

§ 140.735-3

17 CFR Ch. I (4-1-01 Edition)

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

(3) Have a beneficial interest, through ownership of securities or otherwise, in any person⁴ regulated by the Commission,⁵ such as a contract market or clearinghouse or member thereof, a registered futures commission merchant,⁶ 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;⁷ 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.⁸

[58 FR 52658, Oct. 12, 1993]

³Attention 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.

⁴As 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.

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

⁶This 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.

⁷For 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.

⁸Attention 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.