

**PART 144—PROCEDURES REGARDING THE DISCLOSURE OF INFORMATION AND THE TESTIMONY OF PRESENT OR FORMER OFFICERS AND EMPLOYEES IN RESPONSE TO SUBPOENAS OR OTHER DEMANDS OF A COURT**

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 4a(j) and 12a(5); 31 U.S.C. 9701, unless otherwise noted.

SOURCE: 50 FR 11149, Mar. 20, 1985, unless otherwise noted.

**§ 144.0 Purpose and scope.**

(a) The regulations in this part set forth procedures to be followed with respect to the disclosure, in response to a subpoena, order or other demand (collectively “demand”) of a court or other authority of any material contained in the files of the Commission, of any information relating to material contained in the files of the Commission or any information acquired by any person while such person is or was an employee of the Commission as part of the performance of that person’s official duties or by virtue of that person’s official status. Employee as used in this part includes both members and employees of the Commission. Demand as used in this part does not include requests for the production of documents in compliance with Fed. R. Civ. P. 34.

(b) Nothing in this part affects disclosure of information under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, the Sunshine Act, 552b, or the Commission’s implementing regulations in part 145, 17 CFR 145.0, *et seq.*, or pursuant to Congressional subpoena or pursuant to other Commission regulation. Nothing in this part otherwise permits disclosure of information by

the Commission except as is provided by statute or other applicable law.

(c) This part is intended to provide guidance for the internal operations of the Commission and is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law against the Commission.

**§ 144.1 Service upon the Commission.**

(a) Subject to paragraph (e) of this section, the Secretary of the Commission is the only person authorized to accept service of a demand directed to the Commission or to an employee of the Commission for documentary information contained in or relating to information contained in the files of the Commission.

(b) Any such demand must be addressed to the Secretary of the Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

(c) In the event that any such demand is attempted to be served upon an employee of the Commission other than the Secretary of the Commission, unless otherwise directed by the Commission’s General Counsel, that employee shall respectfully decline to accept service on the ground that the employee is without authority to do so.

(d) The Secretary shall promptly advise the General Counsel of any service of any demand, and the General Counsel shall thereafter advise the Commission regarding the matter.

(e) A demand for information contained in the Commission’s files concerning the registration of persons or entities for which authority has been delegated to the National Futures Association must be served upon the National Futures Association, 200 West Madison Street, Suite 1600, Chicago, Illinois 60606, to the attention of the General Counsel.

[50 FR 11149, Mar. 20, 1985, as amended at 60 FR 49335, Sept. 25, 1995]

**§ 144.2 Service upon an employee or former employee of the Commission.**

(a) Any employee of the Commission who is served or is attempted to be served with a demand of a court or other authority seeking information or documents relating to the business of

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the Commission shall promptly advise the General Counsel of the service or attempted service of such demand, the nature of the information or documents sought by the demand and any circumstances that may bear upon the desirability in the public interest of disclosure of the information or the production of documents.

(b) Any former employee of the Commission who is served or is attempted to be served with a demand of a court or other authority seeking information or documents relating to the business of the Commission shall promptly advise the General Counsel of the service or the attempted service of such demand, the nature of the information or documents sought by the demand and any circumstances that might bear upon the desirability in the public interest of the disclosure of the information or the production of documents.

(c) After such further inquiry as appropriate, the General Counsel shall advise the Commission concerning the matter.

#### **§ 144.3 Testimony by present or former Commission employees.**

(a) In any proceeding to which the Commission is not a party, an employee of the Commission shall not testify concerning matters related to the business of the Commission unless authorized to do so by the Commission upon the advice of the General Counsel.

(b) In any proceeding, an employee or former employee of the Commission shall not testify concerning non-public matters related to the business of the Commission unless authorized to do so by the Commission upon the advice of the General Counsel. See §140.735-9 of these regulations.

#### **§ 144.4 Production or disclosure of records by present or former employees.**

(a) No employee of the Commission shall, in response to a demand by a court or other authority or otherwise in any proceeding in which the Commission is not a party, produce any material contained in the files of the Commission or disclose any information relating to material contained in the files of the Commission or disclose any information or produce any mate-

rial acquired as part of the performance of the employee's official duties or by virtue of the employee's official status unless authorized to do so by the Commission, provided that Commission authorization shall not be required to comply with a demand solely for Commission documents generally available to the public. In litigation in which the Commission is a party no employee may produce any confidential Commission material without Commission authorization.

(b) No former employee of the Commission shall, in response to a demand by a court or other authority or otherwise in any proceeding in which the Commission is not a party, produce without Commission authorization any material contained in or from the files of the Commission acquired as part of the performance of the former employee's official duties while employed by the Commission. No former employee may in any litigation produce confidential material acquired as part of the performance of the former employee's official duties while employed by the Commission unless authorized to do so by the Commission.

#### **§ 144.5 Procedures when production or disclosure of Commission records or information relating to Commission business is sought.**

(a) If in any proceeding oral testimony of an employee or former employee of the Commission is sought concerning matters related to the business of the Commission, an affidavit or, if that is not feasible, a signed statement by the party seeking the testimony or by his attorney, setting forth with particularity a summary of the testimony sought and its relevance to the proceeding, must be furnished to the Commission's General Counsel at the Commission's office in Washington, DC. When authorization by the Commission is required, any authorization shall be limited to the scope of the demand as summarized in such statement.

(b) If a response to a demand by a court or other authority is required before instructions from the Commission

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are received, and Commission authorization is required, a Commission attorney shall be designated by the General Counsel to appear and to inform the court or other authority of these regulations and that the subpoena or demand has been referred for prompt consideration by the Commission. The Commission attorney shall request a stay of the demand pending receipt of instructions.

(c) In the event that the court or other authority declines to stay the effect of the demand pending receipt of instructions or in the event that the court rules that there must be compliance with the demand irrespective of instructions not to produce the material or disclose the information sought, the Commission employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand.

### § 144.6 Fees.

The provisions of § 145.8 of these regulations with respect to fees for production of documents pursuant to the FOIA are applicable to this part.

## PART 145—COMMISSION RECORDS AND INFORMATION

Sec.

145.0 Definitions.

145.1 Information published in the FEDERAL REGISTER.

145.2 Records available for public inspection and copying; documents published and indexed.

145.3 [Reserved]

145.4 Public records available with identifying details deleted; nonpublic records available in abridged or summary form.

145.5 Disclosure of nonpublic records.

145.6 Commission offices to contact for assistance; registration records available.

145.7 Requests for Commission records and copies thereof.

145.8 Fees for records services.

145.9 Petition for confidential treatment of information submitted to the Commission.

APPENDIX A TO PART 145—COMPILATION OF COMMISSION RECORDS AVAILABLE TO THE PUBLIC

APPENDIX B TO PART 145—SCHEDULE OF FEES  
APPENDIX C TO PART 145 [RESERVED]

AUTHORITY: Pub. L. 99-570, 100 Stat. 3207; Pub. L. 89-554, 80 Stat. 383; Pub. L. 90-23, 81 Stat. 54; Pub. L. 98-502, 88 Stat. 1561-1564 (5

U.S.C. 552); Sec. 101(a), Pub. L. 93-463, 88 Stat. 1389 (5 U.S.C. 4a(j)); unless otherwise noted.

### § 145.0 Definitions.

For the purposes of part 145 the following definitions are applicable:

*Assistant Secretary*—refers to the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance.

*Compliance staff*—refers to the FOI, Privacy and Sunshine Acts Compliance staff of the Office of the Secretariat at the Commission's principal office in Washington, DC assigned to respond to requests for information and to handle various other matters under the Freedom of Information Act, the Privacy Act of 1974, and the Government in the Sunshine Act.

*Public records*—in addition to the records described in § 145.1 (material published in the FEDERAL REGISTER) and in § 145.2 (records required to be made publicly available under the Freedom of Information Act), includes those records that have been determined by the Commission to be generally available to the public directly upon oral or written request from the Commission office or division responsible for the maintenance of such records. A compilation of Commission records routinely available to the public upon request appears in appendix A to this part 145.

*Nonpublic records*—are records not identified in § 145.1, § 145.2, or appendix A of this part 145. Nonpublic records must be requested, in writing, in accordance with the provisions of § 145.7.

*Record*—is any information or agency record maintained by the Commission in any format, including an electronic format. It includes any document, writing, photograph, sound or magnetic recording, videotape, microfiche, drawing, or computer-stored information or output in the possession of the Commission. The term "record" does not include personal convenience materials over which the Commission has no control, such as appointment calendars and handwritten notes, which may be retained or destroyed at an employee's discretion.

[62 FR 17069, Apr. 9, 1997]