

§ 200.110

Act Officer may use alternative procedures for considering requests for confidential treatment.

[45 FR 62421, Sept. 19, 1980, as amended at 47 FR 20289, May 12, 1982; 58 FR 14659, Mar. 18, 1993; 65 FR 55184, 55185, Sept. 13, 2000; 73 FR 32225, June 5, 2008]

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, 77sss, 78w, 80a–37, 80b–11, and 7202; and 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

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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, 15 U.S.C. 78s(d), these prohibitions shall commence at the time that a copy of an application for review has been filed with the Commission and served on the self-regulatory organization.

(iii) That in proceedings under Title I of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7211–7219, these prohibitions shall commence at the time that a copy of an application for review has been filed with the Commission and served on the Public Company Accounting Oversight Board; and

(iv) 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