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AUTHORITY: 15 U.S.C. 77s, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

Sections 200.27, 200.27a, 200.30-6, and 200.30-6a are also issued under 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77q, 77u, 78e, 78g, 78h, 78i, 78k, 78m, 78o, 78o-4, 78q, 78q-1, 78t-1, 78u, 77hhh, 77uuu, 80a-41, 80b-5, and 80b-9.

Section 200.30-1 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 78c(b) 78l, 78m, 78n, 78o(d).

Section 200.30-3 is also issued under 15 U.S.C. 78b, 78d, 78f, 78k-1, 78s, 78q, 78eee, 79d.

Section 200.30-5 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-20, 80a-24, 80a-29, 80b-3, 80b-4.

SOURCE: 27 FR 12712, Dec. 22, 1962, unless otherwise noted.

§200.1 General statement and statutory authority.

The Securities and Exchange Commission was created in 1934 under the Securities Exchange Act. That Act transferred to the Commission the administration of the Securities Act of 1933, formerly administered by the Federal Trade Commission. Subsequent laws assigned to the Securities and Exchange Commission for administration are: Public Utility Holding Company Act of 1935, Trust Indenture Act of 1939, Investment Company Act of 1940, and Investment Advisers Act of 1940. In addition, under the Bankruptcy Code, the Commission is a statutory party in cases arising under chapters 9 and 11. Considered together, the laws administered by the Commission provided for the following.

(a) Public disclosure of pertinent facts concerning public offerings of securities and securities listed on national securities exchanges and certain securities traded in the over-the-counter markets.

(b) Enforcement of disclosure requirements in the soliciting of proxies for meetings of security holders by companies whose securities are registered pursuant to section 12 of the Securities Exchange Act of 1934, public utility holding companies, and their subsidiaries and investment companies.

(c) Regulation of the trading in securities on national securities exchanges and in the over-the-counter markets.

(d) Investigation of securities frauds, manipulations, and other violations, and the imposition and enforcement of legal sanctions therefor.

(e) Registration, and the regulation of certain activities, of brokers, dealers and investment advisers.

(f) Supervision of the activities of mutual funds and other investment companies.

(g) Administration of statutory standards governing protective and other provisions of trust indentures under which debt securities are sold to the public.

(h) Regulation of the purchase and sale of securities, utility properties, and other assets by registered public utility holding companies and their electric and gas utility subsidiaries; enforcement of statutory standards for public utility holding company system simplification and integration; and approval of their reorganization, mergers and consolidations.

(i) Protection of the interests of public investors involved in bankruptcy reorganization cases and in bankruptcy cases involving the adjustment of debts of a municipality.

(j) Administrative sanctions, injunctive remedies, civil money penalties and criminal prosecution. There are also private rights of action for investors injured by violations of the Acts.

(15 U.S.C. 78d-1, 78d-2; 11 U.S.C. 901, 1109(a))

[27 FR 12712, Dec. 22, 1962, as amended at 43 FR 13375, Mar. 30, 1978; 49 FR 12684, Mar. 30, 1984; 60 FR 14623, Mar. 20, 1995; 60 FR 32794, June 23, 1995]

§ 200.2 Statutory functions.

Following are brief descriptions of the Commission's functions under each of the statutes it administers:

(a) *Securities Act of 1933.* (1) Issuers of securities making public offerings for sale in interstate commerce or through the mails, directly or by others on their behalf, are required to file with the Commission registration statements containing financial and other pertinent data about the issuer and the offering. A similar requirement is provided with respect to such public offer-

ings on behalf of a controlling person of the issuer. Unless a registration statement is in effect with respect to such securities, it is unlawful to sell the securities in interstate commerce or through the mails. (There are certain limited exemptions, such as government securities, non-public offerings, and intrastate offerings.) The effectiveness of a registration statement may be refused or suspended after a hearing if the statement contains material misstatements or omissions, thus barring sale of the securities until it is appropriately amended. Registration is not a finding by the Commission as to the accuracy of the facts disclosed; and it is unlawful so to represent. Moreover, registration of securities does not imply approval of the issue by the Commission or insure investors against loss in their purchase, but serves rather to provide information upon which investors may make an informed and realistic evaluation of the worth of the securities.

(2) Persons responsible for filing false information with the Commission subject themselves to the risk of fine or imprisonment or both; and the issuing company, its directors, officers, and the underwriters and dealers and others may be liable in damages to purchasers of registered securities if the disclosures in the registration statements and prospectus are materially defective. Also the statute contains antifraud provisions which apply generally to the sale of securities, whether or not registered.

(b) *Securities Exchange Act of 1934.* This Act requires the filing of registration applications and annual and other reports with national securities exchanges and the Commission, by companies whose securities are listed on the exchanges. Annual and other reports must be filed also by certain companies whose securities are traded on the over-the-counter markets. These must contain financial and other data prescribed by the Commission for the information of investors. Material misstatements or omissions are grounds for suspension or withdrawal of the security from exchange trading. This Act makes unlawful any solicitation of proxies, authorizations, or consents in contravention of Commission

rules. These rules require disclosure of information about the subject of the solicitation to security holders. The Act requires disclosure of the holdings and the transactions by an officer, director, or beneficial owner of over 10 percent of any class of equity security of certain companies. It also requires disclosure of the beneficial owners of more than five percent of any class of equity securities of a registered company. It provides substantive and procedural protection to security holders in third-party and issuer tender offers. The Act also provides for the registration with, and regulation by, the Commission of national securities exchanges, brokers or dealers engaged in an over-the-counter securities business, and national associations of such brokers or dealers. It gives the Commission rulemaking power with respect to short sales, stabilizing, floor trading activities of specialists and odd-lot dealers, and such matters as excessive trading by exchange members. The Act authorizes the Board of Governors of the Federal Reserve System to prescribe minimum margin requirements for listed securities.

(c) *Public Utility Holding Company Act of 1935.* This Act authorizes the Commission to regulate gas and electric public-utility holding companies under standards prescribed for the protection of the public interest and the interest of investors and consumers. The Act generally limits a public-utility holding company to a single integrated public-utility system, and requires simple corporate and capital structures. If not exempt, a public-utility holding company must register with the Commission. Generally, a registered holding company must obtain Commission approval before it can issue and sell securities, acquire utility securities or assets or any other interest in any business, or enter into transactions with its affiliates. It must also comply with extensive reporting and record-keeping requirements. Although largely free of these requirements, an exempt holding company remains subject to the geographic limitations of the Act. The Act permits the acquisition of interests in "exempt wholesale generators" and "foreign utility com-

panies" unrelated to a system's utility operations.

(d) *Trust Indenture Act of 1939.* This Act safeguards the interests of purchasers of publicly-offered debt securities issued under trust indentures by requiring the inclusion of certain protective provisions in, and the exclusion of certain types of exculpatory clauses from, trust indentures. The Act also requires that an independent indenture trustee represent the debtors by proscribing certain relationships that could conflict with proper exercise of duties.

(e) *Investment Company Act of 1940.* This Act establishes a comprehensive regulatory framework for investment companies and subjects their activities to regulation under standards prescribed for the protection of investors. Among other things, the Act provides for the registration of investment companies with the Commission; requires them to disclose their financial condition and investment policies to their shareholders; prohibits them from substantially changing investment policies without shareholder approval; bars persons guilty of securities fraud from serving as officers or directors; prevents underwriters, investment bankers, or brokers from constituting more than a minority of the directors of an investment company; requires that management contracts be submitted to shareholders for their approval; prohibits transactions between investment companies and their directors, officers, or affiliated companies or persons, except when approved by the Commission; and prohibits investment companies from issuing senior securities except under specified terms and conditions. The Act also regulates advisory fees, sales and repurchases of securities, exchange offers, and other activities of investment companies. The Act authorizes the Commission to exempt any person or class of persons or securities from any provisions of, or rules under, the Act and to conduct any investigation it deems necessary to determine existing or potential violations of the Act. It also authorizes the Commission to prepare reports to security holders on the fairness of plans of reorganization, merger, or consolidation. The Commission may institute a

court action to enjoin acts or practices of management involving, among other things, a breach of fiduciary duty and the consummation of plans of reorganization, merger, or consolidation that are grossly unfair to security holders.

(f) *Investment Advisers Act of 1940.* Persons who, for compensation, engage in the business of advising others with respect to their security transactions must register with the Commission. Their activities in the conduct of such business are subject to standards of the act which make unlawful those practices which constitute fraud or deceit and which require, among other things, disclosure of any interests they may have in transactions executed for clients. The Act grants to the Commission rule-making power with respect to fraudulent and other activities of investment advisers.

(g) *Chapter 11 of the Bankruptcy Code.* Chapter 11 of the Bankruptcy Code (11 U.S.C. 1101 *et seq.*) provides for Commission participation as a statutory party in reorganization cases. Under section 1109(a) of the Bankruptcy Code (11 U.S.C. 1109(a)), which also applies to Chapter 9 cases regarding municipalities, the Commission “may raise and may appear and be heard on any issue in the case.”

(11 U.S.C. 901, 1109(a))

[27 FR 12712, Dec. 22, 1962, as amended at 49 FR 12684, Mar. 30, 1984; 60 FR 14624, Mar. 20, 1995]

GENERAL ORGANIZATION

§ 200.10 The Commission.

The Commission is composed of five members, not more than three of whom may be members of the same political party. The members are appointed by the President, with the advice and consent of the Senate, for 5-year terms, one term ending each year. The Chairman is designated by the President pursuant to the provisions of section 3 of Reorganization Plan No. 10 of 1950 (3 CFR, 1949–1953 Comp., p. 1006). The Commission is assisted by a staff, which includes lawyers, accountants, engineers, financial security analysts, investigators and examiners, as well as administrative and clerical employees.

§ 200.11 Headquarters Office—Regional and District Office relationships.

(a)(1) Division and Office Heads in the Headquarters Office (450 Fifth Street, NW., Washington, DC 20549) have Commission-wide responsibility to the Commission for the overall development, policy and technical guidance, and policy direction of the operating programs under their jurisdiction.

(2) Each Regional Director is responsible, subject to the supervision of the Director of the Division of Enforcement, for the direction and supervision of his or her work force and for the execution of all programs in his or her region as shown in paragraph (b) of this section, in accordance with established policy. Each District Administrator is responsible, subject to the supervision of the relevant Regional Director, for the direction and supervision of his or her work force and for the execution of all programs through his or her office, in accordance with established policy.

(b) Regional Directors and District Administrators of the Commission.

Region 1: Northeast Region. Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia—Regional Director, 7 World Trade Center, suite 1300, New York, NY 10048.

Boston District—District Administrator, 73 Tremont Street, suite 600, Boston, MA 02108.

Philadelphia District—District Administrator, The Curtis Center, suite 1005 E., 601 Walnut Street, Philadelphia, PA 19106.

Region 2: Southeast Region. Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virgin Islands—Regional Director, 1401 Brickell Avenue, suite 200, Miami, FL 33131.

Atlanta District—District Administrator, 3475 Lenox Road, NE., suite 1000, Atlanta, GA 30326.

Region 3: Midwest Region. Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, Wisconsin—Regional Director, 500 West Madison Street, suite 1400, Chicago, IL 60661.

Region 4: Central Region. Arkansas, Colorado, Kansas, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota,

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Texas, Utah, Wyoming—Regional Director, 1801 California Street, suite 4800, Denver, CO 80202.

Fort Worth District—District Administrator, 801 Cherry Street, 19th Floor, Fort Worth, TX 76102. Salt Lake District—District Administrator, 500 Key Bank Tower, 50 S. Main Street, suite 500, Box 79, Salt Lake City, UT 84144.

Region 5: Pacific Region. Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Washington—Regional Director, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, CA 90036.

San Francisco District—District Administrator, 44 Montgomery Street, Suite 1100, San Francisco, CA 94104.

(c) The following geographic allocation determines where registered brokers, dealers, transfer agents, clearing agents, registered securities associations, investment advisers, and others as designated in this chapter must file reports required to be filed in regional or district offices:

Northeast Regional Office: New Jersey, New York.

Boston District Office: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

Philadelphia District Office: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.

Southeast Regional Office: Florida, Puerto Rico, Virgin Islands.

Atlanta District Office: Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee.

Midwest Regional Office: Illinois, Indiana, Iowa, Kentucky, Ohio, Michigan, Minnesota, Missouri, Wisconsin.

Central Regional Office: Colorado, Nebraska, New Mexico, North Dakota, South Dakota, Utah, Wyoming.

Fort Worth District Office: Arkansas, Kansas, Oklahoma, Texas.

Pacific Regional Office: Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Washington.

[27 FR 12712, Dec. 22, 1962, as amended at 28 FR 6970, July 9, 1963; 41 FR 44696, Oct. 12, 1976; 47 FR 26818, June 22, 1982; 49 FR 12684, Mar. 30, 1984; 49 FR 13679, Apr. 6, 1984; 52 FR 2677, Jan. 26, 1987; 59 FR 5943, Feb. 9, 1994; 59 FR 12543, Mar. 17, 1994]

§ 200.12 Functional responsibilities.

This section sets forth the administrative and substantive responsibilities of the Division Directors, Office Heads, Regional Directors and District Administrators, and certain other Commission officers. All Commission officers

and other staff members, except administrative law judges and the Inspector General, shall perform, in addition to the duties herein set forth, such additional duties as the chairman of the Commission may assign from time to time. These officers also serve as liaison with Government and other agencies concerning matters within their respective functional responsibilities.

(15 U.S.C. 77u, 78d, 78d-1)

[37 FR 23826, Nov. 9, 1972, as amended at 59 FR 5943, Feb. 9, 1994; 60 FR 14624, Mar. 20, 1995]

§ 200.13 Executive Director.

(a) The Executive Director is responsible for developing and executing the overall management policies of the Commission for all its operating divisions and staff offices. The Executive Director also provides executive direction to, and exercises administrative control over, the Office of Administrative and Personnel Management, the Office of the Comptroller, the Office of Filings and Information Services, the Office of Freedom of Information and Privacy Act Operations, and the Office of Information Technology. In addition, the Executive Director implements the following statutes, regulations, and Executive orders, as well as those that the Chairman may designate:

(1) Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

(2) Small and Disadvantaged Business Utilization Program (15 U.S.C. 631 *et seq.*).

(3) Government Printing and Binding Regulations, U.S. Congress Joint Committee on Printing (1977).

(4) Occupational Safety and Health Programs for Federal Employees under Executive Order 12196 of February 26, 1980 (29 CFR 1960.1-1960.90).

(5) Federal Managers' Financial Integrity Act of 1982 (31 U.S.C. 3512).

(6) National Security Information under Executive Order 12356 of April 6, 1982.

(7) Government Performance and Results Act of 1993 (31 U.S.C. 1101 *et seq.*).

(8) Recommendations of the Report of the National Performance Review (September 1993).

(b) The Executive Director appoints personnel, reviews and approves policies and procedures, and assures appropriate resources to implement the programs set forth in paragraph (a) of this section, and authorizes and transmits reports required by them.

(c) The Executive Director also designates certifying officers for agency payments, prescribes procurement regulations, enters into contracts, designates contracting officers, and makes procurement determinations.

(d) As the Chief Operating Officer of the Commission, the Executive Director shall be responsible for:

(1) Implementing the goals of the President and the Chairman and the mission of the Commission;

(2) Providing overall organizational management to improve agency performance;

(3) Assisting the Chairman in promoting ongoing quality improvement, developing strategic plans, and measuring results;

(4) Directing ongoing reengineering of the Commission's administrative processes;

(e) Overseeing Commission-specific application of performance measures, procurement reforms, personnel reductions, financial management improvements, telecommunications and information technology policies, and other government-wide systems reforms adopted as a result of the recommendations of the National Performance Review; and

(f) Reforming the Commission's management practices by incorporating the principles of the National Performance Review into day-to-day management.

[60 FR 14624, Mar. 20, 1995]

§ 200.13a The Secretary of the Commission.

(a) The Secretary of the Commission is responsible for the preparation of the daily and weekly agendas of Commission business; the orderly and expeditious flow of business at formal Commission meetings; the maintenance of the Official Minute record of all actions of the Commission; and the service of all instruments of formal Commission action. He or she is custodian of the official seal of the Commission,

and also has the responsibility for authenticating documents.

(b) The Secretary has been delegated responsibilities relating to the Commission's rules of practice, administrative proceedings under the Commission's statutes, and other responsibilities.

(c) In addition, he or she administers the Commission's Library.

[50 FR 12239, Mar. 28, 1985]

§ 200.13b Director of the Office of Public Affairs, Policy Evaluation, and Research.

The Director of the Office of Public Affairs, Policy Evaluation, and Research is the chief public information officer for the Commission, and oversees activities that communicate the Commission's actions to those interested in or affected by them. His or her responsibilities include liaison with the news media, dissemination of information to the news media and to the general public, supervision of internal and some external publications and of audio-visual presentations. Responsibilities of the Director, and of his or her staff, include special projects that may be deemed appropriate to communicate information on Commission actions.

[50 FR 12239, Mar. 28, 1985, as amended at 60 FR 14625, Mar. 20, 1995]

§ 200.14 Office of Administrative Law Judges.

(a) Under the Administrative Procedure Act (5 U.S.C. 551-559) and the federal securities laws, the Office of Administrative Law Judges conducts hearings in proceedings instituted by the Commission. The Administrative Law Judges are responsible for the fair and orderly conduct of the proceedings and have the authority to:

(1) Administer oaths and affirmations;

(2) Issue subpoenas;

(3) Rule on offers of proof;

(4) Examine witnesses;

(5) Regulate the course of a hearing;

(6) Hold pre-hearing conferences;

(7) Rule upon motions; and

(8) Unless waived by the parties, prepare an initial decision containing the conclusions as to the factual and legal

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issues presented, and issue an appropriate order.

(b) The Chief Administrative Law Judge performs the duties of an Administrative Law Judge under the Administrative Procedure Act and the duties delegated to him or her by the Commission that are compatible with those duties. The Chief Administrative Law Judge is responsible for the orderly functioning of the Office of Administrative Law Judges apart from the conduct of administrative proceedings and acts as liaison between that Office and the Commission.

[60 FR 14625, Mar. 20, 1995]

§ 200.15 Office of International Affairs.

(a) The Office of International Affairs ("OIA") is responsible for the negotiation and implementation of the Commission's bilateral and multilateral agreements and understandings with foreign financial regulatory authorities. OIA coordinates and participates in activities relating to the Commission's international cooperation programs and develops initiatives to enhance the Commission's ability to enforce the federal securities laws in matters with international elements.

(b) OIA assists in and facilitates the efforts of the Commission's other divisions and offices in responding to international issues and in developing legislative, rulemaking and other initiatives relating to international securities markets. OIA facilitates the development of and, where appropriate, provides advice and presents Commission positions relating to international initiatives of other U.S. Government departments and agencies affecting regulation of securities markets. OIA plans, coordinates and participates in Commission meetings with foreign financial regulatory authorities.

[58 FR 52418, Oct. 8, 1993]

§ 200.16 Executive Assistant to the Chairman.

The Executive Assistant to the Chairman assists the Chairman in consideration of legal, financial, and economic problems encountered in the administration of the Commission's statutes. He or she arranges for and conducts conferences with officials of the

Commission, members of the staff, and/or representatives of the public on matters arising with regard to general programs or specific matters. Acting for the Chairman, he or she furnishes the initiative, executive direction, and authority for staff studies and reports bearing on the Commission's administration of the laws and its relations with the public, industry, and the Congress. The Executive Assistant is also responsible for assisting members of the Commission in the preparation of the opinions of the Commission, and to the Commission for the preparation of opinions and decisions on motions and certifications of questions and rulings by administrative law judges in the course of administrative proceedings under Rule 102(e) of the Commission's Rules of Practice (§201.102(e) of this chapter), and in other cases in which the Chairman or the General Counsel has determined that separation of functions requirements or other circumstances would make inappropriate the exercise of such functions by the General Counsel. In cases where, pursuant to a waiver by the parties of separation of function requirements, another Division or Office of the Commission's staff undertakes to prepare an opinion or decision, such Division or Office rather than the Executive Assistant will prepare such opinion or decision, although the Executive Assistant may assist in such preparation. The Executive Assistant is further responsible for the exercise of such review functions with respect to adjudicatory matters as are delegated to him or her by the Commission pursuant to 101 Stat. 1254 (15 U.S.C. 78d-1, 78d-2) or as may be otherwise delegated or assigned to him or her.

[54 FR 18100, Apr. 27, 1989, as amended at 60 FR 32794, June 23, 1995]

§ 200.16a Inspector General.

(a) Under the Inspector General Act of 1978, as amended, (5 U.S.C. app.) the Inspector General performs independent and objective investigations and audits relating to the Commission's programs and operations. An investigation seeks to detect and prevent waste, fraud, and abuse in the Commission's programs and operations, such as violations of federal statutes or regulations

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by contractors and Commission employees or the Standards Of Ethical Conduct For Employees of the Executive Branch. An audit seeks to determine whether:

(1) Program goals and results identified in enabling legislation are achieved.

(2) Resources are efficiently and economically used and managed.

(3) Financial operations are properly conducted.

(4) Financial reports are fairly presented.

(5) Applicable laws and regulations are complied with.

(b) In cooperation with Commission management, the Inspector General generally promotes economy, efficiency, and the effectiveness of waste or fraud detection and prevention in the Commission's programs and operations. The Inspector General also keeps the Congress and the Chairman informed about problems and deficiencies in the Commission's programs and operations.

(c) The Inspector General reports to the Chairman, but is independent of all other Commission management. In addition, the Inspector General independently prepares semi-annual reports to the Congress.

(d) With respect to misconduct of Commission employees and contractors, the Inspector General, after consultation with the Ethics Counsel, where appropriate, serves as the Commission's liaison with other federal audit and investigative agencies, such as the Department of Justice and the Executive Council on Integrity and Efficiency.

(e) Subpoenas issued in the course of an audit or investigation conducted by the Office of the Inspector General shall be effected by any method prescribed by §201.232(a) and (c) of this chapter.

[60 FR 14625, Mar. 20, 1995]

§ 200.17 Chief Management Analyst.

The Chief Management Analyst is responsible to the Executive Director for overseeing the performance of management analysis tasks which pertain, but are not limited, to:

(a) Agency work methods and procedures;

(b) Effective personnel and resource allocation and utilization;

(c) Organizational structures and delegations of authority;

(d) Management information systems and concepts; and

(e) The preparation of recurring special reports and analyses.

[60 FR 14625, Mar. 20, 1995]

§ 200.18 Director of Division of Corporation Finance.

The Director of the Division of Corporation Finance is responsible to the Commission for the administration of all matters (except those pertaining to investment companies registered under the Investment Company Act of 1940) relating to establishing and requiring adherence to standards of business and financial disclosure with respect to securities being offered for public sale pursuant to the registration requirements of the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) or the exemptions therefrom; establishing and requiring adherence to standards of reporting and disclosure with respect to securities traded on national securities exchanges or required to be registered pursuant to section 12 (g) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)) and with respect to securities whose issuers are required to file reports pursuant to section 15(d) of that Act (15 U.S.C. 78c(d)); establishing and requiring adherence to disclosure and procedural standards in the solicitation of proxies for the election of directors and other corporate actions; establishing and requiring adherence to standards of disclosure with respect to the filing of statements respecting beneficial ownership and transaction statements pursuant to sections 13 (d), (e), and (g) (15 U.S.C. 78m(d), 78m(e), and 78m(g)) of the Securities Exchange Act of 1934; administering the disclosure and substantive provisions of the Williams Act relating to tender offers; and ensuring adherence to enforcement of the standards set forth in the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) regarding indenture covering debt securities. Those duties shall include, with the exception of enforcement and related activities under the jurisdiction of the Division of Enforcement, the responsibility to the Commission

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for the administration of the disclosure requirements and other provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939, as listed below:

(a) All matters under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) including the examination and processing of material filed pursuant to the requirements of that Act (except such material filed by investment companies registered under the Investment Company Act of 1940), the interpretation of the provisions of the Securities Act of 1933, and the proposing to the Commission of rules under that Act.

(b) All matters, except those pertaining to investment companies registered under the Investment Company Act of 1940, arising under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) in connection with:

(1) The registration of securities pursuant to section 12 of the Act (15 U.S.C. 78j), including the exemptive provisions of section 12(h) (15 U.S.C. 78j(h)).

(2) The examination and processing of periodic reports filed pursuant to sections 13 and 15(d) of the Act (15 U.S.C. 78m, 78o(d)).

(3) The examination and processing of proxy soliciting material filed pursuant to section 14(a) and information statements filed pursuant to section 14(c) of the Act (15 U.S.C. 78n(a), 78n(c)).

(4) The examination and processing of statements respecting beneficial ownership transaction statements and tender offer statements filed pursuant to sections 13 (d), (e), and (g) and 14 (d), (e), (f), and (g) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(d), 78m(e), 78m(g), and 78n(d)), and the administration of the other protective standards of these provisions.

(5) The interpretation of the foregoing provisions of the Act, as well as Section 16 thereof (15 U.S.C. 78p), and proposing of rules under those portions of the Act to the Commission.

(c) All matters, except those pertaining to investment companies registered under the Investment Company Act of

1940, arising under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*).

[41 FR 29374, July 16, 1976, as amended at 50 FR 12239, Mar. 28, 1985; 60 FR 14625, Mar. 20, 1995]

§200.19a Director of the Division of Market Regulation.

The Director of the Division of Market Regulation is responsible to the Commission for the administration and execution of the Commission's programs under the Securities Exchange Act of 1934 relating to the structure and operation of the securities markets and the prevention of manipulation in the securities markets. These responsibilities include oversight of the national market system, the national clearance and settlement system, and self-regulatory organizations, such as the national securities exchanges, registered securities associations, clearing agencies, the Municipal Securities Rulemaking Board, and the Securities Investor Protection Corporation. Duties also include the registration and regulation of brokers, dealers, municipal securities dealers, government securities brokers and dealers, transfer agents, and securities information processors. The functions involved in the regulation of such entities include reviewing proposed rule changes of self-regulatory organizations, recommending the adoption and amendment of Commission rules, responding to interpretive, exemptive, and no-action requests, and conducting inspections, examinations, and market surveillance. In addition, the Director shall have the duties specified below:

(a) Administration of all matters arising under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except:

(1) The examination and processing of applications for registration of securities on national securities exchanges pursuant to section 12 of the Act (15 U.S.C. 78j).

(2) The examination and processing of periodic reports filed pursuant to sections 13 and 15(d) of the Act (15 U.S.C. 78m, 78o(d)).

(3) The examination and processing of proxy soliciting material pursuant

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to regulations adopted under section 14 of the Act (15 U.S.C. 78n).

(4) The examination and processing of ownership reports filed under section 16(a) of the Act (15 U.S.C. 78p(a)).

(5) The denial or suspension of registration of securities registered on national securities exchanges, pursuant to section 19(a)(2) (15 U.S.C. 78s(a)(2)) by reason of failure to comply with the reporting requirements of that Act.

(6) The enforcement and related activities under the jurisdiction of the Division of Enforcement.

(15 U.S.C. 78d, 78d-1, 78d-2, 80a-37)

[37 FR 16792, Aug. 19, 1972, as amended at 43 FR 13376, Mar. 30, 1978; 60 FR 14625, Mar. 20, 1995]

§ 200.19b Director of the Division of Enforcement.

The Director of the Division of Enforcement is responsible to the Commission for supervising and conducting all enforcement activities under the acts administered by the Commission. The Director recommends the institution of administrative and injunctive actions arising out of such enforcement activities and determines the sufficiency of evidence to support the allegations in any proposed complaint. The Director supervises the Regional Directors and, in collaboration with the General Counsel, reviews cases to be recommended to the Department of Justice for criminal prosecution. The Director grants or denies access to nonpublic information in the Commission's enforcement files under § 240.24c-1 of this chapter; provided that access under that section shall be granted only with the concurrence of the head of the division or office responsible for the information or the files containing it.

[60 FR 14626, Mar. 20, 1995]

§ 200.19c Director of the Office of Compliance Inspections and Examinations.

The Director of the Office of Compliance Inspections and Examinations ("OCIE") is responsible for the compliance inspections and examinations relating to the regulation of exchanges, national securities associations, clearing agencies, securities information

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processors, the Municipal Securities Rulemaking Board, brokers and dealers, municipal securities dealers, transfer agents, investment companies, and investment advisers, under Sections 15C(d)(1) and 17(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5(d)(1) and 78q(b)), Section 31(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-30(b)), and Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4).

[60 FR 39644, Aug. 3, 1995]

§ 200.20b Director of Division of Investment Management.

The Director of the Division of Investment Management is responsible to the Commission for the administration of the Commission's responsibilities under the Investment Company Act of 1940 and the Investment Advisers Act of 1940, the administration and execution of the Public Utility Holding Company Act of 1935, and with respect to matters pertaining to investment companies registered under the Investment Company Act of 1940 and pooled investment funds or accounts, the administration of all matters relating to establishing and requiring adherence to standards of economic and financial reporting and the administration of fair disclosure and related matters under the Securities Act of 1933 and the Securities Exchange Act of 1934 and enforcement of the standards set forth in the Trust Indenture Act of 1939 regarding indentures covering debt securities, as listed in paragraphs (a) through (e) of this section. These duties shall include inspections arising in connection with such administration but shall exclude enforcement and related activities under the jurisdiction of the Division of Enforcement.

(a) The administration of all matters arising under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), except those arising under section 30(f) of the Act (15 U.S.C. 80a-29(f)).

(b) All matters arising under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) arising from or pertaining to material field pursuant to the requirements of that Act by investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et*

seq.) and pooled investment funds or accounts.

(c) All matters arising under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except the examination and processing of statements of beneficial ownership of securities and changes in such ownership filed under section 16(a) (15 U.S.C. 78p(a)) of such Act, pertaining to investment companies registered under the Investment Company Act of 1940 and pooled investment funds or accounts in connection with:

(1) The registration of securities pursuant to section 12 of the Act (15 U.S.C. 78j), including the exemptive provisions of section 12(h) (15 U.S.C. 78j(h)).

(2) The examination and processing of periodic reports filed pursuant to sections 13 and 15(d) of the Act (15 U.S.C. 78m, 78o(d)).

(3) The examination and processing of proxy soliciting material filed pursuant to section 14(a) and information material filed pursuant to section 14(c) of the Act (15 U.S.C. 78n(a), 78n(c)).

(d) All matters pertaining to investment companies registered under the Investment Company Act of 1940 and pooled investment funds or accounts arising under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*).

(e) All matters arising under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*).

(f) The administration and execution of the Public Utility Holding Company Act of 1935 in connection with:

(1) The administration and processing of proxy solicitation material subject to §§240.14a-1—240.14a-14 of this chapter.

(2) The examination and processing of ownership reports filed under section 17(a) of the Act (15 U.S.C. 79q(a)).

[41 FR 29375, July 16, 1976, as amended at 50 FR 5064, Feb. 5, 1985; 60 FR 14626, Mar. 20, 1995]

§ 200.20c Office of Filings and Information Services.

The Office of Filings and Information Services is responsible for the receipt and initial handling of all public documents filed at the Commission's headquarters office. The initial handling includes determining acceptability, extracting data for EDP input, calculating fees, conducting cursory and sub-

stantive examinations, assigning filings to branches and preparing deficiency correspondence. In addition, the Office is responsible for the custody and control of the Commission's official records; for the development of plans and implementation of the Commission's records management program; for authenticating all documents produced for administrative or judicial proceedings; for maintaining liaison with the National Archives and Records Service and other Government agencies with respect to the Commission's records and its records management program. The Office provides filer-support services relating to the Commission's EDGAR system and the receipt of fees and filings for all types of filers, regardless of filing media. The Office also manages the Commission's public reference facilities to facilitate public access to electronic filings and ensure that all information contained in public filings with the Commission is timely made available to investors.

(Sec. 4(b), 48 Stat. 885, sec. 1106(a), 63 Stat. 972, 15 U.S.C. 78d(b); secs. 1, 2, 76 Stat. 394, 395, 15 U.S.C. 78d-1, 78d-2; secs. 19, 48 Stat. 85, 908, 15 U.S.C. 77s; sec. 23(a), 48 Stat. 901, sec. 8, 49 Stat. 1379, 15 U.S.C. 78w(a); sec. 20, 49 Stat. 833, 15 U.S.C. 78t; sec. 319, 53 Stat. 1173, 15 U.S.C. 77sss; sec. 38, 54 Stat. 841, 15 U.S.C. 80a-37; sec. 211, 54 Stat. 855, sec. 14, 74 Stat. 888, 15 U.S.C. 80b-11; sec. 15B, 15 U.S.C. 78o-4(a); sec. 17A, 15 U.S.C. 78q-1 (c)(2); 11 U.S.C. 901, 1109(a))

[43 FR 13376, Mar. 30, 1978, as amended at 49 FR 12685, Mar. 30, 1984; 60 FR 14626, Mar. 20, 1995]

§ 200.21 The General Counsel.

(a) The General Counsel is the chief legal officer of the Commission. He or she is responsible for the representation of the Commission in judicial proceedings in which it is involved as a party or as *amicus curiae*, for directing and supervising all civil litigation involving the Commission in the United States District Courts, except for law enforcement actions filed on behalf of the Commission, for directing and supervising the Commission's responsibilities under the Bankruptcy Code and all related litigation, and for representing the Commission in all cases in appellate courts. The General Counsel is responsible for the review of

cases which the Division of Enforcement recommends be referred to the Department of Justice with a recommendation for criminal prosecution. In addition, he or she is responsible for advising the Commission at its request or at the request of any division director or office head, or on his or her own motion, with respect to interpretations involving questions of law; for the conduct of administrative proceedings relating to the disqualification of lawyers from practice before the Commission; for the preparation of the Commission comments to the Congress on pending legislation; and for the drafting, in conjunction with appropriate divisions and offices, of legislative proposals to be sponsored by the Commission. The General Counsel is also responsible for the review and clearance of the form and content of articles, treatises, and prepared speeches and addresses by members of the staff relating to the Commission or to the statutes and rules administered by the Commission. He or she is responsible (with the Associate Executive Director of the Office of Administrative and Personnel Management) for administering the Commission's Ethics Program, and (with the Ethics Counsel) for interpreting subpart M of this part and 5 CFR part 2635. He or she serves as Counselor to the Commission and its staff with regard to ethical and conflicts of interest questions and acts as the Commission's liaison on such matters with the Office of Administrative and Personnel Management, the Office of the Inspector General and the Department of Justice. The General Counsel also is responsible for coordinating and reviewing the interpretive positions of the various divisions and offices. In addition, he or she is responsible for appropriate disposition of all Freedom of Information Act and Privacy Act appeals pursuant to the authority delegated in § 200.30-14 of this chapter, and is the Commission's advisor with respect to legal problems arising under the Freedom of Information Act, the Privacy Act, the Federal Reports Act, the Federal Advisory Committee Act, the Civil Service laws and regulations, the statutes and rules applicable to the Commission's procurement, contracting, fiscal and related

administrative activities, and other statutes and regulations of a similar nature applicable to a number of Government agencies.

(b) The General Counsel is also responsible for assisting members of the Commission in the preparation of the opinions of the Commission, and to the Commission for the preparation of opinions and decisions on motions and certifications of questions and rulings by administrative law judges in the course of administrative law proceedings, except (1) in cases where, pursuant to a waiver by the parties of separation of function requirements, another Division or Office of the Commission's staff undertakes to prepare an opinion or decision, in which cases the General Counsel may assist in such preparation, and (2) with respect to administrative proceedings against lawyers under Rule 2(e) of the Commission's Rules of Practice (§ 201.2(e) of this chapter) or other cases in which the Chairman or the General Counsel has determined that separation of function requirements or other circumstances would make inappropriate the exercise of such functions by the General Counsel. In the cases described in clause (2), the Executive Assistant to the Chairman exercises such functions. The General Counsel deals with general problems arising under the Administrative Procedure Act, including the revision or adoption of rules of practice. The General Counsel is also responsible for the exercise of such review functions with respect to adjudicatory matters as are delegated to him or her by the Commission pursuant to 101 Stat. 1254 (15 U.S.C. 78d-1, 78d-2) or as may be otherwise delegated or assigned to him or her.

(c) The General Counsel also is responsible to the Commission for the administration of the Government in the Sunshine Act for publicly certifying, pursuant to § 200.406, that, in his or her opinion, particular Commission meetings may properly be closed to the public. In the absence of the General Counsel, the Solicitor to the Commission shall be deemed the General Counsel for purposes of § 200.406. In the absence of the General Counsel and the Solicitor, the most senior Associate General Counsel available shall be deemed the

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General Counsel for purposes of § 200.406. In the absence of the General Counsel, the Solicitor, and every Associate General Counsel, the most senior Assistant General Counsel available shall be deemed the General Counsel for purposes of § 200.406. In the absence of the General Counsel, the Solicitor, every Associate General Counsel and every Assistant General Counsel, such attorneys as the General Counsel may designate (in such order of succession as the General Counsel directs) shall exercise the responsibilities imposed by § 200.406.

[43 FR 13376, Mar. 30, 1978, as amended at 47 FR 26821, June 22, 1982; 47 FR 37077, Aug. 25, 1982; 49 FR 12685, Mar. 30, 1984; 49 FR 13866, Apr. 9, 1984; 50 FR 12240, Mar. 28, 1985; 54 FR 18100, Apr. 27, 1989; 54 FR 24331, June 7, 1989; 60 FR 14626, Mar. 20, 1995]

§ 200.21a The Ethics Counsel.

(a) The Ethics Counsel within the Office of the General Counsel of the Commission shall oversee compliance with subpart M of this part and 5 CFR part 2635. When appropriate and subject to the authority of, and in consultation with, the Inspector General, the Ethics Counsel shall inquire into alleged violations of subparts C, F, and M of this part, and 5 CFR part 2635.

(b) Subject to the oversight of the General Counsel or his or her delegate, the Ethics Counsel shall:

(1) Receive and review allegations of misconduct by a Commission employee.

(2) Refer matters involving management questions to Division Directors, Office Heads, District Administrators, or Regional Directors, and matters involving alleged or apparent employee misconduct to the Office of the Inspector General, except for matters involving alleged professional misconduct ultimately referable to state professional boards or societies.

(3) Refer complaints that appear to involve a violation of Federal criminal statutes, and do not appear to be frivolous, to the Inspector General for referral to the Department of Justice under 28 U.S.C. 535.

(4) Act as liaison with the Office of the Inspector General on matters that the Ethics Counsel has referred to that Office, and with state or local authori-

ties on matters that, on occasion, the Ethics Counsel may refer to them.

(5) Arrange for the review of proposed publications and prepared speeches under § 200.735-4(e).

(6) Provide advice, counseling, interpretations, and opinions with respect to subparts C, F, and M of this part, and 5 CFR part 2635.

(7) Oversee investigations and refer findings of professional misconduct to state professional boards or societies.

(8) Draft rules and regulations as necessary to implement the Commission's Ethics Program.

[60 FR 14626, Mar. 20, 1995]

§ 200.22 The Chief Accountant.

The Chief Accountant of the Commission is the principal adviser to the Commission on, and is responsible to the Commission for, all accounting and auditing matters arising in the administration of the federal securities laws. The Chief Accountant oversees the accounting profession's standard-setting and self-regulatory organizations, develops or supervises the development of accounting and auditing rules, regulations, opinions and policy, and interprets Commission accounting policy and positions. The Chief Accountant is responsible for recommending the institution of administrative and disciplinary proceedings relating to the disqualification of accountants to practice before the Commission. The Chief Accountant supervises the procedures to be followed in the Commission's enforcement activities involving accounting and auditing issues and helps resolve differences on accounting issues between registrants and the Commission staff.

[60 FR 14626, Mar. 20, 1995]

§ 200.23a Office of Economic Analysis.

The Office of Economic Analysis is responsible for providing an objective economic perspective to understand and evaluate the economic dimension of the Commission's regulatory oversight. It performs economic analyses of proposed rule changes, current or proposed policies, and capital market developments and offers advice on the basis of these analyses. The Office also assists the Commission's enforcement

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effort by applying economic analysis and statistical tools to issues raised in enforcement cases. It reviews certifications and initial and final regulatory flexibility analyses prepared by the operating divisions under the Regulatory Flexibility Act.

[60 FR 14627, Mar. 20, 1995]

§ 200.23b [Reserved]

§ 200.24 Office of the Comptroller.

This Office, under the direction of the Associate Executive Director of the Office of the Comptroller, is responsible to the Executive Director, Chairman and Commission for the internal financial management and programming functions of the Securities and Exchange Commission. These functions include: budgeting, accounting, payroll and administrative audit. The Associate Executive Director of the Office of the Comptroller, and his or her designees, serve as liaison to the Commission before the Office of Management and Budget and Congressional Appropriations Committees on appropriation matters, and the Treasury Department and the General Accounting Office on financial and programming matters.

(11 U.S.C. 901, 1109(a))

[49 FR 12685, Mar. 30, 1984, as amended at 60 FR 14627, Mar. 20, 1995]

§ 200.24a Director of the Office of Consumer Affairs.

The Director of the Office of Consumer Affairs is responsible to the Chairman for the Commission's investor education and consumer protection program. The program includes, but is not limited to:

(a) Presenting seminars and instructional programs to educate investors about the securities markets and their rights as investors; preparing and distributing to the public materials describing the operations of the securities markets, prudent investor behavior, and the rights of investors in disputes they may have with individuals and entities regulated by the Commission; and increasing public knowledge of the functions of the Commission.

(b) Implementing and administering a nationwide system for resolving investor complaints against individuals

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and entities regulated by the Commission by processing complaints received from individual investors and assuring that regulated individual and entities process and respond to such complaints.

(c) Providing information to investors who inquire about individuals and entities regulated by the Commission, the operation of the securities markets, or the functions of the Commission.

(d) Advising the Commission and its staff about problems frequently encountered by investors and possible solutions to them.

(e) Transmitting to other offices and divisions of the Commission information provided by investors which concerns the responsibilities of these offices and divisions.

(f) Providing for greater consumer input in Commission rulemaking proceedings.

[60 FR 14627, Mar. 20, 1995]

§ 200.25 Office of Administrative and Personnel Management.

(a) The Office of Administrative and Personnel Management (OAPM) is responsible for providing a wide variety of programs for human resources, office services, and other administrative and management services for the Commission. The Associate Executive Director of the Office of Administrative and Personnel Management is responsible to the Executive Director and the Chairman of the Commission for developing and executing these programs.

(b) OAPM develops, implements, and evaluates the Commission's programs for human resources and personnel management, such as position management and pay administration; recruitment, placement, and staffing; performance management and employee recognition; employee training and career development; employee and labor relations; personnel management evaluation; employee benefits and counseling; and the processing and maintenance of employee records. OAPM administers the Ethics Program, and helps the Office of the Executive Director manage the Senior Executive Service Program. It reviews requests, recommendations, and justifications for

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certain awards, recruitment and relocation bonuses, retention allowances, special salary rates, and other personnel compensation or benefit determinations for sufficiency and compliance with law, regulations, and Commission policy. OAPM develops and executes programs for office services, such as telecommunications; procurement and contracting; property management; contract and lease administration; space acquisition and management; management of official vehicles; safety programs; emergency preparedness plans; physical security; mail receipt and distribution; and publications, printing, and desktop publishing.

(c) With respect to human resources management, the Associate Executive Director of the Office of Administrative and Personnel Management is the Commission's liaison with the Office of Personnel Management, other agencies, professional organizations, educational institutions, and private industry. He or she is also the Printing Liaison with the Joint Committee on Printing, and the Contract Officer.

[60 FR 14627, Mar. 20, 1995]

§ 200.26 [Reserved]

§ 200.26a Office of Information Technology.

The Office of Information Technology is responsible for the analysis, design programming, operation, and maintenance of all ADP systems; developing and implementing long-range ADP plans and programs; coordinating all ADP and systems analysis activities being considered or carried out by other divisions and offices, and furnishing such organizations with appropriate assistance and support; providing technical advice to the staff in connection with development of Commission rules and regulations having ADP implications; facilitating the Commission's surveillance of ADP in the securities industry; evaluating and recommending new information processing concepts and capabilities for application within the Commission; and, development of microcomputer and office

automation capabilities and support within the Commission.

(15 U.S.C. 78d-1, 78d-2; 11 U.S.C. 901, 1109(a))

[43 FR 13377, Mar. 30, 1978, as amended at 49 FR 12685, Mar. 30, 1984; 60 FR 14627, Mar. 20, 1995]

§ 200.27 The Regional Directors.

Each Regional Director is responsible for executing the Commission's programs within his geographic region as set forth below, subject to review by the Director of the Division of Enforcement and policy direction and review by the other Division Directors, the General Counsel, and the Chief Accountant. The Regional Directors responsibilities include particularly the investigation of transactions in securities on national securities exchanges, in the over-the-counter market, and in distribution to the public; the examination of members of national securities exchanges and registered brokers and dealers, transfer agents, investment advisers and investment companies including the examination of reports filed under § 240.17a-5 of this chapter; the examination and processing of filings under §§ 230.251 to 230.264 of this chapter issued pursuant to section 3(b) of the Securities Act of 1933; the examination and processing of filings under § 239.28 of this chapter and any related filings under the Trust Indenture Act of 1939; the prosecution of injunctive actions in U.S. District Courts and administrative proceedings before Administrative Law Judges; the rendering of assistance to U.S. Attorneys in criminal cases; and the making of the Commission's facilities more readily available to the public in that region. In addition, the Northeast Regional Director is responsible for the Commission's participation in cases under chapters 9 and 11 of the Bankruptcy Code in the Northeast Region, excepting Delaware, District of Columbia, Maryland, Virginia, and West Virginia; the Southeast Regional Director is responsible for such participation in the Southeast Region, as well as Delaware, District of Columbia, Maryland, Virginia, and West Virginia; the Midwest Regional Director is responsible for such participation in the Midwest

and Central Regions, excepting Utah; and the Pacific Regional Director is responsible for such participation in the Pacific Region and Utah.

(15 U.S.C. 77u, 78d, 78d-1; secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 13, 15(d), 23(a), 48 Stat. 894, 895, 90k; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 4, 6, 10, 78 Stat. 569, 570-574, 580; sec. 2, 82 Stat. 454; secs. 1, 2, 84 Stat. 1497; secs. 10, 18, 89 Stat. 119, 155; sec. 308(b), 90 Stat. 57; (15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78m, 78o(d), 78w(a)); 11 U.S.C. 901, 1109(a))

[37 FR 23826, Nov. 9, 1972, as amended at 44 FR 21566, Apr. 10, 1979; 49 FR 12685, Mar. 30, 1984; 50 FR 12240, Mar. 28, 1985; 59 FR 5943, Feb. 9, 1994; 60 FR 14627, Mar. 20, 1995]

§ 200.27a The District Administrators.

Each District Administrator is responsible for executing the Commission's programs as set forth below, subject to review by the appropriate Regional Director and policy direction and review by the relevant Division Directors, the General Counsel, and the Chief Accountant in Washington, DC. The District Administrators' responsibilities include particularly the investigation of transactions in securities on national securities exchanges, in the over-the-counter market, and in distribution to the public; the examination of members of national securities exchanges and registered brokers and dealers, transfer agents, investment advisers and investment companies including the examination of reports filed under §240.17a-5 of this chapter; the prosecution of injunctive actions in U.S. District Courts and administrative proceedings before Administrative Law Judges; the rendering of assistance to U.S. Attorneys in criminal cases; and the making of the Commission's facilities more readily available to the public in that district.

[59 FR 5943, Feb. 9, 1994]

§ 200.28 Issuance of instructions.

(a) Within the spheres of responsibilities heretofore set forth, Division and Office Heads, and all Regional Administrators may issue such definitive instructions as may be necessary pursuant to this section.

(b) All existing procedures and authorizations not inconsistent with this section shall continue in effect until and unless modified by definitive instructions issued pursuant to this paragraph.

§ 200.29 Rules.

The individual operating divisions shall have the initial responsibility for proposing amendments to existing rules or new rules under the statutory provisions within the jurisdiction of the particular division. Where any such proposals presents a legal problem or is a matter of first impression, or involves a matter of enforcement policy or questions involving statutes other than those administered by the Commission, or may have an effect on prior judicial precedent or pending litigation, submission of the proposal should be made to the Office of the General Counsel for an expression of opinion prior to presentation of the matter to the Commission.

§ 200.30-1 Delegation of authority to Director of Division of Corporation Finance.

Pursuant to the provisions of Pub. L., No. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Director of the Division of Corporation Finance, to be performed by him or under his direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) With respect to registration of securities pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and Regulation C thereunder (§230.400 *et seq.* of this chapter):

(1) To determine the effective dates of amendments to registration statements filed pursuant to section 8(c) of the Act (15 U.S.C. 77h(c)).

(2) To consent to the withdrawal of registration statements or amendments or exhibits thereto, pursuant to Rule 477 (§230.477 of this chapter), and to issue orders declaring registration statements abandoned, pursuant to Rule 479 (§230.479 of this chapter).

(3) To grant applications for confidential treatment of contract provisions pursuant to Rule 406 (§230.406 of this chapter) under the Act; to issue orders scheduling hearings on such applications and to deny any such application as to which the applicant waives his right to a hearing, provided such applicant is advised of his right to have such denial reviewed by the Commission.

(4) To accelerate the use or publication of any summary prospectus filed with the Commission pursuant to section 10(b) of the Act (15 U.S.C. 77j(b)) and Rule 431(g) (§230.431(g) of this chapter) thereunder.

(5) To take the following action pursuant to section 8(a) of the Act (15 U.S.C. 77h(a)):

(i) To determine registration statements to be effective within shorter periods of time than 20 days after the filing thereof;

(ii) To consent to the filing of amendments prior to the effective dates of registration statements as part thereof, or to determine that amendments filed prior to the effective dates of registration statements have been filed pursuant to orders of the Commission, so as to be treated as parts of the registration statements for the purpose of section 8(a) of the Act (15 U.S.C. 77h(a));

(iii) To determine to be effective applications for qualification of trust indentures filed with registration statements.

(6) Pursuant to instructions as to financial statements contained in forms adopted under the Act:

(i) To permit the omission of one or more financial statements therein required or the filing in substitution therefor of appropriate statements of comparable character, or

(ii) To require the filing of other financial statements in addition to, or in substitution for, the statements therein required.

(7) Acting pursuant to section 4(3) of the Act (15 U.S.C. 77d(3)) or Rule 174 thereunder (§230.174 of this chapter), to reduce the 40-day period or the 90-day period with respect to transactions referred to in section 4(3)(b) of the Act (15 U.S.C. 77d(3)(B)).

(8) To act on applications to dispense with any written consents of an expert pursuant to Rule 437 (§230.437 of this chapter).

(b) With respect to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and Regulation A thereunder (§230.251 *et seq.* of this chapter):

(1) to authorize the granting of applications under Rule 262 (§230.262 of this chapter) upon a showing of good cause that it is not necessary under the circumstances that an exemption under Regulation A be denied;

(2) to authorize the issuance of orders qualifying offering statements pursuant to Rule 252(g) (§230.252(g) of this chapter); and

(3) to issue orders declaring offering statements withdrawn or abandoned pursuant to Rule 259 (§230.259 of this chapter).

(c) With respect to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and Regulation D thereunder (§230.501 *et seq.* of this chapter), to authorize the granting of applications under Rule 505(b)(2)(iii)(C), (§230.505(b)(2)(iii)(C) of this chapter) and under Rule 507(b) (§230.507(b) of this chapter) upon the showing of good cause that it is not necessary under the circumstances that the exemption under Regulation D be denied.

(d) With respect to the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*):

(1) To determine to be effective prior to the 20th day after filing thereof applications for qualification of indentures filed on Form T-3 (§269.3 of this chapter) pursuant to section 307 of the Act (15 U.S.C. 77ggg), and Rule 7a-1 thereunder (§260.7a-1 of this chapter);

(2) To authorize the issuance of orders exempting certain securities from the Act under sections 304(c) and (d) thereof (15 U.S.C. 77ddd(c) and 77ddd(d)) and §260.4c-1 and §260.4d-7 of this chapter.

(3) In cases in which opportunity for hearing is waived, to authorize the issuance of orders determining that a trusteeship under an indenture to be qualified and another indenture is not so likely to involve a material conflict of interest as to make it necessary to disqualify the trustee pursuant to section 310(b)(1)(ii) of the Act (15 U.S.C.

77jjj(b)(1)(ii) and Rule 10b-2 thereunder (§260.10b-2 of this chapter).

(4) To authorize the issuance of orders exempting any person, registration statement, indenture, security or transaction, or any class or classes of persons, registration statements, indentures, securities, or transactions from the requirements of one or more provisions of the Act pursuant to section 304(d) of the Act (15 U.S.C. 77ddd(d)) and rule 4d-7 thereunder (17 CFR 260.4d-7 of this chapter).

(5) To determine to be effective prior to the 10th day after filing thereof an application for determining the eligibility under section 310(a) of the Act of a person designated as trustee for delayed offerings of debt securities under the Securities Act pursuant to section 305(b)(2) of the Act and rule 5b-1 [17 CFR 260.5b-1 of this chapter] thereunder.

(6) To authorize the issuance of an order permitting a foreign person to act as sole trustee under qualified indentures under section 310(a) of the Act (15 U.S.C. 77jjj(a)) and §260.10a-1 through §260.10a-5 of this chapter.

(7) To issue notices with respect to applications for, and authorize the issuance of orders granting, a stay of a trustee's duty to resign pursuant to section 310(b) of the Act and Rule 10b-4 [17 CFR 260.10b-4 of this chapter] thereunder.

(e) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*):

(1) To determine to be effective applications for registration of securities on a national securities exchange prior to 30 days after receipt of a certification pursuant to section 12(d) of the Act (15 U.S.C. 78l(d));

(2) Pursuant to instructions as to financial statements contained in forms adopted under the Act:

(i) To extend the time for filing or to permit the omission of one or more financial statements therein required or the filing in substitution therefor of appropriate statements of comparable character.

(ii) To require the filing of other financial statements in addition to, or in substitution for, the statements therein required;

(3)(i) To grant and deny applications for confidential treatment filed pursuant to section 24(b) of the Act (15 U.S.C. 78x(b)) and Rule 24b-2 thereunder (§240.24b-2 of this chapter);

(ii) To revoke a grant of any such application for confidential treatment.

(4) To authorize the use of forms of proxies, proxy statements, or other soliciting material within periods of time less than that prescribed in §§240.14a-6, 240.14a-8(d), and 240.14a-11 of this chapter; to authorize the filing of information statements within periods of time less than that prescribed in §240.14c-5a of this chapter; and to authorize the filing of information under §240.14f-1 of this chapter within periods of time less than that prescribed therein.

(5) To grant or deny applications filed pursuant to section 12(g)(1) of the Act (15 U.S.C. 78l(g)(1)) for extensions of time within which to file registration statements pursuant to that section, provided the applicant is advised of his right to have any such denial reviewed by the Commission.

(6) To accelerate at the request of the issuer the effective date of registration statements filed pursuant to section 12(g) of the Act (15 U.S.C. 78l(g)).

(7) To issue notices of applications for exemptions and to grant exemptions under section 12(h) of the Act (15 U.S.C. 78l(h)).

(8) At the request of the issuer to accelerate the termination of registration of any class of equity securities as provided in section 12(g)(4) of the Act (15 U.S.C. 78l(g)(4)) or as provided in §240.12g-4(a) of this chapter.

(9) Upon receipt of a notification from the Secretary of the Treasury designating a security for exemption pursuant to section 3(a)(12), to issue public releases announcing such designation.

(10) To issue public releases listing those foreign issuers which appear to be current in submitting the information specified in Rule 12g3-2(b) (§240.12g3-2(b)).

(11) To grant exemptions from Rule 14d-10 (§240.14d-10 of this chapter) pursuant to Rule 14d-10(e) (§240.14d-10(e) of this chapter).

(12) To grant an exemption from §240.14b-2(b) or §240.14b-2(c), or both, of this chapter.

(13) To determine with respect to a tender or exchange offer otherwise eligible to be made pursuant to rule 14d-1(b) (§240.14d-1(b) of this chapter) whether, in light of any exemptive order granted by a Canadian federal, provincial or territorial regulatory authority, application of certain or all of the provisions of sections 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D and Schedules 14D-1 and 14D-9 thereunder, and rule 14e-1 of Regulation 14E, to such offer is necessary or appropriate in the public interest.

(14) To administer the provisions of §240.24c-1 of this chapter; provided that access to nonpublic information as defined in such section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(15) To administer the provisions of Section 24(d) of the Act (15 U.S.C. 78x(d)).

(f) Notwithstanding anything in the foregoing:

(1) Matters arising under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) and the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) pertaining to investment companies registered under the Investment Company Act of 1940 are not within the scope of the functions delegated to the Director of the Division of Corporation Finance, except those arising under section 30(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-29(f));

(2) In any case in which the Director of the Division of Corporation Finance believes it appropriate, he may submit the matter to the Commission.

(g) With respect to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and Rule 701 thereunder (§230.701 of this chapter), to authorize the granting of applications under Rule 703(b) (§230.703(b) of this chapter) upon a showing of good cause that it is not necessary under the circumstances that an exemption under Rule 701 be denied.

(h) With respect to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and Rule 144A thereunder (§230.144A of this chap-

ter), taking into account then-existing market practices, to designate any securities or classes of securities to be securities that will not be deemed "of the same class as securities listed on a national securities exchange or quoted in a U.S. automated inter-dealer quotation system" within the meaning of Rule 144A(d)(3)(i) (§230.144A(d)(3)(i) of this chapter).

(i) With respect to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and Regulation S thereunder (§230.901 *et seq.* of this chapter), and in consultation with the Director of the Division of Market Regulation, to designate any foreign securities exchange or non-exchange market as a "designated offshore securities market" within the meaning of Rule 902(a) (§230.902(a) of this chapter).

(j) With respect to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*), and Regulation S-T thereunder (part 232 of this chapter), to grant or deny a request submitted pursuant to Rule 13(b) of Regulation S-T (§232.13(b) of this chapter) to adjust the filing date of an electronic filing.

(k) With respect to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*), and Regulation S-T thereunder (part 232 of this chapter), to set the terms of, and grant or deny as appropriate, continuing hardship exemptions, pursuant to Rule 202 of Regulation S-T, (§232.202 of this chapter), from the electronic submission requirements of Regulation S-T (part 232 of this chapter).

[41 FR 29375, July 16, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §200.30-1 see the List of CFR Sections Affected in the Finding Aids section of this volume.

§200.30-3 Delegation of authority to Director of Division of Market Regulation.

Pursuant to the provisions of Pub. L. 87-592, 76 Stat. 394, 15 U.S.C. 78d-1, 78d-2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Director of the

Division of Market Regulation to be performed by him or under his direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*):

(1) To approve the withdrawal or striking from listing and registration of securities registered on any national securities exchange pursuant to section 12(d) of the Act (15 U.S.C. 78j(d)) and Rules 12d2-1 and 12d2-2 thereunder (§§ 240.12d2-1 and 240.12d2-2 of this chapter);

(2) To extend unlisted trading privileges and to deny applications for unlisted trading privileges by national securities exchanges pursuant to section 12(f)(2) of the Act, 15 U.S.C. 78j(f)(2), and Rule 12f-1 thereunder, 17 CFR 240.12f-1, provided that any applicant exchange denied unlisted trading privileges is advised of its right to have such denial reviewed by the Commission.

(3) Pursuant to section 15(b) of the Act (15 U.S.C. 78o(b)):

(i) To authorize the issuance of orders granting registration of brokers or dealers within forty-five days of the filing of an application for registration as a broker or dealer (or within such longer period as to which the applicant consents);

(ii) To authorize the issuance of orders canceling registrations of brokers or dealers, or pending applications for registration, if such brokers or dealers or applicants for registration are no longer in existence or have ceased to do business as brokers or dealers;

(4) Pursuant to Rule 19h-1 (§ 240.19h-1 of this chapter):

(i) To grant applications with respect to membership in, association with a member of, or participation in, a self-regulatory organization and for other relief as to persons who are subject to an applicable disqualification where such relationships or other relief have been approved or recommended by a self-regulatory organization;

(ii) To extend the time for Commission consideration of notices for admission to membership or participation in a self-regulatory organization or association with a member of persons sub-

ject to a statutory disqualification pursuant to paragraph (a)(7) of that rule.

(5) Pursuant to Rule 17a-5(1)(3) (§ 240.17a-5(1)(3) of this chapter), to consider applications, by brokers and dealers for exemptions from, and extension of time within which to file, reports required by Rule 17a-5 (§ 240.17a-5 of this chapter), and to grant, and to authorize the issuance of orders denying, such applications provided such applicant is advised of his right to have such denial reviewed by the Commission.

(6) Pursuant to Rules 10b-13(d), 14e-4(c), and 15c2-11(h) (§§ 240.10b-13(d), 240.14e-4(c), and 240.15c2-11(h) of this chapter), and Rules 101(d), 102(e), 104(j), and 105(c) of Regulation M (§§ 242.101(d), 242.102(e), 242.104(j), and 242.105(c) of this chapter), to grant requests for exemptions from Rules 10b-13, 14e-4, and 15c2-11 (§§ 240.10b-13, 240.14e-4, and 240.15c2-11 of this chapter), and Rules 101, 102, 104, and 105 of Regulation M (§§ 242.101, 242.102, 242.104, and 242.105 of this chapter).

(7) Pursuant to Rule 15c3-1 (§ 240.15c3-1 of this chapter):

(i) To approve lesser equity requirements in specialist or market maker accounts pursuant to Rule 15c3-1(a)(6)(iii)(E) (§ 240.15c3-1(a)(6)(iii)(E) of this chapter);

(ii) To grant exemptions from Rule 15c3-1 (§ 240.15c3-1 of this chapter) pursuant to Rule 15c3-1(b)(3) (§ 240.15c3-1(b)(3) of this chapter);

(iii) To grant temporary exemptions upon specified terms and conditions from the debt equity requirements of Rule 15c3-1(d) (§ 240.15c3-1(d) of this chapter);

(iv) To approve a change in election of the alternative capital requirement pursuant to Rule 15c3-1(f)(1) (i) and (ii) (§ 240.15c3-1(f)(1) (i) and (ii) of this chapter).

(8) Pursuant to Rule 17a-10(d) (§ 240.17a-10(d) of this chapter), to consider applications by broker-dealers for extensions of time in which to file reports required by Rule 17a-10 (§ 240.17a-10 of this chapter), and to grant, and to authorize the issuance of orders denying, such applications provided such applicant is advised of his right to have such denial reviewed by the Commission. Any extension granted shall not be for more than 150 days after the

close of the calendar year for which the report on Form X-17A-10 (§249.618 of this chapter) is made.

(9) Pursuant to Rule 10b-17(b)(2) (§240.10b-17(b)(2) of this chapter), to review applications of various issuers for exemption from the notice requirements of Rule 10b-17 (§240.10b-17 of this chapter) and to grant or deny such applications, with authority to issue orders granting and denying same, provided each applicant is advised of his right to have a denial reviewed by the Commission.

(10) Pursuant to Rule 15c3-3 (§240.15c3-3 of this chapter) to find and designate as control locations for purposes of Rule 15c3-3(c)(7) (§240.15c3-3(c)(7) of this chapter) certain broker-dealer accounts which are adequate for the protection of customer securities.

(11) [Reserved]

(12) Pursuant to Rule 19b-4 (§240.19b-4) of this chapter, to publish notices of proposed rule changes filed by self-regulatory organizations and to approve such proposed rule changes.

(13) Pursuant to section 15B(a) of the Act [15 U.S.C. 78o-4(a)], to authorize the issuance of orders granting registration of municipal securities dealers within forty-five days of the filing of an application for registration as a municipal securities dealer (or within such longer period as to which the applicant consents).

(14) Pursuant to section 17A(c)(2) of the Act (15 U.S.C. 78q-1(c)(2)), to authorize the issuance of orders accelerating registration of transfer agents for which the Commission is the appropriate regulatory agency before the expiration of thirty days following the dates on which applications for registration as a transfer agent are filed.

(15) Pursuant to Rule 10a-1(f) [§240.10a-1(f)] to grant requests for exemptions from Rule 10a-1;

(16) Pursuant to sections 17A(b)(1), 17A(b)(2) and 19(a) of the Act (15 U.S.C. 78q-1(b)(1), 78q-1(b)(2) and 78s(a)), to publish notice of the filing of applications for registration and for exemption from registration as a clearing agency.

(17) Pursuant to Rule 17f-2 (§240.17f-2 of this chapter).

(i) To disapprove a "Notice Pursuant to Rule 17f-2" pursuant to Rule 17f-2(e) (§240.17f-2(e) of this chapter).

(ii) To grant exemptions upon specified terms, conditions and periods, for classes of persons subject to Rule 17f-2 pursuant to Rule 17f-2(g) (§240.17f-2(g) of this chapter).

(iii) To approve amendments to plan of a registered national securities exchange or a national securities association submitted pursuant to Rule 17f-2(c) (§240.17f-2(c) of this chapter).

(18) Pursuant to Rule 17d-1 (§240.17d-1 of this chapter) to designate one self-regulatory organization responsible for the examination of brokers and dealers which are members of more than one such organization to insure compliance with applicable financial responsibility rules.

(19)(i) To grant and deny applications for confidential treatment filed pursuant to section 24(b) of the Act (15 U.S.C. 78x(b)) and Rule 24b-2 thereunder (240.24b-2 of this chapter);

(ii) To revoke a grant of confidential treatment for any such application.

(20) Pursuant to sections 8(c) and 15(c)(2) of the Act (15 U.S.C. 78h(c) and 78o(2)) and paragraphs (g) of Rules 8c-1 and 15c2-1 thereunder, to make findings that the agreements, safeguards, and provisions of registered clearing agencies are adequate for the protection of investors.

(21) Under section 17A(c)(4)(B) of the Act (15 U.S.C. 78q-1(c)(4)(B)), to set terms and conditions upon which transfer agents registered with the Commission may withdraw from registration as a transfer agent by filing a written notice of withdrawal.

(22) Under section 17A(c)(4)(B) of the Act (15 U.S.C. 78q-1(c)(4)(B)), to authorize the issuance of orders canceling registrations of transfer agents registered with the Commission or denying applications for registration as a transfer agent with the Commission, if such transfer agents are no longer in existence or are not engaged in business as transfer agents.

(23) Pursuant to section 17(b) of the Act (15 U.S.C. 78q(b)), prior to any examination of a registered clearing agency, registered transfer agent, or registered municipal securities dealer whose appropriate regulatory agency is

not the Commission, to notify and consult with the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer.

(24) Pursuant to section 17(c)(3) of the Act, 15 U.S.C. 78q(c)(3), in regard to clearing agencies, transfer agents and municipal securities dealers for which the Commission is not the appropriate regulatory agency, (i) to notify the appropriate regulatory agency of any examination conducted by the Commission of any such clearing agency, transfer agent, or municipal securities dealer; (ii) to request from the appropriate regulatory agency a copy of the report of any examination of any such clearing agency, transfer agent, or municipal securities dealer conducted by such appropriate regulatory agency and any data supplied to it in connection with such examination; and (iii) to furnish to the appropriate regulatory agency on request a copy of the report of any examination of any such clearing agency, transfer agent, or municipal securities dealer conducted by the Commission and any data supplied to it in connection with such examination.

(25) Pursuant to Rule 17f-1 (§240.17f-1 of this chapter), to designate persons not subject to §240.17f-1 as reporting institutions upon specified terms, conditions, and time periods.

(26) [Reserved]

(27) To approve amendments to the joint industry plan governing the consolidated transaction reporting declared effective by the Commission pursuant to Rule 11Aa(3-1) (§240.11Aa3-1 of this chapter) or its predecessor, Rule 17a-15, and to grant exemptions from Rule 11Aa3-1 pursuant to Rule 11Aa3-1(g) (§240.11Aaa3-1(g) of this chapter) to exchanges trading listed securities that are designated as national market system securities until such times as a Joint Reporting Plan for such securities is filed and approved by the Commission.

(28) To grant exemptions from Rule 11Ac1-1 ("Rule") (§240.11Ac1-1), pursuant to paragraph (d) of the rule.

(29) To issue supplemental orders modifying the terms upon which self-regulatory organizations are authorized to act jointly in planning, developing, operating or regulating facilities

of a national market system in accordance with the terms of amendments to plans which plans have been previously approved by the Commission under section 11A(a)(3)(B) of the Securities Exchange Act of 1934.

(30) Pursuant to section 17(a) of the Act, 15 U.S.C. 78q, to approve amendments to the plans which are consistent with the reporting structure of Rules 17a-5(a)(4) and 17a-10(b) filed by self-regulatory organizations pursuant to Rules 17a-5(a)(4) and 17a-10(b).

(31) Pursuant to section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), to extend for a period not exceeding 90 days from the date of publication of notice of the filing of a proposed rule change pursuant to section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), the period during which the Commission must by order approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved.

(32) Under §240.10b-10(f) of this chapter, to grant exemptions from §240.10b-10 of this chapter.

(33) Pursuant to Rule 17a-6 (§240.17a-6 of this chapter) to approve record destruction plans and amendments thereto filed by a national securities exchange or a national securities association.

(34) Pursuant to Rule 17d-2 (§240.17d-2 of this chapter) to publish notice of plans and plan amendments filed pursuant to Rule 17d-2 and to approve such plans and plan amendments.

(35) Under §240.13e-4(h)(8) of this chapter:

(i) To grant exemptions from §240.13e-4 of this chapter; and

(ii) To determine with respect to a tender or exchange offer otherwise eligible to be made pursuant to rule 13e-4(g) (§240.13e-4(g) of this chapter) whether, in light of any exemptive order granted by a Canadian federal, provincial or territorial regulatory authority, application of certain or all of the provisions of section 13(e)(1) and rule 13e-4 and Schedule 13E-4 thereunder to such offer is necessary or appropriate in the public interest.

(36) To grant exemptions from Rule 11Ac1-2 (§240.11Ac1-2 of this chapter), pursuant to Rule 11Ac1-2(g) (§240.11Ac1-2(g) of this chapter).

(37) Pursuant to Rule 11Aa2-1, 17 CFR 240.11Aa2-1, to publish notice of the filing of a designation plan with respect to national market system securities, or any proposed amendment thereto, and to approve such plan or amendment.

(38) To disclose:

(i) To the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the state banking authorities, information and documents deemed confidential regarding registered clearing agencies and registered transfer agents; and

(ii) To the Department of Treasury, information and documents deemed confidential regarding possible laundering of money through or by brokers or dealers, including compliance by brokers or dealers with the Currency and Foreign Transactions Reporting Act of 1970, as amended.

(39) Under § 240.9b-1 of this chapter:

(i) To enable distribution of an options disclosure document or amendment to an options disclosure document to the public prior to the time required in the Rule or to lengthen the period before distribution can be made;

(ii) To require refiling of an amendment to an options disclosure document pursuant to the procedure set forth in § 240.9b-1(b)(2)(i) of this chapter.

(40) Pursuant to section 15B(b)(2)(B) of the Act, 15 U.S.C., 78o-4(b), to review and, where appropriate, approve the selection by the Municipal Securities Rulemaking Board ("Board") of public representatives to serve on the Board.

(41) Pursuant to Rule 6a-2(c) (§ 240.6a-2 of this chapter) to exempt registered national securities exchanges from the filing requirements imposed by Rule 6a-2 with respect to certain affiliates and subsidiaries of the exchange.

(42) Under § 240.11Aa3-2(f) of this chapter, to grant or deny exemptions from § 240.11Aa3-2 of this chapter.

(43) To grant or deny exemptions from Rule 17Ad-14 (§ 240.17Ad-14 of this chapter), pursuant to Rule 17Ad-14(d) (§ 240.17Ad-14(d) of this chapter). (Pub. L. 87-592, 76 Stat. 394, 15 U.S.C 78d-1, 78d-2).

(44) To review, publish notice of, and where appropriate, approve plans, and

amendments to plans, submitted by self-regulatory organizations pursuant to Rule 19d-1(c) under the Act (§ 240.19d-1(c)).

(45) To grant exemptions from Rule 3b-9 under the Act. (§ 240.3b-9(c) of this chapter).

(46) Pursuant to section 15(b)(9) of the Act, 15 U.S.C. 78o(b)(9) to review and, where appropriate, grant exemptions from the requirement of section 15(b)(8) of the Act, 15 U.S.C. 78o(b)(8).

(47) Pursuant to section 15(a)(2) of the Act, 15 U.S.C. 78o(a)(2), to review and, either unconditionally or on specified terms and conditions, grant exemptions from the broker-dealer registration requirements of section 15(a)(1) of the Act, 15 U.S.C. 78o(a)(1), to government securities brokers or government securities dealers that have registered with the Commission under section 15(a)(2) of the Act, 15 U.S.C. 78o-5(a)(2), solely with respect to effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security principally backed by a guaranty of the United States.

(48) Pursuant to paragraph (d) of Rule 15c2-12 (17 CFR 15c2-12), to grant or deny exemptions, either unconditionally or on specified terms and conditions, from Rule 15c2-12.

(49) Pursuant to section 11A(b) of the Act and Rule 11Ab2-1 thereunder (17 CFR 11Ab2-1), to publish notice of and, by order, grant under section 11A(b) of the Act and Rule 11Ab2-1 thereunder: Applications for registration as a securities information processor; and exemptions from that section and any rules or regulations promulgated thereunder, either conditionally or unconditionally.

(50) Pursuant to sections 17A(b) and 19(a) of the Act (15 U.S.C. 78q-1(b) and 78s(a)):

(i) To authorize the issuance of orders granting an extension to a temporary clearing agency registration, for up to two years or such longer period as the clearing agency consents.

(ii) To authorize the issuance of orders granting the withdrawal of an application to become a registered clearing agency, at any time prior to final determination of such application by the Commission, upon submission of a

request for such withdrawal by applicant.

(51) Pursuant to paragraph (a)(4) of §240.9b-1 of this chapter, to authorize the issuance of orders designating securities as “standardized options.”

(52) Pursuant to Rules 17h-1T and 17h-2T of the Act (§§240.17h-1T and 240.17h-2T of this chapter):

(i) To designate certain broker-dealers as Reporting Brokers or Dealers; *or and*

(ii) To grant or deny an exemption, conditionally or unconditionally, to a broker or dealer pursuant to section 17(h) of the Act.

(53) To administer the provisions of §240.24c-1 of this chapter; provided that access to nonpublic information as defined in such section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(54) To administer the provisions of Section 24(d) of the Act (15 U.S.C. 78x(d)).

(55) Pursuant to §240.15c6-1 of this chapter, taking into account then existing market practices, to exempt contracts for the purchase or sale of any securities from the requirements of §240.15c6-1(a) of this chapter.

(56) Pursuant to §270.17Ad-16 of this chapter, to designate by order the appropriate qualified registered securities depository.

(57) Pursuant to Section 19(b)(2)(B) of the Act, 15 U.S.C. 78s(b)(2)(B), to institute proceedings to determine whether a proposed rule change of a self-regulatory organization should be disapproved.

(58) Pursuant to Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C), to abrogate a change in the rules of a self-regulatory organization and require that it be refiled in accordance with Section 19(b)(1), 15 U.S.C. 78s(b)(1), and reviewed in accordance with Section 19(b)(2), 15 U.S.C. 78s(b)(2), of the Act.

(59) Pursuant to paragraph (e)(6)(iii) of Rule 19b-4 (§240.19b-4 of this chapter), to reduce the period before which a proposed rule change can become operative, and to reduce the period between an SRO submission of a filing and a pre-filing notification.

(60) To grant exemptions from Rule 17a-23 (§240.17a-23 of this chapter), pursuant to Rule 17a-23(i) (§240.17a-23(i) of this chapter).

(61) To grant exemptions from Rule 11Ac1-4 (“Rule”) (§240.11Ac1-4), pursuant to paragraph (d) of the rule.

(62) From January 2, 1997 through February 17, 1997, to modify for a period not to exceed 60 days, the effective date or the compliance date of Rule 11Ac1-1 (§240.11Ac1-1) or Rule 11Ac1-4 (§240.11Ac1-4), or amendments to Rule 11Ac1-1 or Rule 11Ac1-4, with respect to any party affected by such rules.

(63) Pursuant to section 36 of the Act (15 U.S.C. 78mm) to review and, either unconditionally or on specified terms and conditions, grant or deny exemptions from section 11(d)(1) of the Act (15 U.S.C. 78k(d)(1)).

(b) To designate officers empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records in the course of investigations instituted by the Commission pursuant to section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)).

(c) In nonpublic investigatory proceedings within the responsibility of the Director or Deputy Director, to grant requests of persons to procure copies of the transcript of their testimony given pursuant to Rule 6 of the Commission’s rules relating to investigations as in effect subsequent to November 16, 1972 (17 CFR 203.6).

(d) To notify the Securities Investor Protection Corporation (“SIPC”) of facts concerning the activities and the operational and financial condition of any registered broker or dealer which is or appears to be a member of SIPC and which is in or approaching financial difficulty within the meaning of section 5 of the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. 78aaa *et seq.*

(e) To determine whether, and issue orders regarding, proposals for designation of a contract market for futures trading on an index or group of securities meet the eligibility criteria set forth under section 2(a)(1)(B)(ii) of the

Commodity Exchange Act, 7 U.S.C. 2(a).

(f) With respect to the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. 78aaa *et seq.* ("SIPA"):

(1) Pursuant to Section 3(a)(2)(B) of SIPA, to:

(i) Extend for a period not exceeding 90 days from the date of the filing of the determination by the Securities Investor Protection Corporation ("SIPC") that a registered broker-dealer is not a SIPC member because it conducts its principal business outside the United States and its territories and possessions, the period during which the Commission must affirm, reverse or amend any determination by SIPC; and

(ii) Affirm such determination filed by SIPC.

(2) Pursuant to Section (3)(e)(1) of SIPA, to:

(i) Determine whether proposed bylaw changes filed by SIPC should not be disapproved or whether the proposed bylaw change is a matter of such significant public interest that public comment should be obtained, in which case the Division will notify SIPC of such finding and publish notice of the proposed bylaw change in accordance with Section 3(e)(2) of SIPA; and

(ii) Accelerate the effective date of proposed bylaw changes filed by SIPC.

(3) Pursuant to Section (3)(e)(2) of SIPA, to publish notice of proposed rule changes filed by SIPC.

(g) Notwithstanding anything in the foregoing, in any case in which the Director of the Division of Market Regulation believes it appropriate, he may submit the matter to the Commission.

[37 FR 16795, Aug. 19, 1972]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §200.30-3 see the List of CFR Sections Affected in the Finding Aids section of this volume.

§200.30-4 Delegation of authority to Director of Division of Enforcement.

Pursuant to the provisions of Pub. L. No. 100-181, 101 Stat. 1254, 1255 (15 U.S.C. 78d-1, 78d-2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to

the Director of the Division of Enforcement to be performed by him or under his direction by such other person or persons as may be designated from time to time by the Chairman of the Commission.

(a)(1) To designate officers empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records in the course of investigations instituted by the Commission pursuant to section 19(b) of the Securities Act of 1933 (15 U.S.C. 77s(b)), section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 18(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79r(c)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(b)) and section 209(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(b)).

(2) In nonpublic investigative proceedings, to grant requests of persons to procure copies of the transcript of their testimony under §203.6 of this chapter.

(3) To terminate and close all investigations authorized by the Commission pursuant to section 20 of the Securities Act of 1933 (15 U.S.C. 77t), section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u), section 18 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79r), section 42 of the Investment Company Act of 1940 (15 U.S.C. 80a-41) and section 209 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9).

(4) To terminate the authority to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records in the course of investigations instituted by the Commission pursuant to section 19(b) of the Securities Act of 1933 (15 U.S.C. 77s(b)), section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 18(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79r(c)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(b)) and section 209(b) of

the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(b)).

(5) To grant or deny applications made pursuant to Rule 193 of the Commission's Rules of Practice, §201.193 of this chapter, provided, that, in the event of a denial, the applicant shall be notified that such a denial may be appealed to the Commission for review.

(6) To notify the Securities Investor Protection Corporation ("SIPC") of facts concerning the activities and the operational and financial condition of any registered broker or dealer which is or appears to be a member of SIPC and which is in or approaching financial difficulty within the meaning of section 5 of the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. 78aaa *et seq.*

(7) To administer the provisions of §240.24c-1 of this chapter; provided that access to nonpublic information as defined in such section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(8) Pursuant to Rule 204-2(j)(3)(ii) (§275.204-2(j)(3)(ii) of this chapter) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*), to make written demands upon non-resident investment advisers subject to the provisions of such rule to furnish to the Commission true, correct, complete and current copies of any or all books and records which such non-resident investment advisers are required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Investment Advisers Act of 1940, or any part of such books and records which may be specified in any such demand.

(9) To administer the provisions of Section 24(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78x(d)).

(10) To institute subpoena enforcement proceedings in federal court to seek an order compelling the production of documents or an individual's appearance for testimony pursuant to subpoenas issued pursuant to paragraph (a)(1) of this section in connection with investigations pursuant to section 19(b) of the Securities Act of 1933 (15 U.S.C. 77s(b)), section 21(b) of

the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 18(c) of the Public Utilities Holding Company Act of 1935 (15 U.S.C. 79r(c)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(b)) and section 209(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(b)).

(11) To authorize staff to appear in federal bankruptcy court to preserve Commission claims in connection with investigations pursuant to section 19(b) of the Securities Act of 1933 (15 U.S.C. 77s(b)), section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 18(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79r(c)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(b)) and section 209(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(b)).

(b) Notwithstanding anything in the foregoing, in any case in which the Director of the Division of Enforcement believes it appropriate, he may submit the matter to the Commission.

[37 FR 16796, Aug. 19, 1972, as amended at 37 FR 25166, Nov. 28, 1972; 40 FR 14748, Apr. 2, 1975; 44 FR 22716, Apr. 17, 1979; 44 FR 50835, Aug. 30, 1979; 44 FR 76774, Dec. 28, 1979; 45 FR 7781, Feb. 5, 1980; 47 FR 26822, June 22, 1982; 49 FR 12206, Mar. 29, 1984; 52 FR 12148, Apr. 15, 1987; 54 FR 24331, June 7, 1989; 58 FR 52419, Oct. 8, 1993; 59 FR 23794, May 9, 1994; 60 FR 14628, Mar. 20, 1995; 60 FR 32794, June 23, 1995; 61 FR 20721, May 8, 1996]

§200.30-5 Delegation of authority to Director of Division of Investment Management.

Pursuant to the provisions of Pub. L. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Director of the Division of Investment Management, to be performed by him or under his direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) With respect to the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*):

(1) Except as otherwise provided in this section, to issue notices, under §270.0-5 of this chapter, with respect to applications for orders under the Act

and the rules and regulations thereunder and, with respect to section 8(f) of the Act (15 U.S.C. 80a-8(f)), in cases where no application has been filed, where, upon examination, the matter does not appear to the Director to present significant issues that have not been previously settled by the Commission or to raise questions of fact or policy indicating that the public interest or the interest of investors warrants that the Commission consider the matter.

(2) Except as otherwise provided in this section, to authorize the issuance of orders where a notice, under §270.0-5 of this chapter, has been issued and no request for a hearing has been received from any interested person within the period specified in the notice and the Director believes that the matter presents no significant issues that have not been previously settled by the Commission and it does not appear to the Director to be necessary in the public interest or the interest of investors that the Commission consider the matter.

(3) To permit the withdrawal of applications pursuant to the Act (15 U.S.C. 80a-1 *et seq.*)

(4) In connection with the mailing of reports to stockholders and the filing with the Commission of registration statements and of reports:

(i) To grant reasonable extensions of time, upon a showing of good cause and that it would not be contrary to the public interest or inconsistent with the protection of investors; and

(ii) To deny requests for extensions of time, provided the applicant is advised that he can request Commission review of any such denial.

(5) [Reserved]

(6) To authorize the issuance of orders granting confidential treatment pursuant to section 45(a) of the Act (15 U.S.C. 80a-44(a)) where applications for confidential treatment are made regarding matters of disclosure in registration statements filed pursuant to section 8 of the Act (15 U.S.C. 80a-8), or in reports filed pursuant to section 30 of the Act (15 U.S.C. 80a-29), but only when the Commission has previously by order granted confidential treatment to the same information.

(7) To issue notices, pursuant to Rule 0-5(a) (§270.0-5(a) of this chapter) with respect to applications for temporary and permanent orders under section 9(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(c)), and to conditionally or unconditionally exempt persons, for a temporary period not exceeding 60 days, from section 9(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(a)), if, on the basis of the facts then set forth in the application, it appears that:

(i)(A) The prohibitions of section 9(a), as applied to the applicant, may be unduly or disproportionately severe, or (B) the applicant's conduct has been such as not to make it against the public interest or the protection of investors to grant the temporary exemption; and

(ii) Granting the temporary exemption would protect the interests of the investment companies being served by the applicant by allowing time for the orderly consideration of the application for permanent relief or the orderly transition of the applicant's responsibilities to a successor, or both.

(8) To issue—

(i) Notices, pursuant to Rule 0-5(a) (§270.0-5(a) of this chapter), with respect to applications for permanent orders under section 9(c) of the Act [15 U.S.C. 80a-9(c)], and, orders, pursuant to paragraph (a)(2) of this section, that exempt conditionally or unconditionally persons from section 9(a) of the Act [15 U.S.C. 80a-9(a)], if, on the basis of the facts then set forth in the application, it appears that:

(A) The prohibitions of section 9(a) of the Act, as applied to the applicant, may be unduly or disproportionately severe, or the applicant's conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption;

(B) The prohibitions arise under section 9(a)(3) of the Act solely because the applicant employs, or will employ, a person who is disqualified under section 9(a) (1) or (2) of the Act; and,

(C) The employee does not and will not serve in any capacity directly related to providing investment advice to, or acting as depositor for, any registered investment company, or acting

as principal underwriter for any registered open-end company, registered unit investment trust or registered face amount certificate company.

(ii) Temporary orders under section 9(c) of the Act [15 U.S.C. 80a-9(c)], exempting conditionally or unconditionally persons from section 9(a) of the Act [15 U.S.C. 80a-9(a)], if, on the basis of the application, it appears that:

(A) The prohibitions arise under section 9(a)(3) of the Act solely because the applicant employs a person who is disqualified under section 9(a) (1) or (2) of the Act; and

(B) Applicant meets the requirements of paragraphs (a)(8)(i) (A) and (C) of this section.

(b) With respect to matters pertaining to investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), pooled investment funds or accounts, and the general assets or separate accounts of insurance companies, all arising under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), and the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*), the same functions as are delegated to the Director of the Division of Corporation Finance in regard to companies other than such investment companies in paragraphs (a), (e), and (f) of § 200.30-1.

(b-1) *With respect to the Securities Act of 1933.* (1) To issue notices with respect to applications for orders under section 3(a)(2) exempting from section 5 interests or participations issued in connection with stock bonus, pension, profit-sharing, or annuity plans covering employees some or all of whom are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954 where, upon examination, the matter does not appear to him to present issues not previously settled by the Commission or to raise questions of fact or policy indicating that the public interest or the interest of investors requires that a hearing be held.

(2) To authorize the issuance of orders where a notice has been issued and no request for a hearing has been received from any interested person within the period specified in the notice and the matter involved presents no issue that he believes has not been

settled previously by the Commission and it does not appear to him to be necessary in the public interest or the interest of investors that a hearing be held.

(b-2) With respect to post-effective amendments filed pursuant to § 230.485(a) or § 230.486(a) of this chapter:

(1) To suspend the operation of paragraph (a) of such sections and to issue written notices to registrants of such suspensions;

(2) To determine such amendments to be effective within shorter periods of time than the sixtieth day after the filing thereof.

(b-3) With respect to post-effective amendments filed pursuant to § 230.485(b) or § 230.486(b) of this chapter:

(1) To approve additional purposes for post-effective amendments which shall be eligible for immediate effectiveness pursuant to paragraph (b) of such sections.

(2) To suspend the operation of paragraph (b) of such sections and to issue written notices to registrants of such suspensions.

(b-4) With respect to registration statements filed pursuant to paragraph (a) of Rule 487 under the Act (17 CFR 230.487(a)):

(1) To suspend the operation of said paragraph (a) and to issue written notices to registrants of such suspensions.

(b-5) With respect to registration statements filed pursuant to paragraph (a) of rule 488 under the Act (17 CFR 230.488(a)):

(1) To suspend the operation of said paragraphs and to issue written notices to registrants of such suspensions;

(2) To determine such amendments to be effective within shorter periods of time than the thirtieth day after the filing thereof.

(c) With respect to the Securities Act of 1933 and Regulation E thereunder (§ 230.601 *et seq.* of this chapter):

(1) To authorize the offering of securities:

(i) Less than ten days subsequent to the filing with the Commission of a notification on Form 1-E (§ 239.200 of this chapter) pursuant to Rule 604(a) (§ 230.604(a) of this chapter);

(ii) Less than ten days subsequent to the filing of an amendment to a notification on Form 1-E (§239.200 of this chapter) pursuant to Rule 604(c) (§230.604(c) of this chapter).

(2) To authorize the use of a revised or amended offering circular less than ten days subsequent to the filing thereof pursuant to Rule 605(e) (§230.605(e) of this chapter).

(3) To authorize the use of communications specified in paragraphs (a), (b) and (c) of Rule 607 (§230.607 of this chapter), less than five days subsequent to the filing thereof.

(4) To permit the withdrawal of any notification, or any exhibit or other documents filed as a part thereof, pursuant to Rule 604(d) (§230.604(d) of this chapter).

(c-1) With respect to the Securities Exchange Act of 1934: (1) To grant and deny applications filed pursuant to section 24(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78x(b)) and Rule 24b-2 thereunder (§240.24b-2 of this chapter) for confidential treatment of information filed pursuant to section 13(f) of that Act (15 U.S.C. 78m(f)) and Rule 13f-1 thereunder (§240.13f-1 of this chapter).

(2) To revoke a grant of confidential treatment for any such application.

(3) To administer the provisions of §240.24c-1 of this chapter; provided that access to nonpublic information as defined in such section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(4) To administer the provisions of section 24(d) of the Act (15 U.S.C. 78x(d)).

(d) To issue certifications to investment companies that are principally engaged in the furnishing of capital to corporations that are principally engaged in the development or exploitation of inventions, technological improvements, new processes, or products not previously generally available, under Section 851(e) of the Internal Revenue Code of 1986 (26 U.S.C. 851(e)), where applications from the investment companies do not present issues that have not been previously settled by the Commission and do not require a hearing.

(e) With respect to the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*):

(1) Pursuant to section 203(c) of the Act (15 U.S.C. 80b-3(c)): To authorize the issuance of orders granting registration of investment advisers within 45 days of the filing of an application for registration as an investment adviser (or within such longer period as to which the applicant consents).

(2) Pursuant to section 203(h) of the Act (15 U.S.C. 80b-3(h)), to authorize the issuance of orders canceling registration of investment advisers, or applications for registration, if such investment advisers or applicants for registration are no longer in existence or are not engaged in business as investment advisers.

(3) To issue notices, under §275.0-5 of this chapter, with respect to applications for orders under the Act and the rules and regulations thereunder where, upon examination, the matter does not appear to the Director to present significant issues that have not been previously settled by the Commission or to raise questions of fact or policy indicating that the public interest or the interest of investors warrants that the Commission consider the matter.

(4) To authorize the issuance of orders where a notice, pursuant to §275.0-5 of this chapter, has been issued, no request for a hearing has been received from any interested person within the period specified in the notice, and the Director believes that the matter presents no significant issues that have not been previously settled by the Commission and it does not appear to the Director to be necessary in the public interest or the interest of investors that the Commission consider the matter.

(5) To permit the withdrawal of applications pursuant to the Act (15 U.S.C. 80b-1 *et seq.*).

(6) Pursuant to Rule 204-2(j)(3)(ii) (§275.204-2(j)(3)(ii) of this chapter), to make written demands upon non-resident investment advisers subject to the provisions of such rule to furnish to the Commission true, correct, complete and current copies of any or all books and records which such non-resident investment advisers are required

to make, keep current or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Act, or any part of such books and records which may be specified in any such demand.

(f) With respect to the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*):

(1) To issue notices with respect to applications or declarations under the following sections of the Act:

(i) Section 2(a)(3), 15 U.S.C. 79(b)(a)(3).

(ii) Section 2(a)(4), 15 U.S.C. 79b(a)(4).

(iii) Section 2(a)(7), 15 U.S.C. 79b(a)(7).

(iv) Section 2(a)(8), 15 U.S.C. 79b(a)(8).

(v) Section 3(a), 15 U.S.C. 79c(a).

(vi) Section 3(b), 15 U.S.C. 79c(b).

(vii) Section 5(d), 15 U.S.C. 79e(d).

(viii) Section 6(b), 15 U.S.C. 79f(b).

(ix) Section 7, 15 U.S.C. 79g.

(x) Section 9(c)(3), 15 U.S.C. 79i(c)(3).

(xi) Section 10, 15 U.S.C. 79j.

(xii) Section 11(e), 15 U.S.C. 79k(e).

(xiii) Section 12(b), 15 U.S.C. 79l(b).

(xiv) Section 12(c), 15 U.S.C. 79l(c).

(xv) Section 12(d), 15 U.S.C. 79l(d).

(xvi) Section 12(e), 15 U.S.C. 79l(e).

(xvii) Section 12(f), 15 U.S.C. 79l(f).

(xviii) Section 12(g), 15 U.S.C. 79l(g).

(xix) Section 13(b), 15 U.S.C. 79m(b).

(xx) Section 13(c), 15 U.S.C. 79m(c).

(xxi) Section 13(d), 15 U.S.C. 79m(d).

(xxii) Section 13(e), 15 U.S.C. 79m(e).

(xxiii) Section 13(f), 15 U.S.C. 79m(f).

(xxiv) Section 32, 15 U.S.C. 79ff.

(xxv) Section 33, 15 U.S.C. 79gg.

(2) To authorize the issuance of orders where a notice has been issued and no request for a hearing has been received from any interested person within the period specified in the notice and the matter involved presents no issue that the director believes has not previously been settled by the Commission and it does not appear to the director to be necessary in the public interest or the interest of investors or consumers that a hearing be held; section 20(c) of the Act (15 U.S.C. 79t(c));

(3) To permit the withdrawal of applications or declarations filed pursuant to the Act (15 U.S.C. 79a *et seq.*);

(4) Upon a showing of good cause and that it would not be contrary to the public interest or inconsistent with the

protection of investors or consumers, to grant reasonable extensions of time with respect to the time for the filing with the Commission of registration statements and of reports pursuant to section 20(a) of the Act (15 U.S.C. 79t(a)) and Rules 1(b), 1(c), 2, 24, and 29 (§§ 250.1(b), 250.1(c), 250.2, 250.4, and 250.29 of this chapter) thereunder;

(5) To permit the filing of preliminary registration statements pursuant to section 5(c) of the Act (15 U.S.C. 79e(c));

(6) To authorize the destruction of records pursuant to the provisions of General Instruction 1(f) (§257.1(f) of this chapter) to the appendix of the Uniform System of Accounts for Public Utility Holding Companies (§257.1 *et seq.* of this chapter) and pursuant to provisions of General Requirement 1(e) (§256a.0-1(e) of this chapter) of the Uniform System of Accounts for Mutual Service Companies and Subsidiary Service Companies (§256.00-1 *et seq.*, of this chapter);

(7) To authorize the discontinuance of reporting of information otherwise required to be reported under sections 5(b), 13(c), 13(e), 13(f), 14, and 20(a) of the Act (15 U.S.C. 79e(b), 79m(c), 79m(e), 79m(f), 79n, 79t(a));

(8) To grant extensions of time for filing registration statements and reports pursuant to sections 5(b), 13(c), 13(d), 13(f), 14, and 20(a) of the Act (15 U.S.C. 79e(b), 79m(c), 79m(d), 79m(f), 79n, 79t(a)).

(g) Notwithstanding anything in the foregoing:

(1) The Director of the Division of Investment Management shall have the same authority with respect to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), §§ 230.251-230.263, and §§ 230.651-230.703(T) of this chapter as that delegated to each Regional Director in §200.30-6 (b) and (c).

(2) In any case in which the Director of the Division of Investment Management believes it appropriate, he may submit the matter to the Commission.

(h) With respect to the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*), and Regulation

S-T thereunder (part 232 of this chapter), to grant or deny a request submitted under Regulation S-T to adjust the filing date of an electronic filing.

(i) With respect to the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) and rule 8b-25 thereunder (§270.8b-25), the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*), and Regulation S-T thereunder (part 232 of this chapter), to set the terms of, and grant or deny as appropriate, continuing hardship exemptions under rule 202 of Regulation S-T (§232.202 of this chapter) from the electronic submission requirements of Regulation S-T (part 232 of this chapter).

(j) With respect to the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) and Regulation S-T (part 232 of this chapter), to grant or deny a request to adjust the filing date of a filing submitted under Regulation S-T.

(k) With respect to the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) and Regulation S-T (part 232 of this chapter), to set the terms of, and grant or deny as appropriate, continuing hardship exemptions pursuant to rule 202 of Regulation S-T (§§232.202 of this chapter) from the electronic submission requirements of Regulation S-T (part 232 of this chapter).

[41 FR 29376, July 16, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §200.30-5 see the List of CFR Sections Affected in the Finding Aids section of this volume.

§200.30-6 Delegation of authority to Regional Directors.

Pursuant to the provisions of Pub. L. 87-592, 76 Stat. 394, the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to each Regional Director, to be performed by him or under his direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) With respect to the Securities Exchange Act of 1934, 15 U.S.C. 78 *et seq.*:

(1) Pursuant to section 15(b)(2)(C) of the Act (15 U.S.C. 78o(b)(2)(C)):

(i) To delay until the second six month period from registration with the Commission, the inspection of newly registered broker-dealers that have not commenced actual operations within six months of their registration with the Commission; and

(ii) To delay until the second six month period from registration with the Commission, the inspection of newly registered broker-dealers to determine whether they are in compliance with applicable provisions of the Act and rules thereunder, other than financial responsibility rules.

(2) Pursuant to Rule 0-4 (§240.0-4 of this chapter), to disclose to the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation and to the state banking authorities, information and documents deemed confidential regarding registered clearing agencies and registered transfer agents; *Provided* That, in matters in which the Commission has entered a formal order of investigation, such disclosure shall be made only with the concurrence of the Director of the Division of Enforcement or his or her delegate, and the General Counsel or his or her delegate.

(b) With respect to the Investment Advisers Act of 1940, 15 U.S.C. 80b-1 *et seq.*: Pursuant to Rule 204-2(j)(3)(ii) (§275.204-2(j)(3)(ii) of this chapter), to make written demands upon non-resident investment advisers subject to the provisions of such rule to furnish to the Commission true, correct, complete and current copies of any or all books and records which such non-resident investment advisers are required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Investment Advisers Act of 1940, or any part of such books and records which may be specified in any such demand.

(c) In nonpublic investigatory proceedings within the responsibility of the Regional Director, to grant requests of persons to procure copies of the transcript of their testimony given pursuant to Rule 6 of the Commission's rules relating to investigations as in effect subsequent to November 16, 1972 (17 CFR 203.6).

(d) To notify the Securities Investor Protection Corporation ("SIPC") of facts concerning the activities and the operational and financial condition of any registered broker or dealer which is or appears to be a member of SIPC and which is in or approaching financial difficulty within the meaning of section 5 of the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. 78aaa *et seq.*

(e) Notwithstanding anything in the foregoing, in any case in which the Regional Director believes it appropriate, he may submit the matter to the Commission.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498-1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a-37; secs. 3(b), 19(a), 48 Stat. 75, 85; sec. 209, 48 Stat. 908; c. 122, 59 Stat. 167; Pub. L. 91-565, 84 Stat. 1480; 15 U.S.C. 77c(b), 77s(a), 78d-1, 78n, 80a-37; secs. 2, 17 and 23 thereof (15 U.S.C. 78b, 78q and 78w))

[28 FR 2856, Mar. 22, 1963, as amended at 36 FR 7659, Apr. 23, 1971. Redesignated at 37 FR 16792, Aug. 19, 1972]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 200.30-6 see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 200.30-6a Delegation of authority to District Administrators.

Pursuant to the provisions of Pub. L. 87-592, 76 Stat. 394, 15 U.S.C. 78d-1, the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to each District Administrator, to be performed by him or her or under his or her direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*):

(1) Pursuant to section 15(b)(2)(C) of the Act (15 U.S.C. 78o(b)(2)(C)):

(i) To delay until the second six-month period from registration with the Commission the inspection of newly registered broker-dealers that have not commenced actual operations within six months of their registration with the Commission; and

(ii) To delay until the second six-month period from registration with the Commission the inspection of newly registered broker-dealers to determine whether they are in compliance with applicable provisions of the Act and rules thereunder, other than financial responsibility rules.

(2) Pursuant to Rule 0-4 (§ 240.0-4 of this chapter), to disclose to the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation and to the state banking authorities, information and documents deemed confidential regarding registered clearing agencies and registered transfer agents, *Provided That*, in matters in which the Commission has entered a formal order of investigation, such disclosure shall be made only with the concurrence of the Director of the Division of Enforcement or his or her delegate and the General Counsel or his or her delegate.

(b) With respect to the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*): Pursuant to Rule 204-2(j)(3)(ii) (§ 275.204-2(j)(3)(ii) of this chapter), to make written demands upon non-resident investment advisers subject to the provisions of such rule to furnish to the Commission true, correct, complete and current copies of any or all books and records which such non-resident investment advisers are required to make, keep current or preserve pursuant to any provisions of any rule or regulation of the Commission adopted under the Investment Advisers Act of 1940, or any part of such books and records which may be specified in such demand.

(c) In nonpublic investigatory proceedings within the responsibility of the District Administrator, to grant requests of persons to procure copies of the transcript of their testimony given pursuant to Rule 6 of the Commission

Rules Relating to Investigations (§203.6 of this chapter).

(d) To notify the Securities Investor Protection Corporation ("SIPC") of facts concerning the activities and the operational and financial condition of any registered broker or dealer which is or appears to be a member of SIPC and which is in or approaching financial difficulty within the meaning of Section 4 of the Securities Investor Protection Act of 1970 as amended (15 U.S.C. 78aaa *et seq.*).

(e) Notwithstanding anything in the foregoing, in any case in which the District Administrator believes it appropriate, he or she may submit the matter to the Commission.

[59 FR 5943, Feb. 9, 1994]

§200.30-7 Delegation of authority to Secretary of the Commission.

Pursuant to the provisions of Pub. L. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Secretary of the Commission to be performed by him or under his direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) With respect to proceedings conducted pursuant to the Securities Act of 1933, 15 U.S.C. 77a *et seq.*, the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, the Public Utility Holding Company Act of 1935, 15 U.S.C. 79a *et seq.*, the Trust Indenture Act of 1939, 15 U.S.C. 77aaa *et seq.*, the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*, and the Investment Advisers Act of 1940, 15 U.S.C. 80b-1 *et seq.*:

(1) To fix the time and place for hearings and oral arguments before the Commission pursuant to Rule 451 of the Commission's Rules of Practice, §201.451 of this chapter;

(2) In appropriate cases to extend and reallocate the time prescribed in Rule 451(c) of the Commission's Rules of Practice, §201.451(c) of this chapter;

(3) To postpone or adjourn hearings or otherwise adjust the date for commencement of hearings before the Commission pursuant to Rule 161 of the Commission's Rules of Practice,

§201.161 of this chapter, and to advance such hearings;

(4) To grant or deny extensions of time within which to file papers with the Commission under Rule 161 of the Commission's Rules of Practice, §201.161 of this chapter.

(5) To permit the filing of briefs with the Commission exceeding 60 pages in length, pursuant to Rule 450(c) of the Commission's Rules of Practice, §201.450(c) of this chapter;

(6) To certify records of proceedings upon which are entered orders subject of review in courts of appeals pursuant to section 9 of the Securities Act of 1933, 15 U.S.C. 77i, section 25 of the Securities Exchange Act of 1934, 15 U.S.C. 78y, section 24 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79x, section 322(a) of the Trust Indenture Act of 1939, 15 U.S.C. 77vvv, section 43 of the Investment Company Act of 1940, 15 U.S.C. 80a-42, and section 213 of the Investment Advisers Act of 1940, 15 U.S.C. 80b-13;

(7) Except where the Commission otherwise directs, to issue findings and orders pursuant to offers of settlement which the Commission has determined should be accepted;

(8) To issue findings and orders taking the remedial action described in the order for proceedings where a respondent expressly consents to such action, fails to appear, or defaults in the filing of an answer required to be filed and to grant a request, based upon a showing of good cause, to vacate an order or default, so as to permit presentation of a defense;

(9) To designate officers of the Commission to serve notices of and orders for proceedings and decisions and orders in such proceedings, the service of which is required by Rules 141 and 150 of the Commission's Rules of Practice, §§201.141 and 201.150 of this chapter;

(10) To set the date for sanctions to take effect if an initial decision is not appealed and becomes final pursuant to Rule 360(d) or if an initial decision is affirmed pursuant to Rule 411;

(11) To publish pursuant to Rule 612 of the Commission's Rules of Practice, §201.612 of this chapter, notices of plans of disgorgement and, if no negative comments are received, to issue orders approving proposed plans of

disgorgement pursuant to Rule 613 of the Commission's Rules of Practice, §201.613 of this chapter. Upon the motion of the staff for good cause shown, to approve the publication of proposed plans of disgorgement that omit plan elements required by Rule 611 of the Commission's Rules of Practice, §201.611 of this chapter.

(b) To order the making of private investigations pursuant to section 21(a) of the Securities Exchange Act of 1934, on request of the Division of Corporation Finance or the Division of Enforcement, with respect to proxy contests subject to section 14 of that Act and regulation 14A thereunder, and tender offers filed pursuant to section 14(d) of the Act.

(c) Notwithstanding anything in the foregoing, in any case in which the Secretary of the Commission believes it appropriate he or she may submit the matter to the Commission.

(15 U.S.C. 78d, 78d-1, 78d-2)

[35 FR 17989, Nov. 24, 1970. Redesignated at 37 FR 16792, Aug. 19, 1972, and amended at 38 FR 12913, May 17, 1973; 40 FR 46107, Oct. 6, 1975; 43 FR 13377, Mar. 30, 1978; 60 FR 14629, Mar. 20, 1995; 60 FR 32794, June 23, 1995; 61 FR 5939, Feb. 15, 1996; 61 FR 13689, Mar. 28, 1996; 61 FR 15338, Apr. 5, 1996]

§200.30-8 [Reserved]

§200.30-9 Delegation of authority to hearing officers.

Pursuant to the provisions of Section 4A of the Securities Exchange Act of 1934 (15 U.S.C. 78d-1), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, to each Administrative Law Judge ("Judge") the authority:

(a) To make an initial decision in any proceeding at which the Judge presides in which a hearing is required to be conducted in conformity with the Administrative Procedure Act (5 U.S.C. 557) unless such initial decision is waived by all parties who appear at the hearing and the Commission does not subsequently order that an initial decision nevertheless be made by the Judge, and in any other proceeding in which the Commission directs the Judge to make such a decision; and

(b) To issue, upon entry pursuant to Rule 531 of the Commission's Rules of

Practice, §201.531 of this chapter, of an initial decision on a permanent order, a separate order setting aside, limiting or suspending any temporary sanction, as that term is defined in Rule 101(a)(11) of the Commission's Rules of Practice, §201.101(a) of this chapter, then in effect in accordance with the terms of the initial decision.

[60 FR 32794, June 23, 1995]

§200.30-10 Delegation of authority to Chief Administrative Law Judge.

Pursuant to the provisions of Pub. L. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Chief Administrative Law Judge or to such administrative law judge or administrative law judges as may be designated by the Chief Administrative Law Judge in his absence, or as otherwise designated by the Chairman of the Commission in the absence of the Chief Administrative Law Judge:

(a) With respect to proceedings conducted before an administrative law judge, pursuant to the Securities Act of 1933, 15 U.S.C. 77a *et seq.*, the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, the Public Utility Holding Company Act of 1935, 15 U.S.C. 79a *et seq.*, the Trust Indenture Act of 1939, 15 U.S.C. 77aaa *et seq.*, the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*, and the Investment Advisers Act of 1940, 15 U.S.C. 80b-1 *et seq.*:

(1) After a proceeding has been authorized, to fix the time and place for hearing pursuant to Rule 200 of the Commission's Rules of Practice, §201.200 of this chapter;

(2) To designate administrative law judges pursuant to Rule 110 of the Commission's Rules of Practice, §201.110 of this chapter;

(3) To postpone or adjourn hearings or otherwise adjust the date for commencement of hearings pursuant to Rule 161 of the Commission's Rules of Practice, §201.161 of this chapter, or to advance or cancel such hearings, if necessary;

(4) To grant extensions of time within which to file papers pursuant to Rule 161 of the Commission's Rules of Practice, §201.161 of this chapter;

(5) To permit the filing of briefs exceeding 60 pages in length, pursuant to Rule 450(c) of the Commission's Rules of Practice, §201.450(c) of this chapter;

(6) In the event the designated presiding administrative law judge is unavailable to issue subpoenas requiring the attendance and testimony of witnesses and subpoenas requiring the production of documentary or other tangible evidence at any designated place of hearing upon request therefor by any party, pursuant to Rule 232 of the Commission's Rules of Practice, 201.232 of this chapter;

(7) Pursuant to sections 15(b)(1)(B), 15B(a)(2)(B), and 19(a)(1)(B) of the Securities Exchange Act of 1934 and section 203(c)(2)(B) of the Investment Advisers Act of 1940 to grant extensions of time for conclusion of proceedings instituted to determine whether applications for registration as a broker or dealer, municipal securities dealer, national securities exchange, registered securities association, or registered clearing agency, or as an investment adviser should be denied.

(b) With respect to proceedings under the Equal Access to Justice Act, 5 U.S.C. 504, to make assignments as provided in §201.37(b) of this chapter, respecting applications made pursuant to that Act.

(c) Notwithstanding anything in the foregoing, in any case in which the Chief Administrative Law Judge believes it appropriate he or she may submit the matter to the Commission.

(15 U.S.C. 77u, 78d, 78d-1, 78d-2, 76 Stat. 394, as amended, secs. 25(1) and 25(2), 89 Stat. 163)

[37 FR 23827, Nov. 9, 1972, as amended at 41 FR 21183, May 24, 1976; 43 FR 13378, Mar. 30, 1978; 54 FR 53051, Dec. 27, 1989; 60 FR 32794, June 23, 1995]

§200.30-11 Delegation of authority to Associate Executive Director of the Office of Filings and Information Services.

Under Pub. L. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2), the Securities and Exchange Commission hereby delegates the following functions to the Associate Executive Director of the Office of Filings and Information Services to be performed by him or her or under his or her direction by such person or persons as the Chairman of the Com-

mission may designate from time to time:

(a) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*):

(1) Under section 15(b) of the Act (15 U.S.C. 78o(b)):

(i) To authorize the issuance of orders granting registration of brokers or dealers within 45 days of the acceptance of an application for registration as a broker or dealer (or within such longer period as to which the applicant consents);

(ii) To grant registration of brokers or dealers sooner than 45 days after acceptance of an application for registration;

(iii) To authorize the issuance of orders canceling registrations of brokers or dealers, or pending applications for registration, if such brokers or dealers or applicants for registration are no longer in existence or are not engaged in business as brokers or dealers; and

(iv) To determine whether notices of withdrawal from registration on Form BDW shall become effective sooner than the normal 60-day waiting period.

(2) Under section 15B(a) of the Act (15 U.S.C. 78o-4(a)):

(i) To authorize the issuance of orders granting registration of municipal securities dealers within 45 days of the filing of acceptable applications for registration as a municipal securities dealer (or within such longer period as to which the applicant consents); and

(ii) To grant registration of municipal securities dealers sooner than 45 days after receipt by the Commission of acceptable applications for registration.

(3) Under section 15B(c) of the Act (15 U.S.C. 78o-4(c)):

(i) To authorize the issuance of orders canceling registrations of municipal securities dealers, or pending applications for registration, if such municipal securities dealers or applicants for registration are no longer in existence or are not engaged in business as municipal securities dealers; and

(ii) To determine whether notices of withdrawal from registration on Form MSDW shall become effective sooner than the normal 60-day waiting period.

(4) Under section 15C(a) of the Act (15 U.S.C. 78o-5(a)):

(i) To authorize the issuance of orders granting registration of government securities brokers or government securities dealers for which the Commission is the appropriate regulatory agency within 45 days of the acceptance of an application for registration as a government securities broker or government securities dealer (or within such longer period as to which the applicant consents); and

(ii) To grant registration of government securities brokers or government securities dealers for which the Commission is the appropriate regulatory agency sooner than 45 days after acceptance of an application for registration.

(5) Under section 15C(c) of the Act (15 U.S.C. 78o-5(c)):

(i) To authorize the issuance of orders canceling registrations of government securities brokers or government securities dealers registered with the Commission, or pending applications for registration, if such government securities brokers or government securities dealers or applicants for registration are no longer in existence or are not engaged in business as government securities brokers or government securities dealers; and

(ii) To determine whether notices of withdrawal from registration on Form BDW shall become effective sooner than the normal 60-day waiting period.

(6) Under section 17A(c) of the Act (15 U.S.C. 78q-1(c)):

(i) To authorize the issuance of orders granting registration of transfer agents within 45 days of the filing of acceptable applications for registration as a transfer agent (or within such longer period as to which the applicant consents);

(ii) To grant registration of transfer agents sooner than 45 days after receipt by the Commission of acceptable applications for registration;

(iii) To authorize the issuance of orders canceling registrations of transfer agents, or pending applications for registration, if such transfer agents or applicants for registration are no longer in existence or are not engaged in business as transfer agents; and

(iv) To determine whether notices of withdrawal from registration on Form

TA-W shall become effective sooner than the normal 60-day waiting period.

(b) With respect to the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*):

(1) Under section 203(c) of the Act (15 U.S.C. 80b-3(c)):

(i) To authorize the issuance of orders granting registration of investment advisers within 45 days of the filing of acceptable applications for registration as an investment adviser (or within such longer period as to which the applicant consents); and

(ii) To grant registration of investment advisers sooner than 45 days after receipt by the Commission of acceptable applications for registration.

(2) Under section 203(h) of the Act (15 U.S.C. 80b-3(h)):

(i) To authorize the issuance of orders canceling registrations of investment advisers, or pending applications for registration, if such investment advisers or applicants for registration are no longer in existence or are not engaged in business as investment advisers; and

(ii) To determine whether notices of withdrawal from registration on Form ADV-W shall become effective sooner than the normal 60-day waiting period.

(c) With respect to the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa *et seq.*):

(1) To cause a written notice to be sent by registered or certified mail, upon receipt of a copy of a notice sent by or on behalf of the Securities Investor Protection Corporation that a broker or dealer has failed to timely file any report or information or to pay when due all or any part of an assessment as required under section 10(a) of this Act, to such delinquent member advising such member that it is unlawful for him or her under the provisions of such section of the Act to engage in business as a broker-dealer while in violation of such requirements of the Act and requesting an explanation in writing within ten days stating what he or she intends to do in order to cure such delinquency;

(2) To authorize formerly delinquent brokers or dealers, upon receipt of written confirmation from or on behalf of the Securities Investor Protection

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Corporation that the delinquencies referred to in paragraph (c)(1) of this section have been cured, and upon having been advised by the appropriate regional or district office of this Commission and the Division of Enforcement and Division of Market Regulation that there is no objection to such member being authorized to resume business, and upon there appearing to be no unusual or novel circumstances which would warrant direct consideration of the matter by this Commission, to resume business as registered broker-dealers as provided in section 10(a) of this Act.

(d) Notwithstanding anything in the foregoing, in any case in which the Associate Executive Director of the Office of Filings and Information Services believes it appropriate, he or she may submit the matter to the Commission.

(e) To authenticate all Commission documents produced for administrative or judicial proceedings.

(Sec. 1, 76 Stat. 394, 15 U.S.C. 78d-1, 78d-2; sec. 10(a), 84 Stat. 1655, 15 U.S.C. 78jjj(a); sec. 15B, 15 U.S.C. 78o-4(a); sec. 17A, 15 U.S.C. 78q-1(c)(2); 11 U.S.C. 901, 1109(a))

[41 FR 1740, Jan. 12, 1976, as amended at 41 FR 32736, Aug. 5, 1976; 42 FR 56727, Oct. 28, 1977; 49 FR 12686, Mar. 30, 1984; 55 FR 11168, Mar. 27, 1990; 59 FR 5944, Feb. 9, 1994; 60 FR 14629, Mar. 20, 1995]

§ 200.30-12 [Reserved]

§ 200.30-13 Delegation of authority to Associate Executive Director of the Office of the Comptroller.

Pursuant to the provisions of Pub. L. 94-29, 89 Stat. 163, Pub. L. 87-592, 76 Stat. 395, 15 U.S.C. 78d-1, 78d-2, the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following function to the Associate Executive Director of the Office of the Comptroller, to be performed by him or under his direction by such person or persons as may be designated from time to time by the Chairman of the Commission: The compromise and collection of Federal claims as required by the Federal Claims Collection Act of 1966, 31 U.S.C. 951 *et seq.*, in conformance with standards and procedures jointly promulgated by the Attorney General and

Comptroller General, 4 CFR 101.1-105.7.

(Sec. 25, 89 Stat. 163, 15 U.S.C. 78d-1; Sec. 2, 76 Stat. 395 15 U.S.C. 78d-2)

[44 FR 3473, Jan. 17, 1979, as amended at 60 FR 14630, Mar. 20, 1995]

§ 200.30-14 Delegation of authority to the General Counsel.

Pursuant to the provisions of Pub. L. 101-181, 101 Stat. 1254, 101 Stat. 1255, 15 U.S.C. 78d-1, 15 U.S.C. 78d-2, and 5 U.S.C. 552a(d)(2)(B)(ii), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the General Counsel of the Commission, to be performed by him or her or under his or her direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) Grant waivers of imputed disqualification requested pursuant to 17 CFR 200.735-8(d).

(b) Determine whether the Commission will submit, after consultation with any Division or Office of the Commission designated by the Commission, and amicus curiae brief in private litigation on issues previously considered and designated by the Commission as appropriate for the exercise of delegated authority. A list of the issues designated by the Commission as subject to this delegated authority and, where determined by the Commission, the position to be taken on each such issue, may be obtained on request addressed to Securities and Exchange Commission, Washington, DC 20549.

(c) Determine the appropriate disposition of all Freedom of Information Act and confidential treatment appeals in accordance with §§ 200.80(d)(6), 200.80(e)(4), 200.83(e), 200.83(f), and 200.83(h).

(d) Determine the appropriate disposition of all Privacy Act appeals and related matters in accordance with §§ 200.304 (a) and (c); 200.307 (a) and (b); 200.308(a) (4)-(10); 200.308(b) (1)-(4); and 200.309(e) (1) and (2).

(e) File notices of appearance in bankruptcy reorganization cases under section 1109(a) of the Bankruptcy Code involving debtors, the securities of which are registered or required to be

registered under section 12 of the Securities Exchange Act.

(f) Approve non-expert, non-privileged, factual testimony by present or former staff members, and the production of non-privileged documents, when validly subpoenaed; and assert governmental privileges on behalf of the Commission in litigation where the Commission appears as a party or in response to third party subpoenas.

(g)(1) With respect to proceedings conducted pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*), the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa *et seq.*) and the provisions of Rule 102(e) of the Commission's Rules of Practice (§201.102(e) of this chapter);

(i) To consider an application for review of an interlocutory ruling which an administrative law judge has refused to certify, and to deny such application upon determining that the administrative law judge did not err in refusing to certify the matter.

(ii) To consider an interlocutory ruling which an administrative judge has certified, and to affirm such ruling upon determining that such action is appropriate.

(iii) To issue any order pursuant to an initial decision as to any person who has not filed a petition for review within the time provided, or has withdrawn his appeal, where the Commission has not on its own motion ordered that the initial decision be reviewed.

(iv) Except where the Commission otherwise directs, to issue findings and orders pursuant to offers of settlement which the Commission has determined should be accepted.

(v) To grant petitions for review of initial decisions by a hearing officer.

(vi) To grant motions of staff counsel to discontinue administrative proceedings as to a particular respondent who has died or cannot be found, or because of a mistake in the identity of a re-

spondent named in the order for proceedings.

(vii) To grant requests for the submission of late or additional briefs, or the acceptance of affidavits or other material for inclusion in the record or in support of motions or petitions addressed to the Commission.

(viii) To issue an order dismissing an application for review upon the request of the applicant that the application be withdrawn.

(ix) To issue an order dismissing an exemptive application upon the request of the applicant that the application be withdrawn.

(x) To determine motions to consolidate proceedings pending before the Commission.

(xi) To determine whether to permit or require that a record of proceedings be supplemented with additional evidence.

(xii) To determine requests for leave to file an opposition to a petition for review filed pursuant to the provisions of Rule 411 of the Commission's Rules of Practice, §201.411 of this chapter.

(xiii) To issue a briefing schedule order pursuant to Rule 450 of the Commission's Rules of Practice, §201.450 of this chapter.

(xiv) To determine motions for expedited briefing schedules.

(2) With respect to proceedings conducted pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*), the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa *et seq.*) and the provisions of Rule 102(e) of the Commission's Rules of Practice (§201.102(e) of this chapter), to issue findings and orders taking the remedial action described in the order for proceedings where the respondents expressly consent to such action, fail to appear or default in the filing of answers required to be filed; or to grant a request, based upon a showing of good cause, to vacate an order of default, so as to permit presentation of a defense.

(3) With respect to proceedings conducted pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), to issue an order dismissing an

application for review of a denial by a self-regulatory organization of an application by a person subject to statutory disqualification to become associated with a member firm upon receipt of notice from the self-regulatory organization that the firm is no longer a member of the self-regulatory organization.

(4) With respect to proceedings under Sections 19 (d), (e) and (f) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d), (e) and (f)), to determine that an application for review under those sections has been abandoned, under the provisions of Rule 420, §201.420 of this chapter, or otherwise, and to issue an order dismissing the application in such event.

(5) With respect to proceedings conducted or reviewed pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*) and the provisions of Rule 102(e) of the Commission's Rules of Practice, §201.102(e) of this chapter, to determine applications to stay Commission orders pending appeal of those orders to the federal courts and to determine applications to vacate such stays.

(6) With respect to review proceedings pursuant to Sections 19 (d), (e), and (f) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d), (e), and (f)), to determine applications for a stay of action taken by a self-regulatory organization pending Commission review of that action and to determine applications to vacate such stays.

(7) In connection with Commission review of actions taken by self-regulatory organizations, pursuant to Sections 19 (d), (e) and (f) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d), (e) and (f)), to grant or deny requests for oral argument in accordance with the provisions of Rule 451, §201.451 of this chapter.

(h) Notwithstanding anything in paragraph (g) of this section, the functions described in paragraph (g) of this section are not delegated to the General Counsel with respect to proceedings in which the Chairman or the General Counsel determines that separation of functions requirements or other

circumstances would make inappropriate the General Counsel's exercise of such delegated functions. With respect to such proceedings, such functions are delegated to the Executive Assistant to the Chairman pursuant to §200.30-16 of this chapter.

(i) Notwithstanding anything in paragraph (g) of this section, in any case described in paragraph (g) of this section in which the General Counsel believes it appropriate, he or she may submit the matter to the Commission.

(j) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*):

(1) To administer the provisions of §240.24c-1 of this chapter; provided that access to nonpublic information as defined in such section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(2) To administer the provisions of section 24(d) of the Act (15 U.S.C. 78x(d)).

(k) To refer matters and information concerning possible professional misconduct to state bar associations and other state professional boards or societies.

[47 FR 20288, May 12, 1982, as amended at 49 FR 13866, Apr. 9, 1984; 49 FR 43951, Nov. 1, 1984; 53 FR 17458, May 17, 1988; 54 FR 18101, Apr. 27, 1989; 54 FR 33500, Aug. 15, 1989; 58 FR 8541, Feb. 16, 1993; 58 FR 52419, Oct. 8, 1993; 59 FR 39680, Aug. 4, 1994; 60 FR 14630, Mar. 20, 1995; 60 FR 32794, June 23, 1995; 61 FR 56892, Nov. 5, 1996]

§200.30-15 Delegation of authority to Executive Director.

Under Pub. L. 100-181, 101 Stat. 1254 (15 U.S.C. 78d-1, 78d-2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Executive Director to be performed by him or her or under his or her direction by persons designated by the Chairman of the Commission: To identify and implement additional changes within the Commission that will promote the principles and standards of the National Performance Review and the strategic and quality management approaches described by the Federal Quality Institute's "Presidential

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Award for Quality'' or its successor awards.

[60 FR 14630, Mar. 20, 1995]

§ 200.30-16 Delegation of authority to Executive Assistant to the Chairman.

Pursuant to the provisions of Pub. L. 101-181, 101 Stat. 1254, 101 Stat. 1255, 15 U.S.C. 78d-1, and 15 U.S.C. 78d-2, the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Executive Assistant to the Chairman (or to such other person or persons designated pursuant to paragraph (c) of this section), to be performed by such Executive Assistant or under the Executive Assistant's direction by such person or persons as may be designated from time to time by the Chairman of the Commission (or by such other person or persons designated pursuant to paragraph (c) of this section):

(a) The functions otherwise delegated to the General Counsel under § 200.30-14(g) of this chapter, with respect to any proceeding in which the Chairman or the General Counsel has determined, pursuant to § 200.30-14(h) of this chapter, that separation of functions requirements or other circumstances would make inappropriate the General Counsel's exercise of such delegated functions.

(b) Notwithstanding anything in paragraph (a) of this section, in any proceeding described in paragraph (a) of this section in which the Executive Assistant believes it appropriate, the Executive Assistant may submit the matter to the Commission.

(c) Notwithstanding anything in this section, the functions otherwise delegated to the Executive Assistant respecting any proceeding in which the Chairman or the Executive Assistant determines that the Executive Assistant's exercise of such delegated functions would be inappropriate, are hereby delegated to such person or persons, not under the Executive Assistant's supervision, as may be designated by the Chairman.

[54 FR 18102, Apr. 27, 1989, as amended at 59 FR 39681, Aug. 4, 1994]

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§ 200.30-17 Delegation of authority to Director of Office of International Affairs.

Pursuant to the provisions of Pub. L. 100-181, 101 Stat. 1254, 1255 (15 U.S.C. 78d-1, 78d-2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Director of the Office of International Affairs to be performed by the Director or under the Director's direction by such other person or persons as may be designated from time to time by the Chairman of the Commission:

(a) To administer the provisions of § 240.24c-1 of this chapter; provided that access to nonpublic information as defined in such section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(b) To administer the provisions of section 24(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78x(d)).

[58 FR 52419, Oct. 8, 1993]

§ 200.30-18 Delegation of authority to Director of the Office of Compliance Inspections and Examinations.

Pursuant to the provisions of Pub. L. 100-181, 101 Stat. 1254, 1255 (15 U.S.C. 78d-1, 78d-2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following authority to the Director of the Office of Compliance Inspections and Examinations ("OCIE") to be performed by the Director or by such other person or persons as may be designated from time to time by the Chairman of the Commission:

(a) To administer the provisions of § 240.24c-1 of this chapter; provided that access to nonpublic information as defined in such Section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(b) Pursuant to the Securities Exchange Act of 1934 ("the Exchange Act") (15 U.S.C. 78a *et seq.*):

(1) To grant and deny applications for confidential treatment filed pursuant to Section 24(b) of the Exchange Act (15 U.S.C. 78x(b)) and Rule 24b-2 thereunder (§ 240.24b-2 of this chapter); and

(2) To revoke a grant of confidential treatment for any such application.

(c) Pursuant to Section 17(b) of the Exchange Act (15 U.S.C. 78q(b)), prior to any examination of a registered clearing agency, registered transfer agent, or registered municipal securities dealer whose appropriate regulatory agency is not the Commission, to notify and consult with the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer.

(d) Pursuant to Section 17(c)(3) of the Exchange Act (15 U.S.C. 78q(c)(3)), in regard to clearing agencies, transfer agents and municipal securities dealers for which the Commission is not the appropriate regulatory agency:

(1) To notify the appropriate regulatory agency of any examination conducted by the Commission of any such clearing agency, transfer agent, or municipal securities dealer;

(2) To request from the appropriate regulatory agency a copy of the report of any examination of any such clearing agency, transfer agent, or municipal securities dealer conducted by such appropriate regulatory agency and any data supplied to it in connection with such examination; and

(3) To furnish to the appropriate regulatory agency on request a copy of the report of any examination of any such clearing agency, transfer agent, or municipal securities dealer conducted by the Commission and any data supplied to it in connection with such examination.

(e) To administer the provisions of Section 24(d) of the Exchange Act (15 U.S.C. 78x(d)).

(f) To notify the Securities Investor Protection Corporation ("SIPC") of facts concerning the activities and the operational and financial condition of any registered broker or dealer which is or appears to be a member of SIPC and which is in or approaching financial difficulty within the meaning of Section 5 of the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. 78aa *et seq.*

(g) Pursuant to Section 15(b)(2)(C) of the Exchange Act (15 U.S.C. 78o(b)(2)(C)):

(1) To delay until the second six month period from registration with

the Commission the inspection of newly registered broker-dealers that have not commenced actual operations within six months of their registration with the Commission; and

(2) To delay until the second six month period from registration with the Commission the inspection of newly registered broker-dealers to determine whether they are in compliance with applicable provisions of the Exchange Act and rules thereunder, other than financial responsibility rules.

(h) With respect to the Investment Advisers Act of 1940 ("Advisers Act") (15 U.S.C. 80b-1 *et seq.*):

(1) Pursuant to Section 203(h) of the Advisers Act (15 U.S.C. 80b-3(h)), to authorize the issuance of orders canceling registration of investment advisers, or applications for registration, if such investment advisers or applicants for registration are no longer in existence or are not engaged in business as investment advisers; and

(2) Pursuant to Rule 204-2(j)(3)(ii) (§275.204-2(j)(3)(ii) of this chapter), to make written demands upon non-resident investment advisers subject to the provisions of such rule to furnish to the Commission true, correct, complete, and current copies of any or all books and records which such non-resident investment advisers are required to make, keep current, or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Advisers Act, or any part of such books and records which may be specified in any such demand.

(i) Notwithstanding anything in the foregoing, in any case in which the Director of the OCIE believes it appropriate, the Director may submit the matter to the Commission.

[60 FR 39644, Aug. 3, 1995]

Subpart B—Disposition of Commission Business

AUTHORITY: 5 U.S.C. 552b; 15 U.S.C. 78d-1 and 78w.

SOURCE: 42 FR 14692, Mar. 16, 1977, unless otherwise noted.

§ 200.40 Joint disposition of business by Commission meeting.

Any meeting of the Commission that is subject to the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b, shall be held in accordance with subpart I of this part. The Commission's Secretary shall prepare and maintain a Minute Record reflecting the official action taken at such meetings.

[60 FR 17202, Apr. 5, 1995]

§ 200.41 Quorum of the Commission.

A quorum of the Commission shall consist of three members; provided, however, that if the number of Commissioners in office is less than three, a quorum shall consist of the number of members in office; and provided further that on any matter of business as to which the number of members in office, minus the number of members who either have disqualified themselves from consideration of such matter pursuant to § 200.60 or are otherwise disqualified from such consideration, is two, two members shall constitute a quorum for purposes of such matter.

[60 FR 17202, Apr. 5, 1995]

§ 200.42 Disposition of business by seriatim Commission consideration.

(a) Whenever the Commission's Chairman, or the Commission member designated as duty officer pursuant to § 200.43, 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 contrary to the requirements 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 among all Commission members. Each participating Commission member shall report his or her vote to the Secretary, who shall record it in the Minute Record of the Commission. Any matter circulated for disposition pursuant to this subsection shall not be considered final until each Commission member has reported his or her vote to the Secretary or has reported to the

Secretary that the Commissioner does not intend to participate in the matter.

(b) Whenever any member of the Commission so requests, any matter circulated for disposition pursuant to § 200.42(a) shall be withdrawn from circulation and scheduled instead for joint Commission deliberation.

[42 FR 14692, Mar. 16, 1977, as amended at 59 FR 53936, Oct. 27, 1994. Redesignated and amended at 60 FR 17202, Apr. 5, 1995]

§ 200.43 Disposition of business by exercise of authority delegated to individual Commissioner.

(a) *Delegation to duty officer.* (1) Pursuant to the provisions of Pub. L. No. 87-592, 76 Stat. 394, as amended by section 25 of Pub. L. 94-29, 89 Stat. 163, the Commission hereby delegates to an individual Commissioner, to be designated as the Commission's "duty officer" by the Chairman of the Commission (or by the Chairman's designee) from time to time, all of the functions of the Commission; *Provided, however,* That no such delegation shall authorize the duty officer (i) to exercise the function of rulemaking, as defined in the Administrative Procedure Act of 1946, as codified, 5 U.S.C. 551 *et seq.*, with reference to general rules as distinguished from rules of particular applicability; (ii) to make any rule, pursuant to section 19(c) of the Securities Exchange Act of 1934; or (iii) to preside at the taking of evidence as described in section 7(a) of the Administrative Procedure Act, 5 U.S.C. 556(b), except that the duty officer may preside at the taking of evidence with respect to the issuance of a temporary cease-and-desist order as provided by Rule 511(c) of the Commission's Rules of Practice, § 201.511(c) of this chapter.

(2) To the extent feasible, the designation of a duty officer shall rotate, under the administration of the Secretary, on a regular weekly basis among the members of the Commission other than the Chairman.

(b) *Exercise of duty officer authority.* (1) The authority delegated by this rule shall be exercised when, in the opinion of the duty officer, action is required to be taken which, by reason of its urgency, cannot practicably be scheduled for consideration at a Commission meeting. After consideration of a staff

recommendation involving such a matter, the duty officer shall forthwith report his or her action thereon to the Secretary.

(2) The duty officer may, when in his or her opinion it would be proper and timely, exercise the authority delegated in this section to initiate by order a nonpublic formal investigative proceeding pursuant to section 19(b) of the Securities Act of 1933 (15 U.S.C. 77s(b)), section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 18(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79r(c)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(b)), section 209(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(b)), and part 203 (Rules Relating to Investigations) of this title (17 CFR part 203). After consideration of a staff recommendation for initiation by order of a nonpublic formal investigative proceeding, the duty officer shall forthwith report his or her action thereon to the Secretary.

(3) In any consideration of Commission business by a duty officer, the provisions of subpart I herein, § 200.400 *et seq.*, shall not apply, whether or not the duty officer, in exercising his or her authority, consults with, or seeks the advice of, other members of the Commission individually.

(c) *Commission affirmation of duty officer action.* (1) Any action authorized by a duty officer pursuant to § 200.43(a) shall be either (i) circulated to the members of the Commission for affirmation pursuant to § 200.42; or (ii) scheduled for affirmation at a Commission meeting at the earliest practicable date consistent with the procedures in subpart I.

(2)(i) The Commission may, in its discretion, at any time review any unaffirmed action taken by a duty officer, either upon its own initiative or upon the petition of any person affected thereby. The vote of any one member of the Commission, including the duty officer, shall be sufficient to bring any such unaffirmed action taken by a duty officer before the Commission for review.

(ii) A person or party adversely affected by any unaffirmed action taken by a duty officer shall be entitled to

seek review by the Commission of the duty officer's unaffirmed actions, but only in the event that the unaffirmed action by the duty officer (A) denies any request for action pursuant to sections 8(a) or 8(c) of the Securities Act of 1933, or the first sentence of section 12(d) of the Securities Exchange Act of 1934; (B) suspends trading in a security pursuant to section 12(k) of the Securities Exchange Act of 1934; or (C) is pursuant to any provision of the Securities Exchange Act of 1934 in a case of adjudication, as defined in section 551 of Title 5, U.S. Code, not required by that Act to be determined on the record after notice and opportunity for hearing (except to the extent there is involved a matter described in section 554(a) (1) through (6) of Title 5, United States Code).

(3) Affirmed or unaffirmed action taken by the duty officer shall be deemed to be, for all purposes, the action of the Commission unless and until the Commission directs otherwise. Rule 26 of the Commission's rules of practice, 17 CFR 201.26, shall not apply to duty officer action.

[42 FR 14692, Mar. 16, 1977, as amended at 59 FR 53936, Oct. 27, 1994. Redesignated and amended at 60 FR 17202, Apr. 5, 1995; 60 FR 32795, June 23, 1995]

Subpart C—Canons of Ethics

AUTHORITY: Secs. 19, 28, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11.

SOURCE: 25 FR 6725, July 15, 1960, unless otherwise noted.

§ 200.50 Authority.

The Canons of Ethics for Members of the Securities and Exchange Commission were approved by the Commission on July 22, 1958.

§ 200.51 Policy.

It is characteristic of the administrative process that the Members of the Commission and their place in public opinion are affected by the advice and conduct of the staff, particularly the professional and executive employees. It shall be the policy of the Commission to require that employees bear in

§ 200.52

mind the principles specified in the Canons.

§ 200.52 Copies of the Canons.

The Canons have been distributed to employees of the Commission. In addition, executive and professional employees are issued copies of the Canons upon entrance on duty.

§ 200.53 Preamble.

(a) Members of the Securities and Exchange Commission are entrusted by various enactments of the Congress with powers and duties of great social and economic significance to the American people. It is their task to regulate varied aspects of the American economy, within the limits prescribed by Congress, to insure that our private enterprise system serves the welfare of all citizens. Their success in this endeavor is a bulwark against possible abuses and injustice which, if left unchecked, might jeopardize the strength of our economic institutions.

(b) It is imperative that the members of this Commission continue to conduct themselves in their official and personal relationships in a manner which commands the respect and confidence of their fellow citizens. Members of this Commission shall continue to be mindful of, and strictly abide by, the standards of personal conduct set forth in its regulation regarding Conduct of Members and Employees and Former Members and Employees of the Commission, which is set forth in subpart M of this part 200, most of which has been in effect for many years, and which was originally codified in 1953.

(c) However, in addition to the continued observance of those principles of personal conduct, it is fitting and proper for the members of the Commission to restate and resubscribe to the standards of conduct applicable to its executive, legislative and judicial responsibilities.

[25 FR 6725, July 15, 1960, as amended at 31 FR 13533, Oct. 20, 1966]

§ 200.54 Constitutional obligations.

The members of this Commission have undertaken in their oaths of office to support the Federal Constitution. Insofar as the enactments of the Congress impose executive duties upon

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the members, they must faithfully execute the laws which they are charged with administering. Members shall also carefully guard against any infringement of the constitutional rights, privileges, or immunities of those who are subject to regulation by this Commission.

§ 200.55 Statutory obligations.

In administering the law, members of this Commission should vigorously enforce compliance with the law by all persons affected thereby. In the exercise of the rulemaking powers delegated this Commission by the Congress, members should always be concerned that the rulemaking power be confined to the proper limits of the law and be consistent with the statutory purposes expressed by the Congress. In the exercise of their judicial functions, members shall honestly, fairly and impartially determine the rights of all persons under the law.

§ 200.56 Personal conduct.

Appointment to the office of member of this Commission is a high honor and requires that the conduct of a member, not only in the performance of the duties of his office but also in his everyday life, should be beyond reproach.

§ 200.57 Relationships with other members.

Each member should recognize that his conscience and those of other members are distinct entities and that differing shades of opinion should be anticipated. The free expression of opinion is a safeguard against the domination of this Commission by less than a majority, and is a keystone of the commission type of administration. However, a member should never permit his personal opinion so to conflict with the opinion of another member as to develop animosity or unfriendliness in the Commission, and every effort should be made to promote solidarity of conclusion.

§ 200.58 Maintenance of independence.

This Commission has been established to administer laws enacted by the Congress. Its members are appointed by the President by and with the advice and consent of the Senate to

serve terms as provided by law. However, under the law, this is an independent Agency, and in performing their duties, members should exhibit a spirit of firm independence and reject any effort by representatives of the executive or legislative branches of the government to affect their independent determination of any matter being considered by this Commission. A member should not be swayed by partisan demands, public clamor or considerations of personal popularity or notoriety; so also he should be above fear of unjust criticism by anyone.

§ 200.59 Relationship with persons subject to regulation.

In all matters before him, a member should administer the law without regard to any personality involved, and with regard only to the issues. Members should not become indebted in any way to persons who are or may become subject to their jurisdiction. No member should accept loans, presents or favors of undue value from persons who are regulated or who represent those who are regulated. In performing their judicial functions, members should avoid discussion of a matter with any person outside this Commission and its staff while that matter is pending. In the performance of his rule-making and administrative functions, a member has a duty to solicit the views of interested persons. Care must be taken by a member in his relationship with persons within or outside of the Commission to separate the judicial and the rule-making functions and to observe the liberties of discussion respectively appropriate. Insofar as it is consistent with the dignity of his official position, he should maintain contact with the persons outside the agency who may be affected by his rule-making functions, but he should not accept unreasonable or lavish hospitality in so doing.

§ 200.60 Qualification to participate in particular matters.

The question in a particular matter rests with that individual member. Each member should weigh carefully the question of his qualification with respect to any matter wherein he or any relatives or former business associ-

ates or clients are involved. He should disqualify himself in the event he obtained knowledge prior to becoming a member of the facts at issue before him in a quasi-judicial proceeding, or in other types of proceeding in any matter involving parties in whom he has any interest or relationship directly or indirectly. If an interested person suggests that a member should disqualify himself in a particular matter because of bias or prejudice, the member shall be the judge of his own qualification.

§ 200.61 Impressions of influence.

A member should not, by his conduct, permit the impression to prevail that any person can improperly influence him, that any person unduly enjoys his favor or that he is affected in any way by the rank, position, prestige, or affluence of any person.

§ 200.62 Ex parte communications.

All proceedings required to be determined by the Commission on the record shall be determined by the members solely upon the record and the arguments of the parties or their counsel properly made in the regular course of such proceeding. A member shall at all times comply with the Commission's Code of Behavior governing ex parte communications between persons outside the Commission and decisional employees, § 200.110 *et seq.*

[28 FR 4446, May 3, 1963]

§ 200.63 Commission opinions.

The opinions of the Commission should state the reasons for the action taken and contain a clear showing that no serious argument of counsel has been disregarded or overlooked. In such manner, a member shows a full understanding of the matter before him, avoids the suspicion of arbitrary conclusion, promotes confidence in his intellectual integrity and may contribute some useful precedent to the growth of the law. A member should be guided in his decisions by a deep regard for the integrity of the system of law which he administers. He should recall that he is not a repository of arbitrary power, but is acting on behalf of the public under the sanction of the law.

§ 200.64 Judicial review.

The Congress has provided for review by the courts of the decisions and orders by this Commission. Members should recognize that their obligation to preserve the sanctity of the laws administered by them requires that they pursue and prosecute, vigorously and diligently but at the same time fairly and impartially and with dignity, all matters which they or others take to the courts for judicial review.

§ 200.65 Legislative proposals.

Members must recognize that the changing conditions in a volatile economy may require that they bring to the attention of the Congress proposals to amend, modify or repeal the laws administered by them. They should urge the Congress, whenever necessary, to effect such amendment, modification or repeal of particular parts of the statutes which they administer. In any action a member's motivation should be the common weal and not the particular interests of any particular group.

§ 200.66 Investigations.

The power to investigate carries with it the power to defame and destroy. In determining to exercise their investigatory power, members should concern themselves only with the facts known to them and the reasonable inferences from those facts. A member should never suggest, vote for, or participate in an investigation aimed at a particular individual for reasons of animus, prejudice or vindictiveness. The requirements of the particular case alone should induce the exercise of the investigatory power, and no public pronouncement of the pendency of such an investigation should be made in the absence of reasonable evidence that the law has been violated and that the public welfare demand it.

§ 200.67 Power to adopt rules.

In exercising its rule-making power, this Commission performs a legislative function. The delegation of this power by the Congress imposes the obligation upon the members to adopt rules necessary to effectuate the stated policies of the statute in the interest of all of

the people. Care should be taken to avoid the adoption of rules which seek to extend the power of the Commission beyond proper statutory limits. Its rules should never tend to stifle or discourage legitimate business enterprises or activities, nor should they be interpreted so as unduly and unnecessarily to burden those regulated with onerous obligations. On the other hand, the very statutory enactments evidence the need for regulation, and the necessary rules should be adopted or modifications made or rules should be repealed as changing requirements demand without fear or favor.

§ 200.68 Promptness.

Each member should promptly perform the duties with which he is charged by the statutes. The Commission should evaluate continuously its practices and procedures to assure that it promptly disposes of all matters affecting the rights of those regulated. This is particularly desirable in quasi-judicial proceedings. While avoiding arbitrary action in unreasonably or unjustly forcing matters to trial, members should endeavor to hold counsel to a proper appreciation of their duties to the public, their clients and others who are interested. Requests for continuances of matters should be determined in a manner consistent with this policy.

§ 200.69 Conduct toward parties and their counsel.

Members should be temperate, attentive, patient and impartial when hearing the arguments of parties or their counsel. Members should not condone unprofessional conduct by attorneys in their representation of parties. The Commission should continuously assure that its staff follows the same principles in their relationships with parties and counsel.

§ 200.70 Business promotions.

A member must not engage in any other business, employment or vocation while in office, nor may he ever use the power of his office or the influence of his name to promote the business interests of others.

§ 200.71 Fiduciary relationships.

A member should avoid service as a fiduciary if it would interfere or seem to interfere with the proper performance of his duties, or if the interests of those represented require investments in enterprises which are involved in questions to be determined by him. Such relationships would include trustees, executors, corporate directors, and the like.

§ 200.72 Supervision of internal organization.

Members and particularly the Chairman of the Commission should scrutinize continuously its internal organization in order to assure that such organization handles all matters before it efficiently and expeditiously, while recognizing that changing times bring changing emphasis in the administration of the laws.

Subpart D—Information and Requests

AUTHORITY: 15 U.S.C. 77f(d), 77s, 77ggg(a), 78m(F)(3), 78w, 79t, 79v(a), 77sss, 80a-37, 80a-44(c), 80a-44(b), 80b-10(a), 80b-11, and 36 CFR 1228.10.

§ 200.80 also issued under 5 U.S.C. 552b; Pub. L. 87-592, 76 Stat. 394, 15 U.S.C. 78d-1, 78d-2; Pub. L. 93-502; Pub. L. 93-579; 15 U.S.C. 78a *et seq.*, as amended by Pub. L. 84-29 (June 4, 1975) and by secs. 11A, 15, 19 and 23 of Pub. L. 98-38 (June 6, 1983) (15 U.S.C. 78k-1, 78o, 78s and 78w); 11 U.S.C. 901, 1109(a).

§ 200.80a also issued under 5 U.S.C. 552b.

§§ 200.80b and 200.80c also issued under 11 U.S.C. 901, 1109(a).

§ 200.82 also issued under 15 U.S.C. 78n.

§ 200.80 Commission records and information.

(a)(1) *Information published in the FEDERAL REGISTER.* Except as provided in paragraph (b) of this section the following materials are published in the FEDERAL REGISTER for the guidance of the public:

(i) Description of the Commission's central and field organization and the established places at which, the employees from whom, and the methods whereby the public may obtain information, make submittals or requests, or obtain decisions;

(ii) Statements of the general course and method by which the Commission's

functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(iii) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(iv) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Commission;

(v) Each amendment, revision, or repeal of the foregoing; and

(vi) The notice of Commission meetings described in § 200.403, but only to the extent, and under the conditions, specified in § 200.403.

(2) *Records available for public inspection and copying; documents published and indexed.* Except as provided in paragraph (b) of this section, the following materials are available for public inspection and copying during normal business hours at the public reference room located at 450 Fifth Street, NW., Room 1024, Washington, DC and at the Regional Offices of the Commission, and, except for indices, they are published weekly in a document entitled "SEC Docket" (see paragraph (e)(8)(ii) of this section):

(i) Final opinions of the Commission, including concurring and dissenting opinions, as well as orders made by the Commission in the adjudication of cases;

(ii) Statements of policy and interpretations which have been adopted by the Commission and are not published in the FEDERAL REGISTER;

(iii) Administrative staff manuals and instructions to staff that affect a member of the public;

(iv) A record of the final votes of each member of the Commission in every Commission proceeding concluded after July 1, 1967; and

(v) Current indices (published quarterly or more frequently) providing identifying information to the public as to the materials made available pursuant to paragraphs (a)(2) (i), (ii), and (iii) of this section which have been issued, adopted or promulgated after

July 1, 1967, and such other indices as the Commission may determine.

(3) *Other records available upon request.* Except with respect to the records made available under paragraphs (a) (1) and (2) of this section, and subject to the provisions of paragraph (b) of this section, pertaining to nonpublic matters, the Commission, upon request for records which (i) reasonably describes such records and (ii) is made in accordance with the rules set forth in paragraphs (d) and (e) of this section, stating the time, place, fees (if any) and procedures to be followed, shall make the records promptly available to any person. A compilation of records generally available at the public reference room at the principal office of the Commission appears below as appendix A to this subpart (17 CFR 200.80a). Most of the records described in appendix A to this section are provided to the public pursuant to the Securities Act of 1933, 15 U.S.C. 77f(d), the Securities Exchange Act of 1934, 15 U.S.C. 78m(f)(3), the Public Utility Holding Company Act of 1935, 15 U.S.C. 79v(a), the Investment Company Act of 1940, 15 U.S.C. 80a-44(a)(b), and the Investment Advisers Act of 1940, 15 U.S.C. 80b-10(a). Arrangements can be made through the Public Reference Branch as explained in paragraph (c) of this section for materials to be copied by the Commission's contract copying service at fees found in appendix E to this section.

(4) *Records available with identifying details deleted.* To the extent required to prevent a clearly unwarranted invasion of personal privacy, identifying details may be deleted from materials made public as set forth in paragraphs (a) (1), (2), and (3), of this section, e.g., apparently defamatory statements made about any person, information received by or given to the Commission in confidence, or any contents of personnel and medical and similar files. In addition, certain materials which are considered to be nonpublic, as described in paragraph (b) of this section may, as authorized by the Commission from time to time, be made available for public inspection and copying in an abridged or summary form or with identifying details deleted.

(b) *Nonpublic matters.* Certain records are nonpublic, but any reasonably segregable portion of a record shall be provided to any person requesting such record in accordance with paragraphs (d) and (e) of this section and after deletion of the portions which are considered nonpublic under paragraph (b) of this section. Except for such reasonably segregable portions of records, the Commission will generally not publish or make available to any person matters that are:

(1)(i) Specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy, and (ii) are in fact properly classified pursuant to such executive order.

(2) Related solely to the internal personnel rules and practices of the Commission or any other agency, including, but not limited to:

(i) Operation rules, guidelines, and manuals of procedure for investigators, attorneys, accountants, and other employees other than those which establish legal requirements to which members of the public are expected to conform; or

(ii) Hiring, termination, promotion, discipline, compensation, or reward of any Commission employee or member, the existence, investigation, or disposition of a complaint against any Commission employee or member, the physical or mental condition of any Commission employee or member, the handling of strictly internal matters, matters which would tend to infringe on the privacy of the staff or members of the Commission, or similar subjects.

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, including, but not limited to:

(i) Information contained in letters of comment in connection with registration statements, applications for

registration or other material filed with the Commission, replies thereto, and related material which is deemed to have been submitted to the Commission in confidence or to be confidential at the instance of the registrant or person who has filed such material unless the contrary clearly appears; and

(ii) Information contained in any document submitted to or required to be filed with the Commission where the Commission has undertaken formally or informally to receive such submission or filing for its use or the use of specified persons only, such as preliminary proxy material filed pursuant to Rule 14a-6 under the Securities Exchange Act (17 CFR 240.14a-6) or preliminary information statements filed pursuant to Rule 14c-5 (17 CFR 240.14c-5) before definitive material has been filed with the Commission, reports filed pursuant to Rule 316(a) under the Securities Act (17 CFR 230.316(a)), agreements filed pursuant to Rule 15c-3-1(c)(7)(G) under the Securities Exchange Act (17 CFR 240.15c-1(c)(7)(vii)), schedules filed pursuant to Part II of Form X-17A-5 (17 CFR 249.617) in accordance with Rule 17a-5(b)(3) under the Securities Exchange Act (17 CFR 240.17a-5(b)(3)), statements filed pursuant to Rule 17a-5(k)(1) under the Securities Exchange Act (17 CFR 240.17a-5(k)(1)), and confidential reports filed pursuant to Rules 17a-9, 17a-10, 17a-12 and 17a-16 under the Securities Exchange Act (17 CFR 240.17a-9, 240.17a-10, 240.17a-12, and 240.17a-16); and

(iii) Information contained in reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of or in connection with an examination or inspection of the books and records of any person or any other investigation.

(5) Interagency or intra-agency memoranda or letters, including generally records which reflect discussions between or consideration by members of the Commission or members of its staff, or both, of any action taken or proposed to be taken by the Commission or by any member of its staff, and specifically, reports, summaries, analyses, conclusions, or any other work product of members of the Commission or of attorneys, accountants, analysts, or other members of the Commission's

staff, prepared in the course of an inspection of the books or records of any person whose affairs are regulated by the Commission, or prepared otherwise in the course of an examination or investigation or related litigation conducted by or on behalf of the Commission, except those which by law would routinely be made available to a party other than an agency in litigation with the Commission.

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, including those concerning all employees of the Commission and those concerning persons subject to regulation by the Commission.

(7)(i) Records or information compiled for law enforcement purposes to the extent that the production of such records or information:

(A) Could reasonably be expected to interfere with enforcement activities undertaken or likely to be undertaken by the Commission or the Department of Justice, or any United States Attorney, or any Federal, state, local, foreign governmental authority or foreign securities authority, any professional association, or any securities industry self-regulatory organization;

(B) Would deprive a person of a right to a fair trial or an impartial adjudication;

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(D) Could reasonably be expected to disclose the identity of a confidential source including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(E) Would disclose techniques or procedures or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(F) Could be reasonably expected to endanger the life or physical safety of any individual.

(ii) The term “investigatory records” includes, but is not limited to, all documents, records, transcripts, evidentiary materials of any nature, correspondence, related memoranda, or work product concerning any examination, any investigation (whether formal or informal), or any related litigation, which pertains to, or may disclose, the possible violation by any person of any provision of any statute, rule, or regulation administered by the Commission, by any other Federal, state, local, or foreign governmental authority or foreign securities authority, by any professional association, or by any securities industry self-regulatory organization. The term “investigatory records” also includes all written communications from, or to, any person complaining or otherwise furnishing information respecting such possible violations, as well as all correspondence or memoranda in connection with such complaints or information.

(8) Contained in, or related to, any examination operating, or condition report prepared by, on behalf of, or for the use of, the Commission, any other Federal, state, local, or foreign governmental authority or foreign securities authority, or any securities industry self-regulatory organization, responsible for the regulation or supervision of financial institutions.

(9) Geological and geophysical information and data, including maps, concerning wells.

(c)(1) *Public reference facilities.* In order to disseminate records, including those listed in appendix A to this section, the Commission has a specially staffed and equipped public reference room located at 450 Fifth Street NW., Room 1024, Washington, DC (202-272-3100) and public reference facilities in its New York and Chicago regional offices. Copying machines, which are available to requesters on a self-service or contractor-operated basis, can be used to make immediate copies up to 8½ by 14 inches in size of materials that are available for inspection in the Washington, DC, New York and Chicago offices. Fees and levels of service

are set out in the Commission’s schedule of fees in appendix E to this section and in information available from the public reference room. The Commission accepts only written requests for copies of documents.

(i) The public reference room in Washington has available for public inspection all of the publicly available records of the Commission as described in paragraph (a) of this section. In addition, upon request, such records will be sent to the Commission’s regional offices in New York or Chicago for inspection in the public reference facilities at those offices, if the records are not needed by the Commission or the staff in connection with the performance of official duties. Also upon request, and only when suitable arrangements can be made with respect to the transportation, storage, and inspection of records, records may be sent to any other Commission office for inspection at that office, if the records are not needed by the Commission or the staff in connection with the performance of official duties. When records are sent to another office at the request of a member of the public, the requestor shall be charged all costs incurred by the Commission in transporting the records.

(ii) All regional and district offices of the Commission have available for public examination the materials set forth in paragraph (a)(2) of this section and the *SEC Docket*, *SEC News Digest* and other SEC publications. Blank forms as well as other general information about the operations of the Commission described in paragraph (a)(1) of this section may also be available at particular regional and district offices.

(iii) In the New York and Chicago regional offices, microfiche of all recent registration statements filed pursuant to the Securities Act of 1933, registration statements and periodic reports filed pursuant to the Securities Exchange Act of 1934, and periodic reports filed pursuant to the Investment Company Act from 1969 to date are available for inspection and reproduction.

The addresses of the Commission’s regional and district offices are:

Northeast Regional Office. 7 World Trade Center, suite 1300, New York, NY 10048. Office hours—9 a.m. to 5:30 p.m. E.S.T.

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Boston District Office—73 Tremont Street, suite 600, Boston, MA 02108. Office hours—9 a.m. to 5:30 p.m. E.S.T.

Philadelphia District Office—The Curtis Center, suite 1005 E., 601 Walnut Street, Philadelphia, PA 19106. Office hours—9 a.m. to 5:30 p.m. E.S.T.

Southeast Regional Office. 1401 Brickell Avenue, suite 200, Miami, FL 33131. Office hours—8:30 a.m. to 5 p.m. E.S.T.

Atlanta District Office—3475 Lenox Road, NE., suite 1000, Atlanta, GA 30326. Office hours—9 a.m. to 5:30 p.m. E.S.T.

Midwest Regional Office. 500 West Madison Street, suite 1400, Chicago, IL 60661. Office hours—8:45 a.m. to 5:15 p.m. C.S.T.

Central Regional Office. 1801 California Street, suite 4800, Denver, CO 80202. Office hours—8 a.m. to 4:30 p.m. M.S.T.

Fort Worth District Office—801 Cherry Street, 19th Floor, Fort Worth, TX 76102. Office hours—8:30 a.m. to 5 p.m. C.S.T.

Salt Lake District Office—500 Key Bank Tower, 50 S. Main Street, suite 500, Box 79, Salt Lake City, UT 84144. Office hours—8 a.m. to 4:30 p.m. M.S.T.

Pacific Regional Office. 5670 Wilshire Boulevard, 11th Floor, Los Angeles, CA 90036. Office hours 8:30 a.m. to 5 p.m. P.S.T.

San Francisco District Office—44 Montgomery Street, Suite 1100, San Francisco, CA 94104. Office hours—8:30 a.m. to 5 p.m. P.S.T.

(2) *Public reference inquiries.* Inquiries concerning the nature and extent of records available at the Commission's public reference room in Washington or at its other public reference facilities may be made in person or by telephone. The addresses and telephone numbers of all Commission Regional and District Offices are set forth at paragraph (c)(1) of this section. Written inquiries may be addressed to the Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549, or to a particular regional office.

(3) Electronic filings made through the Electronic Data Gathering, Analysis, and Retrieval system are publicly available through the Commission's Web site (<http://www.sec.gov>).

(d) *Requests for Commission records and copies thereof—(1) Time and place of requests for access to Commission records.* Requests for access to records available through the Commission's public reference facilities may be made in person during normal business hours at those facilities or by mail directed to Public Reference Branch, Securities and Exchange Commission, Washington, DC

20549. In addition, access to agency records not available in public reference facilities may be requested pursuant to the Freedom of Information Act. Such requests must be in writing, should be clearly and prominently identified by a legend on the first page, such as "Freedom of Information Act Request", and should be addressed to the Freedom of Information Act Officer, Securities and Exchange Commission, Washington, DC 20549.

(2) *Requests for copies of records.* Requests for copies of Commission records available through the Commission's public reference facilities, including those listed in appendix A to this section, may be made directly to the appropriate facility either in person or by mail addressed to the Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549. Levels of service and charges for copies are set out in the Commission's schedule of fees in appendix E to this section. Requests for copies of materials to which access has been granted pursuant to a Freedom of Information Act request will be processed pursuant to regulations found in this section in paragraphs (e)(9) and (e)(10) and at charges set out in appendix E to this section.

(3) *Description of requested records.* Each request for Commission records or copies thereof shall reasonably describe the records sought with sufficient specificity with respect to names, dates and subject matter to permit the records to be located among the records maintained by or for the Commission. A person who has requested Commission records or copies thereof will be promptly advised if the records cannot be located on the basis of the description given and that further identifying information must be provided before his request can be satisfied.

(4) *Normal availability.* Records maintained in the Commission's public reference facilities or copies thereof will normally be made available in keeping with levels of service and fees set out in appendix E to this section. Records requested pursuant to the Freedom of Information Act will be made available as described in paragraphs (e)(9) and (e)(10) of this section.

(5) *Initial determinations, denials.* With respect to any record requested pursuant to the Freedom of Information Act, the Freedom of Information Act Officer of the Commission will determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of a request for inspection of the record or for a copy (or within such extended period as may be permitted in accordance with paragraph (d)(7) of this section) whether to comply with such request, and shall immediately notify the person making such request of such determination and, where it is determined not to comply, the reasons therefor, and of the right of such person to appeal to the General Counsel any adverse determination: *Provided*, That a Director of a staff Division of the Commission or Office head whose zone of responsibility relates to the record requested (See 17 CFR 200.13, *et seq.*) may make a determination that the record or copy is not lawfully required to be made available, in which case he, and not the Freedom of Information Act Officer, shall make the required notification. The notification of denial of any request for records shall set forth the name and title or position of each person responsible for the denial.

(6) *Administrative review.* Any person who has been notified pursuant to paragraph (d)(5) of this section that his request for inspection of a record or for a copy has been denied, or who has received no response to a request for a record or copy within ten days (or within such extended period as may be permitted in accordance with paragraph (d)(7) of this section) after his request was received by the Commission's staff, may appeal to the General Counsel the adverse determination or the failure to respond.

(i) The appeal shall be in writing, shall be clearly and prominently identified on the envelope or other cover and at the top of the first page by a legend such as "Freedom of Information Act Appeal," and shall identify the record in the form in which it was originally requested.

(ii) The appeal shall be delivered in person to the Public Reference Branch, Room 1024, 450 Fifth Street, NW.,

Washington, DC, or sent by mail addressed to the Freedom of Information Act Officer, Securities and Exchange Commission, Washington, DC 20549. A copy should be sent to the General Counsel, Securities and Exchange Commission, Washington, DC 20549.

(iii) The appeal may include such facts and cite such legal or other authorities as the person submitting the appeal may consider appropriate.

(iv) The General Counsel shall have the authority to grant or deny all appeals, in whole or in part, and to release as an exercise of discretion records exempt from mandatory disclosure under 5 U.S.C. 552(b). In appropriate cases he or she may, in his or her sole and unfettered discretion, refer appeals to the Commission for determination.

(v) A determination with respect to any appeal shall be made within twenty days (excepting Saturdays, Sundays and legal public holidays) after the receipt of such appeal or within such extended period as may be permitted in accordance with paragraph (d)(7) of this section.

(vi) A denial of an appeal in whole or in part shall set forth the basis for the denial, and shall advise the requester that judicial review of the decision is available in accordance with 5 U.S.C. 552(a)(4).

(7) *Extension of time to consider requests and to consider administrative appeals.* In unusual circumstances, as specified in this paragraph, the time limits prescribed in either paragraphs (d) (5) or (6) of this section may be extended by written notice to the person making a request for a record or a copy, setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the

request. (Many records of the Commission are stored in Federal Records Centers in accordance with law—including many of the documents which have been on file with the Commission for more than 2 years—and cannot be made available for several days after a request has been made. Other records may temporarily be located at a regional or district office of the Commission. Any person who has requested for personal examination a record stored at the Federal Records Center or temporarily located in a regional or district office of the Commission will be notified when and where the record will be made available to him. Any person who has ordered a copy of such record will be provided with a copy as soon as practicable). Some records have been disposed of in accordance with the Commission's Records Control Schedule (17 CFR 200.80(f)).

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request. (While every reasonable effort will be made fully to comply with each request as promptly as possible on a first-come, first-served basis, work done to search for, collect and appropriately examine records in response to a request for a large number of records will be contingent upon the availability of processing personnel in accordance with an equitable allocation of time to all members of the public who have requested or wish to request records.)

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components within the Commission having substantial subject-matter interest therein.

(8) *Inability to comply with time requirements.* If the Commission should be unable to comply with the applicable time limits contained in this paragraph (d) of this section in responding to a request for records, it shall send written notice of the reason for delay to the person who made the request and shall be prepared to demonstrate the existence of exceptional circumstances and that the Commission is exercising due

diligence in responding to the request for records.

(i) *Records in use for another member of the public.* Any record being inspected by or copied for another member of the public will be made available as soon as practicable.

(ii) *Records in use by a member of the Commission or its staff.* Although every effort will be made to make a record in use by a member of the Commission or its staff available when requested, it may occasionally be necessary to delay making such a record available when doing so at the time the request is made would seriously interfere with the work of the Commission or its staff.

(iii) *Missing or lost records.* Any person who has requested a record or copy will be notified if the record sought cannot be found. If he so requests, he will be notified if it should subsequently be located.

(9) *Oral requests; misdirected written requests—(i) Telephone and other oral requests.* While the Commission's staff will attempt in good faith to comply with requests for copies of records made orally, by telephone, or otherwise, the Commission cannot assure a timely or satisfactory response to such requests due to the risk of misunderstanding inherent in the use of oral communication. The Commission will not entertain any appeal from an alleged denial or failure to comply with an oral request. Any person who has orally requested a copy of a record that he believes to have been improperly denied to him should resubmit his request in appropriate written form in order to obtain proper consideration and, if need be, administrative review.

(ii) *Misdirected written requests.* The Commission cannot assure that a timely or satisfactory response will be given to written requests for inspection or copies of records that are directed to the Commission other than in the manner prescribed in paragraphs (d) (1) and (2) of this section. Any staff member who receives a written request for records should promptly forward the request to the Freedom of Information Act Officer. Misdirected requests for records will be considered to have been received for purposes of paragraph (d) of this section only when they have

been actually received by the Freedom of Information Act Officer. The Commission will not entertain any appeal from an alleged denial or failure to comply with a misdirected request, unless it is clearly shown that the request was in fact received by the Freedom of Information Act Officer.

(e) *Fees for records services.* A current schedule of fees for record services, including locating and making records available, attestations and copying, appears in appendix E to this subpart D, 17 CFR 200.80e. Copies of the current schedule of fees may also be obtained upon request made in person, by telephone or by mail from the public reference room or at any regional or district office of the Commission.

(1) *Services provided without charge.* Generally, up to one-half hour of staff time devoted to searching for Commission records will be provided without charge. Where a request for records pursuant to the Freedom of Information Act is determined not to serve a commercial purpose as defined in paragraph (e)(10)(ii) of this section, a total of two staff hours of search and review and one hundred pages of duplication as defined in paragraphs (e)(9)(i), (e)(9)(ii) and (e)(9)(iii) of this section, respectively, shall be made available without charge in the form most economical for the government.

(2) *Services for which fees are charged.* For records available through the Commission's public reference facilities, requestors may make arrangements for duplication in accordance with provisions of the Commission's dissemination contract. Copies of that contract, which contain tables of charges, may be inspected in the public reference room, 450 Fifth Street, NW., Room 1024, Washington, DC. A complete schedule of services offered by the contractor and fees charged for those services is available through the Commission's public reference facilities. Fees for services provided in connection with requests made pursuant to the Freedom of Information Act shall be assessed as set out in appendix E to this section and in keeping with guidelines and procedures described in paragraphs (e)(9) and (e)(10) of this section.

(3) *Requests requiring large expenditures.* A request for Commission records

may state that the requesting person is willing to pay fees up to a stated limit for services to be provided in locating and making available requested records. In such circumstances, no work will be done that will result in fees beyond the stated limit without further written authorization. If no limit is initially stated by the person requesting records or copies, services in locating and making available the requested records will not be done so as to exceed fees of \$25 (exclusive of applicable copying charges) without the express written authorization by the requesting person, and he will be so advised.

(4) *Waiver or reduction of fees.* Requested records shall be furnished without charge or at reduced charge whenever it shall be determined by the Director of the Office of Consumer Affairs and Information Services that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public; provided the information will significantly assist citizens in understanding the working of their government; and the purpose of the request is not primarily commercial as defined in paragraph (e)(10)(ii) of this section. Requests for waiver or reduction of fees for searching and/or copying may be submitted with the original request for records and should state such facts as the requester considers appropriate. Denials of requests for a waiver or reduction of fees may be appealed to the General Counsel in accordance with the procedure set forth in paragraph (d)(6) of this section.

(5) *Records obtained from Federal Records Centers.* When, to fill a request for inspection or copying, records are required to be obtained from a Federal Records Center, fees, in addition to those provided on the Commission's current schedule of fees, will be charged to the extent authorized or required by rules or regulations promulgated by the National Archives and Records Administration.

(6) *Attestations.* In addition to any other fees or charges which may apply, a fee will be charged for records attestations as provided in the Commission's current schedule of fees. The seal

of the Commission will be affixed to all attestations without additional charge.

(7) *Copying services.* Copies of records filed with or retained by the Commission, or portions thereof, will be provided subject to fees established by agreement between the Commission and a private contractor as set forth in the Commission's current schedule of fees and, where applicable, procedures and guidelines for Freedom of Information Act requests as set out in paragraphs (e)(9) and (e)(10) of this section.

(i) *Facsimile copies.* Requests for facsimile copies may be made either in person at the Commission's Washington, DC, New York, or Chicago public reference rooms, or by mail addressed to the Securities and Exchange Commission, Public Reference Room Branch, 450 Fifth Street, NW., room 1024, Washington, DC 20549. The contractor will send copies directly to the purchaser unless attestation is requested. Persons who request copies of documents through the public reference room will be billed by the contractor at regulated prices, and will be billed separately by the Commission for search, review and attestation charges, if any. Copies of documents requested directly from the contractor or from any other information service or vendor are not subject to regulated prices. Special classes of copying services, such as telecopies, not listed herein or in the current schedule of fees posted in the public reference room, are not provided or regulated by the Commission, but may be obtained from private vendors at market prices.

(ii) *Microfiche copies.* A contractor also makes available to the public microfiche copies of certain public documents on file with the Commission, at prices and on terms governed by its contract with the Commission. Microfiche services include subscription microfiche service on an annual basis. Microfiche subscription prices are regulated by the Commission whether requested through the public reference room or directly from the contractor. Certain other microfiche services are provided at prices that are regulated by the Commission only if ordered through the Commission's public reference room. The Commission will accept only subscription requests made

in writing, although the contractor may elect to accept subscription requests by telephone. All microfiche subscription charges are payable directly to the contractor, whether placed through the Commission or not. Information concerning the types and cost of regulated microfiche services may be obtained by writing to the Commission at its public reference room located at 450 Fifth Street, NW., room 1024, Washington, DC 20549 or calling this facility at 202-272-3100.

(iii) *Transcripts of public hearings.* Copies of the transcripts of recent public hearings may be obtained from the reporter subject to the fees established annually by contract between the Commission and the reporter. Copies of that contract, which contains tables of charges, may be inspected in the public reference room, 450 Fifth Street, NW., Room 1024, Washington, D.C. and in each regional and district office. Copies of other public transcripts may be obtained, in the manner of other Commission records, subject to the charges referred to in paragraph (e)(7)(i) of this section.

(8) *Releases and publications.* (i) The Commission's decisions, reports, orders, rules and regulations are published initially in the form of releases and distributed.

(ii) The Commission publishes daily the *SEC News Digest*, which summarizes the releases published by the Commission each day, contains Commission announcements, and lists certain filings with the Commission. The Commission publishes weekly the *SEC Docket*, which prints the full text of every Commission release.

(iii) The Commission publishes an annual report to the Congress which sets forth the results of the Commission's operations during the past fiscal year under the various statutes committed to its charge. Copies may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(iv) The Commission also makes other information in the fields of securities and finance, including economic studies, available to the public through the issuance of releases on specific subject matters.

(v) A classification of the releases available from the Commission appears below as appendix B to this section. Other publications available from the Commission are set forth in appendix C to this section. Copies of rules, regulations, and miscellaneous publications set forth in appendix D to this section may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(9) *Fees for services required for processing Freedom of Information Act Requests.* In cases where records are requested pursuant to the Freedom of Information Act and according to procedures set forth in paragraph (d)(1) of this section, fees shall be charged as set out in the Commission's current schedule of fees, appendix E to this section, for services as described in the following:

(i) *Search.* The term "search" includes all time spent looking for material manually or by using electronic data processing equipment that is responsive to a request, as distinguished from "review" as defined at paragraph (e)(9)(ii) of this section. Searching for requested and specifically identified information, as described in paragraph (d)(1) of this section, includes the cost of staff time devoted to the search as indicated in appendix E to this section and direct costs for use of Commission electronic data processing equipment.

(ii) *Review.* The term "review" refers to the process of examining documents located in response to a request to determine whether any portion of any document is permitted to be withheld pursuant to provisions of the Freedom of Information Act. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise material from and otherwise prepare them for release.

(iii) *Duplication.* The term "duplication" refers to producing paper or microform copies of records. The Commission shall charge for duplication as established by agreement between the Commission and a private contractor. These charges are currently set out in appendix E to this section. Such charges shall be set so as not to exceed the direct cost that would be incurred by the Commission if it were to perform such services itself, as calculated

to include the salary of operators, the cost of reproduction machinery, the cost of material and any other direct costs incurred by the Commission in copying materials responsive to a Freedom of Information Act request.

(iv) *Partial exemption from fee provisions.* No fees shall be charged for the first two hours of search time and the first one hundred pages of materials for requesters described in paragraphs (e)(10)(i) and (e)(10)(iii) of this section.

(v) *Minimum fee.* Fees will not be charged if the normal cost of collecting a fee would be equal to or greater than the fee itself.

(10) *Classification of Freedom of Information Act requesters for purposes of assessing fees.* Parties requesting records pursuant to the Freedom of Information Act will be classified and charged fees described in appendix E to this section as follows:

(i) The following types of requesters shall be charged for duplication of records as described in paragraph (e)(9)(iii) of this section as qualified in paragraph (e)(9)(iv) of this section: Educational institutions requesting information for purposes of scholarly research; non-commercial scientific institutions requesting information for purposes of scientific research; and representatives of the news media requesting information concerning current events or matters of current interest to the general public.

(ii) Commercial requesters, defined as parties other than those mentioned in paragraph (e)(10)(i) of this section who are requesting information to be used in any way which could reasonably be expected to result in corporate or personal financial gain or profit, shall be charged for search, review and duplication of records as described in paragraphs (e)(9)(i), (e)(9)(ii) and (e)(9)(iii), respectively, of this section.

(iii) All parties other than those described in paragraphs (e)(10)(i) and (e)(10)(ii) of this section requesting access to such records shall be charged for search and duplication of records as described in paragraphs (e)(9)(i) and (e)(9)(iii) of this section, respectively, as qualified in paragraph (e)(9)(iv) of this section.

(11) *Appeal of classification.* Classification under the provisions of paragraph

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(e)(10) of this section may be appealed to the General Counsel in accordance with the procedure set forth in paragraph (d)(6) of this section.

(12) *Aggregation of requests.* If the Freedom of Information Act Officer reasonably believes that a requester or group of requesters acting in concert is attempting to divide one request into a series of requests for the purpose of evading the assessment of fees, those requests may be aggregated and charges assessed accordingly.

(13) *Advance payment.* The Freedom of Information Act Officer may require advance payment of fees expected to be incurred in connection with a request, but only when the subject requester has failed to make timely payment in the past, or when the estimated processing costs exceed \$250.00 and the requester has no previous payment records or has failed to make timely payment in the past. Processing in such cases shall be delayed until advance payment is received and statutory time limits will be appropriately extended.

(14) *Interest on unpaid bills.* On the 31st day following the date of a bill to a requester, the Commission may begin assessing interest on the unpaid amount at the rate prescribed in section 3717 of title 31 of the U.S. Code. Interest will accrue from the date of the bill.

[40 FR 8799, Mar. 3, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 200.80, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 200.80a Appendix A—Documentary materials available to the public.

[See footnotes at end of table]

Description	Pursuant to section—
Securities Act of 1933	
Registration statement providing financial and other information concerning securities offered for public sale, filed under Regulation C (17 CFR 230.400 <i>et seq.</i>).	6
Prospectuses (selling circulars) in connection with registration statement.	10
Periodic reports (annual, quarterly, and current) to keep reasonably current the information in registration statement.	(1)
Requests for extension of time to file information, document, or report.	(2)

[See footnotes at end of table]

Description	Pursuant to section—
Reports of sales of registered securities and use of proceeds thereunder by first time registrants.	19(a), 20(a)
Report by issuers of securities quoted on NASDAQ Inter-Dealer Quotation System.	(1)
Preliminary data (prospectus, circular letters, etc.) to oil offering (Regulation B) (17 CFR 230.300 <i>et seq.</i>).	3(b)
Offering sheets for oil or gas rights and royalties under Regulation B for exemption from registration provisions (17 CFR 230.300 <i>et seq.</i>).	3(b)
Notifications of exemption from registration filed under Regulation A, E, and F (17 CFR 230.251, 230.601, 230.651 <i>et seq.</i>).	3(b)
Offering circulars and written advertisements or other communications under Regulations A, E, and F (17 CFR 230.251, 230.601, 230.651 <i>et seq.</i>).	3(b)
Report of sales and use of proceeds (Regulations A and E) (17 CFR 230.251, 230.601 <i>et seq.</i>).	3(b)
Consent by non-resident to service of process (Regulation A) (17 CFR 230.251 <i>et seq.</i>).	3(b)
Application for relief from disability under Regulations A and F (17 CFR 230.651 <i>et seq.</i>).	3(b)
Notice of proposed resale of restricted securities and resale of securities by control persons (17 CFR 230.144).	4(1), 4(4)
Notice of proposed sale by non-controlling person of restricted securities of issuers which do not satisfy all of the conditions of Rule 144 (17 CFR 230.237).	3(b)
Notice of sale of securities by closely held issuers (issuers with 100 or less beneficial owners) other than investment companies, registered or required to be registered under the Investment Company Act of 1940 (17 CFR 230.240).	3(b)

[See footnotes at end of table]

Description	Pursuant to section—
Securities Exchange Act of 1934	
Registration statement (securities listed on a national securities exchange).	12(b)
Registration statement (securities traded over-the-counter).	12(g)
Exemption from section 12(g), 13, 14, 15, or 16.	12(h)
Information by a foreign issuer temporarily exempt from section 12(g).	12(g)(3)
Certification of exchange approving securities for listing and registration.	12(d)
Periodic reports (annual, quarterly and current) to keep current the information in the above registration statements.	13(a)
Request for extension of time to file information, document, or report.	12(b)
Correspondence between the Commission and registrants that are delinquent in filing certain required reports.	13(a), 15(d)
Report by issuers of securities quoted on NASDAQ Inter-Dealer Quotation System.	15(d), 13(a)
Certificate of termination of Registration for a class of security.	(3)

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[See footnotes at end of table]

[See footnotes at end of table]

Description	Pursuant to section—
Notices of suspension of trading	12(d)
Application to withdraw or strike a security from listing and registration on a national securities exchange.	12(d)
Notification by an exchange of the admission to trading of a substituted or additional class of security.	12(a)
Definitive proxy soliciting materials filed under Regulation 14A (17 CFR 240.14a-1 <i>et seq.</i>).	14(a)
Distribution of information to security holders from whom proxies are not solicited filed under Regulation C (17 CFR 230.400 <i>et seq.</i>).	14(c)
Acquisitions, tender offers and solicitations. (17 CFR 240.14d-1 <i>et seq.</i>).	13(d), 14(d)
Initial statement of beneficial ownership of equity securities by officers, directors and principal stockholders of issuers having listed equity securities; and changes in such ownership.	16(a)
Application for permission to extend unlisted trading privileges, notification of changes, and notification of termination or suspension.	12(f)
Application for registration as a broker and dealer, and amendments or supplements to such application.	15(b)
Reports of financial condition of registered brokers and dealers.	17
Application for registration as a transfer agent and amendments to such application.	17A(c)
Application for registration as a municipal securities dealer.	15B(a)
Application for registration or exemption as a securities information processor.	11A(b)
Application for registration or exemption as a clearing agency.	17A(b)
Irrevocable appointment of agent for service of process, pleadings and other papers.	23(a)
Notice by non-resident broker or dealer specifying address of place in United States where copies of books and records are located and undertaking to furnish to Commission, upon demand, copies of books and records he is required to maintain.	17
Subordination agreements	15
Initial assessment and information form for registered brokers and dealers not members of a registered national securities association.	15(b)(8)
Annual assessment and information form for registered brokers and dealers not members of a registered national securities association.	15(b)(8)
Reports of market makers and other registered broker-dealers in securities traded on national securities exchanges.	17(a)
Reports by registered brokers and dealers who are OTC Market in Makers in any OTC Margin Securities.	17(a)
Proposed rule changes by all self-regulatory organizations.	19(b)
Notice as to stated policies, practices and interpretations of self-regulatory organizations.	19(b)

Description	Pursuant to section—
Application by an exchange for registration or exemption from registration as a national securities exchange.	6(a)
Annual amendments and supplemental material filed to keep reasonably current the information contained in application for registration or exemption.	6(e)
Record disposal plan of national securities exchanges.	17
Application for listing securities on an exempted exchange.	12(b)
Periodic reports to keep reasonably current the information contained in application for listing securities on exempted exchange.	13
Certification of exempted exchange approving securities for listing.	12(d)
Application for registration as a national securities association or affiliated securities association.	15A
Annual supplement consolidated to keep reasonably current the information in the above application.	15A
Report of changes in membership status of any of its members required of national securities exchanges and registered national securities associations.	17, 19
Application by a national securities association or a broker or dealer for admission or continuance of a broker or dealer as member of a national securities association, notwithstanding a disqualification under section 15A(b)(4).	15A(b)(4)
Application for review of disciplinary action or denial of membership by registered securities association.	15A(g)
Reports on stabilizing activities pertaining to a fixed price offering of securities registered or to be registered under the Securities Act of 1933, or offered or to be offered pursuant to an exemption under Regulation A (17 CFR 230.251 <i>et seq.</i>), or being or to be otherwise offered if aggregate offering price exceeds \$500,000.	17
Plans by exchanges authorizing payment of special commission in connection with a distribution of securities on exchanges.	10
Suspensions of trading of securities otherwise than on a national securities exchange.	15(c)(5)
Annual and supplemental reports of the Municipal Securities Rulemaking Board.	17

[See footnotes at end of table]

Description	Pursuant to section—
Public Utility Holding Company Act of 1935	
Notification of registration and registration statement by public utility holding companies providing financial and other information concerning the issue and sale of securities.	5(a), 5(b)
Annual reports by registered holding companies to keep reasonably current information in the registration statement.	5(d)
Application for an order of the Commission declaring registrant has ceased to be a holding company.	5(d)

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[See footnotes at end of table]

Description	Pursuant to section—
Statement by a person employed or retained by a registered holding company or subsidiary thereof, of subject matter in respect of which retained or employed; and annual statement thereafter.	12(i)
Application for exemption from provisions of the Act and applications for declaratory orders regarding status of company under Act by holding companies, subsidiaries, and other companies.	2(a)(3), 2(a)(4), 2(a)(7)(B), 2(a)(8)(B), 3(a), (b)
Twelve-month statement by bank claiming exemption under the Act.	3(a), (d)
Application for approval of mutual service company or declaration with respect to organization and conduct of business of subsidiary service company.	13(b)
Statement executed by financial institution authorizing representative to serve as officer or director of holding company or subsidiary, filed by representative.	17(c)
Initial statement of beneficial ownership of securities filed by officers and directors of registered public utility holding companies, and changes in such ownership.	17(a)
Annual reports by mutual and subsidiary service companies.	13
Application by interested persons for approval of reorganization plans required in court proceedings for reorganization of registered holding companies and subsidiaries.	11(f)
Application by or on behalf of persons requesting approval of payment of fees, expenses or remuneration for services rendered in connection with a proceeding in reorganization in a U.S. Court involving registered holding companies or subsidiaries.	11(f)
Notices of intention regarding proposed sale of securities and other assets not requiring filing of application or declaration.	11, 12(d), 12(f)
Statements in justification of fees and expenses proposed to be paid.	6(b), 7, 9, 10, 12(d)
Reports to stockholders by registered holding company or subsidiary thereof and annual reports submitted by registered holding company or subsidiary thereof to a State commission covering operations not reported to Federal Power Commission.	14, 15

[See footnotes at end of table]

Description	Pursuant to section—
Trust Indenture Act of 1939	
Statement of eligibility and qualification of corporations or individuals as trustees under qualified indenture under which debt security has been or is to be issued.	305, 307
Application for qualification of indenture under which security (bonds, debentures, notes and similar debt securities) has been or is to be issued.	307
Application for exemption from provisions of the Act in certain cases.	304(c), (d)

[See footnotes at end of table]

Description	Pursuant to section—
Application re conflict of interest of trustees.	310(b)(1)
Reports by indenture trustee to indenture security holders with respect to eligibility and qualification under section 310.	313
Application relative to affiliations between trustees and underwriters.	310(b)(3), 310(b)(6)

[See footnotes at end of table]

Description	Pursuant to section—
Investment Advisers Act of 1940	
Application for registration as investment adviser or to amend or supplement such an application.	203(c), 204
Application for exemption and other relief	206A
Irrevocable appointment of agent for service of process, pleadings and other papers.	211(a)
Notice by non-resident investment adviser specifying address of place in United States where copies of books and records are located, or.	204
Undertaking by non-resident investment adviser to furnish to Commission, upon demand, copies of any books or records he is required to maintain.	204

[See footnotes at end of table]

Description	Pursuant to section—
Investment Company Act of 1940	
Notification of registration of investment company, and registration statement covering an offering of securities of investment company evidencing an interest in a portfolio of securities in which the investment company invests.	8(a), 8(b)
Periodic reports (annual and quarterly) to keep reasonably current the information in above registration statement.	30(a), 30(b)(1)
Periodic or interim reports to security holders of registered investment companies.	30(b)(2)
Application for order of the Commission determining registrant has ceased to be an investment company.	8(f)
Fidelity bond, resolution of board of directors, notice of cancellation or termination of bond for officers and employees of investment companies who have access to its securities or funds.	17(g)
Waiver of indemnification of officers and directors of investment companies.	17(h), 17(i)
Report of independent auditors examining records of investment companies.	17(f)
Application by other than registrant for order of Commission declaring corporate name of registrant is misleading or deceptive.	35(d)
Request by company for certificate to be issued to Secretary of Treasury.	(4)
Proxy soliciting material	20(a) ⁵

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[See footnotes at end of table]

Description	Pursuant to section—
Initial statement of beneficial ownership of securities by officers, directors and other specified insiders of registered closed-end investment companies, and changes in such ownership.	30(f)
Application for exemption from provisions of the Act and other relief.	2(a)(9), 3(b)(2), 6 (b), (c), (d), 7 (d), 10 (e), (f), 11 (a), (c), 12 (d) (1), (d)(2), 14(a), 15 (a), 16(a), 17 (a), (b), (d), (e), 18(f), 22(d), 23 (b) (5), (c)(3), 24(d), 26(a) (2)(C), 28(c), 35(d), and others.
Statement of transactions—exemption from provisions of section 10(f).	10(f)
Application for an ineligible person to serve as officer, director, etc. of a registered investment company.	9(b)
Request for advisory report of the Commission relating to the reorganization of registered investment company.	25(b)
Report of repurchase of its own securities by a closed-end company.	23(c)
Sales literature regarding securities of certain investment companies.	24(b)
Statement of the Federal Savings and Loan Corporation relating to the exemption of certain issuers.	6(a)(4)
Report submitted pursuant to an order of the Commission.	
Documents and records resulting from derivative or representative law suits.	33

Footnotes:
¹ Section 15(d)—Securities Exchange Act of 1934.
² Section 12(b)—Securities Exchange Act of 1934.
³ Section 12(g)—Securities Exchange Act of 1934.
⁴ Section 851(e)(1) of the Internal Revenue Code of 1954 is applicable.
⁵ Regulation 14 under the Securities Exchange Act of 1934 is applicable (17 CFR 240.14a–1 *et seq.*).

Miscellaneous

Requests or petitions that a change in the Commission's rules, regulations or forms be made; comments on proposed rules, regulations or forms; issuance, amendment or repeal of rules, regulations or forms promulgated under the various Acts administered by the Commission.

Requests for no-action and interpretative letters and responses thereto.

Transcripts of proceedings in public hearings including testimony, exhibits received in evidence, intermediate decisions, oral arguments, motions, briefs, exceptions.

Commission findings, opinions, orders, rulings and notices issued for public release.

Final opinions of the Commission, including concurring and dissenting opinions, as well as orders made by the Commission in the adjudication of cases.

A record of the final votes of each member of the Commission in every Commission proceedings concluded after July 1, 1967.

Hearings and comments on proposed rules or statements of policy, etc., except where the writer requests that his comments not be made public.

Periodic reports filed by the International Bank for Reconstruction and Development under Regulation BW—Rules 1 to 4, section 15(a) of the Bretton Woods Agreement Act (17 CFR part 285).

Periodic reports filed by the Inter-American Development Bank, pursuant to Regulation IA (17 CFR part 286) adopted pursuant to section 11(a) of the Inter-American Bank Act.

Periodic reports filed by the Asian Development Bank, pursuant to Regulation AD (17 CFR part 287) adopted pursuant to section 11(a) of the Asian Development Bank Act.

Copies of papers filed in court, and papers and documents received from courts, are primarily for the use of the Commission attorneys and other members of the staff. These may not always be complete and accurate and may contain nonpublic staff notations. However, in appropriate situations, with the approval of the Office of the General Counsel, examination of such material may be made or copies obtained as a matter of courtesy.

Statements of policy and interpretations which have been adopted by the Commission and are not published in the FEDERAL REGISTER.

Administrative staff manuals and instructions to the staff that affect a member of the public.

Reports by the Commission to the Congress as a whole.

Notices of Commission meetings announced to the public as described in §200.403; announcements of Commission action to close a meeting, or any portion thereof, as described in §200.404(b) and §200.405(c); and certifications by the General Counsel, pursuant to §200.406, that a Commission meeting, or any portion thereof, may be closed to the public.

[41 FR 44696, Oct. 12, 1976, as amended at 42 FR 14693, Mar. 16, 1977]

§ 200.80b Appendix B—SEC releases.

Free mailing list distribution of releases has been discontinued by the Commission because of rising costs and staff limitations. However, the texts of all releases under the various Acts, the corporate reorganization releases, and the litigation releases are contained in the SEC Docket, which may be purchased through the Superintendent of Documents as described in §200.80c of this part. The Statistical series releases are contained in the *SEC Monthly Statistical Review*, which

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also can be obtained by purchase through the Superintendent of Documents.

[40 FR 1009, Jan. 6, 1975, as amended at 49 FR 12686, Mar. 30, 1984; 52 FR 24148, June 29, 1987; 52 FR 48193, Dec. 21, 1987]

§ 200.80c Appendix C—Rules and miscellaneous publications available from the Government Printing Office.

(a) The current rules of the Commission are not published by the Commission in pamphlet form. All SEC public rules and regulations, including its Rules of Practice, are contained in title 17 of the Code of Federal Regulations, which also is available for purchase from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. New rules and rules changes, and other Commission releases, except statistical releases, also are published in the FEDERAL REGISTER as they are adopted.

(b) Copies of the following miscellaneous publications may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Please address to him directly all inquiries, orders and payments concerning the following publications:

1. *Reports.*
SEC Annual Report to the Congress.
2. *Periodicals.*

Official Summary. A monthly summary of securities transactions and holdings reported under the provisions of the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, and the Investment Company Act of 1940 by officers, directors, and certain other persons.

SEC Monthly Statistical Review. A monthly publication containing data on round-lot and odd-lot share volume in stock exchanges, OTC volume in selected securities, block distributions, securities registrations and offerings, net change in corporate securities outstanding, working capital of U.S. corporations, assets of non-insured pension funds, Rule 144 filings and 8K reports.

Directory of Companies Filing Annual Reports with the Securities and Exchange Commission under the Securities Exchange Act of 1934. Published annually. Lists companies alphabetically and classified by industry groups according to the Standard Industrial Classification Manual of the Bureau of the Budget.

[40 FR 1010, Jan. 6, 1975, as amended at 49 FR 12686, Mar. 30, 1984; 52 FR 24148, June 29, 1987; 52 FR 48193, Dec. 21, 1987]

§ 200.80d Appendix D—Other publications available from the Commission.

(a) Limited amounts of the following materials among others are available free of charge upon request to the Commission's Publications Section, Public Reference Branch, 202-272-7460:

Work of the Securities and Exchange Commission.

Blank copies of all forms used under each of the Acts administered by the Commission.

(b) Facsimile copies of other SEC publications which are out of print may be obtained through the Commission's Public Reference Section, at the cost of the copying service to be performed by the commercial copier employed to do the copying. Purchasers of copies will be billed by the copier. An example of the publications which are available in this way is the Litigation Actions and Proceedings Bulletin.

[52 FR 24148, June 29, 1987; 52 FR 48193, Dec. 21, 1987]

§ 200.80e Appendix E—Schedule of fees for records services.

Search and review services: Up to one half hour total—No fee. For each one half hour or fraction thereof of chargeable service—up to GS-11 employee performing service: \$8.00; GS-12 or above employee performing service: \$14.00.

Attestation with Commission seal: \$4.00

Duplication services: The following duplication services are available. The stated time for delivery in each case begins to run only after receipt of the material by the contractor; if files cannot immediately be made available by the Commission, the time of shipment will be affected.

Regular service. Paper copies of original paper copies, or from microfiche accessible to the contractor, will be shipped within seven calendar days after the contractor receives the order and material at \$0.24 per page, exclusive of any applicable shipment cost and sales taxes.

Other services. The Commission's dissemination contractor also provides a wide range of additional regulated dissemination services through the Commission's public reference rooms. Two offsite services also are provided at prices that are regulated: microfiche subscriptions and watch services. Information concerning the availability of all dissemination services may be obtained by writing to the Commission's public reference room located at 450 Fifth Street, NW., room 1024, Washington, DC 20549 or calling 202-272-3100. Copies made pursuant to requests submitted

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to the Commission's public reference room will be filled by the contractor and sent directly to the purchaser, unless attestation is requested. The contractor will bill the purchaser directly for the cost of copies plus postage or other delivery charges, and applicable taxes. Purchasers shall make full payment directly to the contractor for these

services. Search, review or attestation charges will be billed separately by the Commission.

[52 FR 24148, June 29, 1987; 52 FR 48193, Dec. 21, 1987, as amended at 55 FR 41189, Oct. 10, 1990; 57 FR 48970, Oct. 29, 1992; 58 FR 64120, Dec. 6, 1993]

§ 200.80f Appendix F—Records control schedule.

File No.	Type of filing	Retention period
Securities Act of 1933		
2-33	Registration statements and amendments thereto (Regulation C).	30 years.
2-33	Periodic reports (annual, quarterly, current, and proxy material).	30 years.
9-	Notice of proposed resale of restricted securities and resale of securities by control persons (Form 144).	21 years.
15-	Notice of sale of securities pursuant to Rule 242 (Form 242). (Obsolete).	6 years.
18-	Applications for exemption from section 5 registration for interests or participations issued in connection with Keogh Plans (section 3(a)(2)).	10 years.
19-	Notice of sale of securities pursuant to section 4(6) of the Securities Act of 1933 (Form 4(6)). (Obsolete).	6 years.
20-	Offering sheets for oil or gas royalties—Regulation B (Schedules A, B, C).	15 years.
20-	Reports of sale (accorded confidential treatment) (Form 1-G).	7 years.
20-	Reports after termination of offering (Form 3-G)	7 years.
21-	Notice of sale for offerings under Regulation D and section 4(6) (Form D).	6 years.
24-	Notification of exemption from registration (Regulation A)	Until completion or termination of offering plus 10 years or order of the Commission permanently suspending exemption, whichever comes first.
29-	Report of issuers of sale of securities deemed not to involve any public offering (Form 146). (Obsolete).	6 years.
92-	Application for relief from disability (Regulation A)	Until when final action on appeal is taken plus 10 years.
94-	Notification of exemption for assessment or assessable stock (Regulation F).	10 years.
95-	Notification of exemption for securities issued by a small business investment company (Regulation E).	Until completion or termination of offering plus 5 years or until order of Commission permanently suspending exemption, whichever comes first.
96-	Application for relief from disability (Regulation F)	Until final action on appeal is taken plus 5 years.
98-	Notice of proposed sale by non-controlling person of restricted securities of issuers which do not satisfy all of the conditions of Rule 144.	6 years.
100-	Notification of exemption pursuant to Rule 236	6 years.
Securities Exchange Act of 1934		
0-1	Registration statements (sections 12(b) and 12(g), exemptions thereunder).	30 years.
0-1	Periodic reports (annual, quarterly, current and proxy materials).	30 years.
3-	Applications for continuance in membership and applications for review of disciplinary actions (self-regulatory organizations).	10 years.
4-281	Consolidated quotation system plan and amendments	For as long as plan remains approved plus 6 years.
4-208	Intermarket trading system plan and amendments	For as long as plan remains approved plus 6 years.
5-	Acquisitions, tender offers and solicitations	20 years.
6-	Reports of beneficial ownership of securities (Forms 3, 4, & 5).	6 years.

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File No.	Type of filing	Retention period
7-	Applications for permission to extend unlisted trading privileges and related applications pursuant to Rule 12(f).	10 years.
8-	Applications for registration as broker, dealer, municipal securities broker, or government securities broker or dealer and related reports.	For as long as broker-dealer is registered with the Commission plus 50 years.
8-00-2A	Annual audit report (fiscal or calendar year basis) (Form X-17A-5). (Non-public) Supplemental report detailing Securities Investor Protection Corporation assessment payment or overpayments (Rule 17a-5). (Non-public).	For as long as broker-dealer is registered with the Commission plus 13 years.
8-00-2A-19	Reports of changes in membership of any of its members required of national securities exchanges and registered national securities associations (Form X-17A-19). (Public).	For as long as broker-dealer is registered with the Commission plus 6 years.
8-00-3X	Examination/inspection reports of brokers and dealers, investment companies and investment advisors	
	1. Exam reports:	
	a. Home Office	13 years.
	b. Regional Offices	13 years.
	2. Exam workpapers	13 years.
8-00-9	Uniform application for securities and commodities industry representative and/or agent; certification for associated persons engaged in securities activities outside the jurisdiction of the United States; annual assessment form for registered brokers and dealers not members of a registered national securities association (Forms U-4, SECO 2-F, SECO-4, 5).	For as long as broker-dealer is registered with the Commission plus 50 years.
8-2A10	Annual report of revenue and expenses filed by exchange members, brokers and dealers (Form X-17A-10). (Obsolete).	10 years.
8-2A12	Report by registered brokers and dealers who are over-the-counter market makers in any OTC margin securities (Form X-17A-12).	6 years.
8-2A16(1), -2A16(2)	Notification by qualified market makers at least five business days before such broker-dealers obtain third market maker exempt credit pursuant to Regulation U; and quarterly report by broker and dealer, who during a calendar quarter is or has been qualified as a third market maker (Forms X-17A-16(1); X-17A-16(2)) (Obsolete).	6 years.
8-2A17	Quarterly report filed by every broker-dealer block positioner who has filed a notice pursuant to paragraph (a) of Rule 17a-17 (Form X-17A-17) (Obsolete).	6 years.
10-	Applications by an exchange for registration as a national securities exchange.	For as long as exchange is registered with the Commission plus 6 years.
13-	Applications for listing securities on an exempted exchange, periodic reports.	10 years.
14-	Annual reports of issuers having securities listed on an exempted exchange.	10 years.
16-	Application for registration as a national securities association or affiliated securities associations.	For as long as association is registered with the Commission plus 6 years.
17-	Reports on stabilizing activities (Form X-17A-1). (Obsolete).	6 years.
23-	Applications for exemption pursuant to paragraph (g) of Rule 11Aa3-1.	Until closed plus 6 years.
26-	Plans by exchanges authorizing payment of special commission in connection with a distribution of securities on exchanges (Rule 10b-2(d)).	For as long as exchange is registered with the Commission plus 50 years.
27-	Applications for exemption from section 13(f)	10 years.
28-	Reports by institutional investment managers of information with respect to accounts over which they exercise discretion. (Form 13F).	4 years.
80-	Annual and supplemental reports of Municipal Securities Rulemaking Board (Rule 17a-21).	Indefinitely (contingent).
81-	Exemptions from registration under section 12(g)	10 years.
82-	Exemptions—American depository receipts	10 years.
83-1	Periodic reports and related correspondence by the Inter-American Development Bank.	3 years.
83-2	Periodic reports by the Asian Development Bank	3 years.
84-	Application for registration as a transfer agent (non-bank) and amendments thereto.	For as long as transfer agent is registered with the Commission plus 50 years.
85-	Application for registration as a transfer agent (bank) and amendments thereto (Form TA-1).	For as long as transfer agent is registered with the Commission plus 50 years.

File No.	Type of filing	Retention period
86-	Application for registration as a municipal securities dealer which is a bank or separately identifiable department or division of a bank (Form MSD).	For as long as municipal securities dealer is registered with the Commission plus 50 years.
87-	Application for registration as a securities information processor and amendments thereto (Form SIP).	For as long as securities information processor is registered with the Commission plus 50 years.
88-	Application for exemption as a securities information processor correspondence.	For as long as securities information processor is registered with the Commission plus 50 years.
89-	Waiver for foreign issuers furnished by American depository receipts; waiver of information furnished by American depository receipts regarding foreign issuers for Form F-6; waiver of Rule 12g3-2(b) reporting requirements, annual reports to shareholders, F-6 waiver, proxy.	10 years.
89-	Other waivers for foreign issuers furnished by American depository receipts.	3 years.
128-8	Reports of disciplinary actions by stock exchanges (Rule 19d-1).	6 years.
205-3c	Reports of disciplinary actions by NASD (Rule 19d-1)	6 years.
500-	Suspension of trading of securities other than on a national securities exchange.	10 years.
600-	Applications for registration as a (non-bank) clearing agency; amendments thereto.	For as long as clearing agency is registered with the Commission plus 50 years.
600-9	Reports of disciplinary actions by clearing agencies (Rule 19d-1).	6 years.
601-	Applications for exemption from registration as a (non-bank) clearing agency.	For as long as clearing agency has reporting requirements with the Commission plus 20 years.
SR	Proposed rule changes and notice as to stated policies and interpretations by self-regulatory organizations.	For as long as self-regulatory organization is registered with the Commission plus 6 years.
XX	Reports for missing, lost or counterfeit securities (Form X-17F-1A).	Indefinitely.

Public Utility Holding Company Act of 1935

12-	Statements pursuant to section 12(i) by persons employed or retained by a registered holding company or subsidiary thereof (Forms U-12(l)-A & B).	2 years.
30-	Notification and registration by public utility holding companies, annual supplements.	For as long as holding company has reporting requirements with the Commission plus 10 years.
31-	Statement of exemption from the Act by Commission order.	For as long as company relies on exemption plus 10 years.
32-	Exemption of purchaser, assignee, etc. of leased facilities (Form U7D).	Until lease is terminated or cancelled plus 5 years.
33-1	Annual statement by banks holding public utility securities but claiming exemption under Rule 3.	2 years.
34-	Annual statement by banks holding public utility securities but claiming exemption under Rule 3 (Form U-3A3-1).	2 years.
37-	Applications and declarations for authorization of service companies (Form U-13-1).	For as long as service company is part of a registered holding company plus 5 years.
38-	Statement under Rule 70(a)(1) executed by financial authorizing representative to serve as officer/director of holding company, filed by representative.	For as long as officer/director serves plus 3 years.
40-	Certificates of notification by registered holding companies and subsidiaries of security issues exempted from section 6(a) by section 6(b) or exempt under Rule 47(b) and not the subject of an order of the Commission (Form U-6B-2).	3 years.
49-	Annual report by mutual and subsidiary service companies (Form U-13-60).	For as long as service company is part of a registered holding company system plus 15 years.
50-	Order granting or withdrawing exemptions from rules and related correspondence.	Until close plus 3 years.
52-	Application for approval or reorganization under section 11(f).	Until closed plus 3 years.
54-	Divestment of securities, assets or control (section 11(e))	Until closed plus 3 years.
55-	Application for approval of fees incurred in connection with plan under section 11(f).	Until closed plus 3 years.

Securities and Exchange Commission

§ 200.80f

File No.	Type of filing	Retention period
59-	Simplification of corporate structure, sections 11(b) (1) and (2).	Until closed plus 3 years.
62-	Report by an affiliate service company or one engaged principally in the performance of services (Form U-13E-1).	For as long as service company is part of a registered holding company system plus 4 years.
68-	Declaration with respect to solicitations regarding reorganizations of registered holding companies or subsidiaries subject to Rule 62 (Form U-R-1).	10 years.
69-	Annual statements by holding companies claiming exemption pursuant to Rule 2 (intrastate or predominantly operating companies (Form U-3A-2)).	2 years.
70-	Applications and declarations pursuant to sections 6(b), 7, 9, 9(c)(3), 10, 12(b), 12(c), 12(d), 12(f) and applicable rules thereunder (Form U-1).	Until closed plus 3 years.
72-	Report of communication with stockholders	2 years.
Trust Indenture Act of 1939		
22-	Statements of eligibility and qualification of corporations or individuals as trustees under qualified indenture under which debt security has been or is to be issued and exemptions thereto.	Until indenture is terminated or cancelled plus 30 years.
25-	Applications relative to affiliations between trustees and underwriters (Rule 10b-3).	Until applicable indenture is terminated or cancelled plus 33 years.
93-	Reports of indenture trustee to indenture security holders with respect to eligibility and qualification under Section 310.	1 year.
Investment Advisers Act of 1940		
801-	Application for registration as investment adviser and related correspondence.	For as long as investment adviser is registered with the Commission plus 9 years.
803-	Application for exemption from registered and other relief	For as long as investment adviser conducts business under an exemption plus 6 years.
Investment Company Act of 1940		
90-	Notice of sales of securities by closed-end issuers (issuers with 100 or less beneficial owners) other than investment companies, registered or required to be registered.	6 years.
811-	Notifications and registration statements	For as long as registrant is registered with the Commission plus 30 years.
811-	Periodic reports (annual, quarterly, semi-annual, proxy material).	10 years.
812-	Applications for exemption and other relief	10 years.
812-	Application by foreign management investment companies for order permitting registration.	For as long as registrant has reporting requirement with the Commission plus 33 years.
813-	Applications for exemption of an employee's security company (Section (b)).	For as long as registrant has reporting requirement with the Commission plus 33 years.
814-	Notice of intent to elect to be subject to sections 55 and 65.	2 years from filing date.
814-	Notification of withdrawal of election to be subject to sections 55 through 65.	2 years from filing date.
814-	Notification of election to be subject to sections 55 through 65.	30 years or for as long as a class of the issuer's equity securities is registered under the Securities Exchange Act of 1934 plus 10 years, whichever comes first.
816-	Request for advisory report re reorganization of registered investment company (17 CFR 270.02), and related correspondence.	6 years.
817-	Report of repurchase of securities by closed-end investment company.	6 years.
818-	Sales literature regarding securities of certain investment companies.	6 years.
819-	Statement of the Federal Savings and Loan Corporation relating to the exemption of certain issuers.	6 years.

File No.	Type of filing	Retention period
820-	Reports showing that companies have complied with requirements of the rule in purchasing new issues of securities from underwriters.	6 years.
821-	Reports by registered small business investment companies and affiliated banks, with respect to investments.	10 years from date of such action(s).
Miscellaneous Files and Reports		
3-	Disciplinary proceedings (broker-dealer and investment adviser).	25 years.
3-	Administrative proceeding stop orders	For as long as registrant has reporting requirement with the Commission plus 30 years.
4-	102(e) proceedings (previously 2(e) proceedings) (changed to 3-).	25 years.
4-	Miscellaneous studies, general conferences, roundtable, etc., authorized by the Commission.	25 years.
111-	Federal government agencies miscellaneous correspondence.	30 years.
119-	Securities violation files (information regarding persons against whom actions were reported on charges of violating state or federal laws in the purchase and sale of securities).	Until date of last reported action plus 10 years.
122-2	Members of Congress (inquiries relating to various subjects).	1 year after expiration of term in office.
122-3	Correspondence and other materials between the various Senate Committees and the Commission.	30 years.
122-4	Correspondence and other materials between the various House Committees and the Commission.	30 years.
122-6	Correspondence and other materials between Congressional Commissions and Joint Committees and the Commission.	30 years.
123-13	Correspondence relating to the development of a Canadian Extradition Treaty.	30 years.
124-	Stock exchanges (General Correspondence)	For as long as exchange is registered with the Commission.
124-1	Legislation and Laws: Drafts and comments concerning suggested amendments to the various Acts administered by the Commission.	30 years.
124-6 124-11 124-20 124-7, 124-7a	Subject files—Drafts, comments and correspondence concerning proposed legislation submitted by the Senate and the House to the Commission for comment.	30 years.
124-7b	Drafts of bills not yet reported in Congress that are submitted to the Commission for comment.	30 years.
132-3	General Correspondence—Active companies. Inquiries and complaints concerning companies registered under the various Acts administered by the Commission.	10 years.
132-3	General Correspondence—Inactive companies (no longer required to file reports with the Commission). Inquiries and complaints concerning companies registered under the various Acts administered by the Commission.	6 years.
132-3	General Correspondence—Miscellaneous. Requests for interpretation of rules and regulations under the Acts administered by the Commission.	6 years.
140-	Drafts, internal memoranda, correspondence concerning rules and regulations under each of the Acts administered by the Commission.	30 years.
206-, 207- to 215-, 917-	Reorganization proceedings under Chapters IX, X, XI of the Bankruptcy Act in which the Commission participates.	30 years.
265-	Advisory Committees established by the Commission (correspondence, questionnaires, reports).	30 years.
Confidential treatment materials	Periodic reports and other materials containing contracts, commercial and financial information, disclosure of which would impair the value thereof, submitted under confidential cover.	10 years.
CHR	SEC Chairman's Subject Case Files	20 years.
CHR	SEC Chairman's Chronological Files for Period 1972 to Present.	Chairman's tenure in office plus 3 years.
CHR	SEC Chairman's General Subject File	Chairman's tenure in office plus 3 years.

File No.	Type of filing	Retention period
COMM	SEC Commissioners' Files (excluding Chairman), 1934 to Present.	Commissioner's tenure in office plus 1 year.
ENF	Investigative Case Files—Closed	Until closed plus 25 years.
ENF	Investigative Case Files—Inactive	Until inactive plus 25 years.
LIT	Litigation files:	
	1. Briefs	25 years.
	2. File contents other than briefs	10 years.
S7	Issuance, amendment or rescission of rules under the various Acts—public comments and views, transcript of hearings, correspondence.	30 years (permanent).
XX	Reports of internal inquiries:	
	1. Supporting documentation	Until date of final action plus 5 years, if no report is issued, or until date of final report plus 5 years.
	2. Final reports	5 years.

[60 FR 50091, Sept. 28, 1995]

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

(a) Except as provided in paragraphs (b) and (c) of this section, every letter or other written communication requesting the staff of the Commission to provide interpretative legal advice with respect to any statute administered by the Commission or any rule or regulation adopted thereunder; or requesting 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 requesting an exemption, on the basis of the facts stated in such letter, from the provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or any rule or regulation thereunder, where the issuance of an order granting such exemption does not require public notice and an opportunity for hearing; together with any written response thereto, shall be made available 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 such letter or other written communication may also submit therewith a request that it be accorded confidential treatment for a specified period of time, not exceeding 120 days from the date the response, 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 communication 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 communication within 30 days thereafter. In such case, no response will be sent or given and the letter or other communication shall remain in the Commission's files but will not be made public. If such letter or other communication is not so withdrawn, it shall be deemed to be available for public inspection and copying together with any written response thereto.

NOTE: All letters or other written communications requesting interpretative advice, a no-action position, or an exemption shall indicate prominently, in a separate caption at the beginning of the request, each section of the Act and each rule to which the request relates. If more than one section or rule is involved, a separate copy of the request shall be submitted for each section or rule involved and an additional copy for the use of the staff of the Commission.

(c) This section shall not apply, however, to letters of comment or other communications relating to the accuracy or adequacy of any registration statement, report, proxy, or information statement or other document filed with the Commission, or relating to the extent to which such statement, report, or document complies with any applicable requirement. Further, this section shall not apply to applications or other written communications filed pursuant to § 240.24b-2 that relate to

objections to public disclosure of information filed with the Commission or any exchange.

[35 FR 17779, Nov. 19, 1970, as amended at 53 FR 12413, Apr. 14, 1988; 53 FR 32605, Aug. 26, 1988]

§ 200.82 Public availability of materials filed pursuant to § 240.14a-8(d) and related materials.

Materials filed with the Commission pursuant to Rule 14a-8(d) under the Securities Exchange Act of 1934 (17 CFR 240.14a-8(d)), written communications related thereto received from any person, and each related no-action letter or other written communication issued by the staff of the Commission, shall be made available to any person upon request for inspection or copying.

[37 FR 20558, Sept. 30, 1972]

§ 200.83 Confidential treatment procedures under the Freedom of Information Act.

(a) *Purpose.* This section provides a procedure by which persons submitting information in any form to the Commission can request that the information not be disclosed pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552. This section does not affect the Commission's right, authority, or obligation to disclose information in any other context. This section is procedural only and does not provide rights to any person or alter the rights of any person under the Freedom of Information Act or any other applicable statute or regulation.

(b) *Scope.* The provisions of this section shall apply only where no other statute or Commission rule provides procedures for requesting confidential treatment respecting particular categories of information (*see, e.g.*, 17 CFR 240.24b-2) or where the Commission has not specified that an alternative procedure be utilized in connection with a particular study, report, investigation, or other matter. The provisions of this section shall not apply to any record which is contained in or is part of a personnel, medical or similar file relating to a Commission member or employee which would normally be exempt from disclosure pursuant to section 552(b)(6) of title 5, U.S. Code.

(c) *Written request for confidential treatment to be submitted with information.* (1) Any person who, either voluntarily or pursuant to any requirement of law, submits any information or causes or permits any information to be submitted to the Commission, which information is entitled to confidential treatment and for which no other specific procedure exists for according confidential treatment, may request that the Commission afford confidential treatment under the Freedom of Information Act to such information for reasons of personal privacy or business confidentiality, or for any other reason permitted by Federal law, and should take all steps reasonably necessary to ensure, as nearly as practicable, that at the time the information is first received by the Commission (i) it is supplied segregated from information for which confidential treatment is not being requested, (ii) it is appropriately marked as confidential, and (iii) it is accompanied by a written request for confidential treatment which specifies the information as to which confidential treatment is requested.

(2) Except in the circumstances covered by paragraph (c)(4), all records which contain information for which a request for confidential treatment is made or the appropriate segregable portions thereof should be marked by the person submitting the records with a prominent stamp, typed legend, or other suitable form of notice on each page or segregable portion of each page, stating "Confidential Treatment Requested by [name]." If such marking is impractical under the circumstances, a cover sheet prominently marked "Confidential Treatment Requested by [name]" should be securely attached to each group of records submitted for which confidential treatment is requested. Each of the records transmitted in this manner should be individually marked with an identifying number and code so that they are separately identifiable.

(3) In addition to providing a copy of any written request for confidential treatment required by this section to the Commission personnel receiving the information in question, the person requesting confidential treatment shall

also deliver or send by mail a copy of the request (but not the records to which the request applies) to the Freedom of Information Act Officer, Securities and Exchange Commission, Washington, DC 20549. The written request shall be clearly and prominently identified on the envelope or other cover and on the top of the first page by the legend "FOIA Confidential Treatment Request" and shall contain the name, address and telephone number of the requestor. The requestor is responsible for informing the Commission promptly of any changes in address or telephone number. In case records submitted are not individually marked "Confidential Treatment Requested by [name]," the written request for confidential treatment should refer to the identifying numbers and codes placed on the records.

(4) In some circumstances, such as when a person is testifying in the course of a Commission investigation or providing documents requested in the course of a Commission inspection, it may be impracticable to submit a written request for confidential treatment at the time the information is first provided to the Commission. In no circumstances can the need to comply with the requirements of this section justify or excuse any delay in submitting information to the Commission. Rather, in such circumstances, the person testifying or otherwise submitting information should inform the Commission employee receiving the information, at the time the information is submitted or as soon thereafter as possible, that the person is requesting confidential treatment for the information. The person shall then submit a written request for confidential treatment within 30 days of the submission of the information. Any request for confidential treatment submitted pursuant to this paragraph shall be clearly and prominently identified as provided in paragraph (c)(3) of this section and shall be delivered or sent by mail both to the Commission personnel who received or is known to have custody of the information and to the Freedom of Information Act Officer, Securities and Exchange Commission, Washington, DC 20549.

(5) Where confidential treatment is requested by the submitter on behalf of other persons, the request should identify those persons and provide the telephone number and address of such person or the responsible representative thereof if the submitter would be unable to provide prompt substantiation of the request at the appropriate time.

(6) No determination as to the validity of any request for confidential treatment will be made until a request for disclosure of the information under the Freedom of Information Act is received.

(d) *Substantiation of request for confidential treatment.* (1) If it is determined that records which are the subject of a request for access under the Freedom of Information Act are also the subject of a request for confidential treatment under this rule and no other grounds appear to exist which would justify the withholding of the records [e.g., Freedom of Information Act Exemption 7(A), 5 U.S.C. 552(b)(7)(A)], the Commission's Freedom of Information Act Officer promptly shall so inform the person requesting confidential treatment or, in the case of a request made on behalf of a person other than the submitter, the person identified as able to provide substantiation, by telephone, telegram or express mail and require that substantiation of the request for confidential treatment be submitted in ten calendar days.

(2) Substantiation of a request for confidential treatment shall consist of a statement setting forth, to the extent appropriate or necessary for the determination of the request for confidential treatment, the following information regarding the request:

(i) The reasons, concisely stated and referring to specific exemptive provisions of the Freedom of Information Act, why the information should be withheld from access under the Freedom of Information Act;

(ii) The applicability of any specific statutory or regulatory provisions which govern or may govern the treatment of the information;

(iii) The existence and applicability of any prior determinations by the Commission, other Federal agencies, or a court, concerning confidential treatment of the information;

(iv) The adverse consequences to a business enterprise, financial or otherwise, that would result from disclosure of confidential commercial or financial information, including any adverse effect on the business' competitive position;

(v) The measures taken by the business to protect the confidentiality of the commercial or financial information in question and of similar information, prior to, and after, its submission to the Commission;

(vi) The ease or difficulty of a competitor's obtaining or compiling the commercial or financial information;

(vii) Whether the commercial or financial information was voluntarily submitted to the Commission and, if so, whether and how disclosure of the information would tend to impede the availability of similar information to the Commission;

(viii) The extent, if any, to which portions of the substantiation of the request for confidential treatment should be afforded confidential treatment; and

(ix) Such additional facts and such legal and other authorities as the requesting person may consider appropriate.

(e) *Appeal from initial determination that confidential treatment is not warranted.* (1) If it is determined by the Commission's Freedom of Information Act Officer that confidential treatment is not warranted with respect to all or part of the information in question, the person requesting access to the information under the Freedom of Information Act and the person requesting confidential treatment will be so notified by telephone, telegram or express mail. The person requesting confidential treatment will also be informed that any appeal of such decision must be taken to the Commission's General Counsel within ten calendar days of the date of the notice. Information which is determined not to be entitled to confidential treatment may be released under the Freedom of Information Act ten calendar days after notice to the person requesting confidential treatment. If within that ten calendar day period the General Counsel has actually received an appeal from the person requesting confidential treatment, the

person requesting access to the information under the Freedom of Information Act will be informed of the pending appeal and that no disclosure of the information will be made until the appeal is resolved.

(2) Any appeal of a denial of a request for confidential treatment shall be in writing, and shall be clearly and prominently identified on the envelope or other cover and at the top of the first page by the legend "FOIA Confidential Treatment Appeal." The appeal should be delivered or sent by mail to the General Counsel, with a copy to the Freedom of Information Act Officer. The person requesting confidential treatment may supply additional substantiation of the request for confidential treatment in connection with the appeal to the General Counsel.

(3) The General Counsel shall have the authority to consider all appeals from decisions of the Freedom of Information Act Officer with respect to confidential treatment. All appeals taken under this section will be considered by the General Counsel as expeditiously as circumstances permit. Although other procedures may be employed, to the extent possible, the General Counsel will decide the matter on the basis of the affidavits and other documentary evidence submitted by the interested persons and such other information as is brought to the attention of the General Counsel in accordance with the provisions of §201.28 of this chapter. The General Counsel shall also have the authority to enter and vacate stays under the circumstances set forth in paragraph (e)(5) of this section. In appropriate cases the General Counsel may, in his or her sole and unfettered discretion, refer appeals and questions concerning stays under paragraph (e)(5) of this section to the Commission for decision.

(4) If it is determined that confidential treatment is not warranted with respect to all or any part of the information in question, the person requesting confidential treatment will be so informed by telephone, if possible, with a telegram or express mail letter directed to the person's last known address. Disclosure of the information under the Freedom of Information Act

will occur ten calendar days after notice to the person requesting confidential treatment, subject to any stay entered pursuant to paragraph (e) (5) of this section.

(5) If within that ten calendar day period the General Counsel has been notified that the person requesting confidential treatment has commenced an action in a Federal court concerning the determination to make such information publicly available, the General Counsel will stay making the public disclosure of the information pending final judicial resolution of the matter. The General Counsel may vacate a stay under this section either on his or her own motion or at the request of a person seeking access to the information under the Freedom of Information Act. If the stay is vacated, the information will be released under the Freedom of Information Act ten calendar days after the person requesting confidential treatment is notified of this action by telephone, if possible, with a telegram or express mail letter sent to the person's last known address, unless the court orders otherwise.

(f) *Initial determination that confidential treatment is warranted.* If it is determined by the Commission's Freedom of Information Act Officer that confidential treatment is warranted, the person submitting the information and the person requesting access to the information under the Freedom of Information Act will be so informed by mail. The person requesting access, pursuant to the Freedom of Information Act, will also be informed of the right to appeal the determination to the General Counsel. Any such appeal must be taken in accordance with the provisions of the Freedom of Information Act and Commission rules thereunder. See 17 CFR 200.80(d)(6).

(g) *Effect of no prior request for confidentiality.* (1) If access is requested under the Freedom of Information Act to information which is submitted to the Commission on or after October 20, 1980 with respect to which no request for confidential treatment has been made pursuant to either paragraph (c)(1) or (c)(4) of this section, it will be presumed that the submitter of the information has waived any interest in asserting an exemption from disclosure

under the Freedom of Information Act for reasons of personal privacy or business confidentiality, or for other reasons.

(2) Notwithstanding paragraph (g)(1) of this section, in appropriate circumstances, any person who would be affected by the public disclosure of information under the Freedom of Information Act may be contacted by Commission personnel to determine whether the person desires to make a request for confidential treatment. Any request for confidential treatment that is asserted in response to such inquiry shall be made in accordance with provisions of this section.

(h) *Extensions of time limits.* Any time limit under this section may be extended, in the discretion of the Commission, the Commission's General Counsel, or the Commission's Freedom of Information Act Officer, for good cause shown.

(i) *Electronic filings.* Confidential treatment requests shall be submitted in paper format only, whether or not the person making the request is an electronic filer.

[45 FR 62421, Sept. 19, 1980, as amended at 47 FR 20289, May 12, 1982; 58 FR 14659, Mar. 18, 1993]

Subpart E [Reserved]

Subpart F—Code of Behavior Governing Ex Parte Communications Between Persons Outside the Commission and Decisional Employees

AUTHORITY: 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11; 5 U.S.C. 557.

§ 200.110 Purpose.

This code is adopted in conformity with section 4 of the Government in the Sunshine Act, Pub. L. 94-409, and is designed to insulate the administrative process from improper influence.

[42 FR 14690, Mar. 16, 1977]

§ 200.111 Prohibitions; application; definitions.

(a) *Prohibited communications.* In any agency proceeding which is subject to

this subpart, except to the extent required for the disposition of ex parte matters as authorized by law:

(1) No interested person outside the agency shall make or knowingly cause to be made to any member of the Commission or decisional employee an ex parte communication relevant to the merits of the proceeding; and

(2) No member of the Commission or decisional employee shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding.

(b) *Proceedings to which prohibitions apply.* This subpart shall apply to all proceedings subject to 5 U.S.C. 557(a), including suspension proceedings instituted pursuant to the provisions of Regulations A, B, E, and F of the Securities Act of 1933 (§230.251 *et seq.* of this chapter), all review proceedings instituted pursuant to section 19(g) of the Securities Exchange Act of 1934, and all other proceedings where an evidentiary hearing has been ordered pursuant to a statutory provision or rule of the Commission and where the action of the Commission must be taken on the basis of an evidentiary record. In addition, this subpart shall apply to any other proceeding in which the Commission so orders.

(c) *Period during which prohibitions apply.* (1) The prohibitions in §200.111(a) shall begin to apply when the Commission issues an order for hearing; *Provided,*

(i) That in suspension proceedings pursuant to Regulations A, B, E and F of the Securities Act of 1933 (§230.251 *et seq.* of this chapter), these prohibitions shall commence when the Commission enters an order temporarily suspending the exemption; and

(ii) That in proceedings under section 19(d) of the Securities Exchange Act of 1934 these prohibitions shall commence from the time that a copy of an application for review has been served by the Secretary upon the self-regulatory organization; and

(iii) In no case shall the prohibitions in §200.111(a) begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in

which case the prohibitions shall apply beginning at the time of his or her acquisition of such knowledge.

(2) The prohibitions in §200.111(a) shall continue until the time to file a petition for rehearing from the final order of the Commission has expired. In the event a petition for rehearing is filed, these prohibitions shall cease if and when the petition for rehearing is denied.

(3) The Commission may, by specific order entered in a particular proceeding, determine that these prohibitions shall commence from some date earlier than the time specified in this paragraph (c) or shall continue until a date subsequent to the time specified herein.

(d) *Definitions.* As used in this subpart:

(1) *Ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all participants to the proceeding is not given, but it shall not include requests for status reports on any matter or proceeding. In addition, an ex parte communication shall not include:

(i) Any written communication of which copies are served by the communicator contemporaneously with the transmittal of the communication in accordance with requirements of Rule 150 of the Commission's Rules of Practice, §201.150 of this chapter, upon all participants to the proceeding (including the interested Division or Office of the Commission); or

(ii) Any oral communication where 48 hours advance written notice is given to all participants to the proceeding (including the interested division of the Commission).

(2) *Participants to the proceeding* means all parties to the proceeding (including the interested Division or Office of the Commission) and any other persons who have been granted limited participation pursuant to the provisions of Rule 210(c) of the Commission's Rules of Practice, §201.210(c) of this chapter.

(3) *Decisional employee* means: (i) The administrative law judge assigned to the proceeding in question; and

(ii) All members of the staff of the Office of Opinions and Review; and

(iii) The legal and executive assistants to members of the Commission; and

(iv) Any employee of the Commission who has been specifically named by order of the administrative law judge or the Commission in the proceeding to assist thereafter in making or recommending a particular decision; and

(v) Any other employee of the Commission who is, or may reasonably be expected to be, involved in the decisional process of the proceeding.

[42 FR 14690, Mar. 16, 1977, as amended at 60 FR 32795, June 23, 1995]

§200.112 Duties of recipient; notice to participants.

(a) *Duties of recipient.* A member of the Commission or decisional employee who receives, or who make or knowingly causes to be made, a communication prohibited by this section, or who receives or makes a communication which he or she concludes should, in fairness, be brought to the attention of all participants to the proceeding, shall transmit to the Commission's Secretary, who shall place on the public record of the proceeding:

(1) All such written communications; and

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (a) (1) and (2) of this section.

(b) *Notice to participants.* The Secretary shall send copies of the communication to all participants to the proceeding with respect to which it was made, and shall notify the communicator of the provisions of this code prohibiting ex parte communications. If the communications are from persons other than participants to the proceedings or their agents, and the Secretary determines that it would be too burdensome to send copies of the communications to all participants because: (1) The communications are so voluminous, or (2) the communications are of such borderline relevance to the issues of the proceedings, or (3) the participants to the proceeding are so numerous, the Secretary may, instead, notify the participants that the communica-

tions have been received, placed in the file, and are available for examination.

(c) *Post decisional communications.* Any Commission member or decisional employee who receives a communication which would be prohibited by this Code, but for the fact that it was received subsequent to the date when the prohibitions imposed hereby have ceased to apply, shall comply with the provisions of §200.112(a) with respect to such communication in the event that he or she is to act in a decisional capacity in the same proceeding pursuant to remand where he or she concludes, in fairness, that such communication should be brought to the attention of all participants to the proceeding.

[42 FR 14691 Mar. 16, 1977]

§200.113 Opportunity to respond; interception.

(a) *Opportunity to respond.* All participants to a proceeding may respond to any allegations or contentions contained in a prohibited ex parte communication placed in the public record in accordance with §200.112. Such responses shall be included in the public record.

(b) *Interception of communications.* All written communications addressed to the Commission respecting a proceeding will be deemed to be communications to the staff of the interested division and will be directed to that division by the Commission's mail room. A Commission member or decisional employee may instruct any of his assistants who are nondecisional employees to intercept any communication directed to him which might appear to violate this Code and authorize them either to transmit any such written communication to the staff of the interested division of the Commission, if it appears from the contents of the communication that the intent of the sender is consistent with such action, or to return the communication to the sender.

[28 FR 4447, May 3, 1963, as amended at 42 FR 14691, Mar. 16, 1977]

§200.114 Sanctions.

(a) *Discipline of persons practicing before the Commission.* The Commission may, to the extent not prohibited by

law, censure, suspend, or revoke the privilege to practice before it of any person who makes, or solicits the making of, an unauthorized ex parte communication.

(b) *Adverse action on claim.* Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subpart, the Commission, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(c) *Discipline of Commission employees.* The Commission may censure, suspend, or dismiss any Commission employee who violates the prohibitions or requirements of this Code.

[28 FR 4447, May 3, 1963, as amended at 42 FR 14691, Mar. 16, 1977]

Subpart G—Plan of Organization and Operation Effective During Emergency Conditions

AUTHORITY: 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

Section 200.203 is also issued under 15 U.S.C. 78d, 78d-1.

SOURCE: 28 FR 6970, July 9, 1963, unless otherwise noted.

§ 200.200 Purpose.

This subpart describes the plan of organization and operation which will be observed by the Securities and Exchange Commission in discharging its duties and responsibilities in the event of a national emergency as defined in the following section.

(Sec. 4, 48 Stat. 885, as amended; 15 U.S.C. 78d, sec. 1, 76 Stat. 394; 15 U.S.C. 78d-1. Reorganization Plan No. 10 of 1950; 3 CFR, 1949-1953 Comp., p. 1006)

§ 200.201 Emergency conditions, effective date, and duration.

For the purposes of this subpart, emergency conditions shall be deemed to commence at the time of an armed attack upon the United States, its territories and possessions, at the time of

official notification of the likelihood or imminence of such attack, or at a time specified by the authority of the President, whichever may first occur, and shall continue until official notification of cessation of such conditions. The provisions of this subpart shall become operative as at the commencement of emergency conditions and continue until cessation of those conditions, or until the Commission shall by notice or order resume its normal organization and operations.

(Sec. 4, 48 Stat. 885, as amended; 15 U.S.C. 78d, sec. 1, 76 Stat. 394; 15 U.S.C. 78d-1. Reorganization Plan No. 10 of 1950; 3 CFR, 1949-1953 Comp., p. 1006)

§ 200.202 Offices, and information and submittals.

(a) During emergency conditions, the location or headquarters of the Commission shall be as designated by the Chairman or his successor. The location of each Regional and District Office of the Commission, if different from the normal location, shall be as designated by the Chairman of the Commission or his successor, or in the absence of communications with him, by the Regional Director or District Administrator for the area or his acting successor.

(b) During emergency conditions, all formal or informal requests, filings, reports or other submittals shall be delivered to the Commission at designated offices or addressed to the Securities and Exchange Commission, Official Mail and Messenger Service, United States Post Office Department, Washington 25, DC.

(Sec. 4, 48, Stat. 885, as amended; 15 U.S.C. 78d, sec. 1, 76 Stat. 394; 15 U.S.C. 78d-1. Reorganization Plan No. 10 of 1950; 3 CFR, 1949-1953 Comp., p. 1006)

[28 FR 6970, July 9, 1963, as amended at 59 FR 5944, Feb. 9, 1994]

§ 200.203 Organization, and delegations of authority.

(a) During emergency conditions, the respective functions and responsibilities of the Commissioners, the Chairman of the Commission, and the staff members shall be, to the extent possible, as set forth in Subpart A of this part (§ 200.1 *et seq.*).

(b) Action for and in the name of the Commission taken pursuant to this subpart by one or more Commissioners or by a successor as designated in this section shall mean and include the delegated authority to act for the unavailable or incapacitated Commissioners.

(c) Pursuant to the statutes governing the Commission, to Reorganization Plan No. 10 of 1950, and to Pub. L. 100-181, section 308(b), 101 Stat. 1249 (1987), the following automatic delegation of authority is made to provide continuity in the event of an emergency:

(1) In the absence or incapacity of the Chairman of the Commission during an emergency of the nature contemplated by this subpart, the authority of the Chairman to govern the affairs of the Commission and to act for the Commission, as provided for by laws and by delegations from the Commission, will pass to the surviving successor highest on the following list until such time as a duly appointed Chairman of the Commission is available:

- (i) The Commissioners in order of seniority.
- (ii) The General Counsel.
- (iii) The Executive Director.
- (iv) The Executive Assistant to the Chairman.
- (v) The Division Directors in order of seniority.
- (vi) The Regional Directors in order of seniority.
- (vii) The District Administrators in order of seniority.

(2) If and when a commissioner previously incapacitated or otherwise unavailable, again becomes available, he shall thereupon have all the powers and functions he would have had if he had not been incapacitated or otherwise unavailable.

(d) Actions taken for and in the name of the Commission as described above shall be effective immediately or as specified by the successor acting, but shall be subject to reconsideration by the Commissioners when the Commission has been reconstituted and is functioning.

(e) Except as may be determined otherwise by the Chairman or his successor, the duties of each head of a division or office of the Commission shall be discharged, in the absence or incapacity of such person during the emer-

gency conditions, by the available staff member next in line of succession. The head of each division or office shall designate the line of succession within his division or office. If no such designation has been made or the designatee is unavailable, such duties shall be assumed by the available subordinate officer or employee in the particular division or office who is highest in grade and in the event that there is more than one such person, in length of service with the Commission.

(Sec. 4, 48 Stat. 885, as amended; 15 U.S.C. 78d, sec. 1, 76 Stat. 394; 15 U.S.C. 78d-1, Reorganization Plan No. 10 of 1950; 3 CFR, 1949-1953 Comp., p. 1006)

[28 FR 6970, July 9, 1963, as amended at 28 FR 7672, July 27, 1963; 28 FR 14493, Dec. 31, 1963; 54 FR 40862, Oct. 4, 1989; 59 FR 5945, Feb. 9, 1994]

§ 200.204 Personnel, fiscal, and service functions.

In the absence of unavailability of the appropriate staff officer or his successor, authority to effect temporary appointments of such additional officers and employees, to classify and allocate positions to their proper grades, to issue travel orders, and to effect emergency purchases of supplies, equipment and services shall be exercised by the respective Regional Directors and District Administrators, their deputies, or staff in line of succession, as may be required for the discharge of the lawful duties of the respective offices.

(Sec. 4, 48 Stat. 885, as amended; 15 U.S.C. 78d, sec. 1, 76 Stat. 394; 15 U.S.C. 78d-1, Reorganization Plan No. 10 of 1950; 3 CFR, 1949-1953 Comp., p. 1006)

[28 FR 6970, July 9, 1963, as amended at 59 FR 5945, Feb. 9, 1994]

§ 200.205 Effect upon existing Commission organization, delegations, and rules.

Except as otherwise provided herein, all outstanding Commission organizational statements, delegations of authority, orders, rules and regulations shall remain in force and effect during emergency conditions, subject to all lawful requirements and such changes

§ 200.301

as may be authorized by or in the name of the Chairman or the Commission.

(Sec. 4, 48 Stat. 885, as amended; 15 U.S.C. 78d, sec. 1, 76 Stat. 394, 15 U.S.C. 78d-1. Reorganization Plan No. 10 of 1950; 3 CFR, 1949-1953 Comp., p. 1006)

Subpart H—Regulations Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Commission

AUTHORITY: 5 U.S.C. 552a(f), unless otherwise noted.

Section 200.312 is also issued under Pub. L. 93-579, sec. k, 5 U.S.C. 552a(k).

Section 200.313 is also issued under Pub. L. 93-579, sec. j, 5 U.S.C. 552a(j) and sec. k, 5 U.S.C. 552a(k).

SOURCE: 40 FR 44068, Sept. 24, 1975, unless otherwise noted.

§ 200.301 Purpose and scope.

(a) The Privacy Act of 1974, Pub. L. 93-579, 88 Stat. 1896, is based, in part, on the finding by Congress that “in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.” To achieve this objective the Act, among other things, provides, with some exceptions, that Federal agencies shall advise an individual upon request whether records maintained by the agency in a system of records pertain to the individual and shall grant the individual access to such records. The Act further provides that individuals may request amendments or corrections to records pertaining to them that are maintained by the agency, and that the agency shall either grant the requested amendments or set forth fully its reasons for refusing to do so.

(b) The Securities and Exchange Commission, pursuant to subsection (f) of the Privacy Act, adopts the following rules and procedures to implement the provisions of the Act summarized above, and other provisions of the Act. These rules and procedures are applicable to all requests for information, access or amendment to records pertaining to an individual that are contained

in any system of records that is maintained by the Commission.

§ 200.302 Definitions.

The following definitions shall apply for purposes of this subpart:

(a) The terms *individual*, *maintain*, *record*, *system of records*, and *routine use* are defined for purposes of these rules as they are defined in 5 U.S.C. 552a(a)(2), (a)(3), (a)(4), (a)(5), and (a)(6).

(b) *Commission* means the Securities and Exchange Commission.

§ 200.303 Times, places and requirements for requests pertaining to individual records in a record system and for the identification of individuals making requests for access to the records pertaining to them.

(a) *Place to make request.* Any request by an individual to be advised whether any system of records maintained by the Commission and named by the individual contains a record pertaining to him or her, or any request by an individual for access to a record pertaining to him or her that is contained in a system of records maintained by the Commission, shall be submitted by the individual in person during normal business hours at the Commission's Public Reference Room which is located at 450 Fifth Street, NW., Room 1024, Washington, DC, or by mail addressed to the Privacy Act Officer, Securities and Exchange Commission, Washington, DC 20549. All requests will be required to be put in writing and signed by the individual making the request. In the case of requests for access that are made by mail, the envelope should be clearly marked “Privacy Act Request.”

(1) *Information to be included in requests.* Each request by an individual concerning whether the Commission maintains in a system of records a record that pertains to him, or for access to any record pertaining to the individual that is maintained by the Commission in a system of records, shall include such information as will assist the Commission in identifying those records as to which the individual is seeking information or access. Where practicable, the individual should identify the system of records that is the subject of his request by reference to the Commission's notices of

systems of records, which are published in the FEDERAL REGISTER, as required by section (e)(4) of the Privacy Act, 5 U.S.C. 552a(e)(4). Where a system of records is compiled on the basis of a specific identification scheme, the individual should include in his request the identification number or other identifier assigned to him. In the event the individual does not know the specific identifier assigned to him, he shall provide other information, including his full name, address, date of birth and subject matter of the record, to aid in processing his request. If additional information is required before a request can be processed, the individual shall be so advised.

(2) *Verification of identity.* When the fact of the existence of a record is not required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, as amended, or when a record as to which access has been requested is not required to be disclosed under that Act, the individual seeking the information or requesting access to the record shall be required to verify his or her identity before access will be granted or information given. For this purpose, individuals shall appear at the Commission's Public Reference Room located at 450 Fifth Street, NW., Room 1024, Washington, DC, during normal business hours of 9 a.m. to 4:30 p.m. e.s.t., Monday through Friday, or at one of the Commission's Regional or District Offices. The addresses and business hours of those offices are listed below:

Northeast Regional Office. 7 World Trade Center, suite 1300, New York, NY 10048. Office hours—9 a.m. to 5:30 p.m. E.S.T.

Boston District Office—73 Tremont Street, Sixth Floor, suite 600, Boston, MA 02108. Office hours—9 a.m. to 5:30 p.m. E.S.T.

Philadelphia District Office—The Curtis Center, suite 1005 E., 601 Walnut Street, Philadelphia, PA 19106. Office hours—9 a.m. to 5:30 p.m. E.S.T.

Southeast Regional Office. 1401 Brickell Avenue, suite 200, Miami, FL 33131. Office hours—8:30 a.m. to 5 p.m. E.S.T.

Atlanta District Office—3475 Lenox Road, NE., suite 1000, Atlanta, GA 30326. Office hours—9 a.m. to 5:30 p.m. E.S.T.

Midwest Regional Office. 500 West Madison Street, suite 1400, Chicago, IL 60661. Office hours—8:45 a.m. to 5:15 p.m. C.S.T.

Central Regional Office. 1801 California Street, suite 4800, Denver, CO 80202. Office hours—8 a.m. to 4:30 p.m. C.S.T.

Fort Worth District Office—801 Cherry Street, 19th Floor, Fort Worth, TX 76102. Office hours—8:30 a.m. to 5 p.m. C.S.T.

Salt Lake District Office—500 Key Bank Tower, 50 S. Main Street, suite 500, Box 79, Salt Lake City, UT 84144. Office hours—8 a.m. to 4:30 p.m. M.S.T.

Pacific Regional Office. 5670 Wilshire Boulevard, 11th Floor, Los Angeles, CA 90036. Office hours 8:30 a.m. to 5 p.m. P.S.T.

San Francisco District Office—44 Montgomery Street, Suite 1100, San Francisco, CA 94104. Office hours—8:30 a.m. to 5 p.m. P.S.T.

None of the Commission's Offices are open on Saturday, Sunday or the following legal holidays: New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Columbus Day, Thanksgiving Day or Christmas Day.

(3) *Methods for verifying identity—appearance in person.* For the purpose of verifying his identity, an individual seeking information as to records pertaining to him or access to those records shall furnish documentation that may reasonably be relied on to establish the individual's identity. Such documentation might include a valid birth certificate, driver's license, employee or military identification card, or medicare card.

(4) *Method for verifying identity by mail.* Where an individual cannot appear at one of the Commission's Offices for the purpose of verifying his identity, he shall submit, along with the request for information or access, a signed and notarized statement attesting to his identity. Where access is being sought, the sworn statement shall include a representation that the records being sought pertain to the individual and a stipulation that the individual is aware that knowingly and willfully requesting or obtaining records pertaining to an individual from the Commission under false pretenses is a criminal offense.

(5) *Additional procedures for verifying identity.* When it appears appropriate, there may be made such other arrangements for the verification of identity as are reasonable under the circumstances and appear to be effective to prevent unauthorized disclosure of, or access to, individual records.

(b) *Acknowledgement of requests for information pertaining to individual records*

in a record system or for access to individual records. (1) Except where an immediate acknowledgement is given for requests made in person, the receipt of a request for information pertaining to individual records in a record system will be acknowledged within 10 days after the receipt of such request. Requests will be processed as promptly as possible and a response to such requests will be given within 30 days (excluding Saturdays, Sundays, and legal holidays) unless, within the 30 day period and for cause shown, the individual making the request is notified in writing that a longer period is necessary.

(2) When an individual appears in person at the Commission's Public Reference Room in Washington, DC, or at one of its Regional or District Offices to request access to records pertaining to him, and such individual provides the required information and verification of identity, the Commission's staff, if practicable, will indicate at that time whether it is likely that the individual will be given access to the records and, if so, when and under what circumstances such access will be given. In the case of requests received by mail, whenever practicable, acknowledgement of the receipt of the request will be given within 10 days after receipt (excluding Saturdays, Sundays, and legal holidays). The acknowledgement will indicate, if practicable, whether or not access likely will be granted and, if so, when and under what circumstances.

[40 FR 44068, Sept. 24, 1975, as amended at 41 FR 44698, Oct. 12, 1976; 47 FR 26819, June 22, 1982; 52 FR 2677, Jan. 26, 1987; 54 FR 40862, Oct. 4, 1989; 54 FR 50307, Dec. 5, 1989; 59 FR 5945, Feb. 9, 1994; 59 FR 12543, Mar. 17, 1994]

§ 200.304 Disclosure of requested records.

(a) *Initial review.* Requests by individuals for access to records pertaining to them will be referred to the Commission's Privacy Act Officer who initially will determine whether access will be granted. *Provided, however,* That a Director of a staff Division of the Commission or Office head, other than the General Counsel, whose zone of responsibility relates to the record requested (see 17 CFR 200.13 et seq.), may make a

determination that access is not lawfully required to be granted and should not be granted, in which case he, and not the Privacy Act Officer, shall make the required notification to the individual making the request.

(b) *Grant of request for access.* (1) If it is determined that a request for access to records pertaining to an individual will be granted, the individual will be advised by mail that access will be given at the designated Office of the Commission or a copy of the requested record will be provided by mail if the individual shall so indicate. Where the individual requests that copies of the record be mailed to him or requests copies of a record upon reviewing it at a Commission Office, the individual shall pay the cost of making the requested copies, as set forth in § 200.310 of this subpart.

(2) In granting access to an individual to a record pertaining to him, such steps shall be taken by the Commission's staff as are necessary to prevent the unauthorized disclosure at the same time of information pertaining to individuals other than the person making the request or of other information that does not pertain to the individual.

(c) *Denial of request for access.* If it is determined that access will not be granted, the individual making the request will be notified of that fact and given the reasons why access is being denied. The individual also will be advised (1) of his right to seek review by the General Counsel of the initial decision to deny access, in accordance with the procedures set forth in § 200.308 of this subpart; and (2) of his right ultimately to obtain judicial review pursuant to 5 U.S.C. 552a(g)(1)(A) of a final denial of access by the General Counsel.

(d) *Time for acting on requests for access.* Access to a record pertaining to an individual normally will be granted or denied within 30 days (excluding Saturdays, Sundays and legal holidays) after the receipt of the request for access unless the individual making the request is notified in writing within the 30 day period that, for good cause shown, a longer time is required. In such cases, the individual making the request shall be informed in writing of

the difficulties encountered and an indication shall be given as to when it is anticipated that access may be granted or denied.

(e) *Authorization to allow designated person to review and discuss records pertaining to another individual.* An individual who is granted access to records pertaining to him, and who appears at a Commission Office to review the records, may be accompanied by another person of his choosing. Where the records as to which access has been granted are not required to be disclosed under provisions of the Freedom of Information Act 5 U.S.C. 552, as amended, the individual requesting the records, before being granted access, shall execute a written statement, signed by him and the person accompanying him, which specifically authorizes the latter individual to review and discuss the records. If such authorization has not been given as described, the person who has accompanied the individual making the request will be excluded from any review or discussion of the records.

(f) *Exclusion for certain records.* Nothing contained in these rules shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(5 U.S.C. 552a(f); sec. 19, Securities Act of 1933, 48 Stat. 85, as amended; sec. 23, Securities Exchange Act of 1934, 48 Stat. 901, as amended; sec. 20, Public Utility Holding Company Act of 1935, 49 Stat. 833; sec. 319, Trust Indenture Act of 1939, 53 Stat. 1173; sec. 38, Investment Company Act of 1940, 54 Stat. 841; sec. 211, Investment Advisers Act of 1940, 54 Stat. 855 (15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11))

[40 FR 44068, Sept. 24, 1975, as amended at 49 FR 13866, Apr. 9, 1984]

§ 200.305 Special procedure: Medical records.

(a) *Statement of physician or mental health professional.* When an individual requests access to records pertaining to him that include medical and/or psychological information, the Commission, if it deems it necessary under the particular circumstances, may require the individual to submit with the request a signed statement by his physician or a mental health professional indicating that, in their opinion, disclosure of the requested records or infor-

mation directly to the individual will not have an adverse effect on the individual.

(b) *Designation of physician or mental health professional to receive records.* If the Commission believes, in good faith, that disclosure of medical and/or psychological information directly to an individual could have an adverse effect on that individual, the individual may be asked to designate in writing a physician or mental health professional to whom he would like the records to be disclosed, and disclosure that otherwise would be made to the individual will instead be made to the designated physician or mental health professional.

§ 200.306 Requests for amendment or correction of records.

(a) *Place to make requests.* A request by an individual to amend or correct records pertaining to him or her may be made in person during normal business hours at the Commission's Public Reference Room located at 450 Fifth Street, NW., Room 1024, Washington, DC, or by mail addressed to the Privacy Act Officer, Securities and Exchange Commission, Washington, DC 20549.

(1) *Information to be included in requests.* Each request to amend or correct a Commission record shall reasonably describe the record sought to be amended or corrected. Such description should include, for example, relevant names, dates and subject matter to permit the record to be located among the records maintained by the Commission. An individual who has requested that a record pertaining to him be amended or corrected will be advised promptly if the record cannot be located on the basis of the description given and that further identifying information is necessary before his request can be processed. An initial evaluation of a request presented in person will be made immediately to ensure that the request is complete and to indicate what, if any, additional information will be required. Verification of the individual's identity as set forth in § 200.303(a) (2), (3), (4) and (5) may also be required.

(2) *Basis for amendment or correction.* An individual requesting an amendment or correction to a record pertaining to him shall specify the substance of the amendment or correction and set forth facts and provide such materials that would support his contention that the record pertaining to him as maintained by the Commission is not accurate, timely or complete, or that the record is not necessary and relevant to accomplish a statutory purpose of the Commission as authorized by law or by Executive Order of the President.

(b) *Acknowledgement of requests for amendment or correction.* Receipt of a request to amend or correct a record pertaining to an individual normally will be acknowledged in writing within 10 days after such request has been received. When a request to amend or correct is made in person, the individual making the request will be given a written acknowledgement when the request is presented. The acknowledgement will describe the request received and indicate when it is anticipated that action will be taken on the request. No acknowledgement will be sent when the request for amendment or correction will be reviewed, and an initial decision made, within 10 days from the date the request is received.

[40 FR 44068, Sept. 24, 1975, as amended at 47 FR 26819, June 22, 1982]

§ 200.307 Review of requests for amendment or correction.

(a) *Initial review.* As in the case of requests for access, requests by individuals for amendment or correction to records pertaining to them will be referred to the Commission's Privacy Act Officer for an initial determination, except that such requests may be considered by a Division Director or Office Head (other than the General Counsel) as set forth in § 200.304(a) of this subpart.

(b) *Standards to be applied in reviewing requests.* In reviewing requests to amend or correct records, the Privacy Act Officer, or Division or Office head, will be guided by the criteria set forth in 5 U.S.C. 552a(e)(1), i.e., that records maintained by the Commission shall contain only such information as is necessary and relevant to accomplish a statutory purpose of the Commission

as required by statute or Executive Order of the President and that such information also be accurate, timely, and complete. These criteria will be applied whether the request is to add material to a record or to delete information from a record.

(c) *Time for acting on requests.* Initial review of a request by an individual to amend or correct a record pertaining to him shall be completed as promptly as is reasonably possible and normally within 30 days (excluding Saturdays, Sundays and legal holidays) from the date the request was received, unless unusual circumstances preclude completion of review within that time. If the anticipated completion date indicated in the acknowledgement cannot be met, the individual requesting the amendment will be advised in writing of the delay and the reasons therefor, and also advised when action is expected to be completed.

(d) *Grant of requests to amend or correct records.* If a request to amend or correct a record is granted in whole or in part, the Privacy Act Officer will: (1) Advise the individual making the request in writing of the extent to which it has been granted; (2) amend or correct the record accordingly; and (3) where an accounting of disclosures of the record has been kept pursuant to 5 U.S.C. 552a(c), advise all previous recipients of the record of the fact that the record has been amended or corrected and the substance of the amendment or correction.

(e) *Denial of requests to amend or correct records.* If an individual's request to amend or correct a record pertaining to him is denied in whole or in part, the Privacy Act Officer will:

(1) Promptly advise the individual making the request in writing of the extent to which the request has been denied;

(2) State the reasons for the denial of the request;

(3) Describe the procedures established by the Commission to obtain further review within the Commission of the request to amend or correct, including the name and address of the person to whom the appeal is to be addressed; and

(4) Inform the individual that the Privacy Act Officer will provide information and assistance to the individual in perfecting an appeal of the initial decision.

(5 U.S.C. 552a(f); sec. 19, Securities Act of 1933, 48 Stat. 85, as amended; sec. 23, Securities Exchange Act of 1934, 48 Stat. 901, as amended; sec. 20, Public Utility Holding Company Act of 1935, 49 Stat. 833; sec. 319, Trust Indenture Act of 1939, 53 Stat. 1173; sec. 38, Investment Company Act of 1940, 54 Stat. 841; sec. 211, Investment Advisers Act of 1940, 54 Stat. 855 (15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11))

[40 FR 44068, Sept. 24, 1975, as amended at 49 FR 13866, Apr. 9, 1984]

§ 200.308 Appeal of initial adverse agency determination as to access or as to amendment or correction.

(a) *Administrative review.* Any person who has been notified pursuant to § 200.304(c) that his request for access to records pertaining to him has been denied, or pursuant to Section 307(e) of this subpart that his request for amendment or correction has been denied in whole or in part, or who has received no response to a request for access or to amend within 30 days (excluding Saturdays, Sundays and legal holidays) after his request was received by the Commission's staff (or within such extended period as may be permitted in accordance with §§ 200.304(d) and 200.307(c) of this subpart), may appeal the adverse determination or failure to respond by applying for an order of the General Counsel determining and directing that access to the record be granted or that the record be amended or corrected in accordance with his request.

(1) The application shall be in writing and shall describe the record in issue and set forth the proposed amendment or correction and the reasons therefor.

(2) The application shall be delivered to the Securities and Exchange Commission, Public Reference Branch, Room 1024, 450 Fifth Street, NW., Washington, DC 20549, or by mail addressed to the Privacy Act Officer, Securities and Exchange Commission, Washington, DC 20549.

(3) The applicant, if he wishes, may state such facts and cite such legal or other authorities as he may consider

appropriate in support of his application.

(4) The General Counsel will make a determination with respect to any appeal within 30 days after the receipt of such appeal (excluding Saturdays, Sundays and legal holidays), unless for good cause shown, the General Counsel shall extend that period. If such an extension is made, the individual who is appealing shall be advised in writing of the extension, the reasons therefor, and the anticipated date when the appeal will be decided.

(5) In considering an appeal from a denial of a request to amend or correct a record, the General Counsel shall apply the same standards as set forth in § 200.307(b).

(6) If the General Counsel shall conclude that access should be granted, he or she shall issue an order granting access and instructing the Privacy Act Officer to comply with § 200.304(b).

(7) If the General Counsel shall conclude that the request to amend or correct the record should be granted in whole or in part, he or she shall issue an order granting the requested amendment or correction in whole or in part and instructing the Privacy Act Officer to comply with the requirements of § 200.307(d) of this subpart, to the extent applicable.

(8) If the General Counsel affirms the initial decision denying access, he or she shall issue an order denying access and advising the individual seeking access of (i) The order; (ii) the reasons for denying access; and (iii) the individual's right to obtain judicial review of the decision pursuant to 5 U.S.C. 552a(g)(1)(B).

(9) If the General Counsel determines that the decision of the Privacy Act Officer denying a request to amend or correct a record should be upheld, he or she shall issue an order denying the request and the individual shall be advised of

(i) The order refusing to amend or correct the record and the reasons therefor;

(ii) His right to file a concise statement setting forth his disagreement with the General Counsel's decision not to amend or correct the record;

(iii) The procedures for filing such a statement of disagreement with the General Counsel;

(iv) The fact that any such statement of disagreement will be made available to anyone to whom the record is disclosed, together with, if the General Counsel deems it appropriate, a brief statement setting forth the General Counsel's reasons for refusing to amend or correct;

(v) The fact that prior recipients of the record in issue will be provided with the statement of disagreement and the General Counsel's statement, if any, to the extent that an accounting of such disclosures has been maintained pursuant to 5 U.S.C. 552a(c); and

(vi) The individual's right to seek judicial review of the General Counsel's refusal to amend or correct, pursuant to 5 U.S.C. 552a(g)(1)(A).

(10) In appropriate cases the General Counsel may, in his or her sole and unfettered discretion, refer matters requiring administrative review of initial decisions to the Commission for determination and the issuance, where indicated, of orders.

(b) *Statement of disagreement.* As noted in paragraph (a)(9)(ii) of this section, an individual may file with the General Counsel a statement setting forth his disagreement with the General Counsel's denial of his request to amend or correct a record.

(1) Such statement of disagreement shall be delivered to the Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street NW., Room 1024, Washington, DC 20549, or mailed to the Privacy Act Officer, Securities and Exchange Commission, Washington, DC 20549, within 30 days after receipt by the individual of the General Counsel's order denying the amendment or correction. For good cause shown this period can be extended for a reasonable time.

(2) Such statement of disagreement shall concisely state the basis for the individual's agreement. Generally a statement should be no more than two pages in length, except an individual may submit a slightly longer statement if it is necessary to set forth his disagreement effectively. Unduly lengthy or irrelevant materials will be returned to the individual by the Gen-

eral Counsel for appropriate revisions before they become a permanent part of the individual's record.

(3) The record about which a statement of disagreement has been filed will clearly note which part of the record is disputed and the General Counsel will provide copies of the statement of disagreement and, if the General Counsel deems it appropriate, provide a concise statement of his or her reasons for refusing to amend or correct the record, to persons or other agencies to whom the record has been or will be disclosed.

(4) In appropriate cases, the General Counsel may, in his or her sole and unfettered discretion, refer matters concerning statements of disagreement to the Commission for disposition.

(5 U.S.C. 552a(f); sec. 19, Securities Act of 1933, 48 Stat. 85, as amended; sec. 23, Securities Exchange Act of 1934, 48 Stat. 901, as amended; sec. 20, Public Utility Holding Company Act of 1935, 49 Stat. 833; sec. 319, Trust Indenture Act of 1939, 53 Stat. 1173; sec. 38, Investment Company Act of 1940, 54 Stat. 841; sec. 211, Investment Advisers Act of 1940, 54 Stat. 855 (15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11))

[40 FR 44068, Sept. 24, 1975, as amended at 42 FR 40190, Aug. 9, 1977; 47 FR 26819, June 22, 1982; 49 FR 13866, Apr. 9, 1984]

§ 200.309 General provisions.

(a) *Extensions of time.* Pursuant to §§ 200.303(b), 200.304(d), 200.307(c) and 200.308(a)(4) of this subpart, the time within which a request for information, access or amendment by an individual with respect to records maintained by the Commission that pertain to him normally would be processed may be extended for good cause shown or because of unusual circumstances. As used in these rules, *good cause* and *unusual circumstances* shall include, but only to the extent reasonably necessary to the proper processing of a particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Office processing the request. Many records of the Commission are stored in Federal Records Centers in accordance with law—including many of the documents which have been on file with the Commission for

more than 2 years—and cannot be made available promptly. Other records may temporarily be located at a Regional or District Office of the Commission. Any person who has requested for personal examination a record stored at the Federal Records Center or temporarily located in a Regional or District Office of the Commission will be notified when the record will be made available to him.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which may be demanded in a single request. While every reasonable effort will be made fully to comply with each request as promptly as possible on a first-come, first-served basis, work done to search for, collect and appropriately examine records in response to a request for a large number of records will be contingent upon the availability of processing personnel in accordance with an equitable allocation of time to all members of the public who have requested or wish to request records.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components within the Commission having substantial subject-matter interest therein.

(b) *Effective date of action.* Whenever it is provided in this Subpart that an acknowledgement or response to a request will be given by specific times, deposit in the mails of such acknowledgement or response by that time, addressed to the person making the request, will be deemed full compliance.

(c) *Records in use by a member of the Commission or its staff.* Although every effort will be made to make a record in use by a member of the Commission or its staff available when requested, it may occasionally be necessary to delay making such a record available when doing so at the time the request is made would seriously interfere with

the work of the Commission or its staff.

(d) *Missing or lost records.* Any person who has requested a record or a copy of a record pertaining to him will be notified if the record sought cannot be found. If he so requests, he will be notified if the record subsequently is found.

(e) *Oral requests; misdirected written requests—(1) Telephone and other oral requests.* Before responding to any request by an individual for information concerning whether records maintained by the Commission in a system of records pertain to him or to any request for access to records by an individual, such request must be in writing and signed by the individual making the request. The General Counsel will not entertain any appeal from an alleged denial or failure to comply with an oral request. Any person who has orally requested information or access to records pertaining to him that he believes to have been improperly denied to him should resubmit his request in appropriate written form in order to obtain proper consideration and, if need be, administrative review.

(2) *Misdirected written requests.* The Commission cannot assure that a timely or satisfactory response will be given to written requests for information, access or amendment by an individual with respect to records pertaining to him that are directed to the Commission other than in a manner prescribed in §§ 200.303(a), 200.306(a), 200.308(a)(2), and 200.310 of this subpart. Any staff member who receives a written request for information, access or amendment should promptly forward the request to the Privacy Act Officer. Misdirected requests for records will be considered to have been received by the Commission only when they have been actually received by the Privacy Act Officer in cases under § 200.308(a)(2). The General Counsel will not entertain any appeal from an alleged denial or failure to comply with a misdirected request, unless it is clearly shown that

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the request was in fact received by the Privacy Act Officer.

(5 U.S.C. 552a(f); sec. 19, Securities Act of 1933, 48 Stat. 85, as amended; sec. 23, Securities Exchange Act of 1934, 48 Stat. 901, as amended; sec. 20, Public Utility Holding Company Act of 1935, 49 Stat. 833; sec. 319, Trust Indenture Act of 1939, 53 Stat. 1173; sec. 38, Investment Company Act of 1940, 54 Stat. 841; sec. 211, Investment Advisers Act of 1940, 54 Stat. 855 (15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11))

[40 FR 44068, Sept. 24, 1975, as amended at 49 FR 13867, Apr. 9, 1984; 59 FR 5945, Feb. 9, 1994]

§ 200.310 Fees.

(a) A request by an individual for copies of a record pertaining to him or her that is maintained by the Commission may be made in person during normal business hours at the Public Reference Room at 450 Fifth Street, NW., Room 1024, Washington, DC, or by mail addressed to the Privacy Act Officer, Securities and Exchange Commission, Washington, DC 20549. There will be no charge assessed to the individual for the Commission's expense involved in searching for or reviewing the record. Copies of the Commission's records will be provided by a commercial copier or by the Commission at rates established by a contract between the copier and the Commission. In addition, copying machines are provided for public reference facilities in the Commission's Washington, DC, New York and Chicago Offices.

(b) *Waiver or reduction of fees.* Whenever the Director of the Office of Consumer Affairs and Information Services determines that good cause exists to grant a request for reduction or waiver of fees for copying documents, he may reduce or waive any such fees.

(Pub. L. 87-592, 76 Stat. 394, 15 U.S.C. 78d-1, 78d-2; Pub. L. 93-502; 11 U.S.C. 901, 1109(a))

[42 FR 56727, Oct. 28, 1977, as amended at 47 FR 26819, June 22, 1982; 49 FR 12686, Mar. 30, 1984; 50 FR 50287, Dec. 10, 1985]

§ 200.311 Penalties.

Title 18 U.S.C. 1001 makes it a criminal offense, subject to a maximum fine of \$10,000, or imprisonment for not more than 5 years or both, to knowingly and willingly make or cause to be made any false or fraudulent statements

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or representations in any matter within the jurisdiction of any agency of the United States. 5 U.S.C. 552a(i) makes it a misdemeanor punishable by a fine of not more than \$5,000 for any person knowingly and willfully to request or obtain any record concerning an individual from the Commission under false pretenses. 5 U.S.C. 552a(i) (1) and (2) provide criminal penalties for certain violations of the Privacy Act by officers and employees of the Commission.

§ 200.312 Specific exemptions.

Pursuant to section (k) of the Privacy Act of 1974, the Chairman of the Securities and Exchange Commission, with the concurrence of the Commission, has deemed it necessary to promulgate the following exemptions to specified provisions of the Privacy Act:

(a) Pursuant to, and limited by 5 U.S.C. 552a(k)(2), the following systems of records maintained by the Commission shall be exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) and 17 CFR 200.303, 200.304, and 200.306, insofar as they contain investigatory materials compiled for law enforcement purposes:

- (1) Enforcement Files;
- (2) Litigation, Actions and Proceedings Bulletin;
- (3) Office of the General Counsel Working Files;
- (4) Office of the Chief Accountant Working Files;
- (5) Complaint processing System;
- (6) Investor Service Complaint Index;
- (7) Name-Relationship Index System; and
- (8) Rule 102(e) of the Commission's Rules of Practice—Appearing or Practicing Before the Commission.

(b) Pursuant to 5 U.S.C. 552a(k)(5), the systems of records containing the Commission's (1) Office of Personnel Code of Conduct and Employee Performance Files and (2) Personnel Security Files shall be exempt from sections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act, 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f), and 17 CFR 200.303, 200.304, and 200.306 insofar as they contain investigatory material compiled to determine an individual's suitability, eligibility, and qualifications

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for Federal civilian employment or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(Pub. L. 93-579, Sec. k, 5 U.S.C. 552a(k))

[40 FR 44073, Sept. 24, 1975, as amended at 52 FR 2677, Jan. 26, 1987; 54 FR 24332, June 7, 1989; 54 FR 46373, Nov. 3, 1989; 60 FR 32795, June 23, 1995]

§ 200.313 Inspector General exemptions.

(a) Pursuant to section (j) of the Privacy Act of 1974, the Chairman of the Securities and Exchange Commission, with the concurrence of the Commission, has deemed it necessary to promulgate the following exemptions to specified provisions of the Privacy Act:

(1) Pursuant to, and limited by 5 U.S.C. 552a(j)(2), the system of records maintained by the Office of Inspector General of the Commission that contains the Investigative Files shall be exempted from the provisions of 5 U.S.C. 552a, except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i), and 17 CFR 200.303, 200.304, 200.306, 200.307, 200.308, 200.309 and 200.310, insofar as the system contains information pertaining to criminal law enforcement investigations.

(2) [Reserved]

(b) Pursuant to section (k) of the Privacy Act of 1974, the Chairman of the Securities and Exchange Commission, with the concurrence of the Commission, has deemed it necessary to promulgate the following exemptions to specified provisions of the Privacy Act:

(1) Pursuant to, and limited by 5 U.S.C. 552a(k)(2), the system of records maintained by the Office of Inspector General of the Commission that contains the Investigative Files shall be exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) and 17 CFR 200.303, 200.304, and 200.306, insofar as it contains investigatory mate-

rials compiled for law enforcement purposes.

(2) [Reserved]

[55 FR 19872, May 14, 1990]

Subpart I—Regulations Pertaining to Public Observation of Commission Meetings

AUTHORITY: 5 U.S.C. 552b, unless otherwise noted. Section 200.410 also is issued under 29 U.S.C. 794.

SOURCE: 42 FR 14693, Mar. 16, 1977, unless otherwise noted.

§ 200.400 Open meetings.

Except as otherwise provided in this subpart, meetings of the Commission shall be open to public observation.

§ 200.401 Definitions.

As used in this subpart:

(a) *Meeting* means the joint deliberations of at least the number of individual members of the Securities and Exchange Commission required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include deliberations required or permitted by § 200.42 or § 200.43 (respecting seriatim and duty officer disposition of Commission business, respectively), or by §§ 200.403, 200.404, or 200.405 (respecting whether particular Commission deliberations shall be open or closed and related matters).

(b) *Portion of a meeting* means the consideration during a meeting of a particular topic or item separately identified in the notice of Commission meetings described in § 200.403.

(c) *Open*, when used in the context of a Commission meeting or a portion thereof, means that the public may attend and observe the deliberations of the Commission during such meeting or portion of a meeting, consistent with the provisions of § 200.410 (respecting decorum at meetings and other related matters).

(d) *Closed*, when used in the context of a Commission meeting or a portion thereof, means that the public may not attend or observe the deliberations of the Commission during such meeting or portion of a meeting.

(e) *Announce, and make publicly available*, when used in the context of the dissemination of information, mean, in addition to any specific method of publication described in this subpart, that a document containing the information in question will be posted for public inspection in, or adjacent to, the lobby of the Commission's headquarters offices, and will be available to the public through the Commission's Public Reference Section and the Commission's Office of Public Affairs, all in Washington, DC

(f) The term *likely to*, as used in § 200.402, illustrating the circumstances under which Commission meetings may be closed, and the circumstances in which information may be deleted from the notice of Commission meetings, means that it is more probable than not that the discussion of Commission business, or publication of information, reasonably could encompass matters which the Commission is authorized, by the Government in the Sunshine Act, Pub. L. 94-409, as implemented by this subpart, to consider or discuss at a closed meeting (or a closed portion of a meeting).

(g) The term *financial institution*, as used in § 200.402(a), authorizing the closure of certain Commission meetings, includes, but is not limited to, banks, savings and loan associations, credit unions, brokers and dealers in securities or commodities, exchanges dealing in securities or commodities, national securities associations, investment companies, investment advisers, securities industry self-regulatory organizations subject to 15 U.S.C. 78s, and institutional managers as defined in 15 U.S.C. 78m(f).

(h) The term *person* includes, but is not limited to, any corporation, partnership, company, association, joint stock corporation, business trust, unincorporated organization, government, political subdivision, agency, or instrumentality of a government.

[42 FR 14693, Mar. 16, 1977, as amended at 60 FR 17202, Apr. 5, 1995]

§ 200.402 Closed meetings.

(a) *Nonpublic matters.* Pursuant to the general or special procedures for closing Commission meetings, as set forth in § 200.404 or § 200.405, respectively, a

meeting, or any portion thereof, shall be closed to public observation where the Commission determines that such meeting, or a portion thereof, is likely to:

(1) Disclose matters specifically authorized under criteria established by an executive order to be kept secret in the interests of national defense or foreign policy, and in fact properly classified pursuant to such executive order.

(2) Relate solely to the internal personnel rules and practices of the Commission or any other agency, including, but not limited to, discussion concerning:

(i) Operation rules, guidelines, and manuals of procedure for investigators, attorneys, accountants, and other employees, other than those rules, guidelines, and manuals which establish legal requirements to which members of the public are expected to conform; or

(ii) Hiring, termination, promotion, discipline, compensation, or reward of any Commission employee or member, the existence, investigation, or disposition of a complaint against any Commission employee or member, the physical or mental condition of any Commission employee or member, the handling of strictly internal matters, which would tend to infringe on the privacy of the staff or members of the Commission, or similar subjects.

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, including, but not limited to:

(i) Information contained in letters of comment in connection with registration statements, applications for registration or other material filed with the Commission, replies thereto, and related material which is deemed to have been submitted to the Commission in confidence or to be confidential

at the instance of the registrant or person who has filed such material unless the contrary clearly appears; and

(ii) Information contained in any document submitted to or required to be filed with the Commission where the Commission has undertaken formally or informally to receive such submission or filing for its use or the use of specified persons only, such as preliminary proxy material filed pursuant to Rule 14a-6 under the Securities Exchange Act (17 CFR 240.14a-6), reports filed pursuant to Rule 316(a) under the Securities Act (17 CFR 230.316(a)), agreements filed pursuant to Rule 15c3-1 under the Securities Exchange Act, 17 CFR 240.15c3-1, schedules filed pursuant to Part I of Form X-17A-5 (17 CFR 249.617) in accordance with Rule 17a-5(b)(3) under the Securities Exchange Act (17 CFR 240.17a-5(b)(3)), statements filed pursuant to Rule 17a-5(k)(1) under the Securities Exchange Act (17 CFR 240.17a-5(k)(1)), confidential reports filed pursuant to Rules 17a-9, 17a-10, 17a-12 and 17a-16 under the Securities Exchange Act (17 CFR 240.17a-9, 240.17a-10, 240.17a-12, and 240.17a-16), and any information filed with the Commission and confidential pursuant to section 45 of the Investment Company Act of 1940, 15 U.S.C. 80a-44, or Rule 45a-1 thereunder (17 CFR 270.45a-1); and

(iii) Information contained in reports, summaries, analyses, letters, of memoranda arising out of, in anticipation of, or in connection with, an examination or inspection of the books and records of any person or any other investigation.

(5) Involve accusing any person of a crime, or formally censuring any person, including, but not limited to, consideration of whether to:

(i) Institute, continue, or conclude administrative proceedings or any formal or informal investigation or inquiry, whether public or nonpublic, against or involving any person, alleging a violation of any provision of the federal securities laws, or the rules and regulations thereunder, or any other statute or rule a violation of which is punishable as a crime; or

(ii) Commence, participate in, or terminate judicial proceedings alleging a violation of any provision of the fed-

eral securities laws, or the rules and regulations thereunder, or any other statute or rule a violation of which is punishable as a crime; or

(iii) Issue a report or statement discussing the conduct of any person and the relationship of that conduct to possible violations of any provision of the federal securities laws, or the rules and regulations thereunder, or any other statute or rule a violation of which is punishable as a crime; or

(iv) Transmit, or disclose, with or without recommendation, any Commission memorandum, file, document, or record to the Department of Justice, a United States Attorney, any federal, state, local, or foreign governmental authority or foreign securities authority, any professional association, or any securities industry self-regulatory organization, in order that the recipient may consider the institution of proceedings against any person or the taking of any action that might involve accusing any person of a crime or formally censuring any person; or

(v) Seek from, act upon, or act jointly with respect to, any information, file, document, or record where such action could lead to accusing any person of a crime or formally censuring any person by any entity described in paragraph (a)(5)(iv) of this section.

(6) Disclose information of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

(7)(i) Disclose investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, to the extent that the production of such records would:

(A) Interfere with enforcement activities undertaken, or likely to be undertaken, by the Commission or the Department of Justice, or any United States Attorney, or any Federal, State, local, or foreign governmental authority or foreign securities authority, any professional association, or any securities industry self-regulatory organization;

(B) Deprive a person of a right to a fair trial or an impartial adjudication;

(C) Constitute an unwarranted invasion of personal privacy;

(D) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(E) Disclose investigative techniques and procedures; or

(F) Endanger the life or physical safety of law enforcement personnel.

(ii) The term *investigatory records* includes, but is not limited to, all documents, records, transcripts, evidentiary materials of any nature, correspondence, related memoranda, or work product concerning any examination, any investigation (whether formal or informal), or any related litigation, which pertains to, or may disclose, the possible violation by any person of any provision of any statute, rule, or regulation administered by the Commission, by any other Federal, State, local, or foreign governmental authority or foreign securities authority, by any professional association, or by any securities industry self-regulatory organization. The term *investigatory records* also includes all written communications from, or to, any person complaining or otherwise furnishing information respecting such possible violations, as well as all correspondence or memoranda in connection with such complaints or information.

(8) Disclose information contained in, or related to, any examination, operating, or condition report prepared by, on behalf of, or for the use of, the Commission, any other federal, state, local, or foreign governmental authority or foreign securities authority, or any securities industry self-regulatory organization, responsible for the regulation or supervision of financial institutions.

(9) Disclose information the premature disclosure of which would be likely to

(i)(A) Lead to significant financial speculation in currencies, securities, or commodities, including, but not limited to, discussions concerning the proposed or continued suspension of trading in any security, or the possible investigation of, or institution of activ-

ity concerning, any person with respect to conduct involving or affecting publicly-traded securities, or

(B) Significantly endanger the stability of any financial institution; or

(ii) Significantly frustrate the implementation, or the proposed implementation, of any action by the Commission, any other federal, state, local or foreign governmental authority, any foreign securities authority, or any securities industry self-regulatory organization: *Provided, however,* That this paragraph (a)(9)(ii) shall not apply in any instance where the Commission has already disclosed to the public the precise content or nature of its proposed action, or where the Commission is expressly required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal.

(10) Specifically concern the Commission's consideration of, or its actual: Issuance of a subpoena (whether by the Commission directly or by any Commission employee or member); participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration; or initiation, conduct, or disposition of a particular case of formal adjudication pursuant to the procedures in 5 U.S.C. 554, or otherwise involving a determination on the record after opportunity for a hearing; including, but not limited to, matters involving

(i) The institution, prosecution, adjudication, dismissal, settlement, or amendment of any administrative proceeding, whether public or nonpublic; or

(ii) The commencement, settlement, defense, or prosecution of any judicial proceeding to which the Commission, or any one or more of its members or employees, is or may become a party; or

(iii) The commencement, conduct, termination, status, or disposition of any inquiry, investigation, or proceedings to which the power to issue subpoenas is, or may become, attendant; or

(iv) The discharge of the Commission's responsibilities involving litigation under any statute concerning the subject of bankruptcy; or

(v) The participation by the Commission (or any employee or member thereof) in, or involvement with, any civil judicial proceeding or any administrative proceeding, whether as a party, as amicus curiae, or otherwise; or

(vi) The disposition of any application for a Commission order of any nature where the issuance of such an order would involve a determination on the record after opportunity for a hearing.

(b) *Interpretation of exemptions.* The examples set forth §200.402(a)(1) through (10) of particular matters which may be the subject of closed Commission deliberations are to be construed as illustrative, but not as exhaustive, of the scope of those exemptions.

(c) *Public interest determination.* Notwithstanding the provisions of §200.402(a) (concerning the closing of Commission meetings), but subject to the provisions of §200.409(a) (respecting the right of certain persons to petition for the closing of a Commission meeting), the Commission may conduct any meeting or portion of a meeting in public where the Commission determines, in its discretion, that the public interest renders it appropriate to open such a meeting.

(d) *Nonpublic matter in announcements.* The Commission may delete from the notice of Commission meetings described in §200.403, from the announcements concerning closed meetings described in §§200.404(b) and 200.405(c), and from the General Counsel's certification described in §200.406, any information or description the publication of which would be likely to disclose matters of the nature described in §200.402(a) (concerning the closing of Commission meetings).

(Pub. L. 94-409, 90 Stat. 1241)

[42 FR 14693, Mar. 16, 1977; 47 FR 37077, Aug. 25, 1982, as amended at 54 FR 24332, June 7, 1989]

§200.403 Notice of Commission meetings.

(a) *Content of notice.* (1) In the case of open meetings, or meetings closed pursuant to the procedures specified in §200.404, the Commission shall an-

nounce the items to be considered. For each such item, the announcement shall include:

(i) A brief description of the generic or precise subject matter to be discussed;

(ii) The date, place, and approximate time at which the Commission will consider the matter;

(iii) Whether the meeting, or the various portions thereof, shall be open or closed; and

(iv) The name and telephone number of the Commission official designated to respond to requests for information concerning the meeting at which the matter is to be considered.

(2) Every announcement of a Commission meeting described in this subsection, or any amended announcement described in paragraph (c), shall be transmitted to the FEDERAL REGISTER for publication.

(b) *Time of notice.* The announcement of Commission meetings referred to in paragraph (a) shall be made publicly available (and submitted immediately thereafter to the FEDERAL REGISTER for publication) at least one week prior to the consideration of any item listed therein, except where a majority of the members of the Commission determine, by a recorded vote, that Commission business requires earlier consideration of the matter. In the event of such a determination, the announcement shall be made publicly available (and submitted to the FEDERAL REGISTER) at the earliest practicable time.

(c) *Amendments to notice.* (1)(i) The time or place of a meeting may be changed following any public announcement that may be required by paragraph (a). In the event of such action, the Commission shall announce the change at the earliest practicable time.

(ii) The subject matter of a meeting, or the determination of the Commission to open or close a meeting (or a portion of a meeting), may be changed following any public announcement that may be required by paragraph (a), if (A) a majority of the entire membership of the Commission determines, by a recorded vote, that Commission business so requires and that no earlier announcement of the change was possible; and (B) the Commission publicly

announces such change and the vote of each member upon such change at the earliest practicable time.

(2) Notwithstanding the provisions of this paragraph (c), matters which have been announced for Commission consideration may be deleted, or continued in whole or in part to the next scheduled Commission meeting, without notice.

(d) *Notice of meetings closed pursuant to special procedure.* In the case of meetings closed pursuant to the special procedures set forth in §200.405, the Commission shall make publicly available, in whole or in summary form,

(1) A brief description of the general subject matter considered or to be considered, and

(2) The date, place, and approximate time at which the Commission will, or did, consider the matter. The announcement described in this subsection shall be made publicly available at the earliest practicable time, and may be combined, in whole or in part, with the announcement described in paragraph (a).

NOTE: The Commission intends, to the extent convenient, to adhere to the following schedule in organizing its weekly agenda: Closed meetings to consider matters concerning the enforcement of the federal securities laws and the conduct of related investigations will generally be held on Tuesdays and on Thursday afternoons. An open meeting will generally be held each Thursday morning to consider matters of any appropriate nature. On Wednesdays, either open or closed meetings, or both, will generally be held according to the requirements of the Commission's agenda for the week in question. Normally, no meetings will be scheduled on Mondays, Fridays, Saturdays, Sundays, or legal holidays.

The foregoing tentative general schedule is set forth for the guidance of the public, but is not, in any event, binding upon the Commission. In every case, the scheduling of Commission meetings shall be determined by the demands of Commission business, consistent with the requirements of this subpart I. When feasible, the Commission will endeavor to announce the subject matter of all then-contemplated open meetings during a particular month at least one week prior to the commencement of that month.

When and if convenient after the conclusion of a closed Commission meeting, the Commission will endeavor to make publicly available a notice describing (subject to the provision in §200.402(d) regarding nonpublic matter in announcements) the items consid-

ered at that meeting and any action taken thereon.

§200.404 General procedure for determination to close meeting.

(a) *Action to close meeting.* Action to close a meeting pursuant to §200.402(a) or (c) shall be taken only upon a vote of a majority of the entire membership of the Commission. A separate vote of the Commission members shall be taken with respect to each Commission meeting a portion or portions of which are proposed to be closed to the public pursuant to §200.402(a), or with respect to any information which is proposed to be withheld under §200.402(d); *Provided, however,* That a single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed, or with respect to any information concerning such series of meetings, so long as each meeting in such series relates to the same matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Commission member participating in such vote shall be recorded and no proxies shall be allowed.

(b) *Announcement of action to close meeting.* Within one day of any vote pursuant to paragraph (a) of this section or §200.409(a) (relating to review of Commission determinations to open a meeting), the Commission shall make publicly available:

(1) A written record reflecting the vote of each participating member of the Commission on the question; and

(2) In the case of a meeting or portion thereof to be closed to the public, a written explanation of the Commission's action closing the meeting or a portion thereof, together with a list describing generically or specifically the persons expected to attend the meeting and their affiliation; and

(3) For every closed meeting, the certification executed by the Commission's General Counsel as described in §200.406.

§200.405 Special procedure for determination to close meeting.

(a) *Finding.* Based, in part, on a review of several months of its meetings, as well as the legislative history of the Sunshine Act, the Commission finds

that a majority of its meetings may properly be closed to the public pursuant to §200.402(a) (4), (8), (9)(i), or (10), or any combination thereof.

(b) *Action to close meeting.* The Commission may, by recorded vote of a majority of its members at the commencement of any meeting or portion thereof, determine to close any meeting or a portion thereof properly subject to being closed pursuant to §200.402(a) (4), (8), (9)(i), or (10), or any combination thereof. The procedure described in this rule may be utilized notwithstanding the fact that a meeting or portion thereof properly subject to being closed pursuant to §200.402(a) (4), (8), (9)(i), or (10), or any combination thereof, could also be closed pursuant to §200.402(a) (1), (2), (3), (5), (6), (7), or (9)(ii), or any combination thereof.

(c) *Announcement of action to close meeting.* In the case of a meeting or a portion of a meeting closed pursuant to this rule, as soon as practicable the Commission shall make publicly available:

(1) A written record reflecting the vote of each participating member of the Commission to close the meeting; and

(2) The certification described in §200.406, executed by the Commission's General Counsel.

§200.406 Certification by the General Counsel.

For every Commission meeting closed pursuant to §200.402(a) (1) through (10), the General Counsel of the Commission (or, in his or her absence, the attorney designated by General Counsel pursuant to §200.21) shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision.

§200.407 Transcripts, minutes, and other documents concerning closed Commission meetings.

(a) *Record of closed meetings.* Except as provided in §200.407(b), the Commission's Secretary shall prepare a complete transcript or electronic recording adequate to record fully the proceedings of each closed meeting, or closed portion of a meeting.

(b) *Minutes of closed meetings.* In the case of a meeting, or portion of a meeting, closed to the public pursuant to §200.402(a) (8), (9)(i), or (10), the Secretary may, in his or her discretion or at the direction of the Commission, prepare either the transcript or recording described in §200.407(a), or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each participating Commission member on the question). All documents specifically considered by the Commission in connection with any action shall be identified in such minutes are maintained.

(c) *Retention of certificate and statement.* The Secretary shall retain a copy of every certification executed by the General Counsel pursuant to §200.406, together with a statement from the presiding officer of the meeting, or portion of a meeting to which the certification applies, setting forth the time and place of the meeting, and the persons present.

(d) *Minute Record.* Nothing herein shall affect the provisions of §§200.13a and 200.40 requiring the Secretary to prepare and maintain a Minute Record reflecting the official actions of the Commission.

§200.408 Public access to transcripts and minutes of closed Commission meetings; record retention.

(a) *Public access to record.* Within twenty days (excluding Saturdays, Sundays, and legal holidays) of the receipt by the Commission's Freedom of Information Act Officer of a written request, or within such extended period as may be agreeable to the person making the request, the Secretary shall make available for inspection by any person in the Commission's Public Reference Room, the transcript, electronic recording, or minutes (as required by §200.407 (a) or (b)) of the discussion of any item on the agenda, except for such item or items as the Freedom of Information Act Officer determines to involve matters which may be withheld under §200.402 or otherwise. Copies of

such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication, as set forth in § 200.80e, and, if a transcript is prepared, the actual cost of such transcription.

(b) *Review of deletion from record.* Any person who has been notified that the Freedom of Information Act Officer has determined to withhold any transcript, recording, or minute, or portion thereof, which was the subject of a request for access pursuant to § 200.402(a), or any person who has not received a response to his or her own request within the 20 days specified in § 200.408(a), may appeal the adverse determination or failure to respond by applying for an order of the Commission determining and directing that the transcript, recording or minute, or deleted portion thereof, be made available. Such application shall be in writing and should be directed to the Secretary, Securities and Exchange Commission, Washington, DC 20549. The applicant shall state such facts and cite such legal or other authorities as the applicant may consider appropriate. The Commission shall make a determination with respect to any appeal pursuant to this subsection within 20 days (excepting Saturdays, Sundays and legal public holidays) after the receipt of such appeal, or within such extended period as may be agreeable to the person making the request. The Commission may determine to withhold any record that is exempt from disclosure pursuant to § 200.402(a), although it may disclose a record, even if exempt, if, in its discretion, it determines it to be appropriate to do so.

(c) *Retention of record.* The Commission, by its Secretary, shall retain a complete verbatim copy of the transcript, or a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Commission proceeding with respect to which the meeting or portion was held, whichever occurs later.

§ 200.409 Administrative appeals.

(a) *Review of determination to open meeting.* Following any announcement stating that the Commission intends to open a meeting or a portion thereof, any person whose interests may be directly and substantially affected by the disposition of the matter to be discussed at such meeting may make a request, directed to the Commission's Secretary, that the meeting, or relevant portion thereof, be closed pursuant to § 200.402(a) (5), (6), or (7). The Secretary shall circulate such a request to the members of the Commission, along with a supporting statement provided by the requestor setting forth the requestor's interest in the matter and the reasons why the requestor believes that the meeting (or portion thereof) should be closed, and the Commission, upon the request of any one of its members, shall vote by recorded vote on whether to close such meeting or portion.

(b) *Review of determination to close meeting.* Following any announcement that the Commission intends to close a meeting or a portion thereof, any person may make written or telegraphic request, directed to the Commission's Secretary, that the meeting or a portion thereof be open. Such a request shall set forth the requestor's interest in the matter and the reasons why the requestor believes that the meeting (or a portion thereof) should be open to the public. The Secretary shall circulate such a request and supporting statement to the members of the Commission, and the Commission, upon the request of any one of its members, shall vote whether to open such a meeting or a portion thereof.

§ 200.410 Miscellaneous.

(a) *Unauthorized activities; maintenance of decorum.* Nothing in this subpart shall authorize any member of the public to be heard at, or otherwise participate in, any Commission meeting, or to photograph or record by videotape or similar device any Commission meeting or portion thereof. The Commission may exclude any person from attendance at any meeting whenever necessary to preserve decorum, or where appropriate or necessary for

health or safety reasons, or where necessary to terminate behavior unauthorized by this paragraph (a). Any person desiring to sound-record an open Commission meeting shall notify the Commission's Secretary of his intention to do so at least 48 hours in advance of the meeting in question. Any person desiring to photograph or videotape the Commission's proceedings may apply to the Secretary for permission to do so at least 48 hours in advance of the meeting in question. The Commission's determination to permit photography or videotaping at any meeting is confined to its exclusive discretion, and will be granted only if such activities will not result in undue disruption of Commission proceedings.

(b) *Suspension of open meeting.* Subject to the satisfaction of any procedural requirements which may be required by this subpart, nothing in this subpart shall preclude the Commission from directing that the room be cleared of spectators, temporarily or permanently, whenever it appears that the discussion during an open Commission meeting is likely to involve any matter described in §200.402(a) (respecting closed meetings).

(c) *Access to Commission documents.* Except as expressly provided, nothing in this subpart shall authorize any person to obtain access to any document not otherwise available to the public or not required to be disclosed pursuant to subpart D. Access to documents considered or mentioned at Commission meetings may only be obtained subject to the procedures set forth in, and the provisions of, subpart D.

(d) *Access to public meetings.* Any member of the public who plans to attend a public meeting of the Commission, and who requires an auxiliary aid such as a sign language interpreter, should contact the Commission's Selective Placement Coordinator, Office of Personnel at (202) 272-7065 or TDD number (202) 272-2552, prior to the meeting to make the necessary arrangements. The Selective Placement Coordinator will take all reasonable steps to accommodate requests made in advance of the scheduled meeting date.

[42 FR 14693, Mar. 16, 1977, as amended at 44 FR 32366, June 6, 1979; 55 FR 10235, Mar. 20, 1990]

Subpart J—Classification and Declassification of National Security Information and Material

AUTHORITY: Sec. 19, Securities Act of 1933, as amended, 48 Stat. 84, 15 U.S.C. 77s. E.O. 12356, 47 FR 14874, Apr. 6, 1982. Information Security Oversight Office Directive No. 1 (47 FR 27836, June 25, 1982).

SOURCE: 44 FR 65737, Nov. 15, 1979, unless otherwise noted.

§ 200.500 Purpose.

This part establishes general policies and procedures for the classification, declassification and safeguarding of national security information which is generated, processed and/or stored by the Commission, and supplements Executive Order 12356, April 6, 1982 (47 FR 14874), and Information Security Oversight Office Directive No. 1, June 25, 1982 (47 FR 27836).

[47 FR 47236, Oct. 25, 1982]

§ 200.501 Applicability.

This part applies to the handling of, and public access to, national security information and classified documents in the Commission's possession. Such documents no longer in the Commission's possession will be handled by the agency having possession, or in accordance with guidelines developed in consultation with the Archivist.

§ 200.502 Definition.

As used in this part: *Foreign government information* means either (a) information provided to the United States by a foreign government or governments, an international organization of governments, or any element thereof with the expectation, express or implied, that the information, the source of the information, or both, are to be held in confidence, or (b) information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments or an international organization of governments or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.

[47 FR 47236, Oct. 25, 1982]

§ 200.503 Senior agency official.

The Executive Director of the Commission is designated the senior agency official responsible for conducting an oversight program to ensure effective implementation of Executive Order 12356. Any complaints or suggestions regarding the Commission's information security program should be directed to the Office of the Executive Director, Securities and Exchange Commission, Attn: Information Security Program, 450 5th Street, NW., Washington, DC 20549.

(a) The Deputy Executive Director is the Senior Agency Official for purposes of the Paperwork Reduction Act of 1980. In this capacity, the Deputy Executive Director will carry out all responsibilities required by the Act (Pub. L. 96-511, 3506(b)), as well as serving as *Agency Clearance Officer* for purposes of the publication of notices in the FEDERAL REGISTER.

(b) [Reserved]

(11 U.S.C. 901, 1109(a))

[47 FR 47236, Oct. 25, 1982, as amended at 49 FR 12686, Mar. 30, 1984; 51 FR 5315, Feb. 13, 1986]

§ 200.504 Oversight Committee.

An Oversight Committee is established, under the chairmanship of the Executive Director, with the following responsibilities:

(a) Establish a security education program to familiarize Commission and other personnel who have access to classified information with the provisions of Executive Order 12065, and encourage Commission personnel to challenge those classification decisions they believe to be improper.

(b) Establish controls to insure that classified information is used, processed, stored, reproduced, and transitted only under conditions that will provide adequate protection and prevent access by unauthorized persons.

(c) Establish procedures which require that a demonstrable need, under section 4-1 of Executive Order 12065, for access to classified information be established before administrative clearance procedures are initiated, as well as other appropriate procedures to pre-

vent unnecessary access to classified information.

(d) Act on all suggestions and complaints concerning Commission administration of its information security program.

(e) Establish procedures within the Commission to insure the orderly and effective referral of requests for declassification of documents in the Commission's possession.

(f) Review on an annual basis all practices for safeguarding information and to eliminate those practices which are duplicative or unnecessary.

(g) Recommend to the Chairman of the Commission appropriate administrative action to correct abuse or violation of any provision of Executive Order 12356.

(h) Consider and decide other questions concerning classification and declassification that may be brought before it.

(i) Develop special contingency plans for the protection of classified information used in or near hostile or potentially hostile areas.

(j) Promptly notify the Director of the Information Security Oversight Office whenever an officer or employee of the United States Government or its contractors, licensees or grantees knowingly, willfully or negligently (1) discloses to unauthorized persons information properly classified under Executive Order 12356 or predecessor orders or (2) classifies or continues the classification of information in violation of Executive Order 12356 or predecessor orders.

[44 FR 65737, Nov. 15, 1979, as amended at 47 FR 47236, Oct. 25, 1982; 51 FR 5315, Feb. 13, 1986]

§ 200.505 Original classification.

(a) No Commission Member or employee has the authority to classify any information on an original basis.

(b) If a Commission employee originates information that appears to require classification, the employee shall immediately notify the Secretary and protect the information accordingly.

(c) If the Executive Director believes the information warrants classification, it shall be sent to an agency with original classification authority over

the subject matter, or to the information Security Oversight Office, for determination.

[44 FR 65737, Nov. 15, 1979, as amended at 51 FR 5315, Feb. 13, 1986]

§ 200.506 Derivative classification.

Any document that includes paraphrases, restatements, or summaries of, or incorporates in new form, information that is already classified shall be assigned the same level of classification as the source; if, however, the basic information appears to have been so changed that no classification, or a lower classification than originally assigned, should be used, the appropriate official of the originating agency or office of origin who has the authority to upgrade, downgrade or declassify the information must be consulted prior to assigning a different classification to the information.

[47 FR 47236, Oct. 25, 1982]

§ 200.507 Declassification dates on derivative documents.

(a) A document that derives its classification from information classified under Executive Order 12356 of predecessor orders shall be marked with the date or event assigned to that source information for its automatic declassification or for review of its continued need for classification.

(b) A derivative document that derives its classification from the approved use of the classification guide of another agency shall bear the declassification date required by the provisions of that classification guide.

[47 FR 47236, Oct. 25, 1982]

§ 200.508 Requests for mandatory review for declassification.

(a) Requests for mandatory review of a Commission document for declassification may be made by any United States citizen or permanent resident alien, including Commission employees, or a Federal agency, or a State or local government. The request shall be in writing and shall be sent to the Office of the Executive Director, Attn: Mandatory Review Request, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549.

(b) The request shall describe the material sufficiently to enable the Commission to locate it. Requests with insufficient description of the material will be returned to the requester for further information.

(c) Within 5 days of receiving a request for declassification, the Commission shall acknowledge its receipt. If the document was derivatively classified by the Commission or originally classified by another agency, the request and the document shall be forwarded promptly to the agency with original classification authority together with the Commission's recommendation to withhold any of the information where appropriate. The requester shall be notified of the referral.

(d) If the request requires the provision of services by the Commission, fair and equitable fees may be charged under title 5 of the Independent Offices Appropriation Act, 65 Stat. 290, 31 U.S.C. 483a.

[44 FR 65737, Nov. 15, 1979, as amended at 47 FR 47237, Oct. 25, 1982; 51 FR 5315, Feb. 13, 1986]

§ 200.509 Challenge to classification by Commission employees.

Commission employees who have reasonable cause to believe that information is classified unnecessarily, improperly, or for an inappropriate period of time, may challenge those classification decisions through mandatory review or other appropriate procedures as established by the Oversight Committee. Commission employees who challenge classification decisions may request that their identity not be disclosed.

§ 200.510 Access by historical researchers.

(a) Persons outside the executive branch performing historical research may have access to information over which the Commission has classification jurisdiction for the period requested (but not longer than 2 years unless renewed for an additional period of less than 2 years) if the Executive Director determines in writing that access to the information will be consistent with the interests of national security.

(b) The person seeking access to classified information must agree in writing:

- (1) To be subject to a national agency check;
- (2) To protect the classified information in accordance with the provisions of Executive Order 12356; and
- (3) Not to publish or otherwise reveal to unauthorized persons any classified information.

[44 FR 65737, Nov. 15, 1979, as amended at 47 FR 47237, Oct. 25, 1982; 51 FR 5315, Feb. 13, 1986]

§ 200.511 Access by former Presidential appointees.

(a) Former Commission Members appointed by the President may have access to classified information or documents over which the Commission has jurisdiction that they originated, reviewed, signed, or received while in public office, if the Executive Director determines in writing that access to the information will be consistent with the interest of nation security.

(b) The person seeking access to classified information must agree in writing:

- (1) To be subject to a national agency check;
- (2) To protect the classified information in accordance with the provisions of Executive Order 12356; and
- (3) Not to publish or otherwise reveal to unauthorized persons any classified information.

[44 FR 65737, Nov. 15, 1979, as amended at 47 FR 47237, Oct. 25, 1982; 51 FR 5315, Feb. 13, 1986]

Subpart K—Regulations Pertaining to the Protection of the Environment

AUTHORITY: 15 U.S.C. 78w(a)(2).

SOURCE: 44 FR 41177, July 16, 1979, unless otherwise noted.

§ 200.550 Purpose.

This subpart sets forth the procedures the Commission will follow to ensure compliance with the goals of the National Environmental Policy Act (NEPA) and with the procedures required by NEPA in the event that the

Commission should take action subject to such procedural requirements.

§ 200.551 Applicability.

(a) Compliance with the procedures set forth in §§ 200.552 through 200.554 shall be appropriate where Commission action taken with respect to security transactions subject to sections 6(b) and 7 of the Public Utility Holding Company Act of 1935 and acquisitions subject to sections 9 and 10 of that Act involves major Federal action significantly affecting the quality of the human environment.

(b) In addition to the foregoing, in the event of extraordinary circumstances in which a Commission action not specified in paragraph (a) of this section may involve major Federal action significantly affecting the quality of the human environment, the Commission shall follow the procedures set forth in §§ 200.552 through 200.554, unless doing so would be inconsistent with its statutory authority under the Federal securities laws.

§ 200.552 NEPA planning.

Where it is reasonably foreseeable by the Commission that it may be required to act on a matter specified in § 200.551 and that matter is likely to involve major Federal action significantly affecting the quality of the human environment, the Commission shall:

(a) Advise the relevant persons as to information respecting the environment, if any, which may later be required to be submitted for Commission consideration should Commission action become necessary;

(b) Consult on any environmental factors involved with individuals, organizations, and state and local authorities interested in the planned action; and

(c) Begin implementing the procedures set forth in §§ 200.553 and 200.554 as soon as possible, *Provided*, That such procedures are not inconsistent with the Commission's authority under the Federal securities laws.

§ 200.553 Draft, final and supplemental impact statements.

If the Commission determines that the requirements of section 102(2)(C) of

NEPA for preparation of an environmental impact statement are applicable in connection with a proposed Commission action, it shall prepare such statement generally in accordance with the procedures specified in 40 CFR parts 1500-1508, particularly part 1502 concerning impact statement preparation and content, § 1505.1 concerning decision-making procedures, and § 1501.6 concerning the function of cooperating agencies, to the extent that such procedures do not conflict with the Commission's statutory responsibilities and authority under the Federal securities laws.

§ 200.554 Public availability of information.

(a) Any environmental assessment or impact statement, and Commission responses pertaining to formal rule-making proceedings or adjudicatory proceedings, shall be made part of the record in any such proceedings. In the case of formal adjudicatory proceedings, this shall be done in accordance with Rule 460 of the Commission's Rules of Practice, § 201.460 of this chapter. In the case of formal rulemaking proceedings, this shall be done in accordance with the Commission's rules respecting such proceedings.

(b) The location of publicly available environmental impact statements will be 450 Fifth Street, NW., Room 1024, Washington, DC

(c) Interested persons may obtain information regarding and status reports on specific environmental impact statements and environmental assessments by contacting the division or office within the Commission which has responsibility for the particular proposed action.

[44 FR 41177, July 16, 1979, as amended at 47 FR 26819, June 22, 1982; 60 FR 32795, June 23, 1995]

Subpart L—Enforcement of Non-discrimination on the Basis of Handicap in Programs or Activities Conducted by the Securities and Exchange Commission

AUTHORITY: 29 U.S.C. 794.

SOURCE: 53 FR 25885, July 8, 1988, unless otherwise noted.

§ 200.601 Purpose.

The purpose of this regulation is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 200.602 Application.

This regulation (§§ 200.601-200.670) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 200.603 Definitions.

For purposes of this regulation, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf

of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially

limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this regulation by § 200.640.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of

1978 (Pub. L. 95-602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810). As used in this regulation, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 200.604—200.609 [Reserved]

§ 200.610 Self-evaluation.

(a) The agency shall, by September 6, 1989, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this regulation and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

- (1) A description of areas examined and any problems identified; and
- (2) A description of any modifications made.

§ 200.611 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 200.612—200.629 [Reserved]

§ 200.630 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this regulation.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this regulation.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 200.631—200.639 [Reserved]

§ 200.640 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subject to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§ 200.641—200.648 [Reserved]

§ 200.649 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 200.650, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 200.650 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would

result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 200.650(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General*. The agency may comply with the requirements of this section through such means as re-design of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(2) *Historic preservation programs*. In meeting the requirements of § 200.650(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a

physical alteration to an historic property is not required because of § 200.650(a) (2) or (3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance*. The agency shall comply with the obligations established under this section by November 7, 1988, except that where structural changes in facilities are undertaken, such changes shall be made by September 6, 1991, but in any event as expeditiously as possible.

(d) *Transition plan*. In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 6, 1989, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 200.651 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 200.652–200.659 [Reserved]**§ 200.660 Communications.**

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 200.660 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 200.661–200.669 [Reserved]**§ 200.670 Compliance procedures.**

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Equal Employment Opportunity Manager shall be responsible for coordinating implementation of this section. Complaints may be sent to the EEO Manager, 450 Fifth Street NW., Washington, DC 20549.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete

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complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §200.670(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making

the final determination may not be delegated to another agency.

[53 FR 25882 and 25885, July 8, 1988, as amended at 53 FR 25882, July 8, 1988]

§§ 200.671—200.699 [Reserved]

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

AUTHORITY: 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11; E.O. 11222, 3 CFR, 1964-1965 Comp.; 5 CFR 735.104 unless otherwise noted.

SOURCE: 45 FR 36064, May 29, 1980, unless otherwise noted.

§200.735-1 Purpose.

This subpart sets forth the standards of ethical conduct required of members, employees and special Government employees, and former members and employees of the Securities and Exchange Commission. It is a further revision of a comprehensive conduct regulation first adopted by the Commission in 1953 “to restate the ethical principles which it believes should govern and have governed the conduct of members and employees and former members and employees of the Commission.”¹ This revision is necessary to provide members, employees, special Government employees and former Commission members and employees with a comprehensive statement of standards of conduct which are dictated by applicable Federal law, Executive orders, and the Commission’s own requirements.

§200.735-2 Policy.

(a) The Securities and Exchange Commission has been entrusted by Congress with the protection of the

¹The last major revision of the Conduct Regulation was done in 1966 to implement Executive Order 11222, May 8, 1965, and part 735 of the Civil Service Commission regulations (5 CFR part 735) adopted pursuant thereto. It also contains references to the several applicable statutes governing employee conduct, particularly Pub. L. 87-849 (76 Stat. 1119, 18 U.S.C. 201 *et seq.*), and the “Code of Ethics for Government Service,” House Concurrent Resolution 175, 85th Congress, 2d session (72 Stat. B 12).

public interest in a highly significant area of our national economy. In view of the effect which Commission action frequently has on the general public, it is important that members, employees and special Government employees maintain unusually high standards of honesty, integrity, impartiality and conduct. They must be constantly aware of the need to avoid situations which might result either in actual or apparent misconduct or conflicts of interest and to conduct themselves in their official relationships in a manner which commands the respect and confidence of their fellow citizens.

(b) For these reasons, members, employees and special Government employees should at all times abide by the standards of conduct set forth in this subpart, the canons of ethics for members of the Securities and Exchange Commission (subpart C of this part 200) and, in the case of a professional person, the ethical standards applicable to the profession of such person.

§ 200.735-3 General provisions.

(a)(1) In considering the prohibitions of this section, members and employees must constantly be aware that the provisions here enumerated set forth standards of conduct which are broader than the specific applications stated in the rules which follow. Therefore, members and employees should look to these general prohibitions when assessing the advisability of a particular course of conduct. The broadly stated provisions of this rule are aimed at eliminating the appearance of impropriety as well as any actual wrongdoing.

(2) Accordingly, a member or employee should avoid any action, whether or not specifically prohibited by law or regulation (including the provisions of this subpart), which would result in or might create appearance of, among other things:

- (i) Using public office for private gain;
- (ii) Giving preferential treatment to any organization or person;
- (iii) Losing complete independence or impartiality;
- (iv) Making a Government decision outside official channels; or

(v) Affecting adversely the confidence of the public in the integrity of the Government.

(3) While provisions applicable to all employees of the Commission are outlined in this regulation, certain Offices or Divisions for management reasons may require more stringent regulations in certain areas. These may be imposed by Division Directors, Office Heads or Regional Administrators with the consent of the Chairman and the approval of the Office of Government Ethics. Should such additional regulations be imposed, all employees affected must be notified ten days before the effective date of the restriction or at the time of their employment.

(b) A member or employee of the Commission shall not:

(1) Engage, directly or indirectly, in any personal business transaction or private arrangement for personal profit the opportunity for which arises because of his or her official position or authority, or that is based upon confidential or nonpublic information which he or she gains by reason of such position or authority.²

(2) Solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, service, or any other

²Detailed provisions regarding outside or private employment and transactions in securities and commodities are set forth in §§ 200.735-4 and 200.735-5, respectively. Further provisions regarding use and disclosure of confidential information are set forth in paragraph (b) of this section and in the note appended thereto.

Members of the Commission are subject also to the following prohibition in section 4(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78d(a)): “* * * No Commissioner shall engage in any other business, vocation, or employment than that of serving as Commissioner, nor shall any Commissioner participate, directly or indirectly, in any stock market operations or transactions of a character subject to regulation by the Commission pursuant to this title * * *.” This does not preclude Commissioners from engaging in securities transactions. See Opinion letter dated February 11, 1975, sent by the Office of the General Counsel to David Reich, Ethics Counselor at the Civil Service Commission. In addition, members of the Commission are subject to the requirements of Executive Order 11222 of May 8, 1965.

thing of monetary value from any person with whom he or she transacts business on behalf of the United States:

(i) Who has, or is seeking to obtain, contractual or other business or financial relations with the Commission;

(ii) Who conducts operations or activities regulated by the Commission; or

(iii) Who has interests that may be substantially affected by the performance or non-performance of his or her official duty.

(3) The restrictions of paragraph (b)(2) of this section do not prohibit members and employees from the following:

(i) The acceptance of food and refreshments, not lavish in kind, offered free in the course of a meeting or other group function, not connected with an inspection or investigation, at which attendance is desirable because it will assist the member or employee in performing his or her official duties. Members shall determine for themselves and their staffs the propriety of accepting such invitations. Division Directors, Office Heads, and Regional Administrators are authorized to make such determinations for themselves and their subordinates. Staff members are required to advise their Division Director, Office Head, or Regional Administrator of invitations received from entities described in paragraph (b)(2) of this section.

(ii) The acceptance of items of value when the circumstances make it clear that it is family or personal relationships rather than the business of the persons concerned which govern and are the motivating factors.

(iii) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, notepads, calendars and other items of modest value.

(iv) The acceptance of meals and refreshments as provided to all panelists, when participating as a panelist in an educational program.

(v) The acceptance of gifts given for participation in an educational program when they are (A) of modest value; or (B) provided to all participants in the program; or (C) in the nature of a remembrance traditional to the particular sponsor institution.

(vi) For purposes of this subpart, *person* means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company; or any other organization or institution or anyone who acts for such a person in a representative capacity.³

(4) Solicit contributions from another employee for a gift to an employee in a superior official position. An employee in a superior official position shall not accept a gift presented as a contribution from employees receiving less salary than himself or herself. An employee shall not make a donation as a gift to an employee in a superior official position (5 U.S.C. 7351). However, this paragraph does not prohibit the occasional giving of gifts of modest value to an employee in a superior position or the receipt of such gifts by a superior or the use of completely voluntary contributions of nominal amounts by employees within the Commission to establish funds for the limited purpose of providing token remembrances or gifts of modest value to an employee in a superior position on special occasions.

(5) Accept from a foreign government a gift, decoration or other thing of more than minimal value except in accordance with the provisions of 5 U.S.C. 7342.

(6) Discuss or entertain a proposal for future employment by any person outside the Government with whom he or

³Members and employees of the Commission are subject also to provisions of the Federal criminal code which prohibit, (1) any officer or employee of the United States from asking, accepting or receiving any money or other thing of value in connection with any matter before him or her in his or her official capacity, (18 U.S.C. 203); and (2) the compensation of government employees for services to the government by entities other than the United States (18 U.S.C. 209). In addition, members are prohibited by 5 CFR 735.203(c) from receiving compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission or which draws substantially on official data or ideas which have not become part of the body of public information. See also 17 CFR 200.735-4.

she is personally and substantially involved in transacting business on behalf of the United States.⁴

(i) If an employee wishes to discuss future employment with another Government agency, this fact should be disclosed to the employee's Division Director, Office Head or Regional Administrator prior to any discussion regarding employment, if at that time the employee is representing the Commission in a particular matter in which the other agency is taking a position adverse to the Commission.

(7)(i) Divulge to any unauthorized person or release in advance of authorization for its release⁵ any nonpublic Commission document, or any information contained in any such document or any confidential information: (A) In contravention of the rules and regulations of the Commission promulgated under 5 U.S.C. 552, 552a and 552b; or (B) in circumstances where the Commission has determined to accord such information confidential treatment.

(ii) Except where the Commission or the General Counsel, pursuant to delegated authority, has previously granted approval or in relation to a Commission administrative proceeding or a judicial proceeding in which the Commission, or a present or former Commissioner, or present or former member of the staff, represented by Commission counsel, is a party, any officer, employee or former officer or employee who is served with a subpoena requiring the disclosure of confidential or non-public information or documents shall, unless the Commission or the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or documents, respectfully decline to disclose the information or produce the documents called for, basing his or her refusal on this paragraph.

⁴Detailed provisions regarding negotiations for future employment are set forth in § 200.735-7.

⁵In Section 171 of the Commission's Manual of Administrative Regulations the Commission's policy on making available nonpublic information to Federal, State and foreign government authorities, national securities exchanges and national securities associations is outlined.

(iii) Any member, employee or former member or employee who is served with such a subpoena not covered by the exceptions in paragraph (b)(7)(ii) of this section 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 in the public interest of making available such information or documents.⁶ The Commission or the General Counsel, pursuant to delegated authority, shall authorize the disclosure of non-expert, non-privileged, factual staff testimony and the production of non-privileged documents when validly subpoenaed.

(8) Act in any official matter with respect to which there exists a personal interest incompatible with an unbiased exercise of official judgment.⁷

(9) Have direct or indirect personal, business or financial affairs which conflict or appear to conflict with his or her official duties and responsibilities.

(10)(i) Use, or allow the use of, directly or indirectly, Government property of any kind, including property leased to the Government, for other than officially approved activities. *Officially approved activities* for the purpose of this section are those activities which are part of an employee's official duties or are approved by the employee's Division Director, Office Head or

⁶Detailed prohibitions regarding disclosure or use of confidential or nonpublic information are set forth in Rule 122 (17 CFR 230.122) under the Securities Act of 1933; section 24(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78x) and Rule 0-4 (17 CFR 240.0-4); and Rule 24(b)(2) (17 CFR 240.24b-2), thereunder; section 22(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79y) and Rule 104 thereunder (17 CFR 250.104); section 45(a)(1) of the Investment Company Act, and section 210(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-10). *But see*, section 171 of the Administrative Manual which authorizes the staff to divulge certain nonpublic information without Commission approval (n. 5, *supra*).

⁷Section 200.735-6 of this subpart provides a procedure for relieving employees from assignments in certain cases, including those covered by paragraph (b)(5) of this section.

Regional Administrator as being sufficiently related to the employee's official duties, or important to the interests of the Commission to warrant the use of Commission facilities for their accomplishment. Division Directors, Office Heads and Regional Administrators may, for their own activities meeting the same criteria, obtain the concurrence of the Executive Director.

(ii) An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him or her.

(1) Participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity, including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

(12) Engage in unlawful or unethical conduct, or other conduct prejudicial to the Government.

[45 FR 36064, May 29, 1980; 45 FR 40975, June 17, 1980, as amended at 50 FR 23287, June 3, 1985; 53 FR 17458, May 17, 1988; 54 FR 33500, Aug. 15, 1989]

§200.735-4 Outside employment and activities.

(a) No member or employee shall permit his or her name to be associated in any way with any legal, accounting or other professional firm or office.⁸

(b)(1) No employee shall have any outside or private employment, activity, or affiliation incompatible with concurrent employment by the Commission. Incompatible activities include but are not limited to

(i) Employment or association with any securities exchange, association of securities dealers, or other self-regulatory organization either registered under the Securities Exchange Act of 1934 or otherwise involved with the securities industry, any registered

broker, dealer, registered municipal securities dealer, public utility holding company, investment company, investment adviser, securities information processor, transfer agent, clearing agency or other persons who are subject to regulation by the Commission, or where the facts relating to a particular employment would create an appearance of impropriety, because the employment is directly or indirectly related to the issuance, sale, purchase or investment of securities;

(ii) Legal, accounting, or engineering work for compensation involving matters in which the Federal government may be significantly interested;

(iii) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in or create the appearance of conflicts of interest;

(iv) Outside employment or activity which impairs the employee's mental or physical capacity to perform his or her Commission duties and responsibilities in an acceptable manner;

(2) For the purposes of this paragraph (b), the private employment of an employee's spouse, or other member of his or her immediate household with any securities exchange, association of securities dealers, or other self-regulatory organization either registered under the Securities Exchange Act of 1934 or otherwise involved in the securities industry, any registered broker, dealer, registered municipal securities dealer, public utility holding company, investment company, investment adviser, securities information processor, transfer agent, clearing agency or other persons who are subject to regulation by the Commission, or where the particular employment is directly related to the issuance, sale, purchase or investment of securities is deemed to be incompatible with the employee's concurrent employment by the Commission if the duties and activities incident to such employment relate directly to the official activities of the Commission employee, except as determined otherwise by the Commission in a specific case.

(i) *Member of his or her immediate household* is defined for the purposes of

⁸With respect to members, this paragraph supplements the statutory prohibition against outside employment contained in section 4(a) of the Securities Exchange Act of 1934, quoted in footnote 2. Except as otherwise indicated, the remaining provisions of this section are not made applicable to members in view of the provisions of section 4(a) of the Securities Exchange Act of 1934.

this paragraph as a resident of the employee's household who is related to the employee by blood or marriage.

(3) No employee shall accept or perform outside employment prohibited by law, regulations of the Office of Personnel Management or the rules in this subpart.

(4) No employee shall receive any salary or anything of monetary value from a private source as compensation for his or her services to the Government (18 U.S.C. 209), except as otherwise provided by law.

(5) The Commission encourages employees to engage in teaching, lecturing, and writing activities with or without compensation.⁹ In participating in such activities, employees should be guided by the following:

(i) No teaching, lecturing, or writing should be engaged in if prohibited by law, Executive order, Office of Personnel Management regulations, or the rules in this subpart.

(ii) No teaching, lecturing, or writing should be engaged in (including for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service) that depends on information filed with the Commission, or obtained by the Commission in an investigation or otherwise, or generated within the Commission which is nonpublic, unless the Commission gives formal approval for the use of such nonpublic information on the basis that the use thereof is in the public interest.¹⁰

(6)(i) Subject to the specific prohibition and requirements set forth below,

⁹As to employees, while the receipt of honoraria is discouraged (See 17 CFR 200.735-4(b)(7)), that rule is not applicable to the receipt of compensation for teaching.

¹⁰Since members of the Commission are covered by section 401(a) of Executive Order 11222, they are prohibited by Civil Service Regulations (5 CFR 735.203(c)) from receiving compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of their agencies, or which draws substantially on official data or ideas which have not become part of the body of public information.

¹¹[Reserved]

the Commission may accept payment or reimbursement in cash or in kind, for travel and subsistence expenses actually incurred by Commission members and employees, while on official duty status, in connection with the participation of such members and employees in conferences, proceedings, meetings, seminars, and educational programs concerning the functions and responsibilities of the Commission and related topics.

(ii)(A) The Commission shall accept no payment or reimbursement for expenses described in paragraph (b)(6)(i) of this section from or in connection with a conference sponsored by:

(1) A person directly required to file reports or registration statements with the Commission, or

(2) A person directly or indirectly regulated by the Commission, or

(3) Any association or other group composed predominantly of persons regulated by the Commission, *Provided, however,* That the Chairman may authorize the Commission to accept payment or reimbursement from such a group. In determining whether to authorize such payment or reimbursement, the Chairman shall consider the benefits to the Commission and the public of participation in the particular program and the possibility of any appearance of impropriety.

(B) For purposes of this section, the phrase *person regulated by the Commission* means all persons whose activities are directly regulated by, or who are required to register with, the Commission, including but not limited to, such persons as brokers or dealers in securities, national securities exchanges, national securities associations, investment companies, investment advisers, public utility holding companies, and any self-regulatory organization, as that term is defined in section 3 of the Securities Exchange Act of 1934, 15 U.S.C. 78(c).

(iii)(A) Subordinate members of the staff who are invited to participate in programs which offer payment or reimbursement meeting the criteria of paragraph (b)(6)(i) of this section must, prior to participation, obtain the written approval of their Division Director, Office Head, or Regional Administrator to participate in the program and the

written approval of the Chairman, if paragraph (b)(6)(ii)(A)(3) of this section applies. If paragraph (b)(6)(ii)(A)(3) of this section does not apply, the Executive Director shall determine in writing whether the Commission will accept the payment or reimbursement.

(1) In acting on requests to participate, Division Directors, Office Heads, and Regional Administrators shall consider: (i) The benefit to the Commission and the public of participation; (ii) the expertise of the proposed participant; and (iii) the appropriate allocation of resources.

(2) In determining whether the Commission shall accept payment or reimbursement, the Executive Director shall consider the possibility of any appearance of impropriety.

(B) Division Directors, Office Heads, and Regional Administrators must, prior to participation, obtain the written approval of the Chairman, if paragraph (b)(6)(ii)(A)(3) of this section applies. If paragraph (b)(6)(ii)(A)(3) of this section does not apply, the Executive Director shall determine, in writing, considering the possibility of any appearance of impropriety, whether the Commission will accept the payment or reimbursement. Division Directors, Office Heads, and Regional Administrators shall make the determinations specified in paragraph (b)(6)(iii)(A)(1) of this section as to their own participation.

(C) Except if paragraph (b)(6)(ii)(A)(3) of this section applies, each Commissioner shall determine for himself or herself whether payment or reimbursement for his or her expenses incident to participation in programs meeting the criteria of paragraph (b)(6)(i) of this section should be accepted by the Commission. Notice of each decision shall be sent to the Executive Director.

(D) Whenever it is determined, pursuant to paragraphs (b)(6)(iii)(A), (B), or (C) of this section that the Commission will accept a particular payment or reimbursement, the Executive Director shall forward notice of that decision to the Public Reference Room, Washington, DC, for insertion in a public file.

(iv) Payment or reimbursement shall not be accepted for expenses which are unreasonable or lavish.

(v) On a quarterly basis, the Commission shall publish in the *SEC Docket* a compilation of payments and reimbursements accepted.

(vi) The Commission's acceptance from any person of payment or reimbursement for the expenses of a spouse or traveling companion accompanying a member or employee is prohibited. If a staff member wishes to participate in a program which offers payment or reimbursement meeting the criteria of paragraph (b)(6)(i) of this section and acceptance would not be prohibited by paragraph (b)(6)(ii) of this section, but is denied approval in accordance with paragraphs (b)(6)(iii)(A) or (B) of this section, or wishes to accept reimbursement for the travel expenses of his or her spouse or traveling companion, the staff member may participate in the program and accept such reimbursement personally, *Provided, That*:

(A) No reimbursement for travel expenses may be accepted from a person who does, or is seeking to do, business with the Commission, is regulated directly or indirectly by the Commission, is registered with the Commission, or has interests which may be substantially affected by the official's performance or non-performance of his or her official duties.

(B) No reimbursement may be accepted for the travel expenses of an employee's spouse or traveling companion unless the prior written approval of the General Counsel is obtained. Under appropriate circumstances, such as programs where participants are expected to engage in social activities, the General Counsel may approve acceptance upon written application.

(C) A copy of the General Counsel's approval and notice of the amount of payment or reimbursement accepted from the sponsor must be sent to the Executive Director for inclusion in the public file in accordance with paragraph (b)(6)(iii)(D) of this section.

(D) Such staff member's participation and travel occur only while on annual leave, approved in accord with regular leave procedures. *Note 7 CFR 200.735-4(e)(2)(ii)*.

(vii) Members or employees who are participating in a program meeting the criteria of paragraph (b)(6)(i) of this section, which is sponsored by a person

determined by the Secretary of the Treasury to be a tax-exempt organization pursuant to 26 U.S.C. 501(c)(3), and for which reimbursement for the member's or employee's participation will be accepted by the Commission, may, while on official duty, accept from the sponsoring entity *bona fide* reimbursement for actual expenses for travel and necessary subsistence for a spouse or traveling companion *Provided* that the procedures detailed in paragraphs (d)(6)(vi) (A)-(C) of this section are followed.

(7) The provisions of this paragraph (b) and § 200.735-3(b)(2) do not preclude a member or employee from:

(i) Participation in the activities of national or State political parties not proscribed by law;

(ii) Participation in the affairs of, or acceptance of an award for a meritorious public contribution or achievement given by, a charitable, religious, professional, social, fraternal, nonprofit educational, recreational, public service, or civic organization.

(8)(i) As a matter of general policy, the Commission discourages the acceptance of honoraria or similar fees and payments which are given for publications, speeches or lectures based on the official duties of the employee. In accord with this policy, no member or employee may accept such an honorarium unless written approval is obtained in advance from the Commission's General Counsel, subject to the general review of the Commission. Requests for such approval should be submitted to the General Counsel in writing and should include a statement in support of the request.

(ii) Honoraria which are most likely to be deemed acceptable are those which appear to be remuneration for teaching. An employee may not, under any circumstances, accept an honorarium from any person from whom reimbursement for travel expenses is prohibited by paragraph (b)(6)(ii) of this section. In any event an employee may not accept an excessive honorarium as described in 2 U.S.C. 441(i). This section does not preclude the acceptance of a modest gift for participation as a speaker, as provided in Rule 3.

(c) No employee shall appear in court or on a brief in a representative capac-

ity (with or without compensation) or otherwise accept or perform legal, accounting, engineering, or similar professional work, unless specifically authorized to do so by the Commission. Acceptance of a forwarding fee shall be deemed to be within the foregoing prohibition. As a matter of general policy, outside or private professional work or practice by the staff is discouraged and only in unusual cases or circumstances will it be authorized. However, the Commission encourages its employees, in off-duty hours and consistent with official responsibilities, to participate, without compensation, in programs to provide legal or other appropriate assistance and representation to indigents.¹² Such participation may include limited appearances in court and on briefs when required in connection with such programs. However, such participation may not involve any activities which are prohibited by law, Executive orders, Office of Personnel Management regulations, or this subpart M.¹³ For example, 18 U.S.C. 205 prohibits a Federal employee from appearing in court in a matter in which the United States has an interest

¹²As a matter of policy, the Commission encourages members of its staff to participate in matters involving improvement to their communities and service to indigent persons, provided that the necessary approval is obtained in advance. However, in no case will approval be given to participate in matters involving securities.

¹³Attention is called to Title 18, United States Code, sections 201 through 209 which provide, among other things, that Federal employees are prohibited from acting as agent or attorney in prosecuting any claim against the United States or from aiding and assisting in any way, except as otherwise permitted in the discharge of official duties, in the prosecution or support of any such claim, or from receiving any gratuity, or any share of an interest in any claim from any claimant against the United States; and from directly or indirectly receiving or agreeing to receive any compensation whatever for services rendered or to be rendered to any persons in relation to any matter in which the United States is a party or directly or indirectly interested. 18 U.S.C. 205 contains an exception from the foregoing restrictions for acting as agent or attorney, without compensation, for government employees who are the subject of disciplinary, loyalty or other personnel-type proceedings, in connection with these proceedings.

(other than on behalf of the United States), without regard to compensation.

(1) The provisions of this paragraph (c) and § 200.735-3(b)(2) do not preclude an employee from:

(i) Acting without compensation as agent or attorney (A) for a Commission employee who is sued or is under investigation in connection with his or her official duties; (B) for any Commission employee who is the subject of disciplinary, loyalty or other personnel administrative proceedings in connection with those proceedings; or (C) for any Commission employee who raises claims or against whom allegations of wrongdoing are made pursuant to the Commission's Equal Opportunity regulations, if such representation is not inconsistent with the faithful performance of the employee's duties.¹⁴

(2) [Reserved]

(d) No member or employee shall hold office in or be a director of any company which has public security holders, except not for profit corporations, savings and loan associations, and similar institutions, whose securities are exempted under section 3(a)(4) or 3(a)(5) of the Securities Act of 1933 (15 U.S.C. 77c(a)(4), 77c(a)(5)).

(e)(1) As paragraph (b)(5) of this section indicates, the Commission encourages employees to engage in teaching, lecturing and writing activities.¹⁵ It is understood, however, that Commission employees in their teaching, writing and lecturing shall not

(i) Use confidential or nonpublic information;

(ii) Make comments on pending litigation in which the Commission is participating as a party or *amicus curiae*; or

(iii) Make comments on rulemaking proceedings pending before the Com-

mission which would adversely affect the operations of the Commission.

(2) To assist employees in conforming to these requirements the following procedure for reviewing writings prior to publication, or prepared speeches prior to delivery, has been established:

(i) Employees must submit proposed publications or prepared speeches relating to the Commission, or the statutes or rules it administers, to the General Counsel for review. Employees will be notified as promptly as possible, with due regard to publication deadlines, but in any event within 30 days of receipt of the written document, whether such document conforms to the requirements of this Rule.

(ii) A determination by the General Counsel that a proposed publication conforms to the requirements of the rule will not involve adoption of, or concurrence in, the views expressed. Therefore, such publication or speech shall include at an appropriate place or by way of footnote, or otherwise, the following disclaimer of responsibility:

The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication or statement by any of its employees. The views expressed herein are those of the author and do not necessarily reflect the views of the Commission or of the author's colleagues upon the staff of the Commission.

In appropriate cases, the above disclaimer may be modified by the General Counsel or the Commission to reflect the circumstances of an individual case. In addition, any publication or speech which reflects positions taken by the Commission shall set forth those positions accurately and, if it contains differences with Commission positions, it shall clearly state that such positions are those of the employee.

(f) An employee who intends to accept or perform any outside or private employment or professional work shall obtain necessary authorization in advance of such acceptance or performance. A request for such authorization shall be submitted to the Division Director, Office Head or Regional Administrator concerned, together with all pertinent facts regarding the proposed employment, such as the name of the employer, the nature of the work to be

¹⁴This is adapted from the provision in 18 U.S.C. 205 and expresses the Commission's general policy which favors the representation of fellow employees without compensation. However, it may be necessary to look to other regulations for specific provisions regarding such representation.

¹⁵This paragraph (e), requiring review of prepared speeches or writings relating to the Commission, does not apply to teaching activities.

performed, its estimated duration, and the fee or compensation to be received. Division Directors, Office Heads and Regional Administrators have been delegated the authority to approve routine requests for outside employment. The approving official shall forward to the Director of Personnel a copy of each request showing the date of approval. Requests of a non-routine nature should be forwarded to the Director of Personnel.

(g) The Director of Personnel, or his designee, is authorized to approve or disapprove requests for outside or private employment under this rule, except as to those cases which, in his judgment, should be considered and decided by the Commission. An employee may appeal a disapproved request to the Commission. The written appeal, submitted through the Director of Personnel, shall give reasons why the proposed outside or private employment is consistent with this rule. The Director of Personnel may not approve proposed outside or private employment which is absolutely prohibited by these rules. The Commission may, in a particular case, approve such employment.¹⁶

(Pub. L. 98-38)

[45 FR 36064, May 29, 1980; 45 FR 40975, June 17, 1980; 48 FR 39216, Aug. 30, 1983; 50 FR 45603, Nov. 1, 1985]

§200.735-5 Securities transactions.

(a)(1) This section applies to all transactions effected by or on behalf of a member or employee. This includes transactions for the accounts of other persons effected by the member or employee, directly or indirectly, under a power of attorney or otherwise. In addition, a member or employee is considered to have sufficient interest in the securities transactions of his or her spouse or unemancipated minor child or other member of his or her immediate household so that transactions effected by or on behalf of such persons must be reported and are subject to all the terms of this section.

(i) Except, this section shall not apply to securities transactions of a le-

¹⁶The Commission does not favor the granting of waivers from the provision of this subsection.

gally separated spouse living apart from the 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 regard to such transactions. If the member or employee has knowledge of securities held by a separated spouse or for the benefit of a minor child, the disqualification provisions of Rule 6, 17 CFR 200.735-6, and 18 U.S.C. 208 are applicable.

(ii) For purposes of this section *member of his or her immediate household* means a resident of the member's or employee's household who is related to the employee by blood or marriage or who is in the legal care and/or custody of the employee by reason of adoption, prospective adoption or guardianship.

(2) Members and employees are prohibited from recommending or suggesting the purchase or sale of securities:

(i) Based on non-public information gained in the course of employment; or

(ii) Which a member or employee could not purchase because of the restrictions of this rule, in any circumstance in which the member or employee could reasonably expect to benefit from the recommendation, or to anyone over whom the member or employee has or may have control or substantial influence.

(b)(1) No member or employee shall effect or cause to be effected any transaction in a security except for bona fide investment purposes. Therefore, all securities purchased by a member or employee must be held for a minimum of six months. Except, this holding period is not applicable to

(i) Securities sold for less than the purchase price pursuant to a stop-loss order entered at the time of purchase and submitted to the Office of Personnel with the report of purchase;

(ii) Money market fund shares;¹⁷

(iii) Securities purchased by a member or employee prior to entrance on duty with the Commission;

¹⁷For purposes of this rule a *money market fund* is defined as an open end investment company whose investment policy calls for investment of at least 80% of its assets in debt securities maturing in 13 months or less.

(iv) Debt securities with an initial term of less than six months which are held to term;

(v) Shares of a unit investment trust having a term of less than six months; or

(vi) The transferring of funds within a *family* of registered investment companies.

(2) For purposes of this provision a *family* means any two or more registered investment companies which share the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services.

(c) No member or employee shall effect any purchase or sale of an option, future contract, or option on a future contract involving a security or group of securities.

(d) No member or employee shall

(1) Carry securities on margin;

(2) Borrow funds or securities, with or without collateral, for the purpose of purchasing or carrying securities with the proceeds, unless the prior approval of the Commission has been secured; or

(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 such member's or employee's account.

(e)(1) Except as provided in this paragraph (e) or paragraph (f) below, members and employees are prohibited from purchasing or selling any security which is the subject of a registration statement filed under the Security Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), or a letter of notification filed under Regulation A, or any security of the same issuer while such a registration statement or letter of notification is pending or during the first 60 days after its effective date. This prohibition shall not apply to:

(i) A security which is the subject of a pending registration statement filed on Forms S-2, S-3, S-8, F-2, F-3, 8-A, or 8-B; or

(ii) Offerings, except initial public offerings, of shares by an investment company, other than a closed-end investment company, or to offerings by a registered separate account (as defined

in section 1(a)(37) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(37)) which become effective pursuant to 17 CFR 230.485(b).

(2) Securities of a unit investment trust whose registration statements become effective pursuant to 17 CFR 230.487 may be purchased immediately upon effectiveness of the registration statement.

(3) Securities which are registered for delayed distribution pursuant to 17 CFR 230.415 may be purchased 60 days after the registration becomes effective. The subsequent filing of a pricing amendment or sticker does not revive the prohibition on purchase.

(f) A member or employee may sell a security which is referred to in paragraph (e) of this section only if:

(1) The member or employee certifies that he or she has no information which is not publicly available concerning or relating to the issuer; and

(2) The employee's Division Director, Office Head or Regional Administrator certifies that the employee has not participated in the registration processing. Members, Division Directors, Office Heads, and Regional Administrators are required to submit such certification on their own behalf to the Director of the Office of Personnel.

(g) No member or employee shall purchase any security which to his or her knowledge is involved in any pending investigation by the Commission, or in any proceeding before the Commission, or to which the Commission is a party.

(h) No member or employee shall purchase any security of any company which is in a receivership or bankruptcy proceeding in which the Commission has filed a notice of appearance.

(i) No member or employee shall purchase securities of:

(1) Any holding company registered under section 5 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79e), or any subsidiary thereof, or

(2) Any company, if its status under such Act, or the applicability of any provision of the Act to it, is known by the employee to be under consideration.

(j) The restrictions imposed in paragraphs (e), (g), (h), and (i) of this section do not apply;

(1) To the exercise of a privilege to convert or exchange securities;

(2) To the exercise 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);

(3) To the acquisition and exercise of rights in order to round out fractional shares;

(4) To the acceptance of stock dividends on securities already owned; to the reinvestment, under a reinvestment program, of cash dividends on a security already owned; or the participation in a periodic investment plan for the purchase of a security when the original purchase was consistent with the provisions of this rule; or

(5) Investments in funds established pursuant to the Federal Employees Retirement System.

(k) Members and employees holding a Senior Executive Service position in the Division of Investment Management or the Office of Compliance Inspections and Examinations may make discretionary investments in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a *et seq.*, provided that the registered investment company is diversified pursuant to section 5(b)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-5(b)(1). The Directors of the Division of Investment Management and the Office of Compliance Inspections and Examinations, in consultation with the Office of the General Counsel, shall determine in writing whether Senior Executive Service positions in their respective Division or Office whose duties do not include fund matters also may invest in non-diversified registered investment companies.

(l) No member or employee shall have a beneficial interest in any broker, dealer or investment adviser through ownership of securities or otherwise. However, if a corporation acquires or establishes a subsidiary or affiliate subject to regulation by the Commission (*regulated entity*),

(1) A member or employee may retain his or her existing holdings in the corporation, provided the security was originally acquired in compliance with

the provisions of this rule or prior to entry on duty with the Commission.

(2) Purchases of the corporation's shares will be permitted so long as the regulated entity subsidiary or affiliate provides less than 10% of the corporation's gross revenue. Except for reinvestment of cash dividends, additional purchases are prohibited when the regulated entity provides 10% or more of the corporation's gross revenues.

(3) A member or employee who owns shares in a corporation with a regulated entity subsidiary or affiliate is disqualified from participating in any matter including rulemaking which affects the regulated entity unless the disqualification is waived in accordance with the provisions of Rule 6, of this section, 17 CFR 200.735-6, and 18 U.S.C. 208(b).

(m)(1) Annually, in accordance with the procedures adopted by the Director of Personnel, every member and employee shall furnish the Director of Personnel with a complete list of all securities in which he or she has an interest. Employees having no interests in securities and required to so state.

(2) Except as provided in paragraphs (m)(3) and (m)(4) of this section, members and employees shall report every acquisition or sale of any security within five business days of the transaction date or date confirmation is received. (Reports submitted by employees in field offices must be placed in the mails within five business days of the transaction date or date the confirmation is received for each transaction.)

(3) After the initial purchase of shares in a mutual fund, employees shall report holdings in that mutual fund only on the annual statement.

(4) 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 rather than when notification of the transaction is received. But, the acquisition of holdings by, for example, gifts, inheritance or spin-offs, which may result in additional disqualifications pursuant to Rule 6 of this section, 17 CFR 200.735-6, and 18 U.S.C. 208 shall be reported

within five days of the receipt of the notice of the change in holdings.

(n) At the time of taking the oath of office, or prior thereto if requested by the Director of Personnel, a new member or employee shall provide to the Office of Personnel, as requested, information relating to—

(1) Securities owned by or held for the benefit of him or her, or his or her spouse or unemancipated minor child, or a member of his or her immediate household, or by any trust or estate of which he or she is a trustee or other fiduciary or beneficiary, or by any person for whom he or she effects transactions under a power of attorney or otherwise;

(2) Accounts with securities firms;

(3) Close relatives (i.e. children, parents, grandparents, siblings, aunts, uncles, or like relations of a spouse), who are partners or officers of securities firms, investment advisers, or registered public utility holding companies or their affiliates;

(4) The holding of office in or being a director of any company which has public security holders; and

(5) Such other information as may be required by the Director of Personnel.

Employees are required to advise the Office of Personnel of changes in the foregoing information within ten business days of the time the new information is learned.

(o) Paragraphs (b), (m), and (n) of this section do not apply to personal notes, individual real estate mortgages, securities issued by the U.S. Government or its agencies, and securities issued by building and loan associations or cooperatives.

(p) Any member or employee who is a trustee or other fiduciary or a beneficiary of a trust or estate holding securities not exempted by paragraph (o) of this section, shall report the existence and nature of such trust or estate to the Director of Personnel. The transactions of such trust or estate, which is not a qualified blind trust, shall be subject to all the provisions of this section except if the member or employee did not create the trust, 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, unless the Com-

mission shall otherwise direct in view of the circumstances of the particular case.

(q) The Director of Personnel, or his designee, is authorized to require the disposition of securities acquired as a result of a violation of the provisions of this section, whether unintentional or not. Repeated violations shall be reported to the Commission for appropriate action.

(r) Any member or employee who believes that the application of any of the provisions of this rule will result in undue hardship in a particular case may make a written application to the Commission (through the Director of Personnel) setting out, in detail, the reasons for that belief and requesting a waiver. However, as a matter of policy the Commission favors a strict interpretation of the provisions of this rule.

[53 FR 18553, May 24, 1988, as amended at 59 FR 43464, Aug. 24, 1994; 60 FR 52626, Oct. 10, 1995]

§200.735-6 Action in case of personal interest.

Any employee assigned to work on any application, filing or matter of a company (a) in which he or she or his or her spouse or his or her minor unemancipated child then owns any securities or has a personal interest, including a continuing financial interest in a pension or retirement plan, shared income, or other arrangement, as a result of any current or prior employment or business or professional association; or (b) with which he or she has been employed or associated in the past 5 years; or (c) which was a client of a firm with which he or she had been associated, shall immediately advise his or her Division Director or other Office Head or Regional Administrator of the fact. Division Directors, Office Heads and Regional Administrators are authorized to direct the reporting employee to continue with the assignment in question where this appears in the interest of the Government, taking into account (1) the prohibitions stated in §200.735-3(b) (7) and (8); (2) the general desirability of avoiding situations that require a question of conflict of interest to be resolved; (3) the extent to which the employee's activities will be supervised; and (4) the difficulty of

assigning the matter to some other employee. Where the employee in question is not relieved of the assignment, his or her written report concerning the nature of his or her interest shall be forwarded to the Director of Personnel with a notation that he or she has been directed to continue the assignment, together with such explanation, if any, as may seem appropriate. In the event that a Division Director, Office Head or Regional Administrator deems that he or she has, himself or herself, such a personal interest in an application, filing or matter of a company as may raise a question as to his or her disinterestedness, he or she may delegate his or her responsibility with regard thereto to a subordinate, but in that event shall submit a brief memorandum of the circumstances to the Director of Personnel.¹⁸

[45 FR 36064, May 29, 1980; 45 FR 40975, June 17, 1980]

§ 200.735-7 Negotiation for employment.

(a) An employee may not negotiate employment with anyone outside the Commission with whom he or she is personally transacting business in any matter on behalf of the Commission or the United States, or while he or she is immediately or personally engaged in representing the Commission in any matter in which the prospective employer is a participant or witness or counsel for such a person, whether or not such a person takes a substantive position in an adversary proceeding in

¹⁸ 18 U.S.C. 208, provides among other things, that a member or employee is prohibited from participating personally and substantially in any matter in which to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as an officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest. This section (of the Criminal Code) does not apply if the employee has received a written determination made by an authorized official that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's service. Note: Members of the Commission may follow the procedural provision contained in Part V, Section 503 of the Executive Order 11222.

opposition to the Commission's position.

(b) An employee who wishes to negotiate employment with another Government agency at a time when he or she is representing the Commission in a particular matter in which the other Government agency is taking a position adverse to the Commission should disclose this intention to his or her Division Director, Office Head or Regional Administrator prior to taking any action.

(c) No employee shall undertake to act personally on behalf of the Commission in any capacity in a matter¹⁹ that, to his or her knowledge, affects even indirectly any person or organization outside the Commission with whom he or she is discussing or entertaining any proposal for future employment, except pursuant to the direction of the Commission, his or her Division Director, Office Head, or Regional Administrator, as provided in §200.735-6. See footnote 18.

§ 200.735-8 Practice by former members and employees of the Commission.

(a)(1) No person shall appear in a representative capacity before the Commission in a particular matter if such person, or one participating with him or her in the particular matter, participated personally and substantially in that matter while he or she was a member or employee of the Commission.²⁰ As used in this rule, a *matter*

¹⁹ Employees should bear in mind that in this connection the word *matter* is construed very broadly. See 200.735-8 and footnote 20, thereto, *infra*.

²⁰ As used in this paragraph, a single investigation or formal proceeding, or both if they are related, shall be presumed to constitute a particular matter for at least 2 years irrespective of changes in the issues. However, in cases of proceedings in which the issues change from time to time, such as proceedings involving compliance with section 11 of the Public Utility Holding Company Act (15 U.S.C. 79k), this paragraph shall not be construed as prohibiting appearance in such a proceeding, more than two years after ceasing to be a member or employee of the Commission, unless it appears to the Commission that there is such an identity of particular issues or pertinent facts as to make it likely that confidential information, derived while a member or employee of the Commission,

means a discrete and isolatable transaction or set of transactions between identifiable parties.²¹

(2) No person who has been a member or employee shall, within 2 years after his or her employment has ceased, assist, by personal presence, a person appearing in a representative capacity before the Commission in any matter in which he or she participated personally and substantially while a member or employee of the Commission at any time within a period of 1 year prior to the termination of such responsibility.

(3) No person who has been a member or an employee shall, within 2 years after his or her employment has ceased, appear in a representative capacity before the Commission in any matter which was under his or her official responsibility as a member or employee of the Commission at any time within a period of 1 year prior to the termination of such responsibility. The term *official responsibility* as defined in 18 U.S.C. 202 means 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."

(4) No employee in a position which is designated by the Director of the Office of Government Ethics shall, within one year after his or her employment has ceased, appear in a representative capacity before the Commission or communicate with the Commission or its employees with the intent to influ-

would have continuing relevance to the proceeding, so as to make participation therein by the former member or employee of the Commission unethical or prejudicial to the interests of the Commission.

²¹This definition is taken from Formal Opinion 342 of the ABA Ethics Committee. The opinion states that "work as a government employee in drafting, enforcing or interpreting government or agency procedures, regulations or laws, or in briefing abstract principles of law, does not disqualify the lawyer under DR9-101B (which states 'a lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee') from subsequent private employment involving the same regulation procedures, or points of law * * *."

ence.²² This restriction does not apply to members who ceased employment before July 1, 1979, or to employees who ceased employment prior to February 28, 1980.

(b)(1) Any former member or employee of the Commission who, within 2 years after ceasing to be such, is employed or retained as the representative of any person outside the Government in any matter in which it is contemplated that he or she will appear before the Commission, or communicate with the Commission or its employees, shall, within ten days of such retainer or employment, or of the time when appearance before, or communication with the Commission or its employees is first contemplated, file with the Secretary of the Commission a statement which includes:

(i) A description of the contemplated representation;

(ii) An affirmative representation that the former employee while on the Commission's staff had neither personal and substantial responsibility nor official responsibility for the matter which is the subject of the representation; and

(iii) The name of the Commission Division or Office in which the person had been employed.

(2) 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 requirements of this paragraph do not apply to

(i) Communications incidental to court appearances in litigation involving the Commission; and

(ii) Oral communications concerning ministerial or informational matters or requests for oral advice not otherwise prohibited by paragraph (a) of this section.

(c) As used in this section, the term *appear before the commission* means physical presence before the Commission or its employees in either a formal or informal setting or the conveyance of material in connection with a formal appearance or application to the

²²This prohibition appears in the Ethics in Government Act of 1978. Pub. L. 95-521.

Commission. As used in this section the term *communication with intent to influence* does not encompass communications which are not for the purpose of influencing the Commission or any of its employees or which, at the time of the filings, are reasonably believed not to involve any potential controversy. As used in this section, the term *representative or representative capacity* shall include not only the usual type of representation by an attorney, etc., but also representation of a corporation in the capacity of an officer, director or controlling stockholder thereof.

(d)(1) Partners or associates of any person disqualified from appearing or practicing before the Commission in a particular matter by paragraph (a)(1) of this section are also disqualified. Such partners or associates (the *firm*) may request a waiver of this prohibition from the Commission by writing a letter to the General Counsel of the commission setting forth the facts of the proposed representation and the individual's disqualification. In appropriate situations, a firm may request a generic waiver with respect to a number of different matters. Upon the advice of the Office of the General Counsel, the Commission, or the General Counsel exercising delegated authority, will advise the requestor of the Commission's response.

(2) Waivers ordinarily will be granted where the firm makes a satisfactory representation that it has adopted screening measures which will effectively isolate the individual lawyer disqualified under paragraph (a)(1) of this section from participating in the particular matter or matters and from sharing in any fees attributable to it. It will be considered significant for purposes of this determination that:

- (i) The firm had a pre-existing securities law practice prior to the arrival of the disqualified attorney;
- (ii) The matter was previously the subject of consideration by the firm or the client was already advised by the firm;
- (iii) In cases where the matter or client became the subject of consideration by the firm subsequent to the firm's employment of the lawyer individually disqualified, that the matter

was not brought to the firm because of the disqualified attorney.

(3) Notwithstanding the existence or non-existence of any of these factors, no waiver will be issued if the proposed representation would create a significant appearance of impropriety or would otherwise adversely affect the interests of the government.²³ All proceedings with respect to waivers shall be a matter of public record except to the extent that such public disclosure might violate attorney-client privilege or breach the attorney's obligation to preserve the confidences and secrets of this or her clients, reveal the existence of ongoing private investigations, interfere with law enforcement proceedings, or otherwise be inconsistent with the public interest.

(e) Persons in doubt as to the applicability of any portion of this section may apply for an advisory ruling of the Commission.²⁴

[45 FR 36064, May 29, 1980, as amended at 50 FR 23669, June 5, 1985]

§ 200.735-9 Indebtedness.

(a) The Securities and Exchange Commission considers the indebtedness of its members and employees to be essentially a matter of their own concern and will not be placed in the position of acting as a collection agency or of determining the validity or amount of contested debts. Nevertheless, failure on the part of an employee without good reason and in a proper and timely manner to honor debts acknowledged by him or her to be valid, or reduced to judgment by a court, or to make or to adhere to satisfactory arrangements for the settlement thereof, may be a

²³For example, no waiver will be granted if, during the course of representing a client who has an interest with respect to a matter before the Commission, a firm employs, or accepts as a partner, a member of the staff or of the Commission who at any time during the course of that representation had direct and substantial responsibility for the same matter, and whose departure would result in a significant adverse impact upon that matter at the Commission.

²⁴Attention of former members and employees is directed to Formal Opinion 342 of the Committee on Ethics of the American Bar Association, 62 A.B.A.J. 517 (1975) and to 18 U.S.C. 207.

cause for disciplinary action. In this connection each member and employee is expected to meet his or her responsibilities for payment of Federal, State and local taxes. For purposes of this section, *in a proper and timely manner* means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as his or her employer.

(b) Compensation due members and employees is subject to garnishment for child support and alimony obligations. (42 U.S.C. 659).

§ 200.735-10 Miscellaneous statutory provisions.

Each member and employee is responsible for acquainting himself or herself with each statute that relates to his or her ethical and other conduct as a member or employee of the Commission and of the Government, including the statutory provisions listed below. Violations of any of these statutes are deemed to be violations of the rules in this subpart M as well.

(a) House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the "Code of Ethics for Government Service."

(b) Chapter 11 of title 18 U.S.C., relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibition against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) disclosure of confidential information (18 U.S.C. 1905).

(f) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(g) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(h) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(i) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(j) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(k) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(l) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(m) The prohibition against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(n) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(o) The prohibition against political activities in subchapter III of chapter 73 of title 5 U.S.C. and 18 U.S.C. 602, 603, 607, and 608.

(p) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

§ 200.735-11 Statement of employment and financial interests.

(a) Members and employees in the Senior Executive Service or Grades GS-16 through GS-18 are required to file a financial disclosure report as provided by title II of the Ethics in Government Act of 1978, Pub. L. 95-521. Members and such employees need not also file the statement of employment and financial interests required by the following provisions.

(b) Prior to the time of entry on duty, or upon designation to a position set forth in paragraph (c) of this section, such employee shall submit to the Director of Personnel a statement, on the official form made available for this purpose through the Office of Personnel, setting forth the following information:²⁵

²⁵In addition to the information required by this Rule, all employees are required by Rule 5 to file annually with the Director of Personnel a listing of their securities holdings.

(1) A list of the names of all corporations, companies, firms, or other business enterprises, partnerships, non-profit organizations, and educational or other institutions with or in which the employee, his or her spouse, unemancipated minor child or other member of his or her immediate household has—

(i) Any connection as an employee, officer, owner, director, member, trustee, partner, adviser or consultant; or

(ii) Any continuing financial interest, through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association.

(iii) Any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts.

(2) A list of the names of the employee's creditors and the creditors of his or her spouse, unemancipated minor child or other member of his or her immediate household, other than those creditors to whom any such person may be indebted by reason of a mortgage on property which he or she occupies as a personal residence, or to whom such person may be indebted for current and ordinary household and living expenses such as those incurred for household furnishings, vacations, an automobile, education, or the like.

(3) A list of the employee's interests and those of his or her spouse, unemancipated minor child, or other member of his or her immediate household in real property or rights in lands, other than property which he or she occupies as a personal residence.

(4) For the purpose of this section, *member of his or her immediate household* means a resident of the employee's household who is related to the employee by blood or marriage.

(5) In the instance where a spouse is not a *member of the employee's immediate household*, and the employee certifies he or she neither derives nor expects to derive any economic benefit from the holdings of the spouse, the Director of Personnel may waive the requirement of reporting the interests of such spouse.

(c) Except as to employees noted in paragraph (a) of this section, state-

ments of employment and financial interests are required of the following:

(1) All employees in grade GS-15.

(2) Incumbents of the following positions, regardless of grade:

(i) Executive Staff. (A) Legal Assistants to the Chairman and to each Commissioner; (B) Special Counsels to the Chairman.

(ii) Employees serving under SEC Fellowship Programs.

(iii) All employees engaged in any aspect of Government contracting or procurement activities.

(iv) Division, Office, Directorate

(A) Directors

(B) Deputies

(C) Associates

(D) Assistants

(E) Chief Counsels

(v) Regional Offices

(A) Administrators

(B) Associate Administrators

(C) Assistant Administrators

(D) Attorneys-in-Charge of Branch Offices

(E) Chief Enforcement Attorneys

(d) Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of May 15 of each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this paragraph, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflict-of-interest provisions of section 208 of title 18 U.S.C., or of this Conduct Regulation.

(e) If any information required to be included on a statement of employment and financial interest or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his or her behalf.

(f) Paragraph (c) of this section does not require an employee to submit any information relating to his or her connection with, or interest in, a non-profit educational, charitable, religious,

professional, social, fraternal, recreational, public service, civic, or political organization, or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed *business enterprises* and are required to be included in an employee's statement of employment and financial interests.

(g) Statements of employment and financial interests filed pursuant to paragraph (c) of this section shall be sent to the Director of Personnel in a sealed envelope marked "Confidential Employment and Financial Interests." They shall be maintained in a confidential file. Only those officials of the Commission whose participation is necessary for the carrying out of the purpose of this Conduct Regulation may have access to such statements and no information may be disclosed from them except as the Commission or the Office of Personnel Management may determine for good cause shown.

(h) In accordance with the requirements of the Ethics in Government Act of 1978, Pub. L. 95-521, the Director of Personnel or the Assistant Director of Personnel shall review the financial disclosure reports filed pursuant to that Act.

(i) The Director of Personnel or the Assistant Director of Personnel shall examine the statements of employment and financial interests filed pursuant to paragraph (c) of this section to determine whether conflicts of interest or apparent conflicts of interest on the part of employees exist. An employee shall be afforded the opportunity to explain any conflict or appearance of conflict. When the Director or Assistant Director of Personnel, in consultation with appropriate superiors of the employee involved, is unable to resolve a conflict or appearance of conflict, he or she shall report the matter to the Commission through the Counselor for the Commission designated under §200.735-15(a).

(j) The Counselor for the Commission shall examine statements filed by the Director of Personnel and the Assistant Director of Personnel.

(k) Except as otherwise provided in paragraph (a) of this section the statement of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order or regulation. The submission of a statement by an employee does not permit him or her or any other person to participate in a matter in which his or her or the other person's participation is prohibited by law, order or regulation.

(l) An employee has the right to ask for a review through the Commission's grievance procedure outlined in section 771, Part II, Manual of Administrative Regulations, of a complaint that his or her position has been improperly included under the provisions of this section as one requiring the submission of a statement of employment and financial interests.

[45 FR 36064, May 29, 1980; 45 FR 40975, June 17, 1980]

§200.735-12 Special Government employees.

(a) Special Government employee means a person defined in section 18 U.S.C. 202 as a *special Government employee*. All of the provisions of this Conduct Regulation are applicable to special Government employees, except that in specific appropriate cases the Commission may exempt such employees from, or modify the applicability of, any portion of any provision of the Conduct Regulation.

(b) In no event will the Commission waive a provision of the Conduct Regulation which would permit a special Government employee to:

(1) Use his or her Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he or she has family, business, or financial ties.

(2) Use inside information obtained as a result of his or her Government employment for private gain for himself or herself or another person either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family,

business, or financial ties. For purposes of this paragraph, *inside information* means information obtained under Government authority which has not become part of the body of public information.

(3) Use his or her Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

(4) Receive or solicit from a person having business with the Commission anything of value as a gift, gratuity, loan, entertainment, or favor for himself or herself or another person, particularly one with whom he or she has family, business or financial ties.

(c) Prior to entrance on duty, each special Government employee shall submit to the Director of Personnel a statement of employment and financial interests which contains such information as the Director of Personnel determines is relevant in the light of the duties the special Government employee is to perform and, if appropriate, the financial disclosure report as provided by title II of the Ethics in Government Act of 1978, Pub. L. 95-521. It shall be kept current throughout the period of employment by the filing of supplementary statements in accordance with the requirements of § 200.735-11(d). Statements shall be on the official form made available for this purpose through the Office of Personnel.

(d) The Commission may waive the requirement of paragraph (c) of this section in the case of a special Government employee who is not a *consultant* or an *expert*, as those terms are defined in chapter 304 of the Federal Personnel Manual (5 CFR 735.304), if the duties of the position are determined to be at a level of responsibility which does not require the submission of such statement to protect the integrity of the Commission.

§ 200.735-13 Disciplinary and other remedial action.

(a) Knowing participation in a violation of this subpart by persons not within the scope of the foregoing rules in this subpart shall likewise be deemed improper conduct and in con-

travention of Commission rules. Departure from any of the rules in this subpart by employees or special Government employees without specific approval may be cause for appropriate remedial and/or disciplinary action or, in the case of former members, employees, and special Government employees, for disqualification from appearing and practicing before the Commission, which may be in addition to any penalty prescribed by law.

(b) When there has been a departure from any of the rules of this subpart without specific approval or when a conflict of interest or an apparent conflict of interest on the part of an employee or special Government employee arises, the Director of Personnel may order immediate action to end such conflict or appearance of conflict of interest. Remedial action may include, but is not limited to (1) changes in assigned duties; (2) divestment by the employee or special Government employee of his conflicting interest; (3) disciplinary action; or (4) disqualification for a particular assignment. Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive Orders, and regulations. The Director of Personnel may refer any recommended action to the Commission. The employee may obtain review by the Commission of any action ordered to be taken by the Director of Personnel. During the period of review, unless otherwise directed by the Commission, the action ordered by the Director of Personnel is stayed.

(c) Former members or employees who violate the post-employment restriction provisions of 18 U.S.C. 207(a), (b) or (c), which parallel the provisions of Rule 8(a), *supra*, will be subject to an administrative enforcement proceeding as set forth in Rule 102(e) of the Commission's Rules of Practice, § 201.102(e) of this chapter, except that, when proceedings are brought to determine if violations of post-employment restrictions have occurred, denial of the privilege of appearing and practicing before the Commission will be based on a finding of violation of the provisions of Rule 8(a) and 18 U.S.C. 207 (a), (b) and (c). Procedures applicable to such administrative proceedings are to be

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found in the Commission's Rules of Practice, 17 CFR 201.100 *et seq.*

[45 FR 36064, May 29, 1980, as amended at 60 FR 32795, June 23, 1995]

§ 200.735-14 Employees on leave of absence.

The provisions of the rules in this subpart relative to employees of the Commission are applicable to employees on a leave with pay or a leave without pay status other than extended military service.

§ 200.735-15 Interpretive and advisory service.

(a) The General Counsel shall be designated *Counselor for the Commission* and shall serve as the Commission's delegate to the Office of Personnel Management on matters covered by the rules in this subpart. The General Counsel shall be responsible for coordinating the Commission's counseling services provided under this section and for assuring that counseling and interpretations on questions of conflicts of interest and other matters covered by the rules in this subpart are available to all members and employees.

(b) There shall be designated as Deputy Counselors the Director of Personnel, the Administrator of each regional office, and the person in charge of each branch office. The General Counsel or his or her designee shall provide guidance to the Deputy Counselors for the purpose of achieving uniform interpretations of this subpart.

(c) A member, employee, or former member or employee may obtain advice or guidance on the application of the rules in this subpart from any Deputy Counselor or the General Counsel. In addition, any former member or employee seeking advice or an interpretation relating to the Ethics in Government Act shall submit his or her request to the General Counsel.

(d) The General Counsel and Deputy Counselors will treat information they receive pursuant to requests for advice or guidance under this Rule on a confidential basis, except that information they receive indicating a possible past violation of any provision of this Conduct Regulation or of the law will be

brought to the attention of appropriate persons.

(e) The Director of Personnel shall furnish a copy of this Conduct Regulation (subpart M) 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, employee and special Government employee this Conduct Regulation (subpart M) and all revisions thereof.

(f) The Director of Personnel shall notify each member, employee and special Government employee at the time of entrance on duty, and from time to time thereafter, of the availability of counseling services and of how and where these services are available.

§ 200.735-16 Delegation.

Any official responsibility assigned to a person in a particular position pursuant to this subpart may be delegated by such person to any other person.

§ 200.735-17 Administration of the conduct regulation.

Under the general direction of the Executive Director, the Director of Personnel is responsible for the day-to-day administration of this conduct regulation except where otherwise provided.

§ 200.735-18 Requests for waivers.

Unless a different procedure is specifically prescribed in a rule of this part, an employee may submit a request for a waiver, modification or postponement of a requirement included in this part to the Chairman. Such waiver, modification or postponement may be granted if it is determined by the Chairman that such waiver, modification or postponement would not adversely affect the interest of the Commission or the United States. Any such waiver, modification or postponement granted by the Chairman shall be made available to the public. The Chairman may submit any request made pursuant to this rule to the Commission for its consideration. Any Commission action on such request shall be made public only in the

discretion of the Commission. Requirements included in this part which implement any provision of Federal law, regulation or Executive Order generally applicable to the Executive Branch shall not be waived under this provision.

Subpart N—Commission Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers and Expiration Dates

AUTHORITY: (44 U.S.C. 3507(f); secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498-1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a-37)

§200.800 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This subpart collects and displays the control numbers and expiration dates assigned to information collection requirements of the Commission by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this subpart comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement. In particular, this subpart displays current OMB control numbers and expiration dates of those information collection requirements of the Commission which are rules and regulations and codified in 17 CFR either in full text or incorporated by reference with the approval of the Director of the Office of the Federal Register. Where the information collection requirement also exists as a separate document, as, for example, an information collection

requirement which the Commission incorporates by reference in 17 CFR, the Commission, of course, will display on the separate document as well the current OMB control number and the expiration date as required by section 3507(f). Henceforth, the Commission will publish in the FEDERAL REGISTER only additions, deletions and corrections to particular control numbers and expiration dates contained in this subpart.

(b) *Display.*

Information collection requirement	17 CFR part or section where identified and described	Current OMB control No.	Expiration date
Regulation S-X.	Part 210	3235-0009	Jan. 31, 1992.
Regulation S-K.	Part 229	3235-0071	June 30, 1991.
Rule 236	§ 230.236	3235-0095	Mar. 31, 1990.
Regulation A.	§§ 230.251 through 230.264.	3235-0286	Jan. 31, 1992.
Regulation B.	§§ 230.300 through 230.345.	3235-0093	Mar. 31, 1990.
Regulation C.	§§ 230.400 through 230.494.	3235-0074	Apr. 30, 1990.
Regulation D.	§§ 230.501 through 230.506.	3235-0076	Mar. 30, 1991.
Rule 604	§ 230.604	3235-0232	July 31, 1990.
Rule 605	§ 230.605	3235-0232	July 31, 1990.
Rule 606	§ 230.606	3235-0232	July 31, 1990.
Rule 607	§ 230.607	3235-0232	July 31, 1990.
Rule 609	§ 230.609	3235-0232	July 31, 1990.
Regulation F	§§ 230.651 through 230.656.	3235-0094	Nov. 30, 1990.
Rule 701	§ 230.701	3235-0347	Mar. 31, 1990.
Rule 702	§ 230.702	3235-0347	Mar. 31, 1990.
Rule 703	§ 230.703	3235-0347	Mar. 31, 1990.
Form S-1	§ 239.11	3235-0065	Dec. 31, 1991.
Form S-2 ...	§ 239.12	3235-0072	Aug. 31, 1991.
Form S-3 ...	§ 239.13	3235-0073	Do.
Form N-1A ...	§ 239.15a	3235-0307	July 31, 1991.
Form S-6 ...	§ 239.16	3235-0184	Sept. 30, 1990.
Form N-7 ...	§ 239.16A	3235-0338	Apr. 30, 1990.
Form S-11 ...	§ 239.18	3235-0067	Aug. 31, 1991.
Form N-14 ...	§ 239.23	3235-0336	May 31, 1991.
Form S-8 ...	§ 239.16b	3235-0066	Aug. 31, 1991.
Form S-4 ...	§ 239.25	3235-0324	July 31, 1990.
Form S-18 ...	§ 239.28	3235-0098	Nov. 30, 1989.
Form F-1 ...	§ 239.31	3235-0258	May 31, 1991.
Form F-2 ...	§ 239.32	3235-0257	Do.
Form F-3 ...	§ 239.33	3235-0256	Do.
Form F-4 ...	§ 239.34	3235-0325	July 31, 1990.
Form F-6 ...	§ 239.36	3235-0292	Jan. 31, 1992.
Form SR	§ 239.61	3235-0124	Nov. 30, 1990.
Form ET	§ 239.62	3235-0329	Oct. 31, 1989.
Form ID	§ 239.63	3235-0328	Oct. 31, 1989.
Form SE	§ 239.64	3235-0327	Oct. 31, 1989.
Form 1-A ...	§ 239.90	3235-0286	Do.
Form 2-A ...	§ 239.91	3235-0286	Do.
Form 3-A ...	§ 239.92	3235-0286	Do.
Form 4-A ...	§ 239.93	3235-0286	Do.
Form 5-A ...	§ 239.94	3235-0286	Do.

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Information collection requirement	17 CFR part or section where identified and described	Current OMB control No.	Expiration date	Information collection requirement	17 CFR part or section where identified and described	Current OMB control No.	Expiration date
Form 6-A ...	§ 239.95	3235-0286	Do.	Rule 15b1-1	§ 240.15b1-1	3235-0012	Mar. 31, 1991.
Form 7-A ...	§ 239.96	3235-0286	Do.	Rule 15b1-2	§ 240.15b1-2	3235-0020	Do.
Schedules A, B, C, D.	§ 239.101	3235-0093	Mar. 31, 1990.	Rule 15b1-3	§ 240.15b1-3	3235-0011	Do.
Form 1-G ...	§ 239.101	3235-0093	Mar. 31, 1990.	Rule 15b1-4	§ 240.15b1-4	3235-0016	Aug. 31, 1989.
Form 3-G ...	§ 239.101	3235-0093	Mar. 31, 1990.	Rule 15b3-1	§ 240.15b3-1	3235-0013	Oct. 31, 1990.
Form 144 ...	§ 239.144	3235-0101	Dec. 31, 1991.	Rule 15b6-1(a).	§ 240.15b6-1(a).	3235-0018	Nov. 30, 1989.
Form 1-E ...	§ 239.200	3235-0232	July 31, 1990.	Rule 15Ba2-1.	§ 240.15Ba2-1.	3235-0083	Aug. 31, 1991.
Form 2-E ...	§ 239.201	3235-0233	Feb. 28, 1991.	Rule 15Ba2-2.	§ 240.15Ba2-2.	3235-0090	Dec. 31, 1990.
Form 1-F ...	§ 239.300	3235-0094	Nov. 30, 1990.	Rule 15Ba2-4.	§ 240.15Ba2-4.	3235-0088	Do.
Form D ...	§ 239.500	3235-0076	Apr. 30, 1991.	Rule 15Ba2-5.	§ 240.15Ba2-5.	3235-0086	Dec. 31, 1990.
Rule 701 ...	§ 239.701	3235-0347	Mar. 31, 1990.	Rule 15Ba2-6.	§ 240.15Ba2-6.	3235-0087	Nov. 30, 1990.
Rule 6a-1 ...	§ 240.6a-1 ...	3235-0017	Aug. 31, 1991.	Rule 15Bc3-1.	§ 240.15Bc3-1.	3235-0198	Jan. 31, 1991.
Rule 6a-2 ...	§ 240.6a-2 ...	3235-0022	Do.	Rule 15c2-5	§ 240.15c2-5	3235-0202	Mar. 31, 1989.
Rule 6a-3 ...	§ 240.6a-3 ...	3235-0021	Apr. 30, 1990.	Rule 15c2-11.	§ 240.15c2-11.	3235-0200	June 30, 1990.
Rule 10b-6 ...	§ 240.10b-6 ...	3235-0355	Sept. 30, 1990.	Rule 15c3-3	§ 240.15c3-3	3235-0078	Aug. 31, 1990.
Rule 10b-7 ...	§ 240.10b-7 ...	3235-0201	Dec. 31, 1989.	Rule 15c1-7	§ 240.15c1-7	3235-0134	Dec. 31, 1990.
Rule 11Ab2-1.	§ 240.11Ab2-1.	3235-0043	Oct. 31, 1990.	Rule 15Ca1-1.	§ 240.15Ca1-1.	3235-0351	Jan. 31, 1990.
Rule 12a-5	§ 240.12a-5 ...	3235-0079	Dec. 31, 1990.	Rule 15Ca2-2.	§ 240.15Ca2-2.	3235-0352	Apr. 30, 1990.
Regulation 12B.	§§ 240.12b-1 through 240.12b-36.	3235-0062	Nov. 30, 1990.	Rule 17a-1	§ 240.17a-1 ...	3235-0208	Oct. 31, 1989.
Rule 12d1-3	§ 240.12d1-3	3235-0109	Nov. 30, 1990.	Rule 17a-2	§ 240.17a-2 ...	3235-0201	Dec. 31, 1989.
Rule 12d2-1	§ 240.12d2-1	3235-0081	Dec. 31, 1990.	Rule 17a-3	§ 240.17a-3 ...	3235-0033	Sept. 30, 1989.
Rule 12d2-2	§ 240.12d2-2	3235-0080	Dec. 31, 1990.	Rule 17a-4	§ 240.17a-4 ...	3235-0279	Sept. 30, 1989.
Rule 12f-1	§ 240.12f-1 ...	3235-0128	Dec. 31, 1990.	Rule 17a-5	§ 240.17a-5 ...	3235-0123	Oct. 31, 1989.
Rule 12f-2	§ 240.12f-2 ...	3235-0248	Jan. 31, 1991.	Rule 17a-5(c).	§ 240.17a-5(c).	3235-0199	Jan. 31, 1992.
Rule 12f-3	§ 240.12f-3 ...	3235-0249	Jan. 31, 1991.	Rule 17a-7	§ 240.17a-7 ...	3235-0131	Oct. 31, 1989.
Rule 12g3-2	§ 240.12g3-2	3235-0119	Jan. 31, 1992.	Rule 17a-8	§ 240.17a-8 ...	3235-0092	Jan. 31, 1991.
Regulation 13D/G.	§§ 240.13d-1 through 240.13d-7.	3235-0145	Aug. 31, 1991.	Rule 17a-10	§ 240.17a-10	3235-0122	Dec. 31, 1990.
Schedule 13D.	§ 240.13d-101.	3235-0145	Do.	Rule 17a-11	§ 240.17a-11	3235-0085	Oct. 31, 1990.
Schedule 13G.	§ 240.13d-102.	3235-0145	Do.	Rule 17a-13	§ 240.17a-13	3235-0035	Oct. 31, 1990.
Rule 13e-1	§ 240.13e-1 ...	3235-0305	Jan. 31, 1992.	Rule 17a-19	§ 240.17a-19	3235-0133	Dec. 31, 1990.
Rule 13e-3	§ 240.13e-3 ...	3235-0007	June 30, 1989.	Rule 17a-22	§ 240.17a-22	3235-0196	Dec. 31, 1990.
Rule 13e-4	§ 240.13e-4 ...	3235-0203	Sept. 30, 1990.	Rule 17Ab2-1(a) and (e).	§ 240.17Ab2-1(a) and (e).	3235-0195	Jan. 31, 1991.
Schedule 13e3.	§ 240.13e-100.	3235-0007	June 30, 1989.	Rule 17Ac2-1(a) and (c).	§ 240.17Ac2-1(a) and (c).	3235-0084	June 30, 1991.
Schedule 13e-4.	§ 240.13e-101.	3235-0203	Sept. 30, 1990.	Rule 17Ac3-1.	§ 240.17Ac3-1.	3235-0151	Nov. 30, 1990.
Regulation 14A.	§§ 240.14a-1 through 240.14a-12.	3235-0059	July 31, 1990.	Rule 17Ad2(c), (d) and (h).	§ 240.Ad2(c), (d) and (h).	3235-0130	Dec. 31, 1990.
Schedule 14A.	§ 240.14a-101.	3235-0059	July 31, 1990.	Rule 17Ad-4(b) and (c).	§ 240.17Ad-4(b) and (c).	3235-0341	Feb. 28, 1989.
Schedule 14B.	§ 240.14a-102.	3235-0059	July 31, 1990.	Rule 17Ad-6.	§ 240.17Ad-6	3235-0291	Aug. 31, 1989.
Regulation 14C.	§ 240.14c-1 ...	3235-0057	July 31, 1990.	Rule 17Ad-7.	§ 240.17Ad-7	3235-0136	Aug. 31, 1989.
Schedule 14C.	§ 240.14c-101.	3235-0057	July 31, 1990.	Rule 17Ad-10.	§ 240.17Ad-10.	3235-0273	July 31, 1990.
Regulation 14D.	§§ 240.14d-1 through 240.14d-9.	3235-0102	Sept. 30, 1990.	Rule 17Ad-11.	§ 240.17Ad-11.	3235-0341	Do.
Schedule 14d-1.	§ 240.14d-100.	3235-0102	Sept. 30, 1990.	Rule 17Ad-13.	§ 240.17Ad-13.	3235-0275	Do.
Schedule 14d-9.	§ 240.14d-101.	3235-0102	Sept. 30, 1990.				
Regulation 14E.	§§ 240.14e-1 through 240.14e-2.	3235-0102	Sept. 30, 1990.				
Rule 14f-1	§ 240.14f-1 ...	3235-0108	Nov. 30, 1990.				
Rule 15a-4(a).	§ 240.15a-4(a).	3235-0010	Aug. 31, 1989.				
Rule 15Aa-1.	§ 240.15Aa-1	3235-0030	Oct. 31, 1990.				
Rule 15Aj-1	§ 240.15Aj-1	3235-0044	Oct. 31, 1990.				

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Rule 17f-1(b).	§ 240.17f-1(b)	3235-0032	Dec. 31, 1991.	Form MSD	§ 249.1100	3235-0083	Aug. 31, 1991.
Rule 17f-1(c).	§ 240.17f-1(c)	3235-0037	Do.	Form MSDW.	§ 249.1110	3235-0087	Nov. 30, 1990.
Rule 17f-1(g).	§ 240.17f-1(g)	3235-0290	Nov. 30, 1989.	Form X-17f-1A.	§ 249.1200	3235-0037	Dec. 31, 1991.
Rule 17f-2(a).	§ 240.17f-2(a)	3235-0034	Do.	Form TA-1	§ 249b.100	3235-0084	June 30, 1991.
Rule 17f-2(c).	§ 240.17f-2(c)	3235-0029	Oct. 31, 1990.	Form TA-W	§ 249b.101	3235-0151	Nov. 30, 1990.
Rule 17f-2(d).	§ 240.17f-2(d)	3235-0028	Oct. 31, 1990.	Form TA-2	§ 249b.102	3235-0337	May 31, 1991.
Rule 17f-2(e).	§ 240.17f-2(e)	3235-0031	Nov. 30, 1990.	Form CA-1	§ 249b.200	3235-0195	Jan. 31, 1991.
Rule 17f-5	§ 240.17f-5 ...	3235-0269	July 31, 1991.	Rule 1(a)	§ 250.1(a)	3235-0170	Sept. 30, 1991.
Rule 19b-1	§ 240.19b-1 ...	3235-0354	July 31, 1990.	Rule 1(b)	§ 250.1(b)	3235-0170	Sept. 30, 1988.
Rule 19b-4	§ 240.19b-4 ...	3235-0045	Oct. 31, 1990.	Rule 1(c)	§ 250.1(c)	3235-0164	Nov. 30, 1989.
Rule 19d-1(b)(i).	§ 240.19d-1(b)(i).	3235-0206	Aug. 31, 1989.	Rule 2	§ 250.2	3235-0161	Do.
Rule 19d-3(b)-(f).	§ 240.19d-3(b)-(f).	3235-0240	Jan. 31, 1992.	Rule 3	§ 250.3	3235-0160	Do.
Rule 19h-1(a), (c)-(e), (g).	§ 240.19h-1(a), (c)-(e), (g).	3235-0259	Oct. 31, 1989.	Rule 7	§ 250.7	3235-0165	Do.
Rule 24b-1	§ 240.24b-1 ...	3235-0194	Jan. 31, 1991.	Rule 7d	§ 250.7d	3235-0165	Do.
Form 1	§ 249.1	3235-0017	Aug. 31, 1991.	Rule 20(b)	§ 250.20(b) ...	3235-0125	Do.
Form 1-A	§ 249.1a	3235-0022	Do.	Rule 20(c)	§ 250.20(c) ...	3235-0125	Do.
Form 25	§ 249.25	3235-0080	Dec. 31, 1990.	Rule 20(d)	§ 250.20(d) ...	3235-0163	Do.
Form 26	§ 249.26	3235-0079	Dec. 31, 1990.	Rule 23	§ 250.23	3235-0125	Do.
Form 27	§ 249.27	3235-0248	Jan. 31, 1991.	Rule 24	§ 250.24	3235-0126	Do.
Form 28	§ 249.28	3235-0249	Jan. 31, 1991.	Rule 26	§ 250.26	3235-0183	Do.
Form 3	§ 249.103	3235-0104	Nov. 30, 1991.	Rule 29(a)	§ 250.29(a) ...	3235-0149	Do.
Form 4	§ 249.104	3235-0187	Do.	Rule 29(b)	§ 250.29(b) ...	3235-0149	Do.
Form 8-A	§ 249.208a ...	3235-0056	Nov. 30, 1990.	Rule 42	§ 250.42	3235-0171	Do.
Form 8-B	§ 249.208b ...	3235-0068	Aug. 31, 1991.	Rule 44	§ 250.44	3235-0147	Do.
Form 10	§ 249.210	3235-0064	Do.	Rule 45	§ 250.45	3235-0154	July 31, 1990.
Form 18	§ 249.218	3235-0121	May 31, 1991.	Rule 47(b)	§ 250.47(b) ...	3235-0163	Do.
Form 20-F	§ 249.220f ...	3235-0288	June 30, 1991.	Rule 50	§ 250.50	3235-0126	Do.
Form 6-K	§ 249.306	3235-0116	May 31, 1991.	Rule 62	§ 250.62	3235-0152	Do.
Form 8-K	§ 249.308	3235-0060	June 30, 1991.	Rule 71(a)	§ 250.71(a) ...	3235-0173	Do.
Form 10-Q	§ 249.308a ...	3235-0070	Do.	Rule 72	§ 250.72	3235-0149	Do.
Form 10-K	§ 249.310	3235-0063	Sept. 30, 1991.	Rule 83	§ 250.83	3235-0181	Do.
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Form 11-K	§ 249.311	3235-0082	Mar. 31, 1990.	Rule 88	§ 250.88	3235-0182	Do.
Form 18-K	§ 249.318	3235-0120	May 31, 1991.	Rule 93	§ 250.93	3235-0153	Do.
Form 12b-25.	§ 249.322	3235-0058	June 30, 1991.	Rule 94	§ 250.94	3235-0153	Do.
Form 15	§ 249.323	3235-0167	Nov. 30, 1989.	Rule 95	§ 250.95	3235-0162	Do.
Form 13F	§ 249.325	3235-0006	Feb. 28, 1991.	Rule 100(a)	§ 250.100(a) ..	3235-0125	Do.
Form N-SAR.	§ 249.330	3235-0030	Sept. 30, 1990.	Part 256(a)	§ 250.100(a) ..	3235-0153	Do.
Form SE	§ 249.444	3235-0327	Oct. 31, 1989.	Part 257	§ 250.100(a) ..	3235-0153	Do.
Form ET	§ 249.445	3235-0329	Oct. 31, 1989.	Form U5A	§ 259.5a	3235-0170	Nov. 30, 1989.
Form ID	§ 249.446	3235-0328	Oct. 31, 1989.	Form U5B	§ 259.5b	3235-0170	Do.
Form 8	§ 249.460	3235-0141	Mar. 31, 1990.	Form U5S	§ 259.5s	3235-0164	Nov. 30, 1989.
Form BD	§ 249.501	3235-0012	Mar. 31, 1991.	Form U-	§ 259.12(a) ...	3235-0173	Sept. 30, 1991.
Form BDW	§ 249.501a ...	3235-0018	Nov. 30, 1989.	Form U-12(1)A.	§ 259.12(b) ...	3235-0173	Do.
Form X-17A-5.	§ 249.617	3235-0123	Oct. 31, 1989.	Form U-12(1)B.	§ 259.101	3235-0125	Sept. 30, 1991.
Form X-17A-19.	§ 249.635	3235-0133	Dec. 31, 1990.	Form U-1	§ 259.113	3235-0182	Do.
Form X-17A-1.	§ 249.717	3235-0208	Oct. 31, 1989.	Form U-13-1.	§ 259.206	3235-0163	Do.
Form X-15AA-1.	§ 249.801	3235-0030	Oct. 31, 1990.	Form U-6b-2.	§ 259.213	3235-0162	Do.
Form X-15AJ-1.	§ 249.802	3235-0044	Oct. 31, 1990.	Form U-13e-1.	§ 259.221	3235-0152	Do.
Form X-15AJ-2.	§ 249.803	3235-0044	Oct. 31, 1990.	Form U-R-1	§ 259.313	3235-0153	Do.
Form 19b-4	§ 249.819	3235-0045	Oct. 31, 1990.	Form U-13-60.	§ 259.402	3235-0161	Do.
Form SIP	§ 249.1001 ...	3235-0043	Oct. 31, 1990.	Form U-3A-2.	§ 259.403	3235-0160	Do.
				Form U-3A3-1.	§ 259.404	3235-0165	Do.
				Form U-7d	§ 259.501	3235-0125	Do.
				Form U-A	§ 259.601	3235-0329	Oct. 31, 1989.
				Form ET	§ 259.602	3235-0328	Oct. 31, 1989.
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				Form SE	§ 259.603	3235-0327	Oct. 31, 1989.
				Rules 7a-15 through 7a-37.	§ 260.7a-15 through 260.7a-37.	3235-0132	Nov. 30, 1990.
				Form T-1	§ 269.1	3235-0110	Nov. 30, 1990.

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Form T-2 ...	§ 269.2	3235-0111	Nov. 30, 1990.
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Form ET	§ 269.5	3235-0329	Oct. 31, 1989.
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Form SE	§ 269.7	3235-0327	Oct. 31, 1989.
Rule 2A-7 ..	§ 270.2a-7 ...	3235-0268	Sept. 30, 1990.
Rule 2a19-1	§ 270.2a19-1 ..	3235-0332	Dec. 31, 1991.
Rule 6c-6 ...	§ 270.6c-6 ...	3235-0245	Nov. 30, 1989.
Rule 6c-7 ...	§ 270.6c-7 ...	3235-0276	Jan. 31, 1992.
Rule 6c-9 ...	§ 270.6c-9 ...	3235-0344	Oct. 31, 1989.
Rule 6e	§ 270.6e-2(b)(9).	3235-0177	Feb. 28, 1991.
Rule 7d	§ 270.7d-(b)(8)(i), (iii) and (viii).	3235-0176	Jan. 31, 1990.
Rule 8b-11	§ 270.8b-11 ..	3235-0176	Jan. 31, 1990.
Rule 8b-16	§ 270.8b-16 ..	3235-0176	Jan. 31, 1990.
Rule 8b-20	§ 270.8b-20 ..	3235-0176	Jan. 31, 1990.
Rule 8b-21(b).	§ 270.8b-21(b).	3235-0176	Jan. 31, 1990.
Rule 8b-25	§ 270.8b-25 ..	3235-0176	Jan. 31, 1990.
Rule 8b-32(b).	§ 270.8b-32(b).	3235-0176	Jan. 31, 1990.
Rule 10f-3	§ 270.10f-3 ...	3235-0226	Nov. 30, 1989.
Rule 11a-2	§ 270.11a-2 ...	3235-0272	Jan. 31, 1992.
Rule 12b-1	§ 270.12b-1 ..	3235-0212	July 31, 1991.
Rule 17a-7	§ 270.17a-7 ..	3235-0214	Feb. 28, 1991.
Rule 17a-8	§ 270.17a-8 ..	3235-0235	Feb. 28, 1991.
Rule 17e-1	§ 270.17e-1 ..	3235-0217	Oct. 31, 1990.
Rule 17f-1	§ 270.17f-1 ...	3235-0222	Feb. 28, 1991.
Rule 17f-2	§ 270.17f-2 ...	3235-0223	Oct. 31, 1991.
Rule 17f-4	§ 270.17f-4 ...	3235-0225	July 31, 1990.
Rule 17f-1(g).	§ 270.17f-1(g)	3235-0213	Jan. 31, 1992.
Rule 17j-1 ..	§ 270.17j-1 ...	3235-0224	Nov. 30, 1989.
Rule 18f-1	§ 270.18f-1 ...	3235-0211	Feb. 28, 1991.
Rule 19a-1	§ 270.19a-1 ..	3235-0216	Feb. 28, 1991.
Rule 20a-1(b).	§ 270.20a-1(b).	3235-0158	Sept. 30, 1991.
Rule 20a-2	§ 270.20a-2 ..	3235-0158	Do.
Rule 20a-3	§ 270.20a-3 ...	3235-0158	Do.
Rule 22d-1	§ 270.22d-1 ..	3235-0310	June 30, 1991.
Rule 23c-1	§ 270.23c-1 ..	3235-0260	Feb. 28, 1989.
Rule 24f-1	§ 270.24f-1 ...	3235-0155	Feb. 28, 1991.
Rule 24f-2	§ 270.24f-2 ...	3235-0159	Feb. 28, 1991.
Rule 24f-3	§ 270.24f-3 ...	3235-0348	Apr. 30, 1990.
Rule 26a-3	§ 270.26a-3 ...	3235-0333	Apr. 30, 1990.
Rule 30a-1	§ 270.30a-1 ...	3235-0219	Feb. 28, 1991.
Rule 30b2-1	§ 270.30b2-1 ..	3235-0220	Feb. 28, 1991.
Rule 30d-1	§ 270.30d-1 ..	3235-0025	Dec. 31, 1990.
Rule 31a-1	§ 270.31a-1 ..	3235-0178	July 31, 1990.
Rule 31a-2	§ 270.31a-2 ..	3235-0179	June 30, 1989.
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Form N-5 ...	§ 274.5	3235-0169	Feb. 28, 1989.
Form N-8A	§ 274.10	3235-0175	Jan. 31, 1991.
Form N-1 ...	§ 274.11	3235-0027	Feb. 28, 1989.
Form N-1A	§ 274.11a	3235-0307	July 31, 1991.
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Form N-3 ...	§ 274.11b	3235-0316	Do.
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Form N-8B-2.	§ 274.12	3235-0186	Apr. 30, 1990.
Form N-7 ...	§ 274.12a	3235-0338	Apr. 30, 1990.
Form N-8B-3.	§ 274.13	3235-0166	Dec. 31, 1990.
Form N-8B-4.	§ 274.14	3234-0247	Dec. 31, 1990.
Form N-6F	§ 274.15	3235-0238	Feb. 28, 1991.
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Form N-SAR.	§ 274.101	3235-0330	Sept. 30, 1990.
Form N-17d-1.	§ 274.200	3235-0229	Feb. 28, 1991.
Form N-23C-1.	§ 274.201	3235-0230	Feb. 28, 1991.
Form N-8F	§ 274.218	3235-0157	Feb. 28, 1991.
Form N-6E1-1.	§ 274.301	3235-0177	Feb. 28, 1991.
Form ET	§ 274.401	3235-0329	Oct. 31, 1989.
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Form SE	§ 274.403	3235-0327	Oct. 31, 1989.
Rule 0-2 ...	§ 275.0-2	3235-0240	Jan. 31, 1992.
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Rule 203 ...	§ 275.203-1 ..	3235-0049	June 30, 1991.
Rule 203-2	§ 275.203-2 ..	3235-0313	Jan. 31, 1992.
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Rule 204-2	§ 275.204-2 ..	3235-0278	Sept. 30, 1991.
Rule 204-3	§ 275.204-3 ..	3235-0047	Jan. 31, 1992.
Rule 206(3)-2.	§ 275.206(3)-2.	3235-0243	June 30, 1989.
Rule 206(4)-2.	§ 275.206(4)-2.	3235-0241	Do.
Rule 206(4)-3.	§ 275.206(4)-3.	3235-0242	Sept. 30, 1991.
Rule 206(4)-4.	§ 275.206(4)-4.	3235-0345	Do.
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Form 6-R ...	§ 279.6	3235-0240	Do.
Form 7-R ...	§ 279.7	3235-0240	Do.

[47 FR 4982, Feb. 3, 1982, as amended at 47 FR 11401, Mar. 16, 1982; 47 FR 54766, Dec. 6, 1982; 47 FR 56834, Dec. 21, 1982; 48 FR 12347, Mar. 24, 1983; 48 FR 13160, Mar. 30, 1983; 49 FR 10927, Mar. 23, 1984; 49 FR 16765, Apr. 20, 1984; 51 FR 9769, Mar. 21, 1986; 53 FR 9764, Mar. 25, 1988; 54 FR 13057, Mar. 30, 1989]

PART 201—RULES OF PRACTICE

Subpart A [Reserved]

Subpart B—Regulations Pertaining to the Equal Access to Justice Act

- Sec. 201.31 Purpose of these rules.
- 201.32 When the Act applies.
- 201.33 Proceedings covered.
- 201.34 Eligibility of applicants.
- 201.35 Standards for awards.
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- 201.42 Net worth exhibit.
- 201.43 Documentation of fees and expenses.