



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

OFFICE OF  
ETHICS COUNSEL

**MEMORANDUM**

**TO:** Mary Jo White  
Chair

**FROM:** Shira Pavis Minton   
Ethics Counsel  
Designated Agency Ethics Official

**DATE:** February 6, 2014

**SUBJECT:** Limited Waiver Pursuant to Section 3 of Executive Order 13490

Pursuant to the authority delegated under Section 3 of Executive Order 13490 “Ethics Commitments by Executive Branch Personnel” (January 21, 2009) and after consultation with the Office of the Counsel to the President, I hereby waive certain requirements of paragraph 2 of the Ethics Pledge you signed pursuant to Executive Order 13490 (the “Pledge”) with respect to your former client, Simpson, Thacher & Bartlett LLP (“Simpson Thacher”). This waiver pertains to particular matters involving specific parties arising at the United States Securities and Exchange Commission (the “Commission”).<sup>1</sup>

Executive Order 13490 provides that a political appointee will not, for a period of two years from the date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to the appointee’s former employer or former clients, including regulations and contracts. Sec. 1, par. 2. A waiver of the Pledge restriction may be granted upon a finding that a literal application of the restriction is inconsistent with the purposes of the restriction or that it is in the public interest to grant the waiver. Executive Order 13490, Sec. 3(a). The Director of the Office of Management and Budget has designated the Designated Agency Ethics Official of each executive branch agency to exercise the Section 3 waiver authority in consultation with the Counsel to the President. *See* DO-09-008, OGE Memorandum to Designated Agency Ethics Officials, February 23, 2009.

You were appointed to the Commission on April 9, 2013. I understand that for several years prior to your appointment Simpson Thacher was a client for whom you performed attorney services. However, during the two years preceding your appointment the amount of time you spent providing services for Simpson Thacher as an attorney was minimal: between April 2011

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<sup>1</sup> Authorization under 5 C.F.R. § 2635.502(d) is not required here because Simpson Thacher has not been your client within the past year.

and the date of your appointment, you billed in total less than one hour for work on Simpson Thacher matters (.2 hours in May 2011 and and 0 hours in 2012).<sup>2</sup>

The purpose of the Ethics Pledge is to address concerns of special access. *See* DO-09-011, OGE Memorandum to Designated Agency Ethics Officials, March 26, 2009. Given the minute amount of work you did for Simpson Thacher in the two years prior to your appointment, there is no reason that you should not be able to function objectively in matters in which Simpson Thacher is, or represents, a party. Although de minimis time alone does not justify waving the Pledge, the United States Office of Government Ethics has observed that “the Pledge is not intended to require a two-year recusal based on activities so insubstantial that they are not likely to engender the kind of lingering affinity and mixed loyalties at which the Executive Order is directed.” DO-09-011. Here, the minimal amount of your work for Simpson Thacher during the two years prior to your appointment does not present a significant concern regarding the appearance of undue influence that the Pledge is designed to prevent.

The waiver of your Pledge restriction as to Simpson Thacher will directly serve the public interest. Simpson Thacher is an international law firm with a significant securities practice in the United States. As such, they represent a large number of entities regulated by the Commission and appear before the Commission regularly. Thus far, as Chair of the Commission, you have recused from particular matters in which Simpson Thacher represents a party. This has led to a situation in which your leadership, experience, and expertise have not been brought to bear on significant matters before the Commission. Your involvement would be invaluable to Commission staff and your fellow Commissioners to ensure that the Commission’s responsibilities to the American investing public are being met. Your knowledge, expertise, and leadership in such matters will help the Commission best carry out its mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

Accordingly, I certify that it is in the public interest that this waiver be granted. This waiver is granted with the understanding that you will comply with the remaining provisions of the Executive Order and with all other applicable government ethics rules.

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<sup>2</sup> I note you did approximately 6 hours of work for Simpson Thacher in January, 2011, which is outside the 2 year period prior to your appointment.