AUTHENTICATED
U.S. GOVERNMENT
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47. Attach as **Exhibit GG** policies and procedures implemented by the Applicant protect the privacy of any and all swap information that the swap data repository receives from reporting entities.

48. Attach as **Exhibit HH** a description of safeguards, policies, and procedures implemented by the Applicant to prevent the misappropriation or misuse of (a) any confidential information received by the Applicant, including, but not limited to "Section 8 Material" and "SDR Information," as those terms are defined in Commission Regulation §49.2, about a market participant or any of its customers; and/or (c) intellectual property by Applicant or any person associated with the Applicant for their personal benefit or the benefit of others.

49. Attach **Exhibit II** policies and procedures implemented by the Applicant regarding its use of the SDR information that it receives from a market participant, any registered entity, or any person for non-commercial and/or commercial purposes.

50. Attach as **Exhibit JJ** procedures and a description of facilities of the Applicant for effectively resolving disputes over the accuracy of the transaction data and positions that are recorded in the swap data repository.

51. Attach as **Exhibit KK** policies and procedures relating to the Applicant's calculation of positions.

52. Attach as **Exhibit LL** policies and procedures that are reasonably designed to prevent any provision in a valid swap from being invalidated or modified through the procedures or operations of the Applicant.

53. Attach as **Exhibit MM** a plan to ensure that the transaction data and position data that are recorded in the Applicant continue to be maintained after the Applicant withdraws from registration as a swap data repository, which shall include procedures for transferring the transaction data and position data to the Commission or its designee (including another registered swap data repository).

PART 100—DELIVERY PERIOD REQUIRED

AUTHORITY: 7 U.S.C. 7a(a)(4) and 12a.

§ 100.1 Delivery period required with respect to certain grains.

A period of seven business days is required during which contracts for future delivery in the current delivery month of wheat, corn, oats, barley, rye, or flaxseed may be settled by delivery of the actual cash commodity after trading in such contracts has ceased, for each delivery month after May 1938, on all contract markets on which there is trading in futures in any of such commodities, and such contract markets, and each of them, are directed to provide therefor.

[41 FR 3211, Jan. 21, 1976]

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

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AUTHORITY: 7 U.S.C. 2 and 12a.

Subpart A—Organization

§ 140.1 Headquarters office.

(a) *General*. The headquarters office of the Commission is located at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

(b) [Reserved]

[48 FR 2734, Jan. 21, 1983, as amended at 60 FR 49335, Sept. 25, 1995]

§ 140.2 Regional office—regional coordinators.

Each of the Regional offices described herein functions as set forth in this section under the direction of a Regional Coordinator who, as a collateral duty, oversees the administration of the office and represents the Commission in negotiations with employee union officials and in interactions with external parties. Each regional office has delegated authority for the enforcement of the Act and administration of the programs of the Commission in the particular regions.

(a) The Eastern Regional Office is located at 140 Broadway, New York, New York, 10005 and is responsible for enforcement of the Act and administration of programs of the Commission in the States of Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia.

(b) The Central Regional Office is located at 525 West Monroe Street, Suite 1100, Chicago, Illinois 60661 and is responsible for enforcement of the Act and administration of programs of the Commission in the States of Illinois, Indiana, Michigan, Ohio and Wisconsin.

(c) The Southwestern Regional Office is located at Two Emanuel Cleaver II Blvd., Suite 300, Kansas City, Missouri 64112, and is responsible for enforcement of the Act and administration of the programs of the Commission in the States of Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma,

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 Commission'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]

§ 140.12 Disposition of business by seriatim 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

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]

§ 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

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 consideration 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

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

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 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

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

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 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:

(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

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

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:

[1] These 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.

(1) Participate, directly or indirectly, in any transaction:

(i) In commodity futures;

(ii) Involving any commodity that is of the character of or which is commonly known to the trade as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, or decline guaranty; or

(iii) For the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract;

(2) Effect any purchase or sale of an option, futures contract, or option on a futures contract involving a security or group of securities;

(3) Sell a security which he or she does not own or consummate a sale by the delivery of a security borrowed by or for his or her account;

(4) Participate, directly or indirectly, in any investment transaction in an actual commodity if:

(i) Nonpublic information is used in the investment transaction;

(ii) It is prohibited by rule or regulation of the Commission; or

(iii) It is effected by means of any instrument regulated by the Commission and is not otherwise permitted by an exception under this section;

(5) Purchase or sell any securities of a company which, to his or her knowledge, is involved in any:

(i) Pending investigation by the Commission;

(ii) Proceeding before the Commission or to which the Commission is a party;

(iii) Other matter under consideration by the Commission that could have a direct and predictable effect upon the company; or

(6) Recommend or suggest to another person any transaction in which the member or employee is not permitted to participate in any circumstance where the member or employee could reasonably expect to benefit or where the member or employee has or may have control or substantial influence over such person.

(c) *Exception for farming, ranching, and natural resource operations.* The prohibitions in paragraphs (b)(1)(i) and (ii) of this section shall not apply to a transaction in connection with any farming, ranching, oil and gas, mineral rights, or other natural resource operation in which the member or employee has a financial interest, if he or she is not involved in the decision to engage in, and does not have prior knowledge of, the actual futures or options transaction and has previously notified the General Counsel[2] in writing of the nature of the operation, the extent of the member's or employee's interest, the types of transactions in which the operation may engage, and the identity of the person or persons who will make trading decisions for the operation;[3]

(d) *Other exceptions.* The prohibitions in paragraphs (b)(1), (2) and (3) of this section shall not apply to:

(1) A transaction entered into by any publicly-available pooled investment

[2] As used in this subpart, ''General Counsel'' refers to the General Counsel in his or her capacity as counselor for the Commission and designated agency ethics official for the Commission, and includes his or her designee and the alternate designated agency ethics official appointed by the agency head pursuant to 5 CFR 2638.202.

[3] Although not required, if they choose to do so, members or employees may use powers of attorney or other arrangements in order to meet the notice requirements of, and to assure that they have no control or knowledge of, futures or options transactions permitted under paragraph (c) of this section. A member or employee considering such arrangements should consult with the Office of General Counsel in advance for approval. Should a member or employee gain knowledge of an actual futures or option transaction entered into by an operation described in paragraph (c) of this section that has already taken place and the market position represented by that transaction remains open, he or she should promptly report that fact and all other details to the General Counsel and seek advice as to what action, including recusal from any particular matter that will have a direct and predictable effect on the financial interest in question, may be appropriate.

vehicle (such as a mutual fund or exchange-traded fund) other than one operated by a person who is a commodity pool operator with respect to such entity if the direct or indirect ownership interest of the member or employee neither exercises control nor has the ability to exercise control over the transactions entered into by such vehicle;[4]

(2) The acceptance or exercise of any stock option or similar right granted by an employer as part of a compensation package to a spouse or minor child or other related member of the immediate household of a member or employee, or to the exercise of any stock option or similar right granted to the member or employee by a previous employer prior to commencement of the member's or employee's tenure with the Commission as part of such member's or employee's compensation package from such previous employer;

(3) A transaction by any trust or estate of which the member or employee or the spouse, minor child, or other related member of the immediate household of the member or employee is solely a beneficiary, has no power to control, and does not in fact control or advise with respect to the investments of the trust or estate;

(4) The exercise of any privilege to convert or exchange securities, of rights accruing unconditionally by virtue of ownership of other securities (as distinguished from a contingent right to acquire securities not subscribed for by others), or of rights in order to round out fractional shares in securities;

(5) The acceptance of stock dividends on securities already owned, the reinvestment of cash dividends on a security already owned, or the participation in a periodic investment plan when the original purchase was otherwise consistent with this rule; or

(6) Investment in any fund established pursuant to the Federal Employees Retirement System.

(e) *No prohibition on stocks or funds.* Nothing in paragraph (b)(1) or (2) of this section shall prohibit a member or employee from purchasing, selling, or retaining any share that represents ownership of a publicly-owned corporation or interest in a publicly-available pooled investment vehicle containing any such shares (such as a mutual fund or exchange-traded fund) other than one operated by a person who is a commodity pool operator with respect to such pooled investment vehicle, regardless of whether any security futures product may at any time be or have been based upon shares of such corporation or pooled investment vehicle, and regardless of whether such pooled investment vehicle may, by design or effect, track or follow any group of securities that also underlies a futures contract.

(f) *Exception applicable to legally separated employees.* This section shall not apply to transactions of a legally separated spouse of a member or employee, including transactions for the benefit of a minor child, if the member or employee has no power to control, and does not, in fact, advise or control with respect to such transactions. If the member or employee has actual or constructive knowledge of such transactions of a legally separated spouse or for the benefit of a minor child, the disqualification provisions of § 140.735–2a(d)(2)(i)–(iii) and 18 U.S.C. 208 are applicable.

[67 FR 5939, Feb. 8, 2002]

§ 140.735–2a Prohibited interests.

(a) *Application.* This section applies to all financial interests of a Commission member or employee of the Commission, including financial interests held by the member or employee for the account of other persons. A member or employee shall be deemed to have a sufficient interest in the financial interests 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

[4] Section 9(c) of the Commodity Exchange Act makes it a felony for any member or employee, or agent thereof, to participate, directly or indirectly in, *inter alia,* any transaction in commodity futures, option, leverage transaction, or other arrangement that the Commission determines serves the same function, unless authorized to do so by Commission rule or regulation. 17 CFR 4.5 excludes certain otherwise regulated persons from the definition of ''commodity pool operator'' with respect to operation of specific investment entities enumerated in the regulation.

financial interests 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:

(1) Have a financial interest, through ownership of securities or otherwise, in any person[5] registered with the Commission (including futures commission merchants, associated persons and agents of futures commission merchants, floor brokers, commodity trading advisors and commodity pool operators, and any other persons required to be registered in a fashion similar to any of the above under the Commodity Exchange Act or pursuant to any rule or regulation promulgated by the Commission), or any contract market, board of trade, or other trading facility, or any clearing organization subject to regulation or oversight by the Commission;[6] or

(2) Own or control, through securities or otherwise, ten percent or more of the total ownership interests in any other person required to file reports under the Commodity Exchange Act, or pursuant to any rule or regulation promulgated by the Commission.[7]

(c) *Exceptions.* The prohibitions in paragraph (b) of this section shall not apply to:

(1) A financial interest in any publicly-available pooled investment vehicle (such as a mutual fund or exchange-traded fund) other than one operated by a person who is a commodity pool operator with respect to such entity if such vehicle does not have invested, or indicate in its prospectus the intent to invest, ten percent or more of its assets in securities of persons described in paragraph (b) of this section and the member or employee neither exercises control nor has the ability to exercise control over the financial interests held in such vehicle;

(2) A financial interest in any corporate parent or affiliate of a person described in paragraph (b)(1) of this section if the operations of such person provide less than ten percent of the gross revenues of the corporate parent or affiliate;[8]

(3) A financial interest in any trust or estate of which the member or employee is solely a beneficiary, has no power to control, and does not in fact control or advise with respect to the investments of the trust or estate; except that such interest is subject to the provisions of paragraphs (d) and (f) of this section.

(d) *Retention or passive acquisition of prohibited financial interests.* Nothing in this section shall prohibit a member or employee, or a spouse or minor child or other related member of the immediate household of the member or employee, from:

(1) Retaining a financial interest that was permitted to be retained by the member or employee prior to the adoption of this regulation, was obtained prior to the commencement of employment with the Commission, or was acquired by a spouse prior to marriage to the member or employee; or

(2) Acquiring, retaining, or controlling an otherwise prohibited financial interest, including but not limited to any security or option on a security (but not a security futures product), where the financial interest was acquired by inheritance, gift, stock split, involuntary stock dividend, merger,

[5] As defined in section 1a(16) of the Commodity Exchange Act and 17 CFR 1.3(u) thereunder, a ''person'' includes an individual, association, partnership, corporation and a trust.

[6] Attention is directed to 18 U.S.C. 208.

[7] The Division of Market Oversight maintains information on persons whose commodity futures and options positions are or have been reportable under the Commission's large trader reporting system. Members and employees should consult with DEA to determine whether any of their financial interests involve entities subject to such reporting.

[8] It is the member's or employee's responsibility to monitor his or her financial interests and those of a spouse or minor child or other related member of his or her immediate household, to promptly report relevant changes to the General Counsel in writing, and to seek the advice of the General Counsel as to what action may be appropriate. In this regard, attention is directed to 18 U.S.C. 208, which bars an employee from participating in any particular matter that will have a direct and predictable effect on the financial interest in question.

acquisition, or other change in corporate ownership, exercise of preemptive right, or otherwise without specific intent to acquire the financial interest, or by a spouse or minor child or other related member of the immediate household of the member or employee as part of an employment compensation package; *provided, however,* that retention of any interest allowed by paragraph (c)(3) or (d) of this section is permitted only where the employee:

(i) Makes full disclosure of any such interest on his or her annual financial disclosure (Standard Form 278 or Standard Form 450);

(ii) Makes full written disclosure to the General Counsel within 30 days of commencing employment or, for incumbents, within twenty days of his or her receipt of actual or constructive notice that the interest has been acquired;[9] and

(iii) Will be disqualified in accordance with 5 CFR part 2635, subpart D, and 18 U.S.C. 208 from participating in any particular matter that will have a direct and predictable effect on the financial interest in question. Any Commission member or employee affected by this section may, pursuant to 18 U.S.C. 208(b)(1) and 5 CFR 2640.301–303, request a waiver of the disqualification requirement.

NOTE: With respect to any financial interest retained under paragraph (c)(3) or (d) of this section, Commission members and employees are reminded of their obligations under 18 U.S.C. 208 and 5 CFR part 2635, subpart D, to disqualify themselves from participating in any particular matter in which they, their spouses or minor children have a financial interest.

(e) *Exception applicable to legally separated employees.* This section shall not apply to the financial interests of a legally separated spouse of a Commission member or employee, including transactions for the benefit of a minor child, if the member or employee has no power to control and does not, in fact, advise or control with respect to such transactions. If the member or employee has actual or constructive knowledge of such financial interests held by a legally separated spouse or for the benefit of a minor child, the disqualification provisions of paragraphs (d)(2)(i)–(iii) of this section and 18 U.S.C. 208 are applicable.

(f) *Divestiture.* Based upon a determination of substantial conflict under 5 CFR 2635.403(b) and 18 U.S.C. 208, the Commission, or its designee, may require in writing that a member or employee, or the spouse or minor child or other related member of the immediate household of a member or employee, divest a financial interest that he or she is otherwise authorized to retain under this section.[10]

[67 FR 5940, Feb. 8, 2002, as amended at 67 FR 62353, Oct. 7, 2002]

§ 140.735–3 Non-governmental employment and other outside activity.

A Commission member or employee shall not accept employment or compensation from any person, exchange or clearinghouse subject to regulation by the Commission. For purposes of this section, a person subject to regulation by the Commission includes but is not limited to a contract market or clearinghouse or member thereof, a registered futures commission merchant, any person associated with a futures commission merchant or with any agent of a futures commission merchant, floor broker, commodity trading advisor, commodity pool operator or any person required to be registered in a fashion similar to any of the above or file reports under the Act

[9] Changes in holdings, other than by purchase, which do not affect disqualification, such as those resulting from the automatic reinvestment of dividends, stock splits, stock dividends or reclassifications, may be reported on the annual statement, SF 278 or SF 450, rather than when notification of the transaction is received. Acquisition by, for example, gifts, inheritance, or spinoffs, which may result in additional disqualifications pursuant to paragraph (d)(2)(iii) of this section and 18 U.S.C. 208 shall be reported to the General Counsel within 20 days of the receipt of actual or constructive notice thereof.

[10] Any evidence of a violation of 18 U.S.C. 208 must be reported by the General Counsel to the Commission, which may refer the matter to the Criminal Division of the Department of Justice and the United States Attorney in whose venue the violations lie. *See* 28 U.S.C. 535.

or pursuant to any rule or regulation promulgated by the Commission.[8]

[58 FR 52658, Oct. 12, 1993]

§ 140.735–4 Receipt and disposition of foreign gifts and decorations.

(a) For purposes of this section only:

(1) *Commission member* or *employee* means any Commission member or any person employed by or who occupies an office or a position in the Commission; an expert or consultant under contract with the Commission, or in the case of an organization performing services under such contract, any individual involved in the performance of such service; and the spouse, unless the individual and his or her spouse are separated, and any dependent, as defined by section 152 of the Internal Revenue Code of 1954, of any such person.

(2) *Foreign government* means:

(A) Any unit of foreign governmental authority, including any foreign national, state, local, and municipal government;

(B) Any international or multinational organization whose membership is composed of any unit of foreign government described in paragraph (a)(2)(A) of this section; and

(C) Any agent or representative of any such unit or such organization, while acting as such.

(3) *Gift* means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government, except grants and other forms of assistance to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies.

(4) *Decoration* means an order, device, medal, badge, insignia, emblem, or award tendered by, or received from, a foreign government.

(5) *Minimal value* means a retail value in the United States at the time of acceptance of $140 or less, except as redefined to reflect changes in the consumer price index at three year intervals by the Administrator of General Services pursuant to authority granted in 5 U.S.C. 7342(a)(5)(A).

(b) Commission members and employees shall not:

(1) Request or otherwise encourage the tender of a gift or decoration;

(2) Accept a gift of currency, except that which has an historical or numismatic value;

(3) Accept gifts of travel or gifts of expenses for travel, such as transportation, food and lodging, from foreign governments, other than those authorized in paragraph (c)(5) of this section; or

(4) Accept any gift or decoration, except as authorized by this section.

(c) Gifts which may be accepted:

(1) Commission members and employees may accept and retain gifts of minimal value tendered or received as a souvenir or mark of courtesy from a foreign government without further approval. If the value of a gift is uncertain, the recipient shall be responsible for establishing that it is of minimal value, as defined in this section. Documentary evidence may be required in support of the valuation.

(2) Commission members and employees may accept, on behalf of the United States, gifts of more than minimal value tendered or received from a foreign government when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States. When a tangible gift of more than minimal value is accepted on behalf of the United States, it becomes the property of the United States.

(3) Commission members and employees may accept a gift of more than minimal value where such gift is in the nature of an educational scholarship or medical treatment.

(4) Within 60 days after accepting a tangible gift of more than minimal value, other than a gift described in paragraph (c)(5) of this section, a Commission member or employee shall file a statement with the Executive Director of the Commission which shall include the following information:

(A) The name and position of the Commission member or employee;

[8] Attention is directed to section 2(a)(7) of the Commodity Exchange Act, which provides, among other things, that no Commission member or employee shall accept employment or compensation from any person, exchange or clearinghouse subject to regulation by the Commission, or participate, directly or indirectly, in any contract market operations or transactions of a character subject to regulation by the Commission.

(B) A brief description of the gift and the circumstances justify acceptance;

(C) The identity, if known, of the foreign government and the name and position of the individual who presented the gift;

(D) The date of acceptance of the gift;

(E) The estimated value in the United States of the gift at the time of acceptance; and

(F) The disposition or current location of the gift.

(5) Commission members and employees are authorized to accept from a foreign government gifts of travel or gifts of expenses for travel taking place entirely outside the United States, such as transportation, food and lodging, of more than minimal value if the acceptance is approved by the Executive Director, upon a finding that it is consistent with the interests of the Commission. Either prior to or within 30 days after accepting each gift of travel or gift of travel expenses pursuant to this paragraph, the Commission member or employee concerned shall file a statement with the Executive Director containing the following information:

(A) The name and position of the Commission member or employee;

(B) A brief description of the gift and the circumstances justifying acceptance;

(C) The identity, if known, of the foreign government and the name and position of the individual who presented the gift; and

(D) The date of acceptance.

(6) Not later than January 31 of each year the Executive Director shall compile a listing of all statements filed during the preceding year by Commission members and employees pursuant to paragraphs (c)(4) and (c)(5) of this section and shall transmit the listing to the Secretary of State.

(d) Commission members or employees may accept, retain and wear decorations tendered by a foreign government in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the Executive Director. Without this approval, the decoration is deemed to have been accepted on behalf of the United States, shall become the property of the United States, and shall be deposited by the employee, within 60 days of acceptance, with the Executive Director for official use or forwarding to the Administrator of General Services for disposal in accordance with paragraph (g) of this section. Under normal circumstances, it can be expected that a Commission member or employee will be notified of the intent of a foreign government to award him or her or a spouse or dependent a decoration for outstanding or unusually meritorious service sufficiently in advance so that the approval required can be sought prior to its acceptance. A request for the approval of the Executive Director shall be submitted in writing, stating the nature of the decoration and the reason why it is being awarded. Whenever possible, the request should also be accompanied by a statement from the foreign government, preferably in the form of the citation, which shows the basis for the tender of the award, whether it is in recognition of active field service in time of combat operations or for other outstanding or unusually meritorious performance.

(e) Within 60 days after acceptance of a tangible gift of more than minimal value or a decoration for which the Executive Director has not given approval, a Commission member or employee shall:

(1) Deposit the gift or decoration for disposal with the Executive Director; or

(2) Subject to the approval of the Commission, upon the recommendation of the Executive Director, deposit the gift or decoration with the Commission for official use.

A gift or decoration may be retained for official use if the Commission determines that it can be properly displayed in an area accessible to employees and members of the public. Within 30 days after termination of the official use of a gift, the Executive Director shall forward the gift to the Administrator of General Services in accordance with paragraph (g) of this section.

(f) Whenever possible, gifts and decorations that have been deposited with the Executive Director for disposal shall be returned to the donor. The Executive Director, in coordination with

the Office of the General Counsel, shall examine the circumstances surrounding the donation, assessing whether any adverse effect on the foreign relations of the United States might result from the return of the gift or decoration to the donor. The appropriate Department of State officials shall be consulted if a question of adverse effect on United States foreign relations arises.

(g) Gifts and decorations that have not been returned to the donor, retained for official use, or for which official use has terminated, shall be forwarded by the Executive Director to the Administrator of General Services for transfer, donation, or other disposal in accordance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended, and 5 U.S.C. 7342.

(h) In accordance with 5 U.S.C. 7342(h), the U.S. Attorney General may bring a civil action in any United States district court against any Commission member or employee who knowingly solicits or accepts a gift from a foreign government not consented to by the Congress of the United States in 5 U.S.C. 7342, or who fails to deposit or report such gift as required by 5 U.S.C. 7342. The court may assess a penalty against such Commission member or employee in any amount not exceeding the retail value of the gift improperly solicited or received plus $5,000.

(i) A violation of the requirements set forth in this section by a Commission employee may be cause for appropriate disciplinary action which may be in addition to any penalty prescribed by law.

(j)(1) The burden of proving minimal value shall be on the recipient. In the event of a dispute over the value of a gift, the Executive Director shall arrange for an outside appraiser to determine whether the gift is of more or less than minimal value.

(2) When requested by the Administrator of Government Services, the Executive Director shall arrange for an appraisal of a gift or decoration.

(k) No appropriated funds of the Commission may be used to buy any tangible gift of more than minimal value for any foreign individual, unless the gift has been approved by Congress.

[47 FR 24115, June 3, 1982. Redesignated at 58 FR 52658, Oct. 12, 1993; 63 FR 32733, June 16, 1998]

§ 140.735–5 Disclosure of information.

A Commission employee or former employee shall not divulge, or cause or allow to be divulged, confidential or non-public commercial, economic or official information to any unauthorized person, or release such information in advance of authorization for its release.[9] Except as directed by the Commission or its General Counsel as provided in these regulations, no Commission employee or former employee is authorized to accept service of any subpoena for documentary information contained in or relating to the files of the Commission. Any employee or former employee who is served with a

[9] Attention is directed to section 9(d) of the Commodity Exchange Act, which provides that it shall be a felony punishable by a fine of not more than $500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution—(1) for any Commissioner of the Commission or any employee or agent thereof who, by virtue of his employment or position, acquires information which may affect or tend to affect the price of any commodity future or commodity and which information has not been promptly made public, to impart such information with intent to assist another person, directly or indirectly, to participate in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an option, privilege, indemnity, bid, offer, put, call, advance guaranty or decline guaranty, or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account or leverage contract, or under any contract or other arrangement that the Commission determines to serve the same function or is marketed in the same manner as such standardized contract, and (2) for any person to acquire such information from any Commissioner of the Commission or any employee or agent thereof and to use such information in any of the foregoing transactions.

subpoena requiring testimony regarding non-public information or documents shall, unless the Commission authorizes the disclosure of such information, respectfully decline to disclose the information or produce the documents called for, basing his refusal on these regulations.[10] Any employee or former employee who is served with a subpoena calling for information regarding the Commission's business shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making such information or document available in the public interest.[11] In any proceeding in which the Commission is not a party, no employee of the Commission shall testify concerning matters related to the business of the Commission unless authorized to do so by the Commission.

[58 FR 52658, Oct. 12, 1993]

§ 140.735–6 Practice by former members and employees of the Commission.

(a) *Personal and substantial participation or nonpublic knowledge of a particular matter*. No person who has been a member or employee of the Commission shall ever knowingly make, with the intent to influence, any communication to or appearance before the Commission in connection with any particular matter involving a specific party or parties[12] in which such person, or one participating with him or her in the particular matter, participated personally and substantially, or gained nonpublic knowledge of facts thereof, while with the Commission.[13]

(b) *Particular matter under an individual's official responsibility*. No person who has been a member or employee of the Commission shall, within two years after that employment has ceased, knowingly make, with the intent to influence, any communication to or appearance before the Commission in connection with a particular matter involving a specific party or parties which was actually pending under his official responsibility as a member or employee of the Commission at any time within one year prior to the termination of government service.[14]

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[10] No employee shall disclose such information unless directed to do so by the Commission.

[11] The prohibitions regarding confidential or nonpublic information stated above are intended to cover the matters addressed in sections 4(c), 8, and 9(d) of the Commodity Exchange Act as well as nonpublic information under the Freedom of Information Act, 5 U.S.C. 552, the rules of the Commission thereunder, 17 CFR part 145, the Privacy Act, 5 U.S.C. 552a, the rules of the Commission thereunder, 17 CFR part 146, and cases where, apart from specific prohibitions in any statute or rule, the disclosure or use of such information would be unethical.

[12] The phrase "particular matter involving a specific party or parties" does not apply to general rulemaking, general policy and standards formulation or other similar matters. *See* § 2637.201(c)(1) of the regulations of the Office of Government Ethics, 5 CFR 2637.201(c)(1); *cf.*, memorandum of the Attorney General dealing with the conflict-of-interest provisions prior to amendment by the Ethics in Government Act (reproduced following 18 U.S.C. 201).

[13] Attention is directed to 18 U.S.C. 207(a)(1), as amended, which generally prohibits former Federal officers and employees permanently from knowingly making, with the intent to influence, any communication to or appearance before any Federal (or District of Columbia) department, agency or court, or court martial, or any officer or employee thereof, in connection with any particular matter involving a specific party or parties in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while with the government.

[14] Attention is directed to 18 U.S.C. 207(a)(2), as amended. Section 207(a)(2) generally prohibits former Federal officers and employees, within two years after their Federal employment has ceased, from knowingly making, with the intent to influence, any communication to or appearance before any Federal (or District of Columbia) department, agency or court, or court martial, or any officer or employee thereof, in connection with any particular matter involving a specific party or parties in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and which was actually pending under the official responsibility of the former officer or employee within one year prior to the termination of government service.

As used in paragraph (b) of this section, the term "official responsibility" has the

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(c) *Restrictions on former members and senior employees.* A former member or employee of the Commission who occupied a ''senior'' position specified in 18 U.S.C. 207(c)(2), as amended, shall not within one year after such ''senior'' employment has ceased, knowingly make, with the intent to influence, any communication to or appearance before the Commission on behalf of any other person in connection with any matter in which such person seeks official action by the Commission.[15]

(d) *Exceptions.* The prohibitions contained in paragraphs (a), (b), and (c) of this section do not apply to communications solely for the purpose of furnishing scientific or technological information if approved by the Commission or generally to giving testimony under oath or making a statement which is subject to penalty or perjury. Further, the prohibition contained in paragraph (c) of this section does not apply to an uncompensated statement in a particular area within the special knowledge of the former Commission member or employee.[16]

(e) *Reporting requirement.* Any former member or employee of the Commission who, within two years after ceasing to be such, is employed or retained as the representative of any person (except the United States) in connection with a matter in which it is contemplated that he will appear before or communicate with the Commission shall, within ten days of such retainer or employment, or of the time when appearance before or communication with the Commission is first contemplated, file with the General Counsel of the Commission a statement as to the nature thereof together with any desired explanation as to why it is deemed consistent with this section. Employment of a recurrent character may be covered by a single comprehensive statement. Each such statement should include an appropriate caption indicating that it is filed pursuant to this section. The reporting requirement of this paragraph does not apply to communications incidental to court appearances in litigation involving the Commission.

(f) *Definitions.* As used in this section, the phrase ''appearance before the Commission'' means any formal or informal appearance on behalf of any person (except the United States) before the Commission, or any member or employee thereof with an intent to influence. As used in this section, the phrase ''communication with the Commission'' means any oral or written communication made to the Commission, or any member or employee thereof, on behalf of any person (except the United States) with an intent to influence.

(g) *Advisory ruling.* Persons in doubt as to the applicability of this section may apply for an advisory ruling by addressing a letter requesting such a ruling to the General Counsel.

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meaning assigned to it in 18 U.S.C. 202(b), namely, the ''direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.''

[15] Attention is directed to 18 U.S.C. 207(c), as amended, which places restrictions on the representational activities of certain senior officers and employees after their departure from a senior position. Section 207(c) generally makes it unlawful for one year after service in a ''senior'' position terminates for a former ''senior'' Federal employee to knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he served in any capacity during the one year period prior to termination from ''senior'' service, if that communication or appearance is on behalf of any other person (except the United States), in connection with any matter concerning which he seeks official action by that employee.

Note that the one year period is measured from the date when the employee ceases to be a senior employee, not from the termination of Government service, unless the two occur simultaneously. This provision prohibits communications to or appearances before the Government and does not prohibit ''behind-the-scenes'' assistance. The restriction does not require that the former employee have ever been in any way involved in the matter that is the subject of the communication or appearance. The restriction applies with respect to any matter, whether or not involving a specific party.

[16] Attention is directed to 18 U.S.C. 207(j), as amended (listing other exceptions). Self-representation is not prohibited under section 207.

(h) *Procedures for administrative enforcement of statutory restrictions on post-government employment conflicts of interest*[17]—(1) *Scope*. The provisions of this paragraph prescribe procedures for administrative enforcement of the restrictions which 18 U.S.C. 207 (a), (b), and (c), as amended, place on appearances before or communications with Federal (and District of Columbia) departments, agencies and courts, and other enumerated entities, as well as the officers and employees thereof, by former Commission members and employees.

(2) *Investigations*. The General Counsel of the Commission, or his or her designee, shall conduct such investigations as he or she deems appropriate to determine whether any former Commission member or employee have violated 18 U.S.C. 207 (a), (b) or (c), as amended. The General Counsel shall report the results of his or her investigations to the Commission and shall recommend to the Commission such action as he or she deems appropriate.

(3) *Hearings*. Hearings required to be held under the provisions of this section shall be held before an Administrative Law Judge, utilizing the procedures prescribed by the Commission's rules of practice for adjudicatory proceedings (17 CFR part 10), except to the extent that those rules are inconsistent with the provisions of this section. Any proceeding brought under the provisions of this section shall be prosecuted by the General Counsel or his or her designee.

(4) *Sanctions*. If the Commission finds, after notice and opportunity for a hearing, that a former Commission member or employee has violated 18 U.S.C. 207 (a), (b) or (c), as amended, the Commission may prohibit that person from making, on behalf of any other person (except the United States), any formal or informal appearance before, or with the intent to influence any oral or written communication to, the Commission on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action.

[58 FR 52658, Oct. 12, 1993; 58 FR 58593, Nov. 2, 1993]

[17] This section does not apply to employees who leave service after December 31, 1990.

§ 140.735–7 Statutory violations applicable to conduct of Commission members and employees.

A violation of section 2(a)(7), 8 or 9 (c) or (d) of the Commodity Exchange Act, as amended, shall be deemed to be a violation of this subpart as well.

[58 FR 52660, Oct. 12, 1993]

§ 140.735–8 Interpretative and advisory service.

(a) *Counselor for the Commission*. The General Counsel, or his or her designee, will serve as Counselor for the Commission and as the Commission's representative to the Office of Government Ethics, on matters covered by this subpart. The General Counsel will also serve as the Commission's designated agency ethics official to review the financial reports filed by high-level Commission officials under title II of the Ethics in Government Act, as well as otherwise to coordinate and manage the Commission's ethics program.

(b) *Duties of the Counselor*. The Counselor shall:

(1) Coordinate the agency's counseling services and assure that counseling and interpretations on questions of conflict of interests and other matters covered by the regulations in this subpart are available as needed to Regional Deputy Counselors, who shall be appointed by the General Counsel, in coordination with the Chairman of the Commission, for each Regional Office of the Commission;

(2) Render authoritative advice and guidance on matters covered by the regulations in this subpart which are presented to him or her by employees in the Washington, DC headquarters office; and

(3) Receive information on, and resolve or forward to the Commission for consideration, any conflict of interests or apparent conflict of interests which appears in the annual financial disclosure (Standard Form 278 or Standard Form 450), or is disclosed to the General Counsel by a member or employee pursuant to § 140.735–2a(d) of this part,

or otherwise is made known to the General Counsel.

(i) A conflict of interests or apparent conflict of interests is considered resolved by the General Counsel when the affected member or employee has executed an ethics agreement pursuant to 5 CFR 2634.801 *et seq.* to undertake specific actions in order to *resolve* the actual or apparent conflict.

(ii) If, after advice and guidance from the General Counsel, a member or employee does not execute an ethics agreement, the conflict of interests is considered unresolved and must be referred to the Commission for resolution or further action consistent with 18 U.S.C. 208 and 28 U.S.C. 535.

(iii) *Where an unresolved conflict of interests or apparent conflict of interests is to be forwarded to the Commission by the General Counsel,* the General Counsel will promptly notify the affected member or employee in writing of his or her intent to forward the matter to the Commission. Any member or employee so affected will be afforded an opportunity to be heard by the Commission through written submission.

(c) *Regional Deputy Counselors.* Regional Deputy Counselors shall:

(1) Give advice and guidance as requested to the employees assigned to their respective Regional Offices; and

(2) Receive information on and refer to the Director of Human Resources, any conflict of interests or appearance of conflict of interests in Statements of Employment and Financial Interests submitted by employees to whom they are required to give advice and guidance.

(d) *Confidentiality of communications.* Communications between the Counselor and Regional Deputy Counselors and an employee shall be confidential, except as deemed necessary by the Commission or the Counselor to carry out the purposes of this subpart and of the laws of the United States.[18]

(e) *Furnishing of conduct regulations.* The Director of Human Resources shall furnish a copy of this Conduct Regulation to each member, employee, and special government employee immediately upon his or her entrance on duty and shall thereafter, annually, and at such other times as circumstances warrant, bring to the attention of each member and employee this Conduct Regulation and all revisions thereof.

(f) *Availability of counseling services.* The Director of Human Resources shall notify each member, employee, and special government employee of the availability of counseling services and of how and where these services are available at the time of entrance on duty and periodically thereafter.

[58 FR 52660, Oct. 12, 1993, as amended at 61 FR 21955, May 13, 1996; 62 FR 13302, Mar. 20, 1997; 67 FR 5941, Feb. 8, 2002]

[18] No attorney-client privilege, however, attaches to such communications since the Counselors are counsel to the Commission, not to the employee. Thus, any evidence of criminal law violations divulged by an employee to the Counselor must be reported by the latter to the Commission, which may refer the matter to the Criminal Division of the Department of Justice and the United States Attorney in whose venue the violations lie.

PART 141—SALARY OFFSET

Sec.
141.1 Purpose and scope.
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AUTHORITY: 5 U.S.C. 5514, E.O. 11609 (redesignated E.O. 12197), 5 CFR part 550, subpart K, and 7 U.S.C. 4a(j), unless otherwise noted.

SOURCE: 55 FR 5207, Feb. 14, 1990, unless otherwise noted.

§ 141.1 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset of a federal employee's salary without his/her consent to satisfy certain debts owed to the federal government. These regulations apply to employees of other federal agencies and current employees of the Commission who owe debts to the Commission