

House Ethics Committee Issues New “Outside Position Regulations”

January 2020

On December 11, 2019, the Committee on Ethics of the U.S. House of Representatives issued “Outside Position Regulations.” These new regulations were mandated by H. Res. 6, passed January 9, 2019 and which – as part of the rules package for the current Congress – required that “[n]ot later than December 31, 2019, the Committee on Ethics shall develop regulations addressing other types of prohibited service or positions that could lead to conflicts of interest.” Two sections of the new regulations restate restrictions on outside employment and positions long in effect pursuant to statute and House rule; these include, for example, a series of restrictions on the practice of professions that involve fiduciary relationships. Two other sections of the regulations, however, state new restrictions (summarized below) and became effective January 1, 2020.

Section VII of the new House “Outside Position Regulations” provides that

A Member, Delegate, Resident Commissioner, officer, or employee of the House may not serve as an officer or director of any:

1. Public company; or
2. Company traded on a foreign market.

The restriction on service as an officer or director of a public company proscribes all such service, whether compensated or uncompensated. This restriction was mandated by H. Res. 6, which, effective January 1, 2020, incorporated this restriction as new clause 19 of House Rule XXIII, the House Code of Official Conduct. The prohibition on service as an officer or director of any company traded on a foreign market clearly reflects, in part, concerns crystallized by

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now former Congressman Chris Collins' service on the board of an Australian biotech company. (Mr. Collins was sentenced on January 17, 2020 to 26 months in prison on charges of conspiracy to commit securities fraud in connection with the securities of the Australian company.)

Section IX of the new Regulations provides that

A Member, Delegate, or Resident Commissioner may not serve as an officer or director of any

1. Entity that receives funding from a federal agency, jurisdiction of which falls within a committee on which the Member, Delegate, or Resident Commissioner sits, or
2. Entity that is regulated by a federal agency, jurisdiction of which falls within a committee on which the Member, Delegate, or Resident Commissioner sits.

The Section IX restrictions include a number of exceptions to permit, for example, service as an officer or director: with a charitable organization; in a family business or family trust; with an entity with which the Member, Delegate, or Resident Commissioner "had served continuously as an officer or director for at least two years prior to their initial election to the House of Representatives, and [where] the amount of time required to perform such service is minimal"; and in a "position . . . conferred solely by virtue of an ownership interest in the entity, and [that] involves no active participation in the entity's operations." The Section IX restrictions also allow for waivers or suspensions of the restrictions under limited circumstances and for a period of no more than 120 days.

In issuing its "Outside Position Regulations," the Committee on Ethics followed its recent practice of including a number of useful, hypothetical examples to illustrate how the regulations will be applied in specific, commonly arising scenarios.