

0001

1  
2 NYC TAXI AND LIMOUSINE COMMISSION  
3 PUBLIC HEARING  
4 held on Friday, April 3, 2009  
5 40 Rector Street  
6 5th Floor  
7 New York, New York

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0002

1 Public Hearing convened at 2:30 p.m.

2

3 P R E S E N T:

4

5 CHARLES FRASER, GENERAL COUNSEL

6 CHRISTOPHER WILSON, ASSISTANT GENERAL COUNSEL

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0003

1 MR. FRASER: We will get started.

2 My name is Charles Fraser, I am the general

3 counsel to the Taxi and Limousine Commission.

4 To my left is Christopher Wilson, Assistant

5 General Counsel for the Commission who is

6 working on the Rules Revision Project.

7 We are in the second phase of the

8 Rules Revision Project, the second phase being

9 the one we have been calling the Zero Sum

10 Phase, which means we are rewriting the rules  
11 to make them clearer, plainer English,  
12 simplified, more accessible, more user  
13 friendly, but not changing the substance of  
14 the existing rules or at least changing the  
15 substance as little as possible.

16 Phase 3 of the Rules Revision will  
17 involve substantive changes but that is not  
18 what we are doing now. So for anyone who has  
19 comments that are asking essentially for  
20 changes in the substance of the rules, please,  
21 by all means submit them, but please  
22 understand that we will not be making those  
23 changes at the current time. We will be  
24 considering the changes you request at some  
25 future time in the project.

0004

1 Also we published a notice with a  
2 deadline time to comment. For those of you  
3 here and for those of you who may read the  
4 transcript later on-line, feel free to submit  
5 comments at any time during the process  
6 because we will continue to consider them as  
7 go forward until we finally complete the  
8 project.

9 I have just one preregistered  
10 speaker, Peter Mazer. Mr. Mazer?

11 MR. MAZER: Good afternoon.  
12 My name is Peter Mazer and I am  
13 General Counsel for the Metropolitan Taxicab  
14 Board of Trade and Trade Association  
15 representing the owners of approximately 3,500  
16 Medallion taxicabs. Several of our members  
17 are also licensed taxicab brokers.

18 Thank you for providing me with the  
19 opportunity to once again speak on the  
20 proposed rule changes. Again, the TLC has  
21 stated that there are no substantive changes  
22 proposed today and that today's proposals are  
23 intended to merely clarify confusing language  
24 and reorganize the rules in a more cogent  
25 format. To the extent that substantive

0005

1 changes are proposed, MTBOT reserves the  
2 right to further comment on such rule  
3 proposals. I have the following general  
4 comments concerning these rule proposals:

5 First, definitions. The term broker  
6 is defined in Administrative Code, Section  
7 19-527. The definition of broker contained in  
8 existing TLC Rule 5-01 uses the exact language  
9 contained in the Administrative Code.

10 Proposed Rule 12-03(b) contains major changes  
11 to the definition and no longer follows the  
12 Administrative Code statutory language. To  
13 the extent that the proposed rules of the  
14 Commission differ from the Administrative  
15 Code, it grants the TLC powers to regulate  
16 entities and activities that the City Council  
17 did not intend to be regulated, and,  
18 therefore, exceeds the authority granted to  
19 the TLC by the Charter.

20 A new definition of, quote,

21 "delicensed broker" is added. This term is  
22 not used in any other provision of the TLC  
23 rules relating to individuals or entities with  
24 a suspended or revoked license. The term is  
25 also not used in the Administrative Code or

0006

1 existing rules of the Commission, and,  
2 therefore, constitutes a substantial change to  
3 existing rules.

4 The proposed rules also create a new  
5 redundant definition of brokerage defining it  
6 as, quote, "the business of being a broker."  
7 A, quote, "broker" is defined as "an  
8 individual, partnership or business entity."  
9 The definition is not needed and also  
10 constitutes an addition to existing rules.

11 Next point is on scope of chapter and  
12 penalties. Section 12-01(c) states that the  
13 broker's rules exist to protect the public.  
14 The brokers' rules exist to protect the rights  
15 and responsibilities of brokers and their  
16 relationship to clients. The brokers rules do  
17 not exist to protect the public at large since  
18 they do not regulate conduct that has an  
19 impact on the general public.

20 Section 12-02(b) requiring fines to  
21 be paid on the day assessed violates the  
22 Administrative Code or at least the provision  
23 of the Administrative Code that was recently  
24 amended, and that I know other in other  
25 chapters you have changed that --

0007

1 MR. FRASER: Do you have the current  
2 version? The current version has the 30-day  
3 provision in it.

4 MR. MAZER: The version that --

5 MR. FRASER: The first two rules we  
6 did that had the same day, we had to correct.  
7 And having caught it then, we have now  
8 corrected for all the chapters going forward.  
9 So that particular one is already in the draft  
10 that we are working from.

11 MR. MAZER: Okay. I had picked it  
12 up on the draft when it first came on line.

13 MR. FRASER: The City Record  
14 published version would be the one we are  
15 working from, and that one has the 30-day  
16 provision in it.

17 MR. MAZER: Okay, good.

18 Next point, requirements for  
19 licensure. The proposed rules require all  
20 applicants, including applicants who are  
21 business entities, to supply government-issued  
22 photo ID as an original social security card.  
23 These new requirements do not exist in the  
24 current rules. It is also unclear whether  
25 this new requirement would apply to all

0008

1 shareholders of a licensee or applicant  
2 corporation.

3 And I note just by way of comparison,  
4 if you look at proposed Rule 12-11(e), the  
5 rules relating to hiring employees with

6 suspended or revoked licenses apply only to  
7 the chief executive officer of the partnership  
8 or corporation.

9 The next point is that the proposed  
10 rules contain the requirement that an  
11 applicant or licensee be of good moral  
12 character and continues the fingerprinting  
13 requirement for certain applicants and  
14 principals. The proposed rules, however, add  
15 a new standard for review of applicants  
16 stating that all moral character will be  
17 determined in part through fingerprinting and  
18 background investigation. Existing rules do  
19 not provide for background investigations  
20 except for new shareholders or officers added  
21 to existing licensee, which is current Rule  
22 5-02(d).

23 Although the Commission is now adding  
24 a new power, the right to conduct a vague  
25 background investigation to gauge moral

0009

1 character, the rule is devoid of any standards  
2 for the review of such applicants or  
3 licensees.

4 Proposed Rule 12-05(c) requests  
5 disclosure of taxicab broker and applicant's  
6 financial interest in an automobile  
7 dealership, insurance brokerage or lender.  
8 The existing rule requires disclosure as to  
9 the extent of such interest, while the  
10 proposed rule requires disclosure of any  
11 financial interest. Under the existing rules,  
12 a broker would be required to disclose his or  
13 her interest in a lender, automobile  
14 dealership, or insurance brokerage only if the  
15 principals would be acting in that capacity on  
16 behalf of his or her clients. Under the  
17 proposed rules, any interest in such  
18 activities, even if unrelated to the brokerage  
19 business, must be disclosed. For example,  
20 under the existing rule a broker might be an  
21 insurance agent and only sell insurance to the  
22 black car industry, and to that extent, he  
23 would not have to disclose his ownership of  
24 that insurance brokerage since he doesn't sell  
25 insurance to Medallion owners in connection

0010

1 with the Medallion license. Under the  
2 proposed rules, it appears that that interest  
3 would have to be disclosed now even if it  
4 didn't affect clients in his brokerage  
5 business.

6 Bond requirement. This might have  
7 been changed also. It says that 12-06(c)  
8 requires that fines be made payable  
9 immediately unless an appeal is filed. This  
10 is contrary to the Administrative Code, which  
11 gives respondents 30 days to pay fines. If  
12 you could just double-check that that change  
13 was also made.

14 MR. FRASER: I think 12-06(c) says  
15 the broker is immediately liable for any fine  
16 or judgment when the amount is determined or

17 in the case of appeal, when a final  
18 determination is issued.

19 Is that what you are referring to?  
20 MR. MAZER: Yes. We are talking  
21 about when the fine is determined the broker  
22 would still have 30 day to pay the fine, even  
23 if there is an appeal. That's the point I am  
24 making, it makes it sound like the fine is due  
25 and payable immediately as opposed to 30 days.

0011

1 MR. FRASER: Okay.

2 MR. MAZER: Next one, Section  
3 12-11(a) states that an individual or an  
4 entity may not, quote, "publicly imply that he  
5 or she is a broker without a license." This  
6 language replaces existing language which  
7 states that one may not, quote, "hold themself  
8 out or act temporarily," close quote, as a  
9 broker without a license. That's old Rule  
10 5-03(a).

11 The term "publicly imply" is vague  
12 and is not defined in the rules. There is no  
13 body of law interpreting this phrase, although  
14 as least in the context of other licensees,  
15 the term "hold oneself out" has been  
16 interpreted. Objective standards for review  
17 of prohibited conduct is replaced with the  
18 subjective standards. That is not in the  
19 existing rules or authorized by the  
20 Administrative Code.

21 Another change from the present rules  
22 to the proposed rules is that a requirement  
23 set forth in proposed rules 12-11(e) and (f)  
24 concerning the employment of persons whose  
25 license has previously been suspended or

0012

1 revoked, has been altered to delete the  
2 provision that these requirements could be  
3 waived by the Commission. Right now under the  
4 existing rules, a broker cannot hire somebody  
5 who had a brokerage license that was  
6 previously suspended or revoked unless the  
7 Commission waives that requirement, and the  
8 right of the Commission to waive the  
9 requirement was deleted in the proposed rules.

10 Finally, and I think this is the most  
11 important one in my opinion, which is Rule  
12 12-12. It is not in the text of the rules but  
13 is only in the caption of the rules but it is  
14 something I am a very concerned about. Rule  
15 12-12 refers to a, quote, "broker as a  
16 fiduciary agent of the owner."

17 This term does not appear -- I am  
18 referring to the term "fiduciary agent" does  
19 not appear in the Administrative Code or in  
20 the existing TLC broker rules. Fiduciary is a  
21 specific legal term that has a meaning beyond  
22 the meaning intended by these rules. It  
23 confers upon brokers responsibilities and  
24 gives their clients rights that are not  
25 intended by the rules. Although the term

0013

1 fiduciary only appears in the section title,

2 it should be deleted.

3 As I have stated at these public  
4 hearings in the past, it is the articulated  
5 position of the Commission that prior to any  
6 final rule making that there will be further  
7 opportunity for public comment. At that time,  
8 MTBOT may submit further comments regarding  
9 substantive rules, policies and procedures  
10 including such rules, policies and procedures  
11 that have not been amended which the  
12 Commission is not intending to amend.

13 Inasmuch as the purpose of today's  
14 hearing is, as noted in the Statement of Basis  
15 and Purpose, to enhance their clarity and  
16 accessibility without substantive change, we  
17 did not address any substantive concerns of  
18 the rules that MTBOT members may have except  
19 where it appears that the rules are contrary  
20 to existing TLC rules.

21 Of course, MTBOT appreciates the  
22 opportunity to comment on these rules as well  
23 as the opportunity to address each aspect of  
24 both the current and proposed rules of the  
25 Commission to insure that the charter mandates

0014

1 to provide safe and reliable for-hire  
2 transportation are satisfied. And as always,  
3 we continue to look forward to working with  
4 the Commission and your consultants as rule  
5 revisions are considered.

6 Thank you.

7 MR. FRASER: Thank you.

8 Would anyone else like to speak?

9 All right, come up to the microphone  
10 and state your name.

11 MR. GOLDBETTER: Nat Goldbetter, I  
12 am with the Action Medallion Sales.

13 There are two little things that  
14 concern me, and maybe you can figure out a way  
15 to make things a little easier for us. The  
16 fair market rule where we used to have that  
17 \$10,000 window has been taken away and it  
18 causes a lot of problems. Especially if you  
19 are putting a deal together right at the end  
20 of the month, such as what just happened to me  
21 this week. For example, I was trying to get  
22 the papers ready to get it in before, the deal  
23 in before the end of the month. Couldn't get  
24 the commitment letter or the commitment letter  
25 was wrong. By the time I got the paperwork

0015

1 ready, it was already the first of the month.

2 There was only a \$5,000 difference,  
3 now we have a delay the whole deal. So  
4 contact the Department of Finance, get a  
5 determination letter, and then submit the deal  
6 once we get the letter, which is going to cost  
7 approximately a week to 10 days. This is  
8 particularly costly to the owners that are  
9 selling their Medallions because they are off  
10 the road, they are not producing any income  
11 and the interest on their existing loans is  
12 rolling on.

13 And it also makes more work for the  
14 City of New York, the Department of Finance,  
15 who are basically giving us the okay as long  
16 as we show a contract. And I think if that be  
17 the case, we can produce a copy of contract  
18 when submitting papers if this is the case.  
19 So that is something that I think maybe the  
20 Commission can look into.

21 MR. FRASER: Thank you, I appreciate  
22 that.

23 Just for the record, your comment  
24 doesn't relate to the chapter at issue here  
25 today, Chapter 12. It does relate to a

0016  
1 different chapter, which I think is the  
2 Medallion owners rules. But nonetheless, we  
3 have heard your comment and it happens that  
4 the Medallion Transfer Clerk is in the back of  
5 the room. It also happens that Mr. Wilson is  
6 the lawyer who supervises those transfers, so  
7 we have heard your comment and we certainly  
8 will consider it. I appreciate that.

9 MR. GOLDBETTER: One more comment I  
10 would like to make about the license renewal  
11 process.

12 The way it stands now, we have to do  
13 the same paperwork as we originally applied  
14 for license and these are only one-year  
15 licenses. We have to produce the Certificate  
16 of Incorporation, we have to make sure the  
17 corporation is still viable, make sure there  
18 is no criminal records. And I think if --

19 MR. FRASER: You are talking about  
20 for the broker's license?

21 MR. GOLDBETTER: Yes.

22 And if there is no material changes  
23 in the brokerage itself, I think that's just a  
24 lot of extra paperwork for everybody.

25 MR. FRASER: Thank you. Appreciate

0017  
1 that. We have heard your comments and we will  
2 look into that further.

3 MR. GOLDBETTER: Thank you.

4 MR. FRASER: Would anyone else like  
5 to speak?

6 (No response.)

7 MR. FRASER: Okay, thank you very  
8 much.

9 (Time noted: 2:50 p.m.)

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

24  
25  
0018

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T I O N

I, MARGARET EUSTACE, a Shorthand Reporter and a Notary Public, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.

---

MARGARET EUSTACE,  
Shorthand Reporter