

## § 11.8

as the circumstances warrant based upon a written transcript evidencing the conduct of the attorney in that investigation or such other or additional written or oral presentation as the Commission may permit or direct.

(d) *Self-Incrimination; immunity*—(1) *Self-Incrimination*. Except as provided in paragraph (d)(2) of this section, a witness testifying or otherwise giving information in an investigation may refuse to answer questions on the basis of the right against self-incrimination granted by the Fifth Amendment of the Constitution of the United States.

(2) *Immunity*.<sup>2</sup> If the Commission believes that the testimony or other information sought to be obtained from any individual may be necessary to the public interest and that individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination, the Commission, with the approval of the Attorney General, may issue an order requiring the individual to give testimony or provide other information which he previously refused to give on the basis of self-incrimination. Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in an investigation under this part, and the person presiding over the investigation communicates to the witness an order issued by the Commission requiring the witness to give testimony or provide other information, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a

<sup>2</sup> This subsection shall be effective on and after such date as section 6001 of Title 18 of the United States Code has been amended to include the Commodity Futures Trading Commission among those agencies which may, with the approval of the Attorney General, grant immunity to witnesses to the extent and in the manner prescribed in 18 U.S.C. 6001 *et seq.*

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false statement, or otherwise failing to comply with the order.

[41 FR 29799, July 19, 1976, as amended at 61 FR 1709, Jan. 23, 1996]

### § 11.8 Sequestration.

(a) *Sequestration of witnesses*. All witnesses and potential witnesses shall be sequestered and prohibited from being present during the examination of any other witness unless otherwise permitted in the discretion of the person conducting the investigation.

(b) *Sequestration of counsel*. When a reasonable basis exists to believe that an investigation may be obstructed or impeded, directly or indirectly, by an attorney's representation of more than one witness during the course of an investigation, the member of the Commission or of the Commission's staff conducting the investigation may prohibit that attorney from being present during the testimony of any witness other than the witness in whose behalf counsel first appeared in the investigatory proceeding. To the extent practicable, consistent with the integrity of the investigation, the attorney will be advised of the reasons for his having been sequestered.

### APPENDIX A TO PART 11—INFORMAL PROCEDURE RELATING TO THE RECOMMENDATION OF ENFORCEMENT PROCEEDINGS

The Division of Enforcement ("Division"), in its discretion, may inform persons who may be named in a proposed enforcement proceeding of the nature of the allegations pertaining to them. The Division, in its discretion, may advise such persons that they may submit a written statement prior to the consideration by the Commission of any staff recommendation for the commencement of such proceeding. Unless otherwise provided for by either the Director, a Deputy Director, the Program Coordinator, the Chief Counsel, an Associate Director, or a Regional Counsel of the Division, or a Regional Director of the Commission, such written statements shall be submitted within 14 days after persons are informed by the Division of Enforcement of the nature of the proposed allegations pertaining to them and shall be no more than 20 pages, double spaced on 8½ by 11 inch paper, setting forth their views of factual, legal or policy matters relevant to the commencement of an enforcement proceeding. Any statement of fact included in the submission must be sworn to by a person