

§ 11.5

17 CFR Ch. I (4–1–06 Edition)

(b) *Authorization to issue subpoenas.* An order of the Commission authorizing one or more members of the Commission or of its staff to issue subpoenas in the course of a particular investigation shall include:

(1) A general description of the scope of the investigation;

(2) The authority under which the investigation is being conducted; and

(3) A designation of the members of the Commission or of its staff authorized by the Commission to issue subpoenas.

(c) *Service.* Service of subpoenas issued for investigative purposes shall be effected in the following manner:

(1) *Service upon a natural person.* Delivery of a copy of a subpoena to a natural person may be effected by

(i) Handing it to the person;

(ii) Leaving it at his office with the person in charge thereof or, if there is no one in charge, by leaving it in a conspicuous place therein;

(iii) Leaving it at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein;

(iv) Mailing it by registered or certified mail to him at his last known address; or

(v) Any other method whereby actual notice is given to him.

(2) *Service upon other persons.* When the person to be served is not a natural person, delivery of a copy of the subpoena may be effected by (i) handing it to a registered agent for service, or to any officer, director, or agent in charge of any office of such person; (ii) mailing it by registered or certified mail to any such representative at his last known address; or (iii) any other method whereby actual notice is given to any such representative.

(d) *Witness fees and mileage.* Witnesses appearing pursuant to subpoena shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

(e) Pursuant to the authority granted under Sections 2(a)(11) and 8a(5) of the Act, the Commission hereby delegates to the Director of the Division of Enforcement, with the concurrence of the General Counsel or General Counsel's delegate, and until such time as the Commission orders otherwise, the au-

thority to invoke, in case of contumacy by, or refusal to obey a subpoena issued to, any person, the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda and other records pursuant to subpoenas issued in accordance with section 6(c) of the Act for the purpose of securing effective enforcement of the provisions of this Act, for the purpose of any investigation or proceeding under this Act, and for the purpose of any action taken under section 12(f) of the Act.

(f) Notwithstanding the delegation of authority to the Director set forth in paragraph (e) of this section, in any case in which the Director believes it appropriate the matter may be submitted to the Commission for its consideration. Nothing in this section shall prohibit the Commission from exercising the authority delegated in paragraph (e) of this section.

[41 FR 29799, July 19, 1976, as amended at 67 FR 37322, May 29, 2002]

§ 11.5 Transcripts.

Transcripts of testimony taken in the course of an investigative proceeding shall be recorded solely by an official reporter or other person or by other means authorized by the Commission or by a member of the Commission or its staff conducting the investigation for the Commission.

§ 11.6 Oath; false statements.

(a) *Oath.* At the discretion of the member of the Commission or staff member conducting the investigation, testimony of a witness may be taken under oath.

(b) *Penalties for false statements and other false information.* Any person making false statements under oath during the course of a Commission investigation is subject to the criminal penalties for perjury in 18 U.S.C. 1621. Any person who knowingly and willfully makes false or fraudulent statements, whether under oath or otherwise, or who falsifies, conceals or covers up a material fact, or submits any

false writing or document, knowing it to contain false, fictitious or fraudulent information, is subject to the criminal penalties set forth in 18 U.S.C. 1001.

§ 11.7 Rights of witnesses.

(a) *Orders authorizing issuance of subpoenas.* Any person upon whom a subpoena has been served compelling him to furnish documentary evidence or testimony in an investigation shall, upon his request, be permitted to examine a copy of the Commission's order pursuant to which the subpoena has been issued. However, a copy of the order shall not be furnished for his retention except with the express approval of either the Director, a Deputy Director, the Program Coordinator, the Chief Counsel, an Associate Director, or a Regional Counsel of the Division of Enforcement, or a Regional Director of the Commission; approval shall not be given unless it has been shown by the person seeking to retain a copy that his retention of a copy would be consistent both with the protection of privacy of persons involved in the investigation and with the unimpeded conduct of the investigation.

(b) *Copies of testimony or data.* A person compelled to submit data or evidence in the course of an investigatory proceeding shall be entitled to retain or, upon payment of appropriate fees as set forth in the Schedule of Fees for records services, 17 CFR part 145b, procure a copy or transcript thereof, except that the witness may for good cause be limited to inspection of the official transcript of his testimony.

(c) *Right to counsel.* A person compelled to appear, or who appears in person by request or permission of the Commission or its staff during an investigation, may be accompanied, represented, and advised by counsel. Subject to the provisions of § 11.8(b) of this part, he may be represented by any attorney-at-law who is admitted to practice before the highest court in any State or territory or the District of Columbia, who has not been suspended or disbarred from appearance and practice before the Commission in accordance with the provisions of part 14 of this title, and who has not been excluded from further participation in the par-

ticular investigatory proceeding for good cause established in accordance with paragraph (c)(2) of this section.

(1) The right to be accompanied, represented and advised by counsel shall mean the right of a person testifying to have an attorney present with him during any aspect of an investigative proceeding and to have this attorney advise his client before, during and after the conclusion of such examination. At the conclusion of the examination, counsel may request the person presiding to permit the witness to clarify any of his answers which may need clarification in order that his answers not be left equivocal or incomplete on the record. For his use in protecting the interests of his client with respect to that examination counsel may make summary notes during the examination.

(2) With due regard for the rights of a witness, the Commission may for good cause exclude a particular attorney from further participation in any investigation in which the Commission has found the attorney to have engaged in dilatory, obstructionist or contemptuous conduct. The person conducting an investigation may report to the Commission instances of apparently dilatory, obstructionist or contemptuous conduct on the part of an attorney. After due notice to the attorney, the Commission may take such action 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.*² If the Commission believes that the testimony or other information sought to be obtained from

² 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

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