee's work product to determine the impact his work may have had, if any, on [REDACTED] and the value of his investment.

Employee History and Interactions with Ethics Officials

The employee worked at [REDACTED] beginning [REDACTED], and he left [REDACTED]. [REDACTED] The employee remains in this position as of the date of this report.

On joining the CFTC, the employee filed the required paperwork, including an Entrance Form 450 ("2014 form"). The 2014 form shows that the employee reported his wife's holding of \$55,000 in [REDACTED] stock, noting: "[REDACTED] stock – spouse 401(k) – \$55k."¹¹

The employee also affirmatively notified an ethics official ("Ethics Official #1").¹² In an email titled "New hire – existing stock holdings," the employee wrote:

My supervisor [Name] suggested I contact you. I am a new employee that started yesterday.

My wife still holds about \$50,000 of [REDACTED] stock in her 401(k). She is a [REDACTED] former employee and never sold it. The CFTC regulates [REDACTED]. Do we have to sell the stock immediately from her 401(k)?

¹⁰ Available at: <https://www.law.cornell.edu/cfr/text/17/140.735-2a>.

¹¹ The form requires the employee to "[i]ndicate the full name of each specific asset or investment. You may add the ticker symbol to the full name." While the employee's use of "[REDACTED]" does not comply with the instructions to list the "full name," we do not view the employee's decision to use an acronym as material.

¹² The employee reached out with the same questions to an official in Human Resources on [REDACTED]. We have no record of a response, but the question was correctly directed to the ethics office. We would not expect Human Resources to voice an opinion.

The employee has no record of a response from Ethics Official #1. The ethics official searched his email for relevant records, and found neither this email from the employee nor a response.

After submission of the 2014 form by the employee, the form was signed by a first-line ethics official ("Ethics Official #2) on November 25, and by Ethics Official #1 as the final reviewing official on December 9, 2014.

Above the signature box for the two ethics officials, the form reads: "On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations, except as noted in the 'comments' box below." The comment box is blank.

In January of 2015, the employee filed another Form 450 ("2015 form") as part of the CFTC's annual recertification of its employees' financial interests. This 2015 form lists the [REDACTED] stock in the same manner as before. Eleven months later, in November of 2015, another ethics official ("Ethics Official #3) emailed the employee some questions about the employee's responses on the 2015 form.¹³ However, Ethics Official #3 had no questions specific to the employee's entry of his wife's stock in [REDACTED]. On December 28, 2015, Ethics Official #3 signed the employee's 2015 form.¹⁴ Ethics Official #1 signed the same day, again as the reviewing official. The instructions above the signature box had not changed. The comment box is again blank.

Though the 2015 form had already been signed, the email exchange between the employee and Ethics Official #3 continued through January of 2016. On January 10, the employee sent an email summarizing his understanding of his ethical responsibilities. Though there is no record of Ethics Official #3 asking about the [REDACTED] stock, the employee volunteered that:

She does hold [REDACTED] stock, but that was all acquired a) prior to our marriage [REDACTED] and b) prior to her departure from [REDACTED] and c) prior to my starting with the CFTC [REDACTED]. Slide 24¹⁵ in the ethics training says the prohibited interest rules do not apply to interests acquired prior to my CFTC employment and acquired by my spouse before we were married, both are true.

¹³ The complete email string is included as Attachment 1. The most relevant of the questions was a request for confirmation that "all mutual funds underlying your wife's 401(k) plan include non-diversified assets." See Attachment 1, email dated November 30, 2015, 10:44 a.m. This led to a request for the most recent statement from the 401(k). The ethics official had seen a prior statement from the 401(k), and this statement had included the [REDACTED] stock. See Attachment 1, email dated November 30, 2015, 4:40 p.m.

¹⁴ The signature of the "final reviewing official" remains the same as in 2014; however, the first-line ethics official was new. Accordingly, three ethics officials had now signed off on the employee's Form 450 that states that his wife holds "[REDACTED] stock - spouse 401(k) - \$55k."

¹⁵ Slide 24 of the ethics presentation shows exceptions to the prohibited interest rule - which are if the assets were (1) acquired prior to working at the CFTC or (2) acquired by spouse before marriage. Regulation available at: <https://www.law.cornell.edu/cfr/text/17/140.735-2a>.

...

Am I all set? I didn't think any of these positions would require me to recuse myself from issues dealing with [REDACTED] specifically. I'm not in [REDACTED] of any kind. Let me know if you think otherwise.¹⁶

Ethics Official #3 responded simply: "Thank you so much."¹⁷ There is no record of further communication by the ethics office on this issue.¹⁸

Also on January 10, 2016, the employee filed his third Form 450 ("2016 form"), again as part of the CFTC's annual recertification of employees' financial interests. This year, the employee described the [REDACTED] stock in greater detail. The 2016 form reads: "[REDACTED] stock – spouse 401(k) - \$55k – acquired prior to marriage [REDACTED] and my hire at CFTC in 2014."¹⁹

On February 29, 2016, an ethics official ("Ethics Official #4") signed the 2016 form. Ethics Official #1 signed on March 2, 2016, as the final reviewing official. The comment box was again blank.

In September of 2016, the ethics office held its annual ethics training [REDACTED] [REDACTED]. Immediately afterwards, the employee sent an email to the ethics official ("Ethics Official #5") who had led the ethics training.²⁰

Thanks for the ethics training today.

[Ethics official #3] never specifically responded to my conflict of interest question below regarding my wife's interests in [REDACTED]. Could someone check and get back to me? I'm a [REDACTED] and a 450 filer.

[Wife's name] (spouse) retains approximately \$50k of [REDACTED] stock in her 401k at [REDACTED], plus a small defined benefit pension. No positions, to my knowledge, have been added or subtracted from those accounts since she left [REDACTED] in [REDACTED], besides

¹⁶ Email from employee to ethics official dated January 10, 2016. This email closely tracks the language of CFTC supplemental regulation 17 C.F.R. § 140.735-2a(d)(1), which provides an exception to prohibited interests rules for financial interests acquired by a spouse prior to marriage or prior to start at the CFTC. This was also referenced on the ethics presentation Slide #24.

¹⁷ Email from ethics official to employee dated January 11, 2016.

¹⁸ Neither the employee nor Ethics Official #3 was able to locate a response.

¹⁹ This language tracks both slide #24 from the 2015 training and the email sent that same day to Ethics Official #3.

²⁰ Email from employee to Ethics Official #5 dated September 13, 2016. One or more oral conversations with Ethics Official #5 occurred just before or after this email. Interviews suggest that the content of the email broadly mirrors the content of the conversations.

the small dividend check she receives (it's paid in cash to her, not reinvested in [REDACTED] stock). I left [REDACTED] in [REDACTED] [] and joined CFTC [REDACTED] 2014.

The closest I've ever come to an [REDACTED] issue was a question from [REDACTED] posed to [REDACTED] in 2015 about [REDACTED]
[REDACTED]
[REDACTED] a list of proposed questions to ask. I never contacted [REDACTED] directly about the issue and I never heard about the resolution of the issue. Last worked on it in Sep 2015.

I work on [REDACTED]
[REDACTED]
[REDACTED] although no such proposal was made in the report, nor did I personally lobby for any specific recommendation in the report. I have never [REDACTED] (for any reason for any registrant or non registrant).

- A) Do I have to recuse myself from all [REDACTED] related matters because of her positions/interests?
- B) She's considering closing the 401k and moving it to an account at [REDACTED]. Do I need a special form before she does so?

Thanks,
[Employee]

A conversation ensued between the Ethics Official #5 and the employee. Ethics Official #5 documented the conversation later that same day with a memo to file. This memo states that during the conversation, the employee decided to sell the stock. On September 15, 2016, the employee emailed Ethics Official #5 that the sale was complete; his wife was entirely divested of stock in [REDACTED].

Stock in [REDACTED]

The employee's wife held the [REDACTED] stock in her 401(k). She acquired it over the course of her career at [REDACTED] which ended in [REDACTED]. The employee provided a snapshot of the account from [REDACTED] 2014 to March 9, 2017, covering his period of employment at CFTC.

On [REDACTED] 2014, the account value was \$58,640.90. No trading occurred during the employee's time at the CFTC. Quarterly dividends were paid out in cash until late 2015, and reinvested starting in January 2016. The account was closed on September 14, 2016, with a transfer of \$54,936. Excluding dividends, the account lost approximately \$4,000 during the

employee's time at CFTC. This figure of \$54k represented approximately one-third of the total account value.

Employee's Work Product

The employee worked on four main projects that involved [REDACTED]. We briefly outline each project below.²¹

Project One – [REDACTED] Reports

[REDACTED]

The employee [REDACTED] conduct [REDACTED]. This involved reading a substantial number [REDACTED] going back over a year and giving feedback to [REDACTED] management. CFTC staff discussed with the employee whether to [REDACTED]

[REDACTED] However, according to the employee, the purpose of the work had nothing to do with [REDACTED] it was merely one of the [REDACTED]

Project Two – [REDACTED]

A second project involved [REDACTED]. On or around [REDACTED] 2015,

[REDACTED]

The individual exchanges [REDACTED]

[REDACTED]

²¹ We relied on our interviews for these descriptions.

²² [REDACTED]

[REDACTED] assigned him the project, [REDACTED] and asked the employee for his opinion. The employee [REDACTED] a number of questions to ask [REDACTED]. The employee says that his role was relatively minimal, and that he never heard back. As of the date of the interview over a year later, he was unaware of the result, if any, from his work on this project.

[REDACTED] with whom the employee worked confirmed the employee's recollection. When asked to name the staff who worked on the project, neither named the employee without being prompted. They described the project as primarily one of [REDACTED] and viewed his assistance as minor. They stated that the employee was asked [REDACTED] - not because of any experience specific to [REDACTED]. [REDACTED] confirmed that they never informed the employee of the final result; indeed, they themselves never learned what came of their work.

Project Three – [REDACTED] Reports

From [REDACTED] the employee worked on the [REDACTED] reports. These reports [REDACTED]
[REDACTED]

The employee described his role as relatively small; he worked as part of a team that

[REDACTED]

Among these names was [REDACTED]

²³ [REDACTED]

²⁴ The [REDACTED] also had a role in this project. An employee in [REDACTED] stated that [REDACTED] took the lead, while [REDACTED]

[REDACTED] has numerous subsidiaries; [REDACTED]
[REDACTED]

[REDACTED] the final report was
completed in [REDACTED]. The employee explained [REDACTED]
[REDACTED]

Project Four – [REDACTED]

[REDACTED]

The employee has spoken to staff [REDACTED] including [REDACTED]. The employee
provided examples of the conversations, including: [REDACTED]
[REDACTED]

[REDACTED] The employee characterized this work [REDACTED]
and emphasized that it was not focused specifically on [REDACTED]

[REDACTED]
[REDACTED]. However, this project had only just
started when the employee's wife completed the sale of stock on September 14, 2016. The
employee's continued involvement in this or other matters related to [REDACTED] could no
longer conflict with a personal financial interest.

CONCLUSION AND RECOMMENDATIONS

We find that by the employee's second day of work, he had communicated his wife's
holding of stock in [REDACTED] to his supervisor, the ethics office, and the Human Resources
office. In the email to Ethics Official #1, the employee clearly and concisely described the
situation at issue in this investigation, and asked whether he needed to sell the position. He
received no answer.

We find that the employee continued to receive no answer for two years. He disclosed
the stock in 2014, 2015, and 2016, and each year the Form 450 was signed without question or
comment on his wife's stock. In 2015, the employee again took the opportunity to affirmatively

²⁵ We asked, and the employee emphasized, that [REDACTED] in the aggregate has [REDACTED]
[REDACTED] unlikely to have a material impact on [REDACTED]

²⁶ [REDACTED]
[REDACTED]

ask an ethics official about his wife's holding of [REDACTED]. His concerns continued to go unaddressed.

The employee states that he believed the lack of response by ethics officials meant that his wife's holding of [REDACTED] stock, and his participation in various matters involving [REDACTED], was permitted. We find this assertion credible under the circumstances.

We find that the employee self-reported immediately after attending ethics training in September of 2016. Ethics Official #5 engaged with the employee on the matter, and within one day the position had been liquidated.

We find that the stock in [REDACTED] constituted approximately one-third of the value of the portfolio, and that the stock lost value during the employee's tenure at CFTC.²⁷

We find that the employee's work was unlikely to have a material – or even noticeable – impact on [REDACTED] or its stock value. We believe neither the substance nor the number of projects worked on by the employee involving [REDACTED] raises an appearance issue in this case.

We decline to refer this matter to the Justice Department for possible prosecution. We believe that under the facts of this investigation, no reasonable person could conclude that the employee had acted willfully in this matter; accordingly, there can be no felony. In our experience, a U.S. Attorney would be equally unlikely to consider prosecution for a misdemeanor.

What remains is the possibility of an administrative penalty imposed by the Chairman. We note for the Chairman's consideration 5 C.F.R. § 2635.107(b), which may be summarized as stating that no disciplinary action will be taken against an employee for violation of supplementary agency regulations who has engaged in good faith reliance on the advice of an agency ethics official.

We also note 5 C.F.R. § 2640.101-03, which helps to implement 18 U.S.C. § 208. It explains that the statute intends to prevent an employee from allowing personal interests to affect his official duties. We find no evidence to suggest that the employee's personal interest affected his official duties. We therefore decline to recommend disciplinary action against this individual.

We recommend that the Chairman take appropriate action given our findings. Please refer to Appendix "Other Matters" for supplemental observations & recommendations.

²⁷ We note, however that this is in no way dispositive of the employee's impact on [REDACTED]. That is, value could decrease in a situation where an employee acted improperly to limit losses.

Attachment #1

From: [ethics official #3]
Sent: Monday, January 11, 2016 9:22 AM
To: [employee]
Subject: RE: Form 450

Thank you so much!

[ethics official #3]

From: [employee]
Sent: Sunday, January 10, 2016 5:46 PM
To: [ethics official #3]
Subject: RE: Form 450

Finally logged into [redacted] site. Statements for my wife's retirement savings at [redacted] attached.

Defined Benefit Pension:
Owed approx. \$402.51/month starting in 2033

401k:

I don't believe any of these funds meet the definition you provided below of sector funds. None focus on "investments in any industry, business, single country." Some focus on specific market capitalization sectors, but that is not included in your definition of sector funds, and therefore none of these need to be reported on 450, in my opinion.

She does hold [redacted] stock, but that was all acquired a) prior to our marriage [redacted] and b) prior to her departure from [redacted] [redacted] and c) prior to my starting with the CFTC in 2014. Slide 24 in the ethics training says the prohibited interest rules do not apply to interests acquired prior to my CFTC employment and acquired by my spouse before we were married, both are true.

[http://cftcnet/Operations/Additional-Services/Ethics/layouts/PowerPoint.aspx?PowerPointView=ReadingView&PresentationId=/Operations/Additional-Services/Ethics/Documents/CFTC%20Annual%20Ethics%20Training%202015%20\(ON-LINE\).ppt&Source=http%3A%2F%2Fcftcnet%2FOperations%2FAdditional%2DServices%2FEthics%2FPages%2Fdefault%2Easpx&DefaultItemOpen=1](http://cftcnet/Operations/Additional-Services/Ethics/layouts/PowerPoint.aspx?PowerPointView=ReadingView&PresentationId=/Operations/Additional-Services/Ethics/Documents/CFTC%20Annual%20Ethics%20Training%202015%20(ON-LINE).ppt&Source=http%3A%2F%2Fcftcnet%2FOperations%2FAdditional%2DServices%2FEthics%2FPages%2Fdefault%2Easpx&DefaultItemOpen=1)

Am I all set? I didn't think any of these positions would require me to recuse myself from issues dealing with [redacted] specifically. I'm not [redacted] and have not been involved in any [redacted] of any kind. Let me know if you think otherwise.

From: [employee]
Sent: Monday, January 04, 2016 10:28 AM
To: [ethics official #3]
Subject: RE: Form 450

Just an update. My wife called [REDACTED] over the break and they are mailing her a new PIN so she can log onto the pension and 401k system. We're waiting for them to mail the PIN.

From: [ethics official #3]
Sent: Monday, December 14, 2015 12:15 PM
To: [employee]
Cc: [ethics official #3]
Subject: RE: Form 450

Please don't worry, [REDACTED] are not fun. I had one recently also. I'll wait for you to get this information,

Feel better.

[ethics official #3]

From: [employee]
Sent: Monday, December 14, 2015 12:01 PM
To: [ethics official #3]
Subject: RE: Form 450

I know I owe you updated info on my wife's portfolio. Been recovering from [REDACTED] so I've been out of it.

She hasn't made any buy/sells in the plan, it's passive. I need to get her to focus and log into the [REDACTED] site to get the current holdings; I don't have direct access. She has the 401k portfolio you saw, and we think she might be entitled to a very small defined benefit pension plan. I was, but I took a lump sum buyout shortly after I left [REDACTED]. All of my [REDACTED]-related holdings are gone.

From: [ethics official #3]
Sent: Monday, December 07, 2015 3:31 PM
To: [employee],
Cc: [ethics official #3]
Subject: RE: Form 450

[Employee]:

I wanted to check if you had a chance to locate a more recent statement of your wife's 401(k) plan. If it is difficult to locate and you think that the portfolio has remained essentially the same, I will just make a notation to this effect. Also, in

your form you noted that you haven't been able to access [REDACTED] deferred compensation website. Please let me know whether that's still the case; otherwise, I will need to know the nature of this plan (e.g. pension, retirement plan, or stock option) and what it includes.

Please let me know if you have any questions.

Thanks much for your help,

[ethics official #3]

From: [ethics official #3]
Sent: Monday, November 30, 2015 4:40 PM
To: [employee]
Cc: [ethics official #3]
Subject: RE: Form 450

[Employee]:

Thank you for the clarifications.

To confirm that the assets remain the same, it might be helpful if you could locate the most recent statement for your wife's 401(k) Plan. One of the reasons is that, for example, [company] no longer appears to offer its [name] [REDACTED] fund, which is listed in the current account statement dated April-June 2014.

In response to your question regarding non-diversified assets, ethics regulations distinguish between diversified and sector (non-diversified) mutual funds:

- A diversified mutual fund is one that does not have a stated policy of concentrating its investments in any industry, business, single country other than the U.S., or bonds of a single U.S. state. *Diversified assets are not reportable in Form 450.*
- A sector, or non-diversified, mutual fund is one that has a stated policy of concentrating its investments in any industry, business, single country other than the U.S., or the bonds of a single U.S. state. *Sector (non-diversified) funds must be reported in Form 450.*

Please note that, for next year's filing, it would be helpful if you could list any sector funds, or other relevant assets, as part of Form 450 itself, as opposed to providing account statements.

Also, if it is easier for you, I will input the name of your wife's 401(k) plan for you, just let me know how you would like me to proceed.

Thank you,

[ethics official #3]

From: [employee]
Sent: Monday, November 30, 2015 1:03 PM
To: [ethics official #3]
Subject: RE: Form 450

1. See attached.



2.

3.

4.

5. What do you mean by "non-diversified assets?" This is an older run of her portfolio but she hasn't changed it. I've asked her to track down a more current copy.

6. How do I do that? When I click open on the Feb 17 2015 Form 450 this is all I see:



https://emat.cftc.gov/Forms/FormViewer.aspx

View Form x

File Edit View Favorites Tools Help



Ethics Management and Tracking

[My Dashboard](#)

[Administration](#)

[Help](#) ▾

View Form



Close

From: [ethics official #3]
Sent: Monday, November 30, 2015 10:44 AM
To: [employee]
Cc: [ethics official #3]
Subject: Form 450

Dear :

I am reviewing your recent financial disclosure Form 450 and would like to clarify certain information:

1. In Part I, Assets, you listed [REDACTED]
2. In Part I, Assets, you [REDACTED]
3. Also in Part I, Assets, [REDACTED]
4. In Part III, [REDACTED]
5. Finally, could you confirm that all mutual funds underlying your wife's 401(k) plan include non-diversified assets.
6. In addition, please list your wife's 401(k) plan in Part IV, Agreements and Arrangements.

Please let me know if you have any questions and I will be happy to assist you.

Thanks much,

[ethics official #3]

Addendum – Other Matters

During our investigation, other issues arose which concerned us.

Ethics Records

We are concerned that our investigation found records of emails from an employee seeking ethics advice – but no record of any responses.

We have previously recommended that ethics officials make and keep records of their advice.¹ We believe this would help to eliminate confusion for CFTC employees. Given our findings of fact in this investigation, we renew this recommendation. We further recommend that ethics officials implement a system to track open/unanswered requests for ethics advice.

Lack of Role for Supervisors in Identifying and Preventing Conflicts of Interest

In our interviews with ethics officials, we learned that some employees at CFTC have investments in sectors under the jurisdiction and oversight of CFTC. This creates the potential for material conflicts of interest. We also learned that supervisors play no role in the financial disclosure process; and specifically, that supervisors have no role in proactively helping to identify and prevent potential conflicts of interests by their direct reports. Ethics officials told us that they cannot know what each employee in every Division is presently working on, nor what each employee may be assigned over the course of the year.

We agree.

Coordination with supervisors appears an essential – and missing – element of the review process. Intermediate approval of financial disclosure forms by supervisors would improve efficiency and help to prevent conflicts of interest. It should streamline the financial disclosure review process for all (including supervisors), as it will avoid the distraction of answering questions from ethics officials each year. In addition, if a supervisor knows in advance, from their intermediate review of financial disclosure forms, which employees should be recused from assignments based on employee holdings, supervisors could properly assign work at the outset.

We believe this missing element may lead to conflicts of interest, both deliberate and unintended, in appearance and in fact.

¹ See Investigation into an Allegation of Illegal Trading by a CFTC Employee of the Commodity Futures Trading Commission, dated February 11, 2015.