SOCO ADVISORY

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1. Reporting of Asset Management Accounts or Managed Accounts. In accordance with OGE financial disclosure guides, a managed account is not an excepted investment fund (EIF), even if the filer has selected a pre-determined portfolio of investments and has no control over the investments in that portfolio. This is because the account and the pre-determined portfolios are not "investment funds." The filer has not "pooled" their money with other investors, and instead, the filer owns each of the assets in the portfolio individually. Several years ago, SOCO was able to support ethics counselor findings that certain entities calling their investment vehicles "portfolios" actually were setting up pooled investment vehicles that would qualify as Excepted Investment Funds (EIFs). This was based upon information provided by the investment managers indicating that all assets within these vehicles were pooled and held by a third party entity, such that individual investors only had an ownership interest in their proportionate shares of the pooled investment vehicle or "portfolio," and not in the underlying funds/assets within that vehicle.

   During a recent review of a filer's statement for one of these investment vehicles, SOCO noted that the filer clearly owned the assets within the listed portfolios. The filer's statement attributed ownership of individual shares of underlying assets within the portfolio to the filer and provided separate value and income data for those underlying assets. Therefore, the facts supporting prior EIF determinations for those investment vehicles would no longer apply.

   This advisory serves as a reminder that ethics counselors must always make an independent review of a filer's accounts and investment vehicles to determine whether they are correctly identified as an EIF based upon current information and data. If an investment vehicle does not qualify as an EIF in accordance with OGE guidance, the filer must properly report all underlying holdings.

2. Conflicts of Interest Reviews – Holding Companies. A "holding company" is an entity that does not manufacture anything, sell any products or services, or conduct any other business operations. Instead, the main line of business for these entities is to invest in other businesses. Typically, holding companies own a controlling percentage of stock in other companies. One example of such a company is Berkshire Hathaway (BH).

   OGE has advised that individuals who hold more than the de minimis exemption for stocks (currently, $15,000) in a holding company have a conflict of interest not only with the holding company, but potentially with any entity in which the holding company has a controlling interest. This occurs in two categories: a) entities that are not a subsidiary of the holding company, but in which the holding company owns equity; and b) entities that are subsidiaries of the holding company. The expectation is that for these holding companies, the filer should be regularly identifying those investments, even where not reportable on a financial disclosure form.

a) Underlying Equities: If the individual holds more than the de minimis amount in the holding company, they can prorate their proportional indirect ownership of the underlying equities held by the holding company and then apply the $15,000 de minimis. OGE has provided a formula for prorating, using BH as an example:

1. Determine BH's total percentage of assets invested in equities.
2. Determine the individual's proportional investment in BH attributable to equities.
3. Determine BH's proportional investment in equity of the company in question.
4. Determine the individual's proportional investment in the given entity (multiply #2 by #3)

A hypothetical application of that formula would look like this: BH invests in ABC, Inc. Employee owns $300,000 in shares of BH and is asked to work on a matter affecting ABC's financial interests:

1. BH's total investments in equities ($110B) ÷ BH's total assets ($540B) = the percentage of BH assets in equities (approximately 20%)
2. Employee's total investment in in BH ($300K) x percentage of BH assets in equities (20%) = $60K. So, the share of the employee's investment attributable to BH equities would be $60K.
3. BH's investment in ABC is $695M. BH's total investment in ABC ($695M) ÷ its overall equity portfolio ($110B) = BH's proportional investment in ABC equity (approximately .64%)
4. Employee's proportional share of BH equity investments ($60K) x BH's proportional investment in ABC equity (.64%) = $380. So, the employee's interest in ABC is approximately $380.

b) Subsidiaries: The formula above cannot be used for subsidiaries. If the employee holds more than the de minimis in parent company stock, then the employee has a conflict of interest with any subsidiary. Conversely, if the employee holds stock in a subsidiary, whether or not the employee has a conflict with the parent will depend on the specific factual circumstances. *See* OGE guidance on Conflicts of Interest Considerations for Assets at: https://www.oge.gov/web/OGE.nsf/0/E4B0AAE5BC3A3FDF852582B40061FDA6/$FILE/Assets.pdf

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