



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
www.cftc.gov

Office of the
General Counsel

MEMORANDUM

INTERNAL MEMO

TO: Chelsea Pizzola, Deputy Chief of Staff, Office of Chairman Tarbert

FROM: John Einstman, Deputy General Counsel and Alternate Designated Agency Ethics Official ("ADAEO")

DATE: July 24, 2019

SUBJECT: Limited Authorization for Ms. Pizzola, Deputy Chief of Staff, Office of Chairman Tarbert to Participate in Certain Particular Matters with Specific Parties Involving a Former Employer and Former Clients

I. INTRODUCTION

The purpose of this memorandum is to provide limited authorization pursuant to 5 C.F.R. § 2635.502(d), to Ms. Chelsea Pizzola, Deputy Chief of Staff, Office of Chairman Tarbert to participate in certain particular matters with specific parties involving a former employer and former clients.

II. FACTUAL BACKGROUND

Ms. Pizzola joined the CFTC as Deputy Chief of Staff on July 22, 2019. Prior to joining the CFTC, Ms. Pizzola was a second year associate with the law firm of Allen & Overy in the financial services regulatory group. While at Allen & Overy, she advised a broad range of financial institutions, including banks, swap dealers, futures commission merchants, broker-dealers, and investment advisers. Prior to joining Allen & Overy, she was a research fellow at the Committee on Capital Markets Regulation and she served as a law clerk in the Office of the former CFTC Chairman, Mr. J. Christopher Giancarlo.

(b)(5)

III. LEGAL STANDARD

The Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. § 2635.502(a), regarding personal and business relationships, provides that where an employee knows that a particular matter involving specific parties may involve a person with whom the employee has a covered relationship, involves a party who is, or represents, a party to such matter, or where the circumstances would cause a reasonable person with knowledge of the relevant facts to question her impartiality in the matter, the employee should not participate in the matter unless she has received authorization from the agency designee in accordance with § 2635.502(d). An employee has a covered relationship with, “[a]ny person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.” 5 C.F.R. § 2635.502(b)(iv) (emphasis added).

Because Ms. Pizzola served as an attorney to Allen & Overy up until July 19, 2019, she has a covered relationship with Allen & Overy until July 19, 2020.

(b)(5)

The ADAEO “may authorize an employee to participate in a particular matter based on a determination, made in light of all relevant circumstances, that the interest of the government in the employee’s participation outweighs the concern that a reasonable person may question the integrity of the agency’s programs and operations.” *See* 5 C.F.R. § 2635.502(d). Factors which may be taken into consideration include:

- 1) The nature of the relationship involved;
- 2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;

- 3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- 4) The sensitivity of the matter;
- 5) The difficulty of reassigning the matter to another employee; and
- 6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

IV. AUTHORIZATION

Based on the facts, I find that there is no actual financial conflict of interest under 18 U.S.C. § 208 regarding Ms. Pizzola's participation in any given particular matter affecting the above listed entities because she resigned from her position at Allen & Overy on July 19, 2019, and is no longer receiving any salary or legal fees for such services. As such, issuance of this limited authorization pursuant to 5 C.F.R. § 2635.502 will not cause her to violate 18 U.S.C. § 208.

Although Ms. Pizzola's participation in particular matters affecting the above listed entities would not violate 18 U.S.C. § 208(a), it could raise a question in the mind of a reasonable person about her impartiality because of her former position as attorney to Allen & Overy and her former clients. However, Ms. Pizzola may be authorized to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in Ms. Pizzola's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. See 5 C.F.R. § 2635.502(a)(2).

Specifically, this limited authorization allows Ms. Pizzola to serve as Chairman Tarbert's ethics screener for all particular matters with specific parties where one of the above-named entities is a party or represents a party.

This authorization also permits Ms. Pizzola to participate in particular matters with specific parties where Coinbase, Inc. and I.CH Group are either a party to the matter or represent a party to the matter. (b)(5)
(b)(5)

(b)(5) This authorization will also allow her participation in specific party matters affecting I.CH Group because she only provided a mere 1.5 hours of legal services to this entity.

However, except for Coinbase, Inc. and LCH Group, Ms. Pizzola is not authorized to participate in specific party matters with the entities listed in the table, beyond screening matters for Chairman Tarbert, where the entity is a party or represents a party to the matter.

In accordance with 5 C.F.R. § 2635.502(d), even though there is an appearance of lack of impartiality in Ms. Pizzola's participating in particular matters with specific parties involving all of the above-named entities while serving as Chairman Tarbert's ethics screener, and for participating in particular matters with specific parties where Coinbase, Inc. or LCH Group is, or represents, a party, I have determined the following:

- 1) The nature of the relationship involved is neutral. Ms. Pizzola is no longer receiving any salary from Allen & Overy, legal fees, or providing legal advice to the above-named entities.
- 2) The effect that resolution of the matter would have upon the financial interests of Ms. Pizzola is non-existent. However, the effect that resolution of a matter on any of the above-named entities may vary.
- 3) The nature and importance of Ms. Pizzola's role in the matter, including the extent to which she is called upon to exercise discretion in the matter, may vary, as set forth immediately below:
 - a. While serving as a screener, Ms. Pizzola's determinations will be objective and require little to no subjective determinations. She will review all documents for Chairman Tarbert against the list of entities in his screening arrangement. It is possible that in her screening of documents, she may find entities involved in the particular matter that are also her former employer or client. It should also be noted that Chairman Tarbert's conflict expires on October 10, 2019.
 - b. (b)(5)

particular matter. Ms. Pizzola's role as an advisor in this matter is critical. However, Ms. Pizzola is not the sole staff member considering these issues and will not be a final decision maker. Chairman Tarbert considers all matters, and along with the other Commissioners, is the final decision maker.

- c. CFTC Ethics is not aware of any pending issues concerning LCH Group. Further, Ms. Pizzola only provided 1.5 hours of legal services to that entity. Because she is not the sole

participant or a final decision maker in any particular matter under the Commission's consideration, there is minimal risk that a reasonable person with knowledge of the facts would question her impartiality.

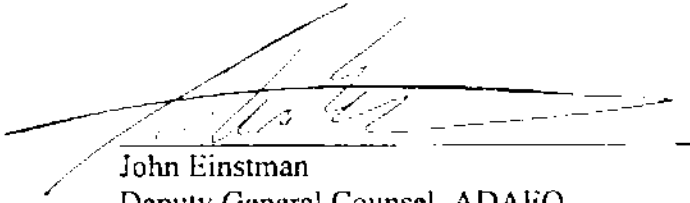
- 4) This limited authorization has considered the sensitivity of issues that may arise involving the above-named entities, including Coinbase, Inc. and LCH Group. However, the fact that Ms. Pizzola is serving as a screener - which is an objective activity - and the fact that she is not the sole staff member considering issues or the final decision-maker, adequately mitigate appearance concerns and protect the integrity of Commission's programs and operations.
- 5) Ms. Pizzola's unique perspectives are necessary in advising Chairman Tarbert on particular matters with specific parties where Coinbase, Inc. or LCH Group is involved. She was hired as Deputy Chief of Staff because of her expertise in financial services and her former experience serving as an intern to the former CFTC Chairman.
- 6) Ms. Pizzola does not act alone in any particular matters with specific parties, because Chairman Tarbert reviews those matters as well, along with other colleagues, and the other Commissioners and their staff. The Chairman, Commissioners, Chief of Staff, Secretariat, and others with a need-to-know, will be provided a copy of this authorization to ensure that all parties are aware of Ms. Pizzola's prior background with the above-named entities and the scope of this limited authorization.

Based upon the above, I have determined, in light of all relevant facts and circumstances, that the interest of the Commission in Ms. Pizzola's participation as the screener for Chairman Tarbert where any of the above-named entities is, or represents, a party in the particular matter, or where Coinbase, Inc. or LCH Group are, or represent, a party, outweighs the concern that a reasonable person may question the integrity of the Commission's programs and operations, and it is appropriate to issue Ms. Pizzola this written limited authorization pursuant to 5 C.F.R. § 2635.502(d).

Accordingly, I authorize Ms. Pizzola to participate in her official capacity as explained above.

Ms. Pizzola is advised that if there are any material changes, or if any other relevant facts concerning this matter come to her or the Commission's attention, she must consult with me, the DAEO, or a CFTC Deputy Ethics Counselor to determine the continuing validity of this authorization.

Should you have any questions regarding this matter, please contact me or a
CFTC Deputy Ethics Counselor.



John Einstman
Deputy General Counsel, ADAEO

07 29 19
Date



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**Office of
General Counsel**

MEMORANDUM

INTERNAL MEMO

TO: Joshua B. Sterling, Director, Division of Swap Dealer and Intermediary Oversight (“DSIO”)

FROM: John Einstman, Deputy General Counsel and Alternate Designated Agency Ethics Official (“ADAEO”)

DATE: August 12, 2019

SUBJECT: Limited Authorization for Mr. Sterling, Director of DSIO to Participate in Particular Matters with Specific Parties Involving a Former Employer and Former Clients

I. INTRODUCTION

The purpose of this memorandum is to provide you with a limited authorization pursuant to 5 C.F.R. § 2635.502(d), to participate in certain particular matters with specific parties involving a former employer and former clients.

II. FACTUAL BACKGROUND

You joined the CFTC as the Director of DSIO on August 7, 2019. Prior to joining the CFTC, you were a partner at Morgan, Lewis & Bockius LLP (“Morgan Lewis”). In that capacity, you advised asset managers globally, including the sponsors of exchange-traded commodity pools, registered investment companies, and other pooled investment vehicles. You provided legal advice to managers of alternative investment strategies in structuring their derivatives activities in compliance with the Dodd-Frank Act and related U.S. Securities and Exchange Commission (“SEC”) and CFTC requirements. Prior to joining Morgan Lewis, you were a partner at Bingham McCutchen LLP and an associate with Cleary Gottlieb Steen & Hamilton LLP. You bring over 17 years of global financial markets experience to the CFTC.

(b)(5)

III. LEGAL STANDARD

The Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. § 2635.502(a), regarding personal and business relationships, provides that where an employee knows that a particular matter involving specific parties may involve a person with whom the employee has a covered relationship, involves a party who is, or represents, a party to such matter, or where the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has received authorization from the agency designee in accordance with section 2635.502(d). An employee has a covered relationship with, “[a]ny person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.” 5 C.F.R. § 2635.502(b)(iv) (emphasis added).

Because you served as an attorney and partner at Morgan Lewis unit July 31, 2019, you have a covered relationship with Morgan Lewis until July 31, 2020.

(b)(5)

The ADAEO “may authorize an employee to participate in a particular matter based on a determination, made in light of all relevant circumstances, that the interest of the government in the employee’s participation outweighs the concern that a reasonable person may question the integrity of the agency’s programs and operations.” *See* 5 C.F.R. § 2635.502(d). Factors which may be taken into consideration include:

- 1) The nature of the relationship involved;
- 2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;

- 3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- 4) The sensitivity of the matter;
- 5) The difficulty of reassigning the matter to another employee; and
- 6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

IV. AUTHORIZATION

Based on the facts, I find that there is no actual financial conflict of interest under 18 U.S.C. § 208 regarding your participation in any given particular matter affecting the above listed entities because you resigned from your position at Morgan Lewis on July 31, 2019, and you are no longer receiving any salary, bonus, or legal fees for such services. Additionally, upon your resignation you liquidated your capital account balance with Morgan Lewis and no longer have any financial connection with the firm. Based on these facts, the issuance of this limited authorization pursuant to 5 C.F.R. § 2635.502 will not cause you to violate 18 U.S.C. § 208.

Although your participation in particular matters affecting the above listed entities would not violate 18 U.S.C. § 208(a), it could raise a question in the mind of a reasonable person about your impartiality toward Morgan Lewis and your former clients. However, you may be authorized to participate in a particular matter with specific parties based on a determination, made in light of all relevant circumstances, that the interest of the Government in your participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. *See* 5 C.F.R. § 2635.502(a)(2).

Specifically, this limited authorization allows you to participate in particular matters with specific parties where Morgan Lewis is representing an industry association. However, you will be recused until August 6, 2020, from participating in CFTC particular matters with specific parties where Morgan Lewis is the party, or where it is representing a party that is not an industry association.

This authorization also permits you to participate in particular matters with specific parties where a former client from the above list is, or represents, a party.

In accordance with 5 C.F.R. § 2635.502(d), even though there is an appearance of lack of impartiality in your participation in particular matters with specific parties involving all of the above-named entities, I have determined the following:

- 1) The nature of the relationship involved is neutral. You no longer receive any salary, bonus, or legal fees from Morgan Lewis or any former clients, nor do you continue to provide legal advice to the above-named entities.
- 2) The effect that resolution of the matter would have upon your financial interests is non-existent. However, the effect that resolution of a matter on any of the above-named entities may vary.
- 3) The nature and importance of your role in the matter, including the extent to which you are called upon to exercise discretion in the matter, may vary. As Director of DSIO, you will be called upon to exercise discretion in any given matter. You will also supervise staff providing their own expertise in any given matter. While you may have influence over specific party matters before DSIO involving the above-named entities, Chairman Tarbert considers all matters, and along with the other Commissioners, is the final decision maker.
- 4) This limited authorization has considered the sensitivity of issues that may arise involving the above-named entities. However, we have also considered the fact that you no longer receive salary or bonus from Morgan Lewis and that you have liquidated your capital account, and no longer have any financial ties to the firm. We have also considered the fact that you are no longer providing legal advice to your former clients and that you have no continuing financial ties. Further, we believe that oversight from the Chairman and Commissioners adequately mitigates appearance concerns and protects the integrity of the Commission's programs and operations.
- 5) Particular matters with specific parties involving the above-named entities before the DSIO cannot be reassigned to any other employee. Chairman Tarbert chose you to serve as the Director of DSIO because of your significant expertise assisting clients in structuring their complex derivatives activities while remaining compliant with the Dodd-Frank Act and CFTC requirements. While we acknowledge that your prior experience at Morgan Lewis with your former clients creates an appearance that you may lack impartiality when they are concerned, you were hired because of this expertise, and there is no one above you in the organization, other than the Chairman and Commissioners, who could supervise the direction and actions of the DSIO.

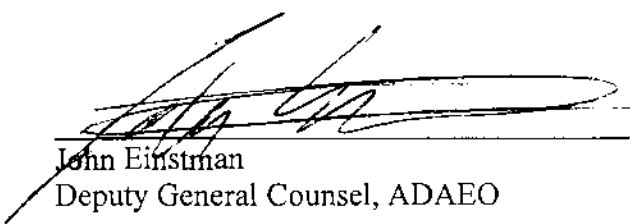
- 6) This authorization is unlimited as to your former clients. You may participate in any particular matter with specific parties affecting your former clients. However, in regard to Morgan Lewis, because you were a partner at that firm and developed relationships with your colleagues, we have determined that you should be recused from specific party matters where Morgan Lewis is, or is representing a party, unless they are representing an industry association. Industry associations will most likely be commenting on rulemakings where comments and CFTC responses will be publicly posted thus reducing impartiality concerns. The Chairman, Commissioners, Chief of Staff, Secretariat, and others with a need-to-know, will be provided a copy of this authorization to ensure that all parties are aware of your prior background with the above-named entities and the scope of this limited authorization.

Based upon the above, I have determined, in light of all relevant facts and circumstances, that the interest of the Commission in your participation in particular matters with specific parties where one of the above-named former clients is, or represents, a party, or where your former employer, Morgan Lewis is representing an industry association, outweighs the concern that a reasonable person may question the integrity of the Commission's programs and operations, and it is appropriate to issue you this written limited authorization pursuant to 5 C.F.R. § 2635.502(d).

Accordingly, I authorize you to participate in your official capacity as explained above.

Please be advised that if there are any material changes, or if any other relevant facts concerning this matter come to yours, or the Commission's attention, consult with me, the DAEO, or a CFTC Deputy Ethics Counselor to determine the continuing validity of this authorization.

Should you have any questions regarding this matter, please contact me or a CFTC Deputy Ethics Counselor.


John Einstman
Deputy General Counsel, ADAEO

08/12/19
Date



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Office of the
General Counsel

MEMORANDUM

INTERNAL MEMO

TO: Mr. Bruce Tuckman, Director, Office of Chief Economist

FROM: Daniel J. Davis, General Counsel and Designated Agency Ethics Official (DAEO)

DATE: October 25, 2017

SUBJECT: Authorization to the Participation of Mr. Bruce Tuckman, Director, Office of Chief Economist

I. INTRODUCTION

The purpose of this memorandum is to provide authorization pursuant to 5 C.F.R. § 2635.502(d), to Mr. Bruce Tuckman, Director, Office of Chief Economist (“OCE”), to participate in CFTC particular matters affecting the Chicago Mercantile Exchange (“CME”).

II. FACTUAL BACKGROUND

Mr. Bruce Tuckman joined the CFTC on September 5, 2017 as the Director, Office of Chief Economist. Prior to joining the CFTC, Mr. Tuckman was a Professor at the New York University School of Business. Mr. Tuckman is also uniquely qualified within the CFTC because he also has over 15 years of experience working in the financial sector. Mr. Tuckman also held some other part-time positions. One such position was as a member of the CME Risk Committee. Mr. Tuckman advised that this Committee met quarterly for about 3 hours for each meeting. CME formed the committee and hired experts to review CME internal control issues. Mr. Tuckman was not an employee of CME and he was hired as an independent member of the board to provide an objective opinion regarding CME internal controls. The time commitment Mr. Tuckman spent on this activity was minimal and he earned about ^{(b)(6)} for each committee meeting. Within the last year, Mr. Tuckman’s interaction with CME staff was minimal. Mr. Tuckman’s last CME Risk Committee meeting occurred in May 2017 and he received his last payment in June 2017. Mr. Tuckman resigned from this position in July 2017 and no longer has any financial connection to CME.

(b)(5)

III. LEGAL STANDARD

The Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. § 2635.502(a), regarding personal and business relationships, provide that where an employee knows that a particular matter involving specific parties may involve a person with whom the employee has a covered relationship involves a party who is or represents a party to such matter, or where the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has received authorization from the agency designee in accordance with Part 2635.502(d). An employee has a covered relationship with “[a]ny person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.” 5 C.F.R. § 2635.502(b)(iv).

As Mr. Tuckman’s service on CME’s Risk Committee was as an expert and as an independent member, and because he expended minimal time and received minimal fees for such services, his activity is tantamount to a consulting position. As such, CFTC Ethics has determined that Mr. Tuckman has a covered relationship with CME until July 2018.

The DAEO “may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the government in the employee’s participation outweighs the concern that a reasonable person may question the integrity of the agency’s programs and operations.” *See* 5 C.F.R. § 2635.502(d). Factors which may be taken into consideration include:

- (1) The nature of the relationship involved;
- (2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- (3) The nature and importance of the employee’s role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) The sensitivity of the matter;
- (5) The difficulty of reassigning the matter to another employee; and

(6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

IV. AUTHORIZATION

Based on the above facts, I find there is no actual financial conflict of interest under 18 U.S.C. § 208 regarding Mr. Tuckman's participation in a particular matter affecting CME because he resigned from his position on the CME Risk Committee in July 2017, and he no longer receives any fees from CME. As such, issuance of this authorization pursuant to 5 C.F.R. § 2635.502 will not cause him to violate 18 U.S.C. § 208.

Although Mr. Tuckman's participation in this particular matter would not violate 18 U.S.C. 208(a), it could raise a question in the mind of a reasonable person about his impartiality because of Mr. Tuckman's former position on the CME Risk Committee. Mr. Tuckman may be authorized to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in Mr. Tuckman's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. *See* 5 C.F.R. § 2635.502(a)(2). In accordance with 5 C.F.R. § 2635.502(d), even though there is an appearance of lack of impartiality in Mr. Tuckman's continued involvement, I have determined the following:

- 1) The nature of the relationship involved is neutral. Mr. Tuckman no longer has any loyalties to CME and in fact his participation while on the CME Risk Committee was to provide unbiased expert advice regarding CME internal controls as an independent board member. He resigned from his position in July 2017 and all fees owed by CME to Mr. Tuckman were paid in June 2017.
- 2) The effect that resolution of the matter would have upon the financial interests of Mr. Tuckman is non-existent. Mr. Tuckman no longer has any financial connection to CME.
- 3) The nature and importance this particular matter would involve exercising the normal amount of discretion for the Director, OCE. Additionally, Mr. Tuckman is one advisor on the issue of whether to grant a No Object Letter to CME. In addition to Mr. Tuckman, CFTC senior officials from DSIO and DCR will also be providing their independent opinions and recommendations.
- 4) The sensitivity of the matters is minimal. CME's request for a No Objection Letter will not likely have a significant impact on CME itself, although it may have greater impact on FCMs.
- 5) Mr. Tuckman was hired as Director, OCE because of his area of expertise and his unique perspectives are necessary in determining the actions required by the CFTC. Although other employees in OCE can analyze data, Mr. Tuckman's significant private sector financial experience is unique to him and not readily available in other OCE employees. His private sector experience in the financial industry will allow him to

apply a qualitative analysis to this issue in a way that other OCE employees cannot because they do not have that unique experience.

6) Mr. Tuckman will not be acting in this matter alone. Other CFTC officials from DSIO and DCR will be participating in this deliberation. Each participant will be provided a copy of this authorization to ensure that all parties are aware of Mr. Tuckman's prior background with CME.

Based on the above, I have determined, in light of all relevant facts and circumstances, that the interest of the Commission in Mr. Tuckman's participation in this matter regarding CME's request for a No Objection Letter outweighs the concern that a reasonable person may question the integrity of the Commission's programs and operations, and it is appropriate to issue Mr. Tuckman this written authorization, pursuant to 5 C.F.R. § 502(d).

Accordingly, I authorize Mr. Tuckman to participate in his official capacity in this CME matter regarding the No Objection Letter.

Mr. Tuckman is advised that if there are any material changes, or other relevant facts concerning this matter come to his or the Commission's attention, he must consult with me or CFTC Ethics to determine the continuing validity of this authorization.

Should you have any questions regarding this matter, please contact me or CFTC Ethics.



Daniel J. Davis
General Counsel, DAEO

October 25, 2017
Date



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**Office of the
General Counsel**

MEMORANDUM

INTERNAL MEMO

TO: Mr. Bruce Tuckman, Director, Office of Chief Economist

FROM: Daniel J. Davis, General Counsel and Designated Agency Ethics Official (DAEO)

DATE: November 22, 2017

SUBJECT: Authorization for Mr. Bruce Tuckman, Director, Office of Chief Economist to Participate in Particular Matters Affecting Chicago Mercantile Exchange ("CME")

I. INTRODUCTION

The purpose of this memorandum is to provide authorization pursuant to 5 C.F.R. § 2635.502(d), to Mr. Bruce Tuckman, Director, Office of Chief Economist ("OCE"), to participate in CFTC particular matters affecting the CME.

II. FACTUAL BACKGROUND

Mr. Bruce Tuckman joined the CFTC on September 5, 2017 as the Director, Office of Chief Economist. Prior to joining the CFTC, Mr. Tuckman was a Professor at the New York University School of Business. Mr. Tuckman is uniquely qualified within the CFTC because he has over 15 years of experience working in the financial sector. Mr. Tuckman also held some other part time positions. One such position was as a member of the CME Risk Committee. Mr. Tuckman advised that this committee met quarterly for about 3 hours for each meeting. CME formed the committee and hired experts to review CME internal control issues. Mr. Tuckman was not an employee of CME and he was hired to provide an objective opinion regarding CME internal controls. The time commitment Mr. Tuckman spent on this activity was minimal and he earned about ^{(b)(6)} for each committee meeting. Within the last year, Mr. Tuckman's interaction with CME staff was minimal. Mr. Tuckman's last CME Risk Committee meeting occurred in May 2017, and he received his last payment in June

2017. Mr. Tuckman resigned from this position in July 2017 and no longer has any financial connection to CME.

In an authorization dated October 25, 2017, I authorized Mr. Tuckman to participate in a particular matter to consider whether to grant CME a No Objection Letter, which would allow the customers of Futures Commission Merchants (“FCMs”) to deposit required margin directly with CME rather than with the FCM. Now, just a few weeks later, Mr. Tuckman is being asked to consult on another matter that may affect CME. Specifically, Mr. Tuckman, along with the Chairman, other division heads, and staff are contemplating clearinghouse self-certification of Bitcoin futures. As the team contemplated the Bitcoin futures issue, the conversation naturally led to a discussion about the CME’s self-certification to list Bitcoin contracts. As Mr. Tuckman has been becoming more familiar with his duties as the Director of OCE, it is becoming more apparent that topics in which he is consulting may frequently evolve into discussions regarding CME in some capacity. Rather than recuse himself from those points in the discussion affecting CME, an authorization would better serve the interests of the CFTC.

Mr. Tuckman, as the Chief Economist, is in an advisory role, and is not a final decision maker. The ultimate decisions relating to CME in any given matter will rest with some other office and ultimately the Commissioners and the Chairman. Additionally, Mr. Tuckman is not the sole advisor. He typically participates in deliberating issues with other CFTC officials from various other offices.

III. LEGAL STANDARD

The Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. § 2635.502(a), regarding personal and business relationships, provides that where an employee knows that a particular matter involving specific parties may involve a person with whom the employee has a covered relationship, involves a party who is or represents a party to such matter, or where the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has received authorization from the agency designee in accordance with Part 2635.502(d). An employee has a covered relationship with, “[a]ny person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.” 5 C.F.R. § 2635.502(b)(iv).

As Mr. Tuckman’s service on CME’s Risk Committee was as an expert, and because he expended minimal time and received minimal fees for such services, his activity is tantamount to a consulting position. As such, CFTC Ethics has determined that Mr. Tuckman has a covered relationship with CME until July 2018.

The DAEO “may authorize the employee to participate in a particular matter based on a determination, made in light of all relevant circumstances, that the interest of the government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations.” 5 C.F.R. § 2635.502(d). Factors which may be taken into consideration include:

- (1) The nature of the relationship involved;
- (2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- (3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) The sensitivity of the matter;
- (5) The difficulty of reassigning the matter to another employee; and
- (6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

IV. AUTHORIZATION

Based on the facts, I find there is no actual financial conflict of interest under 18 U.S.C. § 208 regarding Mr. Tuckman's participation in any given particular matter affecting CME because he resigned from his position on the CME Risk Committee in July 2017, and he no longer receives any fees. As such, issuance of a broader authorization pursuant to 5 C.F.R. § 2635.502, will not cause him to violate 18 U.S.C. § 208.

Although Mr. Tuckman's participation in particular matters affecting CME would not violate 18 U.S.C. 208(a), it could raise a question in the mind of a reasonable person about his impartiality because of Mr. Tuckman's former position on the CME Risk Committee. However, Mr. Tuckman may be authorized to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in Mr. Tuckman's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. *See* 5 C.F.R. § 2635.502(a)(2). In accordance with 5 C.F.R. § 2635.502(d), even though there is an appearance of lack of impartiality in Mr. Tuckman's involvement in particular matters affecting CME, I have determined the following:

- 1) The nature of the relationship involved is neutral. Mr. Tuckman no longer has any loyalties to CME and in fact his participation while on the CME Risk Committee was to provide unbiased expert advice regarding CME internal controls. He resigned from his position in

July 2017 and all fees owed by CME to Mr. Tuckman were paid in June 2017.

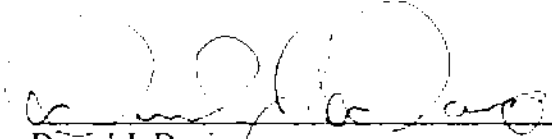
- 2) The effect that resolution of the matter would have upon the financial interests of Mr. Tuckman is non-existent. Mr. Tuckman no longer has any financial connection to CME.
- 3) The nature and importance of typical particular matters affecting CME involve exercising the normal amount of discretion for the Director, OCE. Additionally, Mr. Tuckman is one advisor of many to the Chairman on particular matters affecting CME. In addition to Mr. Tuckman, CFTC senior officials from various offices also provide their independent opinions and recommendations.
- 4) Typically the sensitivity of particular matters affecting CME is within the norm of business relations between the CFTC and CME.
- 5) Mr. Tuckman was hired as Director, OCE because of his area of expertise and his unique perspectives are necessary in determining the actions required by the CFTC. Although other employees in OCE can analyze data, Mr. Tuckman's significant private sector financial experience is unique to him and not readily available in other OCE employees. His private sector experience in the financial industry will allow him to apply a qualitative analysis to various issues in a way that other OCE employees cannot because they do not have that unique experience.
- 6) Mr. Tuckman does not act in particular matters affecting CME alone. Other CFTC officials from various offices participate in deliberations, and the CFTC Chairman will make the final decision. The Chairman, Commissioners, Chief of Staff, Office Directors, and others with a need to know, will be provided a copy of this authorization to ensure that all parties are aware of Mr. Tuckman's prior background with CME.

Based on the above, I have determined, in light of all relevant facts and circumstances, that the interest of the Commission in Mr. Tuckman's participation in particular matters affecting CME outweighs the concern that a reasonable person may question the integrity of the Commission's programs and operations, and it is appropriate to issue Mr. Tuckman this written authorization, pursuant to 5 C.F.R. § 502(d).

Accordingly, I authorize Mr. Tuckman to participate in his official capacity in particular matters affecting CME.

Mr. Tuckman is advised that if a particular issue arises with heightened sensitivities, if there are any material changes, or if any other relevant facts concerning this matter come to his or the Commission's attention, he must consult with me or CFTC Ethics to determine the continuing validity of this authorization.

Should you have any questions regarding this matter, please contact me or CFTC Ethics.



Daniel J. Davis
General Counsel, DAEO

11/22/17
Date



U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of
General Counsel

MEMORANDUM

INTERNAL MEMO

TO: Dorothy D. DeWitt, Director, Division of Market Oversight (“DMO”)

FROM: John Einstman, Deputy General Counsel and Alternate Designated Agency Ethics Official (“ADAEO”)

DATE: December 23, 2019

SUBJECT: Authorization for Dorothy D. DeWitt, Director of DMO to Participate in Particular Matters Affecting Davis Polk & Wardwell (“Davis Polk”)

I. INTRODUCTION

The purpose of this memorandum is to provide you with authorization pursuant to 5 C.F.R. § 2635.502(d), to participate in particular matters¹ with specific parties when your spouse’s employer, Davis Polk, is or is representing a party.

II. FACTUAL BACKGROUND

You entered on duty as the Director of DMO on September 30, 2019. You were selected for this critical role at the Commodity Futures Trading Commission (“CFTC”) because you have more than 20 years of private sector experience in the financial services and legal fields. You have a strong investment, risk, legal, and compliance background and familiarity with distributed ledger technology, including crypto assets, which are considered to be invaluable as the CFTC looks to develop a holistic approach to regulating this new commodity. You also have extensive expertise in derivatives and swaps.

¹ A “particular matter” includes matters involving specific parties, such as enforcement actions, litigation, investigations or examinations, rulemakings that affect specific parties in an industry, or other matters where the United States is on one side of the matter and a third party is on the other side. It also includes “particular matters of general applicability,” such as certain narrowly focused rulemakings, where the particular matter is focused on the interests of a discrete and identifiable class of persons, but does not involve specific parties.

Immediately prior to joining the CFTC, you were employed at Coinbase, a cryptocurrency company, where you served as Vice President and General Counsel for Business Lines and Markets. You were also an attorney at Davis Polk in New York from December 2016 through November 2018. You were only at Davis Polk for just under two years, and you have not been employed with them for over a year.

Your spouse, ^{(b)(6)} is currently a law partner at Davis Polk. However, he is a national security attorney focused on economic sanctions and The Committee on Foreign Investment in the United States ("CFIUS"), which is an inter-agency committee of the United States Government that reviews the national security implications of foreign investments in U.S. companies or operations. He advises U.S. and international clients on trade, security and regulatory issues including export controls, and represents clients before the Departments of State, Treasury, Commerce, Defense, and Homeland Security, and the Office of the U.S. Trade Representative. He personally does not represent clients before the CFTC. However, other attorneys at Davis Polk frequently represent clients or trade associations before the CFTC.

Because of your position with the CFTC, your spouse arranged with the management committee at Davis Polk to ensure that he would not receive any remuneration, including pay, bonus, partnership share, etc., from any representation by Davis Polk before the CFTC, at any time during your employment with the CFTC.

(b)(5)

(b)(5)

(b)(5)

III. LEGAL STANDARD

The Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. § 2635.502(a), regarding personal and business relationships, provides that where an employee knows that a particular matter involving specific parties may involve a person with whom the employee has a covered relationship, involves a party who is, or represents, a party to such matter, or where the circumstances would cause a reasonable person with knowledge of the relevant facts to question her impartiality in the matter, the employee should not participate in the matter unless she has received authorization from the agency designee in accordance with 5 C.F.R. § 2635.502(d). An employee has a covered relationship with, “[a] person for whom the employee’s spouse, parent or dependent child is, to the employee’s knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee.” 5 C.F.R. § 2635.502(b)(iii). Because your spouse serves as an attorney and partner at Davis Polk, you have a covered relationship with that law firm.

The ADAEO “may authorize an employee to participate in a particular matter based on a determination, made in light of all relevant circumstances, that the interest of the government in the employee’s participation outweighs the concern that a reasonable person may question the integrity of the agency’s programs and operations.” See 5 C.F.R. § 2635.502(d). Factors which may be taken into consideration include:

- 1) The nature of the relationship involved;
- 2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- 3) The nature and importance of the employee’s role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- 4) The sensitivity of the matter;
- 5) The difficulty of reassigning the matter to another employee; and
- 6) Adjustments that may be made in the employee’s duties that would reduce or eliminate the likelihood that a reasonable person would question the employee’s impartiality.

IV. AUTHORIZATION

Based on the facts, I find that there is no actual financial conflict of interest under 18 U.S.C. § 208 regarding your participation in any given particular matter affecting Davis Polk. You have not been an employee at Davis Polk for over a year, and you no longer receive any salary, bonus, or legal fees for such services. You have a 401K retirement plan through Davis Polk, but the firm no longer makes contributions. Additionally, your spouse arranged with the management committee at the firm that he would receive no remuneration, including pay, bonus, partnership share, etc., from any representation by Davis Polk before the CFTC. Nor does your spouse personally represent parties before the CFTC. Based on these facts, the issuance of this authorization pursuant to 5 C.F.R. § 2635.502 will not cause you to violate 18 U.S.C. § 208.

Although your participation in particular matters affecting Davis Polk would not violate 18 U.S.C. § 208(a), it could raise a question in the mind of a reasonable person about your impartiality toward Davis Polk because your spouse is a partner with the firm. Despite this appearance concern, you may be authorized to participate in particular matters with specific parties based on a determination, made in light of all relevant circumstances, that the interest of the Government in your participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. See 5 C.F.R. § 2635.502(a)(2).

Specifically, this authorization allows you to participate in particular matters with specific parties where Davis Polk is itself a party, or is representing a person or entity, before the CFTC.

In accordance with 5 C.F.R. § 2635.502(d), even though there may be an appearance of lack of impartiality in your participation in particular matters with specific parties involving Davis Polk, I have determined the following:

- 1) The nature of the relationship involved is neutral. You personally have not worked for Davis Polk as an attorney for over a year. While your spouse is still employed as a partner at Davis Polk, he does not engage in any representational activities before the CFTC or advise clients regarding matters regulated by the CFTC.
- 2) The effect that resolution of the matter would have upon your financial interests is non-existent. You personally no longer receive any salary, bonus, or legal fees from Davis Polk. Additionally, your spouse will not receive any remuneration including pay, bonus, partnership share, etc., from any representation by Davis Polk before the CFTC.

- 3) The nature and importance of your role in the matter, including the extent to which you are called upon to exercise discretion in the matter, may vary. As Director of DMO, you will be called upon to exercise discretion in any given matter. You will also supervise staff providing their own expertise in any given matter. While you may have influence over specific party matters before DMO involving Davis Polk and its clients, Chairman Tarbert considers all matters, and along with the other Commissioners, is the final decision-maker.
- 4) This authorization has considered the sensitivity of issues that may arise involving Davis Polk. Davis Polk will likely not ever be a party, but rather a representative of a party, which reduces appearance concerns. We have also considered the fact that you no longer receive salary or bonus from Davis Polk, and that your spouse no longer has any remuneration tied to the firm's representational activities before the CFTC. Further, we believe that oversight from the Chairman and Commissioners adequately mitigates appearance concerns and protects the integrity of the Commission's programs and operations.
- 5) Particular matters with specific parties involving Davis Polk before the DMO cannot be reassigned to any other employee. Chairman Tarbert chose you to serve as the Director of DMO because of your significant expertise in derivatives and swaps, as well as a strong investment, risk, legal, and compliance background and familiarity with distributed ledger technology, including crypto assets. While we acknowledge that your spouse's partnership at Davis Polk creates the possibility of an appearance that you may lack impartiality when it is or is representing a party, you were hired because of this expertise, and there is no one above you in the organization, other than the Chairman and Commissioners, who could supervise the direction and actions of the DMO.
- 6) Should a circumstance arise where your spouse will be representing a client before the CFTC, you should recuse yourself and seek further ethics advice. You are not currently authorized to participate in particular matters with specific parties where your spouse is personally representing a party before the CFTC. The Chairman, Commissioners, Chief of Staff, Secretariat, and others with a need-to-know, will be provided a copy of this authorization to ensure that all parties are aware of these circumstances.

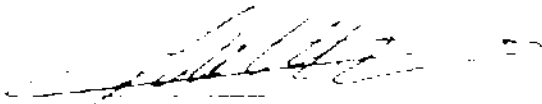
Based upon the above, I have determined, in light of all relevant facts and circumstances, that the interest of the Commission in your participation in particular matters with specific parties where Davis Polk is or is representing a party outweighs the concern that a reasonable person may question the integrity of the Commission's

programs and operations, and it is appropriate to issue you this written authorization pursuant to 5 C.F.R. § 2635.502(d).

Accordingly, I authorize you to participate in your official capacity as explained above.

Please be advised that if there are any material changes, or if any other relevant facts concerning this matter come to yours, or the Commission's attention, consult with me, the DAEO, or a CFTC Deputy Ethics Counselor to determine the continuing validity of this authorization.

Should you have any questions regarding this matter, please contact me or a CFTC Deputy Ethics Counselor.



John Einstman
Deputy General Counsel, ADAEO

12.25.19
Date



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Office of the
General Counsel

MEMORANDUM

INTERNAL MEMO

TO: Ms. Elizabeth Mastrogiacomo, Senior Counsel, Office of
Commissioner Stump

FROM: John Einstman, Deputy General Counsel and Alternate Designated
Agency Ethics Official ("DAEO")

DATE: November 28, 2018

SUBJECT: Limited Authorization for Ms. Elizabeth Mastrogiacomo, Senior
Counsel, Office of Commissioner Stump to Participate in Certain
Particular Matters with Specific Parties Involving the Chicago
Mercantile Exchange ("CME")

I. INTRODUCTION

The purpose of this memorandum is to provide limited authorization pursuant to 5 C.F.R. § 2635.502(d), to Ms. Elizabeth Mastrogiacomo, Senior Counsel, Office of Commissioner Stump to participate in certain particular matters with specific parties involving the Chicago Mercantile Exchange Group Inc. ("CME").

II. FACTUAL BACKGROUND

Ms. Elizabeth Mastrogiacomo joined the CFTC, as Senior Counsel to Commissioner Stump on November 13, 2018. Prior to joining the CFTC, Ms. Mastrogiacomo was an associate with the law firm, Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates ("Skadden"). While at Skadden, Ms. Mastrogiacomo's primary client within the last year was CME. Over the years, in her capacity as counsel to CME, she assisted CME in a variety of issues including drafting CME's comments to the CFTC's proposal to regulate automated trading ("Regulation AT"), and has developed significant industry expertise. Specifically, Ms. Mastrogiacomo has developed expertise in regulatory, legislative, and transactional issues related to derivatives. She has also developed expertise in the regulatory requirements for

exchanges, derivatives clearing organizations, banks, asset managers, pension funds and end users of derivatives in a wide variety of regulatory and legislative matters that emerge out of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”).

(b)(5)

(b)(5)

¹ A particular matter includes matters involving specific parties, such as enforcement actions, litigation, investigations or examinations, rulemakings that affect specific parties in an industry, or other matters where the United States is on one side of the matter, and a third party is on the other side. It also includes particular matters of general applicability, such as certain narrowly focused rulemakings, where the particular matter is focused on the interests of a discrete and identifiable class of persons, but does not involve specific parties.

(b)(5)

III. LEGAL STANDARD

The Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. § 2635.502(a), regarding personal and business relationships, provides that where an employee knows that a particular matter involving specific parties may involve a person with whom the employee has a covered relationship, involves a party who is or represents a party to such matter, or where the circumstances would cause a reasonable person with knowledge of the relevant facts to question her impartiality in the matter, the employee should not participate in the matter unless she has received authorization from the agency designee in accordance with § 2635.502(d). An employee has a covered relationship with, “[a]ny person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.”

5 C.F.R. 2635.502(b)(iv).

As Ms. Mastrogiacom served as an attorney to CME up until November 1, 2018, she has a covered relationship with CME until November 1, 2019.

The ADAEO “may authorize the employee to participate in a particular matter based on a determination, made in light of all relevant circumstances, that the interest of the government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations.”

See 5 C.F.R. § 2635.502(d). Factors which may be taken into consideration include:

- (1) The nature of the relationship involved;
- (2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- (3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) The sensitivity of the matter;
- (5) The difficulty of reassigning the matter to another employee; and
- (6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

IV. AUTHORIZATION

Based on the facts, I find there is no actual financial conflict of interest under 18 U.S.C. § 208 regarding Ms. Mastrogiacom's participation in any given particular matter affecting CME because she resigned from her position at Skadden on November 1, 2018 and is no longer serving as an attorney to CME or receiving an legal fees for such services. As such, issuance of this limited authorization pursuant to 5 C.F.R. § 2635.502, will not cause her to violate 18 U.S.C. § 208.

Although Ms. Mastrogiacom's participation in particular matters affecting CME would not violate 18 U.S.C. § 208(a), it could raise a question in the mind of a reasonable person about her impartiality because of her former position as attorney to CME. However, Ms. Mastrogiacom may be authorized to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in Ms. Mastrogiacom's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. See 5 C.F.R. § 2635.502(a)(2).

Specifically, this limited authorization will allow Ms. Mastrogiacom to participate in DOE particular matters with specific parties where CME is merely cooperating with, or serving as a witness for, the CFTC in enforcement actions. Ms. Mastrogiacom

remains disqualified from participating in particular matters with specific parties where CME is the subject of an investigation, a defendant/respondent in litigation, the subject of an audit or exam, or other specific party matters where CME is the subject, such as no actions letters specifically requested by CME.

In accordance with 5 C.F.R. § 2635.502(d), even though there is an appearance of lack of impartiality in Ms. Mastrogiacomo's participating in particular matters with specific parties involving CME, I have determined the following:

- 1) The nature of the relationship involved is neutral. Ms. Mastrogiacomo is no longer receiving any legal fees or providing legal advice to CME.
- 2) The effect that resolution of the matter would have upon the financial interests of Ms. Mastrogiacomo is non-existent. Ms. Mastrogiacomo no longer has any financial connection to CME.
- 3) The nature and importance of CME where it is cooperating with the DOE or serving as a witness is not inherently adversarial thus mitigating appearance concerns given that Ms. Mastrogiacomo served as CME's attorney within the last year. Additionally, Ms. Mastrogiacomo is not a final decision maker. Commissioner Stump considers all matters, and with the Chairman and the other Commissioners, is the final decision maker.
- 4) This limited authorization has contemplated the sensitivity of issues at the CFTC that impact CME, and has determined that limiting Ms. Mastrogiacomo's participation in DOE specific party matters where CME is merely cooperating or serving as a witness to the CFTC adequately mitigates appearance concerns and protects the integrity of CFTC's programs and operations.
- 5) Ms. Mastrogiacomo was hired as Senior Counsel to Commissioner Stump because of her area of expertise in Dodd-Frank and the regulatory, legislative, and transactional issues related to derivatives. Her unique perspectives are necessary in advising Commissioner Stump.
- 6) Ms. Mastrogiacomo does not act alone in DOE particular matters with specific parties in which CME is cooperating or serving as a witness, as Commissioner Stump reviews those matters as well, along with the Chairman, other Commissioners and their staff. The Chairman, Commissioners, Chief of Staff, Office Directors, and others with a need to know, will be provided a copy of this authorization to ensure

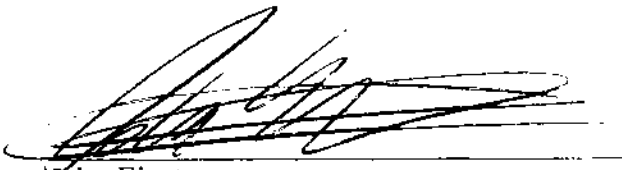
that all parties are aware of Ms. Mastrogiacomo's prior background with CME and the scope of this limited authorization.

Based on the above, I have determined, in light of all relevant facts and circumstances, that the interest of the Commission in Ms. Mastrogiacomo's participation in DOE particular matters with specific parties where CME is cooperating with, or serving as a witness for the CFTC, outweighs the concern that a reasonable person may question the integrity of the Commission's programs and operations, and it is appropriate to issue Ms. Mastrogiacomo this written limited authorization, pursuant to 5 C.F.R. § 2635.502(d).

Accordingly, I authorize Ms. Mastrogiacomo to participate in her official capacity in DOE particular matters with specific parties where CME is cooperating with, or serving as a witness for, the CFTC.

Ms. Mastrogiacomo is advised that if a DOE particular matter with specific parties where CME is merely cooperating with, or serving as a witness for the CFTC arises with heightened sensitivities, if there are any material changes, or if any other relevant facts concerning this matter come to her or the Commission's attention, she must consult with me or a CFTC Deputy Ethics Counselor to determine the continuing validity of this authorization.

Should you have any questions regarding this matter, please contact me or a CFTC Deputy Ethics Counselor.


John Einstman
Deputy General Counsel, ADAEO

11/28/18
Date



U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of General Counsel

TO: David Newman, Trial Attorney, Division of Enforcement

CC: Manal Sultan, Deputy Director, Division of Enforcement

THROUGH: John Dolan, Counsel, Office of General Counsel

FROM: Daniel J. Davis,
General Counsel and Designated Agency Ethics Official (DAEO)

DATE: January 31, 2018

SUBJECT: Authorization of David Newman's participation in the investigation of a matter involving Katten Muchin Rosenman LLP that relates to (b)(7)(A)

I. INTRODUCTION

The purpose of this memorandum is to provide authorization pursuant to 5 C.F.R. § 2635.502(d), to David Newman, of the Division of Enforcement ("DOE"), to participate in the investigation of a matter that relates to (b)(7)(A)

(b)(7)(A) This memorandum supplements a previous memorandum from a former General Counsel and DAEO, dated August 18, 2016 (attached), which authorized Mr. Newman to participate in another matter involving similar ethics issues.

II. FACTUAL BACKGROUND

Mr. Newman has been a DOE trial attorney in CFTC's New York office since September 2014. In August 2016, the DAEO authorized Mr. Newman, under Part 2635.502(d), to participate in a DOE investigation where Katten Muchin Rosenman LLP ("Katten") represented a potential respondent, (b)(7)(A) notwithstanding that Mr. Newman's father-in-law is a partner at Katten in an unrelated practice area. Katten now represents a potential respondent in another DOE matter assigned to Mr. Newman, in which DOE is investigating alleged (b)(7)(A)

(b)(7)(A)

Mr. Newman states that his relationship and his wife's relationship with his father-in-law have not changed since the August 2016 authorization, nor has his father-in-law's position at Katten changed.

III. LEGAL STANDARD

As noted in the August 2016 memorandum, Mr. Newman does not have a covered relationship with his father-in-law within the meaning of 5 C.F.R. § 2635.502(b)(1). I have substantial doubt that, given the above facts and the facts in the August 2016 memorandum, a reasonable person with knowledge of the relevant facts would likely question Mr. Newman's involvement in the^{(b)(7)(A)} investigation on account of his father-in-law's partnership in the law firm representing^{(b)(7)(A)} see 5 C.F.R. § 2635.502(c)(2). Even under circumstances where an employee's impartiality would likely be questioned, however, the CFTC's DAEO "may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations," *id.* § 2635.502(d). Factors which may be taken into consideration include:

- (1) The nature of the relationship involved;
- (2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- (3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) The sensitivity of the matter;
- (5) The difficulty of reassigning the matter to another employee; and
- (6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Id. § 2635.502(d). Because I determine that Mr. Newman meets these factors, I deem it unnecessary to determine whether Mr. Newman's participation would likely be questioned by a reasonable person.

IV. AUTHORIZATION

Based on the facts provided above, I find there is no actual financial conflict of interest under 18 U.S.C. § 208 regarding the participation of Mr. Newman in the^{(b)(7)(A)} investigation because it is purely speculative as to whether Mr. Newman's spouse would receive a financial benefit in the future from her father as a result of Katten representing a party to the DOE investigation, and the possibility of an effect on Mr. Newman's financial interests is too tenuous. Therefore, if Mr. Newman participates in this investigation he would not be participating personally and substantially in a 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. See 18 U.S.C. § 208(a). As such,

issuance of this authorization pursuant to 5 C.F.R. § 2635.502 will not cause him to violate 18 U.S.C. § 208.

After reviewing the August 2016 authorization and carefully considering the factors for authorizing participation in a matter set forth in 5 C.F.R. § 2635.502(d), I have determined the following:

(1) The nature of the relationship is a family relationship through marriage. Mr. Newman's father-in-law is not a member of his household. Mr. Newman states that (b)(6)

(2) The effect that the resolution of the matter would have upon the financial interests of Mr. Newman is speculative and tenuous. It is not reasonably foreseeable that Mr. Newman's spouse will ever receive any financial benefit through gift, inheritance, or otherwise, from her father as a result of the client fees charged in this matter. Katten is a large law firm, so the revenue generated from this matter would most likely have a small impact on the firm's profits and an even smaller impact on Mr. Newman's father-in-law's compensation. Moreover, a favorable or unfavorable resolution for Katten's client would not have any effect on the firm's financial interests because payment is unlikely to be contingent on the outcome of the investigation.

(3) Mr. Newman's role in the matter is limited to his exercise of the typical amount of discretion by a trial attorney responsible for investigating a complex matter with a large team—which in this case includes three chief trial attorneys, three trial attorneys including Mr. Newman, and one investigator. In general, Mr. Newman does not make important decisions in this matter without the input and approval of supervisors and colleagues, and rarely if ever makes any decisions whatsoever without the input of at least one other person. With regard to (b)(7)(A) in particular, a trial attorney other than Mr. Newman serves as the team's primary liaison with Katten and has primary responsibility for the (b)(7)(A) of the investigation, so the amount of discretion if Mr. Newman is called upon to exercise with regard to Katten's client is minimal.

(b)(7)(A)

(5) According to Manal Sultan, the DOE Deputy Director that oversees all of the attorneys assigned to the (b)(7)(A) investigation, it would be unusually difficult to reassign the matter to another employee in DOE, because other DOE staff are currently assigned to other major matters that are approaching critical phases and could not be removed from those cases without significantly impacting the Commission's interests,

and because Mr. Newman has worked on the ^{(b)(7)(A)} investigation since its inception in 2016 and it would be very difficult to find another trial attorney to assume his duties.

(6) Due to the multiple levels of supervision, review, and approval to which Mr. Newman's limited discretion and work on this investigation would be subject before any formal enforcement action would be taken, it is unnecessary to make adjustments to Mr. Newman's duties in order to avoid the possibility that a reasonable person would question Mr. Newman's impartiality.

Based on the above, and in light of the prior August 2016 authorization and all current relevant facts and circumstances, I have determined that it is appropriate to issue Mr. Newman this written authorization, pursuant to 5 C.F.R. § 502(d), because the interest of the Commission in Mr. Newman's participation in ^{(b)(7)(A)} outweighs any potential concern that a reasonable person may question the integrity of the Commission's programs and operations.

Accordingly, I authorize Mr. Newman to continue to participate in his official capacity in the investigation of ^{(b)(7)(A)}

Please be advised that if there are any material changes, or if other relevant facts concerning this matter come to your or DOE's attention, you must consult with CFTC Ethics to determine the continuing validity of this authorization. Further, future recusals or waivers regarding your participation in particular matters involving Katten must be considered on a case-by-case basis as to whether it would create "the adverse appearances prohibited by the standards of conduct." See OGE Informal Advisory Letter 83 x 18.

Should you have any questions regarding this matter, please contact CFTC Ethics.



Daniel J. Davis

41-31-2018

January 31, 2018