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Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

[69 FR 41426, July 9, 2004, as amended at 72 FR 16269, Apr. 4, 2007]

Subpart B—Functions

§ 140.10 The Commission.

The Commission is composed of a Chairman and four other Commissioners, not more than three of whom may be members of the same political party, who are appointed by the President, with the advice and consent of the Senate, for 5-year terms, one term ending each year. The Commission is assisted by a staff, which includes lawyers, economists, accountants, investigators and examiners, as well as administrative and clerical employees.

[41 FR 28474, July 12, 1976]

§ 140.11 Emergency action by the senior Commissioner available.

(a) *Authority of senior Commissioner.* When it is not feasible to convene a quorum of the Commission, the Senior Commissioner present at the principal offices of the Commission (or, during non-business hours, available in the Washington, DC area) may take emergency action on behalf of and in the name of the Commission in accordance with the procedures set forth in this section. Members of the Commission shall be considered senior in the following order: The Chairman, the Vice-Chairman, and other Commissioners in order of their length of service on the Commission. Where two or more Commissioners have commenced their service on the same date, the Commissioner whose unexpired term in office is the longest will be considered senior.

(b) *Exercise of authority.* Subject to the right of the Commission to review any emergency action taken as hereinafter provided, the Senior Commissioner may act on behalf of and in the name of the Commission with respect to all of the functions of the Commission except general rulemaking functions: *Provided, however,* That the Senior Commissioner shall not exercise any authority on behalf of the Commission (1) without consultation with such other member of the Commission as may at the time be present at the Com-

mission's offices in Washington, DC, and without a reasonable attempt to consult, by telephone, with other members of the Commission; and (2) unless, in the opinion of the Senior Commissioner (after consulting with the General Counsel or his deputy or associate, and such other members of the Commission staff as the Senior Commissioner deems appropriate) the public interest requires that action be taken prior to the next scheduled meeting of the Commission.

(c) *Report to the Commission.* The exercise of Senior Commissioner authority shall be reported to the Commission within one business day thereafter either by the Senior Commissioner or at his direction, and shall be recorded by the Secretariat in the Minute Record of all official actions of the Commission. The Secretariat shall promptly notify any directly affected person of the action taken and that it was the Senior Commissioner available, rather than the Commission as a whole, who took the action.

(d) *Review by the Commission.* The Commission may, in the following circumstances, review any action taken under Senior Commissioner authority and may affirm, modify, alter or set aside the decision:

(1) Upon the request of any member of the Commission, any action taken by a Senior Commissioner shall be reviewed by the Commission.

(2) In the event action by a Senior Commissioner suspends, denies or revokes or otherwise directly and adversely affects any license, right or privilege of any person, that person may in writing request review by the Commission and shall be entitled to have the action of the Senior Commissioner reviewed by the Commission.

(3) The Commission may, in its discretion, review any action taken by a Senior Commissioner upon petition by any other person.

(e) *Final effect of action by Senior Commissioner.* In any matter, the action taken under Senior Commissioner authority shall be deemed the action of the Commission unless and until the Commission shall otherwise direct.

[41 FR 28474, July 12, 1976]

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§ 140.12 Disposition of business by secretariat Commission consideration.

(a) Whenever the Chairman of the Commission is of the opinion that joint deliberation among the members of the Commission upon any matter is unnecessary in light of the nature of the matter, impracticable, or would impede the orderly disposition of agency business, but is of the view that such matter should be the subject of a vote of the Commission, such matter may be disposed of by circulation of any relevant materials concerning the matter. The relevant materials shall be circulated to each member of the Commission, unless a member is unavailable or has determined not to participate in the matter. A written record of the vote of each participating Commission member shall be reported to the Secretariat who shall retain it in the records of the Commission.

(b) Whenever any member of the Commission so requests, any matter circulated for disposition pursuant to paragraph (a) of this section shall be withdrawn from circulation and scheduled instead for a Commission meeting.

[43 FR 43452, Sept. 26, 1978]

§ 140.13 Vacancy in position of Chairman.

At any time that a vacancy exists in the position of Chairman of the Commission the remaining members of the Commission shall elect a member to serve as acting Chairman who shall exercise the executive and administrative functions of the Commission that would otherwise be exercised by a Chairman in accordance with section 2(a)(6) of the Commodity Exchange Act, as amended, until a new Chairman has been appointed by the President and confirmed by the Senate: *Provided, however,* That if the President shall appoint a new Chairman from among the existing members of the Commission, that Commissioner shall serve as acting Chairman for these purposes until such time as his appointment as Chairman has been confirmed or rejected by the Senate.

[43 FR 50167, Oct. 27, 1978]

§ 140.14 Delegation of authority to the Secretary of the Commission.

After the Commission has formally reached a decision or taken other action on a matter, has agreed upon the language of the document which embodies the Commission decision or other action, including, but not limited to, a rule, regulation or order, and has directed that the document be issued, the Secretary of the Commission (or a person designated in writing by the Secretary) shall sign the document on behalf of the Commission. Signature by the Secretary shall be a ministerial function and shall not be discretionary. The delegation to the Secretary of the authority to sign documents on the Commission's behalf shall not affect any other delegation which the Commission has made, or may make, which authorizes any other officer or employee of the Commission to take action and to sign documents on the Commission's behalf. In addition, the Commission reserves the authority to provide for signature on its behalf by the Chairman or any other member of the Commission in particular circumstances.

[44 FR 33677, June 12, 1979]

§ 140.20 Designation of senior official to oversee Commission use of national security information.

(a) The Executive Director is hereby designated to oversee the Commission's program to ensure the safeguarding of national security information received by the Commission from other agencies, to chair a Commission committee composed of members of the staff selected by him with authority to act on all suggestions and complaints with respect to the Commission administration of its information security program, and, in conjunction with the Security Officer of the Commission, to ensure that practices for safeguarding national security information are systematically reviewed and that those practices which are duplicative or unnecessary are eliminated.

(b) The Executive Director may submit any matter for which he has been designated under paragraph (a) of this

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section to the Commission for its consideration.

[44 FR 65736, Nov. 15, 1979, as amended at 61 FR 21955, May 13, 1996]

§ 140.21 Definitions.

(a) *Classified information.* Information or material that is:

(1) Owned by, produced for or by, or under control of the United States Government, and

(2) Determined pursuant to Executive Order 12356 or prior or succeeding orders to require protection against unauthorized disclosure, and

(3) So designated.

(b) *Compromise.* The disclosure of classified information to persons not authorized access thereto.

(c) *Custodians.* An individual who has possession of or is otherwise charged with the responsibility for safeguarding or accounting for classified information.

(d) *Classification levels.* Refers to Top Secret “(TS)”, Secret “(S)”, and Confidential “(C)” levels used to identify national security information. Markings “For Official Use Only,” and “Limited Official Use” shall not be used to identify national security information.

[48 FR 15464, Apr. 11, 1983]

§ 140.22 Procedures.

(a) *Original classification.* The Commodity Futures Trading Commission has no original classification authority.

(b) *Derivative classification.* Personnel of the Commission shall respect the original classification markings assigned to information they receive from other agencies.

(c) *Declassification and downgrading.* Since the Commission does no original classification of material, declassification and downgrading of sensitive material is not applicable.

(d) *Dissemination.* All classified national security information which the Commission receives from any agency will be cared for and returned in accordance with the particular agency’s policy guidelines and may not be disseminated to any other agency without the consent of the originating agency.

[48 FR 15464, Apr. 11, 1983]

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§ 140.23 General access requirements.

(a) *Determination of trustworthiness.* No person shall be given access to classified information unless a favorable determination has been made as to the person’s trustworthiness. The determination of eligibility, referred to as a security clearance, shall be based on such investigations as the Commission may require in accordance with the applicable Office of Personnel Management standards and criteria.

(b) *Determination of need-to-know.* A person is not entitled to receive classified information solely by virtue of having been granted a security clearance. A person must also have a need for access to the particular classified information sought in connection with the performance of official government duties or contractual obligations. The determination of that need shall be made by officials having responsibility for the classified information.

[48 FR 15464, Apr. 11, 1983]

§ 140.24 Control and accountability procedures.

Persons entrusted with classified information shall be responsible for providing protection and accountability for such information at all times and for locking classified information in approved security equipment whenever it is not in use or under direct supervision of authorized persons.

(a) *General safeguards.* (1) Classified material must not be left in unoccupied rooms or be left inadequately protected in an occupied office, or one occupied by other than security cleared employees. Under no circumstances shall classified material be placed in desk drawers or anywhere other than in approved storage containers.

(2) Employees using classified material shall take every precaution to prevent deliberate or casual inspection of it by unauthorized persons. Classified material shall be kept under constant surveillance and face down or covered when not in use.

(3) All copies of classified documents and any informal material such as memoranda, rough drafts, shorthand notes, carbon copies, carbon paper, typewriter ribbons, recording discs, spools and tapes shall be given the

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same classification and secure handling as the classified information they contain.

(4) Commission personnel authorized to use classified materials will obtain them from the Executive Director or his delegee on the day required and return them to the Executive Director or his delegee before the close of business on the same day.

(5) Classified information shall not be revealed in telephone or telecommunications conversations.

(6) Any person who has knowledge of the loss or possible compromise of classified information shall immediately report the circumstances either to the Security Officer or to the Executive Director or his delegee. The Executive Director or his delegee shall initiate a preliminary inquiry to determine the circumstances surrounding an actual or possible compromise, and to determine what corrective measures and administrative, disciplinary, or legal action is necessary.

(b) *Reproduction controls.* (1) The number of copies of documents containing classified information must be kept to the minimum required by operational necessity to decrease the risk of compromise and reduce storage costs.

(2) Top Secret documents, except for the controlled initial distribution of information processed or received electrically, shall not be reproduced without the consent of the originator.

(3) Unless restricted by the originating agency, Secret and Confidential documents may be reproduced to the extent required by operational needs.

(4) Reproduced copies of classified documents shall be subject to the same accountability and controls as the original documents.

(5) Classified reproduction shall be controlled by persons with the proper level of security clearance.

(6) Records shall be maintained to show the number and distribution of reproduced copies to all Top Secret documents, of all classified documents covered by special access programs distributed outside the originating agency, and of all Secret and Confidential documents which are marked with special dissemination and reproduction limitations.

(7) Unauthorized reproduction of classified material will be subject to appropriate disciplinary action.

(c) *Storage of classified material.* (1) All classified material in the custody of the Commission will be stored in accordance with the guidelines set forth in 32 CFR 2001.43.

(2) In addition, the Commission remains subject to the provisions of 32 CFR part 2001, *et seq.*, insofar as they are applicable to classified materials held by the Commission.

[48 FR 15464, Apr. 11, 1983, as amended at 61 FR 21955, May 13, 1996]

§ 140.61 [Reserved]

§ 140.72 **Delegation of authority to disclose confidential information to a contract market, registered futures association or self-regulatory organization.**

(a) Pursuant to the authority granted under sections 2(a)(11), 8a(5) and 8a(6) of the Act, the Commission hereby delegates, until such time as the Commission orders otherwise, to the Executive Director, the Deputy Executive Director, the Special Assistant to the Executive Director, the Director of the Division of Clearing and Intermediary Oversight, each Deputy Director of the Division of Clearing and Intermediary Oversight, the Chief Accountant, the General Counsel, each Deputy General Counsel, the Director of the Division of Market Oversight, each Deputy Director of the Division of Market Oversight, the Director of the Market Surveillance Section, the Director of the Division of Enforcement, each Deputy Director of the Division of Enforcement, each Associate Director of the Division of Enforcement, the Chief Counsel of the Division of Enforcement, each Regional Counsel of the Division of Enforcement, each of the Regional Administrators, each of the Directors of the Market Surveillance Branches, the Chief Economist of the Office of the Chief Economist, the Deputy Chief Economist of the Office of the Chief Economist, the Director of the Office of International Affairs, and the Deputy Director of the Office of International Affairs, the authority to disclose to an official of any contract market, registered futures association,

or self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934, any information necessary or appropriate to effectuate the purposes of the Act, including, but not limited to, the full facts concerning any transaction or market operation, including the names of the parties thereto. This authority to disclose shall be based on a determination that the transaction or market operation disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors or that disclosure is necessary or appropriate to effectuate the purposes of the Act. The authority to make such a determination is also delegated by the Commission to the Commission employees identified in this section. A Commission employee delegated authority under this section may exercise that authority on his or her own initiative or in response to a request by an official of a contract market, registered futures association or self-regulatory organization.

(b) Disclosure under this section shall only be made to a contract market, registered futures association or self-regulatory organization official who is named in a list filed with the Commission by the chief executive officer of the contract market, registered futures association or self-regulatory organization, which sets forth the official's name, business address and telephone number. The chief executive officer shall thereafter notify the Commission of any deletions or additions to the list of officials authorized to receive disclosures under this section. The original list and any supplemental list required by his paragraph shall be filed with the Secretary of the Commission, and a copy thereof shall also be filed with the Regional Coordinator for the region in which the contract market is located or in which the registered futures association or self-regulatory organization has its principal office.

(c) Notwithstanding the provisions of paragraph (a) of this section, in any case in which a Commission employee delegated authority under this section believes it appropriate, he or she may submit to the Commission for its con-

sideration the question of whether disclosure of information should be made.

(d) For purposes of this section, the term "official" shall mean any officer or member of a committee of a contract market, registered futures association or self-regulatory organization who is specifically charged with market surveillance or audit or investigative responsibilities, or their duly authorized representative or agent, who is named on the list filed pursuant to paragraph (b) of this section or any supplement thereto.

(e) For the purposes of this section, the term "self-regulatory organization" shall mean the same as that defined in section 3(a)(26) of the Securities Exchange Act of 1934.

(f) Any contract market, registered futures association or self-regulatory organization receiving information from the Commission under these provisions shall not disclose such information except that disclosure may be made in any self-regulatory action or proceeding.

[48 FR 22134, May 17, 1983, as amended at 57 FR 20638, May 14, 1992; 61 FR 1709, Jan. 23, 1996; 66 FR 1576, Jan. 9, 2001; 67 FR 62352, Oct. 7, 2002; 73 FR 79609, Dec. 30, 2008]

§ 140.73 Delegation of authority to disclose information to United States, States, and foreign government agencies and foreign futures authorities.

(a) Pursuant to sections 2(a)(11), 8a(5) and 8(e) of the Act, the Commission hereby delegates, until such time as the Commission orders otherwise, to the General Counsel or, in his or her absence, to each Deputy General Counsel, the Director of the Division of Enforcement, each Deputy Director of the Division of Enforcement, the Chief Counsel of the Division of Enforcement, each Associate Director of the Division of Enforcement, each Regional Counsel of the Division of Enforcement, the Director of the Division of Market Oversight or, in his or her absence, each Deputy Director of the Division of Market Oversight, the Director of the Market Surveillance Section, the Director of the Division of Clearing and Intermediary Oversight or, in his or her absence, each Deputy Director of the Division of Clearing and

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Intermediary Oversight, the Chief Economist of the Office of the Chief Economist, the Deputy Chief Economist of the Office of the Chief Economist, and the Director of the Office of International Affairs or, in his or her absence, the Deputy Director of the Office of International Affairs, the authority to furnish information in the possession of the Commission obtained in connection with the administration of the Act, upon written request, to:

(1) Any department or agency of the United States, including for this purpose an independent regulatory agency, acting within the scope of its jurisdiction;

(2) Any department or agency of any State or any political subdivision thereof, acting within the scope of its jurisdiction; or

(3) Any foreign futures authority, as defined in section 1a(10) of the Act, or any department or agency of any foreign government or political subdivision thereof, acting within the scope of its jurisdiction, provided that the Commission official making the disclosure is satisfied that the information will not be disclosed except in connection with an adjudicatory action or proceeding brought under the laws of such foreign government or political subdivision to which such foreign government or political subdivision or any department or agency thereof, or foreign futures authority is a party.

(b) Any disclosure made pursuant to paragraph (a) of this section shall be made with the concurrence of the Director of the Division of Enforcement or in his or her absence a Deputy Director of the Division of Enforcement. Provided, however, that no such concurrence is necessary for the Director of the Division of Market Oversight or in his or her absence each Deputy Director of the Division or for the Director of the Market Surveillance Section to release information under paragraph (a)(1) of this section concerning current or on-going market transactions or operations.

(c) In furnishing information under this delegation pursuant to paragraphs (a)(1) and (2) of this section, the Commission official making the disclosure shall remind the department or agency involved that section 8(e) of the Act

prohibits the disclosure by such department or agency of information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers except in an action or proceeding under the laws of the United States, the State, or a political subdivision thereof to which the department or the agency of either the state or political subdivision, the Commission, or the United States is a party.

(d) This delegation shall not affect any other delegation which the Commission has made or may make, which authorizes any other officer or employee of the Commission to furnish information to governmental bodies on the Commission's behalf.

(e) Notwithstanding the provisions of paragraph (a) of this section, in any case in which any employee delegated authority therein believes it appropriate the matter may be submitted to the Commission for its consideration. Nothing in this section shall prohibit the Commission from exercising the authority delegated in paragraph (a) of this section.

[48 FR 22135, May 17, 1983, as amended at 57 FR 20638, May 14, 1992; 61 FR 1709, Jan. 23, 1996; 66 FR 1576, Jan. 9, 2001; 67 FR 62352, Oct. 7, 2002; 73 FR 79609, Dec. 30, 2008]

§ 140.74 Delegation of authority to issue special calls for Series 03 Reports and Form 40.

(a) The Commodity Futures Trading Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Market Oversight, or the Director's designee, the authority to issue special calls under Commission Rule 18.00 for series 03 reports, and under Commission Rule 18.04 for a Form 40.

(b) The Director of the Division of Market Oversight may submit any matter which has been delegated to the Director under paragraph (a) of this section to the Commission for its consideration.

(c) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of

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Market Oversight under paragraph (a) of this section.

[50 FR 47530, Nov. 19, 1985, as amended at 67 FR 62352, Oct. 7, 2002]

§ 140.75 Delegation of authority to the Director of the Division of Clearing and Intermediary Oversight.

Pursuant to sections 2(a)(11), 8a(5) and 8(g) of the Act, the Commission hereby delegates to the Director of the Division of Clearing and Intermediary Oversight and to such members of the Commission's staff acting under his or her direction as the Director may designate from time to time, the authority to disclose any registration information contained in the registration applications filed by Commission registrants or any compilation of such information maintained by the Commission to any department or agency of any State or any political subdivision thereof. Disclosure under this section may be made upon reasonable request made to the Commission or without request whenever the Director of Trading and Markets or any Commission employee designated by the Director to make disclosures under this section determines that such information may be appropriate for use by any department or agency of a State or political subdivision thereof. Notwithstanding the provisions of this section, in any case in which the Director of Division of Clearing and Intermediary Oversight deems it appropriate, or in any case in which the Commission so requests, the Director may submit matter to the Commission for its consideration.

[48 FR 22136, May 17, 1983, as amended at 67 FR 62352, Oct. 7, 2002]

§ 140.76 Delegation of authority to disclose information in a receivership or bankruptcy proceeding.

(a) Pursuant to sections 2(a)(11) and 8(b) of the Act, the Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Enforcement, the Director of the Division of Clearing and Intermediary Oversight, the General Counsel or any Commission employee under their direction as they may designate, the authority to disclose data and information that would separately disclose the business transactions or

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market positions of any person and trade secrets or names of customers, when such disclosure is made in any receivership proceeding involving a receiver appointed in a judicial proceeding brought under the Act, or in any bankruptcy proceeding in which the Commission has intervened or in which the Commission has the right to appear and be heard under title 11 of the United States Code.

(b) Notwithstanding the provisions of paragraph (a), in any case in which the Director of the Division of Enforcement, the Director of the Division of Clearing and Intermediary Oversight, the General Counsel, or any employee designated by them to make disclosures pursuant to this section believes it appropriate, the matter may be submitted to the Commission for consideration. In addition, the Commission reserves to itself the authority to determine whether to grant a request for information in any particular case.

[49 FR 4464, Feb. 7, 1984, as amended at 67 FR 62352, Oct. 7, 2002]

§ 140.77 Delegation of authority to determine that applications for contract market designation are materially incomplete.

(a) The Commodity Futures Trading Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Market Oversight or the Director's designees, the authority to determine that an application for contract market designation is materially incomplete under section 6 of the Commodity Exchange Act and to so notify the applicant.

(b) The Director of the Division of Market Oversight may submit any matter which has been delegated to the director under paragraph (a) of this section to the Commission for its consideration.

(c) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Market Oversight under paragraph (a) of this section.

[48 FR 34946, Aug. 2, 1983, as amended at 57 FR 20638, May 14, 1992; 67 FR 62353, Oct. 7, 2002]

§ 140.80 Disclosure of information pursuant to a subpoena or summons.

The Commission shall provide notice to any person who has submitted information to the Commission when a summons or subpoena seeking the submitted information is received by the Commission. Notice ordinarily will be provided by mailing a copy of the summons or subpoena to the last known home or business address of the person who submitted the information. However, under circumstances which would make notice by mail unduly burdensome or costly, notice of the existence of the summons or subpoena may be affected by alternative means such as publication in the FEDERAL REGISTER. The Commission will not disclose such information until the expiration of at least fourteen days from the date of mailing, or such other notice as is given. This section shall not apply to (a) Congressional subpoenas or Congressional requests for information, (b) information which is considered by the Commission to be public information, or (c) information as to which the submitter has waived the notice provision of this section.

[49 FR 4464, Feb. 7, 1984]

§ 140.81 [Reserved]**§ 140.91 Delegation of authority to the Director of the Division of Trading and Markets.**

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, the following functions to the Director of the Division of Clearing and Intermediary Oversight and to such members of the Commission's staff acting under his direction as he may designate from time to time:

(1) All functions reserved to the Commission in § 1.10 of this chapter, except for those relating to nonpublic treatment of reports set forth in § 1.10(g) of this chapter;

(2) All functions reserved to the Commission in § 1.12 of this chapter;

(3) All functions reserved to the Commission in § 1.14 of this chapter;

(4) All functions reserved to the Commission in § 1.15 of this chapter;

(5) All functions reserved to the Commission in § 1.16 of this chapter; and

(6) All functions reserved to the Commission in § 1.17 of this chapter, except for those relating to non-enumerated cover cases set forth in § 1.17(j)(3) of this chapter.

(7) All functions reserved to the Commission in § 1.25 of this chapter.

(8) All functions reserved to the Commission in § 41.41 of this chapter. Any action taken pursuant to the delegation of authority under this paragraph (a)(8) shall be made with the concurrence of the General Counsel or, in his or her absence, a Deputy General Counsel.

(b) The Director of the Division of Clearing and Intermediary Oversight may submit any matter which has been delegated to him under paragraph (a) of this section to the Commission for its consideration.

[44 FR 13460, Mar. 12, 1979, as amended at 60 FR 8195, Feb. 13, 1995; 66 FR 43087, Aug. 17, 2001; 66 FR 53523, Oct. 23, 2001; 67 FR 62353, Oct. 7, 2002]

§ 140.92 Delegation of authority to grant registrations and renewals thereof.

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight and to such members of the Commission's staff acting under his direction as he may designate, the authority to grant registrations and renewals thereof.

(b) The Director of the Division of Clearing and Intermediary Oversight may submit any matter which has been delegated to him under paragraph (a) of this section to the Commission for its consideration.

(c) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Clearing and Intermediary Oversight under paragraph (a) of this section.

[45 FR 20785, Mar. 31, 1980, as amended at 67 FR 62353, Oct. 7, 2002]

§ 140.93 Delegation of authority to the Director of the Division of Clearing and Intermediary Oversight.

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, the following

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functions to the Director of the Division of Clearing and Intermediary Oversight and to such members of the Commission's staff acting under his direction as he may designate from time to time:

- (1) All functions reserved to the Commission in § 4.12(a) of this chapter.
- (2) All functions reserved to the Commission in § 4.22(g)(3) of this chapter.
- (3) All functions reserved to the Commission in § 4.20(a) of this chapter.
- (4) All functions reserved to the Commission in § 4.5(c)(2)(ii) of this chapter.
- (5) All functions reserved to the Commission in § 4.6(b) of this chapter.

(b) The Director of the Division of Clearing and Intermediary Oversight may submit any matter which has been delegated to him under paragraph (a) of this section to the Commission for its consideration.

(c) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Clearing Intermediary Oversight under paragraph (a) of this section.

[46 FR 26023, May 8, 1981, as amended at 46 FR 34311, July 1, 1981; 50 FR 15884, Apr. 23, 1985; 52 FR 41986, Nov. 2, 1987; 67 FR 62353, Oct. 7, 2002; 70 FR 2566, Jan. 14, 2005]

§ 140.94 Delegation of authority to the Director of the Division of Clearing and Risk.

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, the following functions to the Director of the Division of Clearing and Intermediary Oversight and to such members of the Commission's staff acting under his direction as he may designate from time to time:

- (1) All functions reserved to the Commission in § 5.7 of this chapter;
- (2) All functions reserved to the Commission in § 5.10 of this chapter;
- (3) All functions reserved to the Commission in § 5.11 of this chapter;
- (4) All functions reserved to the Commission in § 5.12 of this chapter, except for those relating to nonpublic treatment of reports set forth in § 5.12(i) of this chapter; and
- (5) All functions reserved to the Commission in § 5.14 of this chapter;

(6) All functions reserved to the Commission in §§ 39.3(a)(2) and (a)(3) of this chapter;

(7) All functions reserved to the Commission in §§ 39.5(b)(2), (b)(3)(ix), and (d)(3) of this chapter;

(8) All functions reserved to the Commission in § 39.10(c)(4)(iv) of this chapter;

(9) All functions reserved to the Commission in §§ 39.11(b)(1)(vi), (b)(2)(ii), (c)(1), (c)(2), (f)(1) and (f)(4) of this chapter;

(10) All functions reserved to the Commission in § 39.12(a)(5)(i)(B) of this chapter;

(11) All functions reserved to the Commission in §§ 39.13(g)(8)(ii), (h)(1)(i)(C), (h)(1)(ii), (h)(3)(i), (h)(3)(ii), and (h)(5)(i)(A) of this chapter;

(12) The authority to request additional information in support of a rule submission under § 39.15(b)(2)(iii)(A) of this chapter and in support of a petition pursuant to section 4d of the Act under § 39.15(b)(2)(iii)(B) of this chapter;

(13) All functions reserved to the Commission in §§ 39.19(c)(3)(iv), (c)(5)(i), (c)(5)(ii), and (c)(5)(iii) of this chapter; and

(14) All functions reserved to the Commission in § 39.21(d) of this chapter.

(b) The Director of the Division of Clearing and Intermediary Oversight may submit any matter which has been delegated to him under paragraph (a) of this section to the Commission for its consideration.

(c) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Clearing and Intermediary Oversight under paragraph (a) of this section.

[75 FR 55449, Sept. 10, 2010, as amended at 76 FR 44474, July 26, 2011; 76 FR 69472, Nov. 8, 2011]

§ 140.95 Delegation of authority with respect to withdrawals from registration.

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight and to such members of the Commission's staff acting

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under his direction as he may designate, the authority to review, postpone, condition, deny, or otherwise act upon a request for withdrawal from registration.

(b) The Director of the Division of Clearing and Intermediary Oversight may submit any matter which has been delegated to him under paragraph (a) of this section to the Commission for its consideration.

(c) Nothing in this section shall prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Clearing and Intermediary Oversight under paragraph (a) of this section.

[46 FR 48918, Oct. 5, 1981, as amended at 67 FR 62353, Oct. 7, 2002]

§ 140.96 Delegation of authority to publish in the Federal Register.

(a) The Commodity Futures Trading Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Market Oversight or the Director's designee, with the concurrence of the General Counsel or the General Counsel's designee, the authority to publish in the FEDERAL REGISTER notice of the availability for comment of the proposed terms and conditions of applications for contract market designation, and to determine to publish, and to publish, requests for public comment on proposed exchange rule amendments of major economic significance.

(b) The Commodity Futures Trading Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Market Oversight or the Director's designee, and to the Director of the Division of Clearing and Intermediary Oversight or the Director's designee, with the concurrence of the General Counsel or the General Counsel's designee, the authority to determine to publish, and to publish, in the FEDERAL REGISTER, requests for public comment on proposed exchange and self-regulatory organization rule amendments when publication of the proposed rule amendment is in the public interest and will assist the Commission in considering the views of interested persons.

(c) The Director of the Division of Market Oversight or the Director of the Division of Clearing and Intermediary Oversight may submit any matter which has been delegated to such Director under paragraphs (a) or (b) of this section to the Commission for its consideration.

(d) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Market Oversight and to the Director of the Division of Clearing and Intermediary Oversight under paragraphs (a) and (b) of this section.

[50 FR 47532, Nov. 19, 1985, as amended at 55 FR 35897, Sept. 4, 1990; 57 FR 20638, May 14, 1992; 67 FR 62353, Oct. 7, 2002]

§ 140.97 Delegation of authority regarding requests for classification of positions as bona fide hedging.

(a) The Commodity Futures Trading Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Market Oversight, or the Director's designee, all functions reserved to the Commission in §§1.47 and 1.48 of this chapter.

(b) The Director of the Division of Market Oversight may submit any matter which has been delegated to the Director under paragraph (a) of this section to the Commission for its consideration.

(c) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Market Oversight under paragraph (a) of this section.

[57 FR 12874, Apr. 14, 1992, as amended at 67 FR 62353, Oct. 7, 2002]

§ 140.98 Publication of no-action, interpretative and exemption letters and other written communications.

(a) Except as provided in paragraphs (b) and (c) of this section, and except for applications for orders granting exemptions submitted pursuant to section 4(c) of the Commodity Exchange Act and any written responses thereto, each written response by the Commission or its staff to a letter or other written communication requesting:

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(1) Interpretative legal advice with respect to the Commodity Exchange Act or any rule, regulation or order issued or adopted by the Commission thereunder;

(2) A statement that, on the basis of the facts stated in such letter or other communication, the staff would not recommend that the Commission take any enforcement action; or

(3) An exemption, on the basis of the facts stated in such letter or other communication, from the provisions of the Commodity Exchange Act or any rules, or regulations or orders issued or adopted by the Commission thereunder; shall be made available, together with the letter or other written communication making the request, for inspection and copying by any person as soon as practicable after the response has been sent or given to the person requesting it.

(b) Any person submitting a letter or other written communication making such a request may also submit therewith a request that the letter or other written communication, as well as any Commission or staff response thereto, be accorded confidential treatment for a specified period of time, not exceeding 120 days from the date of the response thereto, together with a statement setting forth the considerations upon which the request for such treatment is based. If the staff determines that the request is reasonable and appropriate it will be granted and the letter or other written communication as well as the response thereto will not be made available for public inspection or copying until the expiration of the specified period. If it appears to the staff that the request for confidential treatment should be denied, the staff shall so advise the person making the request and such person may withdraw the letter or other written communication within 30 days thereafter. In such case, no response will be sent or given and the letter or other written communication shall remain in the Commission's files but will not be made public pursuant to this section. If such letter or other written communication is not so withdrawn, it shall be deemed to be available for public inspection and copying together with any written response thereto.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, no portion of a letter or other written communication received by the Commission or its staff of the type described in paragraph (a) of this section, or any written response thereto, shall be made available for inspection and copying or otherwise published which would separately disclose the business transactions or market positions of any person and trade secrets or names of customers, except in accordance with the provisions of section 8 of the Commodity Exchange Act.

[57 FR 61291, Dec. 24, 1992]

§ 140.99 Requests for exemptive, no-action and interpretative letters.

(a) *Definitions.* For the purpose of this section:

(1) *Exemptive letter* means a written grant of relief issued by the staff of a Division of the Commission from the applicability of a specific provision of the Act or of a rule, regulation or order issued thereunder by the Commission. An exemptive letter may only be issued by staff of a Division when the Commission itself has exemptive authority and that authority has been delegated by the Commission to the Division in question. An exemptive letter binds the Commission and its staff with respect to the relief provided therein. Only the Beneficiary may rely upon the exemptive letter.

(2) *No-action letter* means a written statement issued by the staff of a Division of the Commission or of the Office of the General Counsel that it will not recommend enforcement action to the Commission for failure to comply with a specific provision of the Act or of a Commission rule, regulation or order if a proposed transaction is completed or a proposed activity is conducted by the Beneficiary. A no-action letter represents the position only of the Division that issued it, or the Office of the General Counsel if issued thereby. A no-action letter binds only the issuing Division or the Office of the General Counsel, as applicable, and not the Commission or other Commission staff. Only the Beneficiary may rely upon the no-action letter.

(3) *Interpretative letter* means written advice or guidance issued by the staff

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of a Division of the Commission or the Office of the General Counsel. An interpretative letter binds only the issuing Division or the Office of the General Counsel, as applicable, and does not bind the Commission or other Commission staff. An interpretative letter may be relied upon by persons in addition to the Beneficiary.

(4) *Letter* means an exemptive, no-action or interpretative letter.

(5) *Division* means the Division of Clearing and Intermediary Oversight or the Division of Market Oversight.

(b) *General requirements.* (1) Issuance of a Letter is entirely within the discretion of Commission staff.

(2) Each request for a Letter must comply with the requirements of this section. Commission staff may reject or decline to respond to a request that does not comply with the requirements of this section.

(3) The request must relate to a proposed transaction or a proposed activity. Absent extraordinary circumstances, Commission staff will not issue a Letter based upon transactions or activities that have been completed or activities that have been conducted prior to the date upon which the request is filed with the Commission.

(4) The request must be made by or on behalf of the person whose activities or transactions are the subject of the request. Commission staff will not respond to a request for a Letter that is made by or on behalf of an unidentified person.

(5)(i) The request must set forth as completely as possible all material facts and circumstances giving rise to the request.

(ii) Commission staff will not respond to a request based on a hypothetical situation. However, a requester may set forth one or more alternative structures or fact situations for a proposed transaction or activity; *Provided*, That the request complies with this section with respect to each alternative structure or fact situation.

(c) *Information requirements.* Each request for a Letter must comply with the following information requirements:

(1)(i) A request made by the person on whose behalf the Letter is sought must contain:

(A) The name, main business address, main telephone number and, if applicable, the National Futures Association registration identification number of such person; and

(B) The name and, if applicable, the National Futures Association registration identification number of each other person for whose benefit the person is seeking the Letter.

(ii) When made by a requester other than the person on whose behalf the Letter is sought, the request must contain:

(A) The name, main business address and main business telephone number of the requester;

(B) The name and, if applicable, the National Futures Association registration identification number of the person on whose behalf the Letter is sought; and

(C) The name and, if applicable, the National Futures Association registration identification number of each other person for whose benefit the requester is seeking the Letter.

(iii) The request must provide the name, address and telephone number of a contact person from whom Commission staff may obtain additional information if necessary.

(2) The section number of the particular provision of the Act and/or Commission rules, regulations or orders to which the request relates must be set forth in the upper right-hand corner of the first page of the request.

(3) The request must be accompanied by:

(i) A certification by a person with knowledge of the facts that the material facts as represented in the request are true and complete. The following form of certification is sufficient for this purpose:

I hereby certify that the material facts set forth in the attached letter dated _____ are true and complete to the best of my knowledge.
(name and title) _____

and

(ii) An undertaking made by the person on whose behalf the Letter is sought or by that person's authorized representative that, if at any time prior to issuance of a Letter, any material representation made in the request

ceases to be true and complete, the person who made the undertaking will ensure that Commission staff is informed promptly in writing of all materially changed facts and circumstances. If a material change in facts or circumstances occurs subsequent to issuance of a Letter, the person on whose behalf the Letter is sought (or that person's authorized representative at the time of the change) must promptly so inform Commission staff.

(4) The request must identify the type of relief requested and Letter sought and must clearly state why a Letter is needed. The request must identify all relevant legal and factual issues and discuss the legal and public policy bases supporting issuance of the Letter.

(5) The request must contain references to all relevant authorities, including applicable provisions of the Act, Commission rules, regulations and orders, judicial decisions, administrative decisions, relevant statutory interpretations and policy statements. Adverse authority must be cited and discussed.

(6) The request must identify prior publicly available Letters issued by Commission staff in response to circumstances similar to those surrounding the request (including adverse Letters), and must identify any conditions imposed by prior Letters as prerequisites for the issuance of those Letters. Citation of a representative sample of prior Letters is sufficient where a comprehensive recitation of prior Letters on a given topic would be repetitious or would not assist the staff in considering the request.

(7) Requests may ask that, if the requested exemptive relief, no-action position or interpretative guidance is denied, the staff consider granting alternative relief or adopting an alternative position.

(d) *Filing requirements.* Each request for a Letter must comply with the following filing requirements:

(1) The request must be in writing and signed.

(2) A request for a Letter relating to the provisions of the Act or the Commission's rules, regulations or orders governing designated contract markets, registered derivatives transaction

execution facilities, exempt commercial markets, exempt boards of trade, the nature of particular transactions and whether they are exempt or excluded from being required to be traded on one of the foregoing entities, foreign trading terminals, hedging exemptions, and the reporting of market positions shall be filed with the Director, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. A request for a Letter relating to all other provisions of the Act or Commission rules shall be filed with the Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. A request for a Letter relating to all other provisions of the Act or Commission rules shall be filed with the Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. The request must be submitted electronically using the e-mail address dmoletters@cftc.gov (for request filed with the Division of Market Oversight), or dcioletters@cftc.gov (for requests filed with the Division of Clearing and Intermediary Oversight), as appropriate, and a properly signed paper copy of the request must be provided to the Division of Market Oversight or the Division of Clearing and Intermediary Oversight, as appropriate, within ten days for purposes of verification of the electronic submission.

(e) *Form of staff response.* No response to any request governed by this section is effective unless it is in writing, signed by appropriate Commission staff, and transmitted in final form to the recipient. Failure by Commission staff to respond to a request for a Letter does not constitute approval of the request. Nothing in this section shall preclude Commission staff from responding to a request for a Letter by way of endorsement or any other abbreviated, written form of response.

(f) *Withdrawal of requests.* (1) A request for a Letter may be withdrawn by filing with Commission staff a written request for withdrawal, signed by

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the person on whose behalf the Letter was sought or by that person's authorized representative, that states whether the person on whose behalf the Letter was sought will proceed with the proposed transaction or activity.

(2) Where a request has been submitted by an authorized representative of the person on whose behalf a Letter is sought, the authorized representative may withdraw from representation at any time without explanation, *Provided*, That Commission staff is promptly so notified.

(g) *Failure to pursue a request.* In the event that Commission staff requests additional information or analysis from a requester and the requester does not provide that information or analysis within thirty calendar days, Commission staff generally will issue a denial of the request; *Provided, however*, that Commission staff in its discretion may issue an extension of time to provide the information and or analysis.

(h) *Confidential treatment.* Confidential treatment of a request for a Letter must be requested separately in accordance with §140.98 or §145.9 of this chapter, as applicable.

(i) *Applicability to other sections.* The provisions of this section shall not affect the requirements of, or otherwise be applicable to:

(1) Notice filings required to be made to claim relief from the Act or from a Commission rule, regulation, or order including, without limitations, §§4.5, 4.7(a), 4.7(b), 4.12(b), 4.13(b) and 4.14(a)(8) of this chapter;

(2) Requests for exemption pursuant to section 4(c) of the Act; or

(3) Requests for exemption pursuant to §41.33 of this chapter.

[63 FR 68181, Dec. 10, 1998, as amended at 65 FR 47859, Aug. 4, 2000; 66 FR 44967, Aug. 27, 2001; 67 FR 62353, Oct. 7, 2002; 69 FR 41426, July 9, 2004]

Subpart C—Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

AUTHORITY: 7 U.S.C. 4a(f) and (j), 12a(5), and 13, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000).

SOURCE: 41 FR 27511, July 2, 1976, unless otherwise noted.

§ 140.735-1 Authority and purpose.

This subpart sets forth specific standards of conduct required of Commission members, employees of the Commission, and special government employees as well as regulations concerning former Commissioners, employees, and special government employees of the Commodity Futures Trading Commission. These rules are separate from and in addition to the Office of Government Ethics' conduct rules, Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635. In addition, this subpart contains references to various statutes governing employee conduct in order to aid Commission members, employees of the Commission and others in their understanding of statutory restrictions and requirements.¹ Absent compelling countervailing reasons, all Commission members and employees are subject to all the terms of this section.

[67 FR 5939, Feb. 8, 2002]

§ 140.735-2 Prohibited transactions.

(a) *Application.* This section applies to all transactions effected by or on behalf of a Commission member or employee of the Commission, including transactions for the account of other persons effected by the member or employee, directly or indirectly under a power of attorney or otherwise. A member or employee shall be deemed to have a sufficient interest in the transactions of his or her spouse, minor child, or other relative who is a resident of the immediate household of the member or employee so that such transactions must be reported and are subject to all the terms of this section.

(b) *Prohibitions.* Except as otherwise provided in this subsection, no member or employee of the Commission shall:

¹These references, however, do not purport to cover all restrictions and requirements, and paraphrased restatements of statutory provisions are not intended to be, and should not be construed as, verbatim quotations of the law. Statutory text should be consulted in any situation in which it might apply.