

**§ 140.735-2 Business and financial transactions and interests.**

(a) *Application.* This section applies to all transactions effected by or on behalf of a Commission member or employee, including transactions for the account of other persons effected by the member or employee, directly or indirectly under a power of attorney or otherwise. Since this section applies to “indirect” participation in transactions, a member or employee is considered to have sufficient interest in the transactions of the spouse or minor child of the member or employee, or other relatives who are residents of the immediate household of the member or employee, so that such transactions must be reported and, absent compelling countervailing reasons, are subject to all the terms of this section.

(b) *Prohibitions.* No Commission member or employee shall:

(1) Participate, directly or indirectly, in any transaction—

(i) Involving a contract of sale of any commodity for future delivery;

(ii) Involving any commodity that is of the character of, or is commonly known to the trade as, an option, privilege, indemnity, bid, offer, put, call, advance guaranty or decline guaranty; or

(iii) For the delivery of any commodity that is or is to be executed pursuant to a standardized contract commonly known to the trade as a margin account, margin contract, leverage account or leverage contract or similar contracts when subject to regulation by the Commission under section 19 of the Act; except that the prohibitions in paragraphs (b)(1) (i) and (ii) of this section shall not apply to:

(A) A transaction in connection with a farming, ranching, oil and gas, mineral rights or other natural resource operation in which the Commission member or employee has a financial interest, if the Commission member or employee is not involved in the decision to engage in, and does not have prior knowledge of, the actual futures or option transaction and has previously notified the General Counsel in writing of the nature of the operation, the extent of the member’s or employee’s interest, the types of transactions in which the operation may engage and

the identity of the person or persons who will make trading decisions for the operation; or

(B) A transaction entered into by any investment company (*e.g.*, a mutual fund) or similar pooled investment entity other than one operated by a person who is a commodity pool operator with respect to that entity, in which the direct or indirect ownership interest of the Commission member or employee is limited to and represents less than 1 per cent of the total ownership interest of the fund or entity and with which the Commission member or employee has no other relationship;<sup>2</sup>

(2) Participate, directly or indirectly, in any investment transaction involving an actual commodity if:

(i) The transaction involves the use of nonpublic information, or

(ii) The transaction is effectuated by an instrument regulated by the Commission, and is not in connection with a transaction permitted under paragraph (b)(1) of this section, or

<sup>2</sup> Attention is directed to section 9(c) of the Commodity Exchange Act, which makes it a felony for any member or employee of the Commission, or agent thereof, to participate, directly or indirectly, in, *inter alia*, any commodity futures, option or leverage transaction, unless authorized to do so by Commission rule or regulation. Attention is also directed to 17 CFR 4.5, which excludes certain otherwise regulated persons from the definition of “commodity pool operator” with respect to the operation of specific investment entities enumerated in the regulation.

Although not required, if they choose to do so, Commission members or employees may use powers of attorney or other arrangements in order to meet the notice requirements of, and to assure that they have no control or knowledge of, futures or option transactions permitted under paragraph (b)(1)(A) of this section. A Commission member or employee considering such arrangements should consult with the Office of the General Counsel in advance for approval. Should a Commission member or employee gain knowledge of an actual futures or option transaction that has already taken place and the market position represented by that transaction still remains open, he or she should promptly report that fact and all other details to the General Counsel and seek advice as to what action, including recusal from pending matters involving that market, may be appropriate.

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(iii) The transaction is effected by an instrument functionally equivalent to an instrument regulated by the Commission;<sup>3</sup>

(3) Have a beneficial interest, through ownership of securities or otherwise, in any person<sup>4</sup> regulated by the Commission,<sup>5</sup> such as a contract market or clearinghouse or member thereof, a registered futures commission merchant,<sup>6</sup> any person associated with a futures commission merchant or with any agent of a futures commission merchant, floor broker, commodity trading advisor or commodity pool operator, or any other person required to be registered in a fashion similar to any of the above under the Commodity Exchange Act or pursuant to any rule or regulation promulgated by the Commission;

(4) Have a significant beneficial interest, through ownership of securities or otherwise, in any other person required to file reports under the Com-

modity Exchange Act or pursuant to any rule or regulation promulgated by the Commission;<sup>7</sup> or

(5) Purchase or sell any securities of a company which, to his knowledge, is involved in any:

(i) Pending investigation by the Commission;

(ii) Proceeding before the Commission or to which the Commission is a party; or

(iii) Other matter under consideration by the Commission that could significantly affect the company.

[58 FR 52657, Oct. 12, 1993]

**§ 140.735-3 Non-governmental employment and other outside activity.**

A Commission member or employee shall not accept employment or compensation from any person, exchange or clearinghouse subject to regulation by the Commission. For purposes of this section, a person subject to regulation by the Commission includes but is not limited to a contract market or clearinghouse or member thereof, a registered futures commission merchant, any person associated with a futures commission merchant or with any agent of a futures commission merchant, floor broker, commodity trading advisor, commodity pool operator or any person required to be registered in a fashion similar to any of the above or file reports under the Act or pursuant to any rule or regulation promulgated by the Commission.<sup>8</sup>

[58 FR 52658, Oct. 12, 1993]

<sup>3</sup>Attention is directed to section 9(c) of the Commodity Exchange Act which provides, among other things, that it shall be a felony for any Commission member or employee to participate in any investment transaction in an actual commodity that the Commission by rule or regulation has prohibited to Commission members and employees. A transaction involving an instrument that is the "functional equivalent to an instrument regulated by the Commission" would include, for example, but is not limited to, a transaction in a stock index effectuated through the purchase or sale of an option traded on a national securities exchange where the stock index also underlies a futures contract regulated by the Commission. Attention is also directed to §140.735-8 of this subpart for information regarding interpretative and advisory service by the General Counsel of the Commission.

<sup>4</sup>As defined in section 1a(16) of the Commodity Exchange Act and 17 CFR 1.3(u) thereunder, a "person" includes an individual, association, partnership, corporation, and a trust.

<sup>5</sup>Attention is directed to sections 2(a)(7) and 9(c) of the Commodity Exchange Act. See footnotes 1, 2, and 8 to this subpart.

<sup>6</sup>This provision does not, however, preclude a member or employee from carrying securities on margin, pursuant to customary margin requirements, with a broker who is also a registered futures commission merchant, or engaged in the trading of commodity options, or commodity leverage transactions.

<sup>7</sup>For purposes of this section, the Office of the General Counsel normally views "significant" ownership as being 10 per cent or more of the outstanding securities of a firm or a \$25,000 total investment in a firm, regardless of the percentage of stock owned. The Office has also noted that each investment must be considered on a case-by-case basis and that an investment level in excess of \$25,000 may not be "significant" in the case of a large company.

<sup>8</sup>Attention is directed to section 2(a)(7) of the Commodity Exchange Act, which provides, among other things, that no Commission member or employee shall accept employment or compensation from any person, exchange or clearinghouse subject to regulation by the Commission, or participate, directly or indirectly, in any contract market operations or transactions of a character subject to regulation by the Commission.