

Securities and Exchange Commission

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except as in accordance with the requirements of the Supplemental standards of ethical conduct for members and employees of the Securities and Exchange Commission (codified at 5 CFR 4401.103 (Outside Employment and Activities)); 5 CFR part 2635, subpart H (Outside Activities); and 31 U.S.C. 353 and 41 CFR 304-1.1 (Acceptance of payment from a non-Federal source for travel expenses).

[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; 73 FR 32226, June 5, 2008; 75 FR 42276, July 20, 2010]

§ 200.735-4 Outside employment and activities.

(a) Members and employees shall comply with the requirements of the Supplemental standards of ethical conduct for members and employees of the Securities and Exchange Commission (codified at 5 CFR 4401.103 (Outside employment and activities) and 5 CFR part 2635, subpart H (Outside activities)).

(b) The Commission encourages employees to engage in teaching, lecturing, and writing activities with or without compensation.² In participating in such activities, employees should be guided by the following:

(1) 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.

(2) 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

²As to employees, while the receipt of honoraria is discouraged, that rule is not applicable to the receipt of compensation for teaching.

that the use thereof is in the public interest.³

(c) If otherwise permitted by 18 U.S.C. 203 and 205, the provisions of these rules or of 5 CFR 4401.103 do not preclude an employee from acting as agent or attorney:

(1) For any Commission employee who is sued or under investigation in connection with his or her official duties;

(2) For any Commission employee who is the subject of disciplinary, loyalty, or other personnel administrative proceedings in connection with those proceedings; or

(3) 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.

(d)(1) As paragraph (b) of this section indicates, the Commission encourages employees to engage in teaching, lecturing and writing activities.⁴ 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 Commission 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

³Since 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.

⁴This paragraph (d), requiring review of prepared speeches or writings relating to the Commission does not apply to teaching activities.

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) 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 in a footnote or otherwise, the following disclaimer of responsibility:

The Securities and Exchange Commission disclaims responsibility for any private publication or statement of any SEC employee or Commissioner.

This [article, outline, speech, chapter] expresses the author's views and does not necessarily reflect those of the Commission, the [other] Commissioners, or [other] members of the staff.

(B) 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 that 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.

(e) With respect to host-paid travel, members and employees shall comply with the requirements of the Supplemental standards of ethical conduct for members and employees of the Securities and Exchange Commission (codified at 5 CFR 4401.103 (Outside employment and activities)); 5 CFR part 2635, subpart H (Outside Activities); and 31 U.S.C. 1353 and 41 CFR 304-1.1 (Acceptance of payment from a non-Federal source for travel expenses).

(f)(1) With respect to seeking or negotiating outside employment, members and employees shall comply with the requirements of the Supplemental standards of ethical conduct for mem-

bers and employees of the Securities and Exchange Commission (codified at 5 CFR 4401.103 (Outside employment and activities)); 5 CFR part 2635, subpart F (Seeking other employment); 5 CFR part 2635, subpart H (Outside activities).

(2) Members and employees should be aware that 18 U.S.C. 208 (Acts affecting a personal interest) provides, among other things, that a member or employee is prohibited from participating personally and substantially in any particular matter in which, to his or her knowledge, the member or employee, his or her spouse, minor child, general partner, organization of which the employee is an officer, director, trustee, general partner or employee, or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest. This provision does not apply if the employee has received a written determination by an authorized official that the financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's government service.

(3) Members may follow the procedural provision contained in Part V, Section 503 of the Executive Order 11222.

(g) 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 Director concerned, together with all pertinent facts regarding the proposed employment, such as the name of the employer, the nature of the work to be performed, its estimated duration, and the fee or compensation to be received. Division Directors, Office Heads and Regional Directors 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.

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(h) 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.

[45 FR 36064, May 29, 1980; 45 FR 40975, June 17, 1980; 48 FR 39216, Aug. 30, 1983; 50 FR 45603, Nov. 1, 1985; 73 FR 32226, June 5, 2008; 75 FR 42276, July 20, 2010]

§ 200.735-5 Securities transactions.

Securities transactions by members and employees must comply with the provisions of 5 CFR 4401.102 (Prohibited and restricted financial interests and transactions).

[75 FR 42277, July 20, 2010]

§ 200.735-6 Action in case of personal interest.

Members and employees shall comply with the requirements of 5 CFR part 2640 (Interpretation, exemptions, and waiver guidance concerning 18 U.S.C. 208 (Acts affecting a personal interest)).

[75 FR 42277, July 20, 2010]

§ 200.735-7 Negotiation for employment.

Members and employees shall comply with the requirements of 18 U.S.C. 208 (Acts affecting a personal interest) and 5 CFR part 2635, subpart F (Seeking other employment). *See* § 200.735-4(f)(2) of this subpart.

[75 FR 42277, July 20, 2010]

§ 200.735-8 Practice by former members and employees of the Commission.

(a) Members and employees and former members and employees shall comply with the requirements of 18 U.S.C. 207 and 5 CFR part 2641 (Post

employment conflict of interest restrictions). Members and employees and former members and employees should be aware that, among other restrictions, 18 U.S.C. 207 generally prohibits a former member or employee from knowingly communicating to or appearing before a Federal agency with the intent to influence a particular matter involving specific parties in which that person personally and substantially participated while at the Commission.

(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