

§ 200.735-2

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

Commission members and employees with a comprehensive statement of standards of conduct which are dictated by applicable Federal law, Executive orders, and the Commission's own requirements.

§ 200.735-2 Policy.

(a) The Securities and Exchange Commission has been entrusted by Congress with the protection of the public interest in a highly significant area of our national economy. In view of the effect which Commission action frequently has on the general public, it is important that members, employees and special Government employees maintain unusually high standards of honesty, integrity, impartiality and conduct. They must be constantly aware of the need to avoid situations which might result either in actual or apparent misconduct or conflicts of interest and to conduct themselves in their official relationships in a manner which commands the respect and confidence of their fellow citizens.

(b) For these reasons, members, employees and special Government employees should at all times abide by the standards of conduct set forth in this subpart, the canons of ethics for members of the Securities and Exchange Commission (subpart C of this part 200) and, in the case of a professional person, the ethical standards applicable to the profession of such person.

§ 200.735-3 General provisions.

(a)(1) In considering the prohibitions of this section, members and employees must constantly be aware that the provisions here enumerated set forth standards of conduct which are broader than the specific applications stated in the rules which follow. Therefore, members and employees should look to these general prohibitions when assessing the advisability of a particular course of conduct. The broadly stated provisions of this rule are aimed at eliminating the appearance of impropriety as well as any actual wrongdoing.

(2) Accordingly, a member or employee should avoid any action, whether or not specifically prohibited by law or regulation (including the provisions of this subpart), which would result in

or might create appearance of, among other things:

- (i) Using public office for private gain;
- (ii) Giving preferential treatment to any organization or person;
- (iii) Losing complete independence or impartiality;
- (iv) Making a Government decision outside official channels; or
- (v) Affecting adversely the confidence of the public in the integrity of the Government.

(3) While provisions applicable to all employees of the Commission are outlined in this regulation, certain Offices or Divisions for management reasons may require more stringent regulations in certain areas. These may be imposed by Division Directors, Office Heads or Regional Administrators with the consent of the Chairman and the approval of the Office of Government Ethics. Should such additional regulations be imposed, all employees affected must be notified ten days before the effective date of the restriction or at the time of their employment.

(b) A member or employee of the Commission shall not:

- (1) Engage, directly or indirectly, in any personal business transaction or private arrangement for personal profit the opportunity for which arises because of his or her official position or authority, or that is based upon confidential or nonpublic information which he or she gains by reason of such position or authority.²

²Detailed provisions regarding outside or private employment and transactions in securities and commodities are set forth in §§200.735-4 and 200.735-5, respectively. Further provisions regarding use and disclosure of confidential information are set forth in paragraph (b) of this section and in the note appended thereto.

Members of the Commission are subject also to the following prohibition in section 4(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78d(a)): “* * * No Commissioner shall engage in any other business, vocation, or employment than that of serving as Commissioner, nor shall any Commissioner participate, directly or indirectly, in any stock market operations or transactions of a character subject to regulation by the Commission pursuant to this title * * *.” This does not preclude Commissioners from engaging in securities transactions. See Opinion letter dated February 11, 1975, sent by the Office of

(2) Solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, service, or any other thing of monetary value from any person with whom he or she transacts business on behalf of the United States:

(i) Who has, or is seeking to obtain, contractual or other business or financial relations with the Commission;

(ii) Who conducts operations or activities regulated by the Commission; or

(iii) Who has interests that may be substantially affected by the performance or non-performance of his or her official duty.

(3) The restrictions of paragraph (b)(2) of this section do not prohibit members and employees from the following:

(i) The acceptance of food and refreshments, not lavish in kind, offered free in the course of a meeting or other group function, not connected with an inspection or investigation, at which attendance is desirable because it will assist the member or employee in performing his or her official duties. Members shall determine for themselves and their staffs the propriety of accepting such invitations. Division Directors, Office Heads, and Regional Administrators are authorized to make such determinations for themselves and their subordinates. Staff members are required to advise their Division Director, Office Head, or Regional Administrator of invitations received from entities described in paragraph (b)(2) of this section.

(ii) The acceptance of items of value when the circumstances make it clear that it is family or personal relationships rather than the business of the persons concerned which govern and are the motivating factors.

(iii) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, notepads, calendars and other items of modest value.

(iv) The acceptance of meals and refreshments as provided to all panelists,

the General Counsel to David Reich, Ethics Counselor at the Civil Service Commission. In addition, members of the Commission are subject to the requirements of Executive Order 11222 of May 8, 1965.

when participating as a panelist in an educational program.

(v) The acceptance of gifts given for participation in an educational program when they are (A) of modest value; or (B) provided to all participants in the program; or (C) in the nature of a remembrance traditional to the particular sponsor institution.

(vi) For purposes of this subpart, *person* means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company; or any other organization or institution or anyone who acts for such a person in a representative capacity.³

(4) Solicit contributions from another employee for a gift to an employee in a superior official position. An employee in a superior official position shall not accept a gift presented as a contribution from employees receiving less salary than himself or herself. An employee shall not make a donation as a gift to an employee in a superior official position (5 U.S.C. 7351). However, this paragraph does not prohibit the occasional giving of gifts of modest value to an employee in a superior position or the receipt of such gifts by a superior or the use of completely voluntary contributions of nominal amounts by employees within the Commission to establish funds for the limited purpose of providing token remembrances or gifts of modest value to an employee in a superior position on special occasions.

³Members and employees of the Commission are subject also to provisions of the Federal criminal code which prohibit, (1) any officer or employee of the United States from asking, accepting or receiving any money or other thing of value in connection with any matter before him or her in his or her official capacity, (18 U.S.C. 203); and (2) the compensation of government employees for services to the government by entities other than the United States (18 U.S.C. 209). In addition, members are prohibited by 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 the Commission or which draws substantially on official data or ideas which have not become part of the body of public information. See also 17 CFR 200.735-4.

(5) Accept from a foreign government a gift, decoration or other thing of more than minimal value except in accordance with the provisions of 5 U.S.C. 7342.

(6) Discuss or entertain a proposal for future employment by any person outside the Government with whom he or she is personally and substantially involved in transacting business on behalf of the United States.⁴

(i) If an employee wishes to discuss future employment with another Government agency, this fact should be disclosed to the employee's Division Director, Office Head or Regional Administrator prior to any discussion regarding employment, if at that time the employee is representing the Commission in a particular matter in which the other agency is taking a position adverse to the Commission.

(7)(i) Divulge to any unauthorized person or release in advance of authorization for its release⁵ any nonpublic Commission document, or any information contained in any such document or any confidential information: (A) In contravention of the rules and regulations of the Commission promulgated under 5 U.S.C. 552, 552a and 552b; or (B) in circumstances where the Commission has determined to accord such information confidential treatment.

(ii) Except where the Commission or the General Counsel, pursuant to delegated authority, has previously granted approval or in relation to a Commission administrative proceeding or a judicial proceeding in which the Commission, or a present or former Commissioner, or present or former member of the staff, represented by Commission counsel, is a party, any officer, employee or former officer or employee who is served with a subpoena requiring the disclosure of confidential or non-public information or documents shall, unless the Commission or the

⁴Detailed provisions regarding negotiations for future employment are set forth in § 200.735-7.

⁵In Section 171 of the Commission's Manual of Administrative Regulations the Commission's policy on making available non-public information to Federal, State and foreign government authorities, national securities exchanges and national securities associations is outlined.

General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or documents, respectfully decline to disclose the information or produce the documents called for, basing his or her refusal on this paragraph.

(iii) Any member, employee or former member or employee who is served with such a subpoena not covered by the exceptions in paragraph (b)(7)(ii) of this section shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability in the public interest of making available such information or documents.⁶ The Commission or the General Counsel, pursuant to delegated authority, shall authorize the disclosure of non-expert, non-privileged, factual staff testimony and the production of non-privileged documents when validly subpoenaed.

(8) Act in any official matter with respect to which there exists a personal interest incompatible with an unbiased exercise of official judgment.⁷

(9) Have direct or indirect personal, business or financial affairs which conflict or appear to conflict with his or her official duties and responsibilities.

(10)(i) Use, or allow the use of, directly or indirectly, Government property of any kind, including property leased to the Government, for other

⁶Detailed prohibitions regarding disclosure or use of confidential or nonpublic information are set forth in Rule 122 (17 CFR 230.122) under the Securities Act of 1933; section 24(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78x) and Rule 0-4 (17 CFR 240.0-4); and Rule 24(b)(2) (17 CFR 240.24b-2), thereunder; section 22(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79y) and Rule 104 thereunder (17 CFR 250.104); section 45(a)(1) of the Investment Company Act, and section 210(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-10). *But see*, section 171 of the Administrative Manual which authorizes the staff to divulge certain nonpublic information without Commission approval (n. 5, *supra*).

⁷Section 200.735-6 of this subpart provides a procedure for relieving employees from assignments in certain cases, including those covered by paragraph (b)(5) of this section.

than officially approved activities. *Officially approved activities* for the purpose of this section are those activities which are part of an employee's official duties or are approved by the employee's Division Director, Office Head or Regional Administrator as being sufficiently related to the employee's official duties, or important to the interests of the Commission to warrant the use of Commission facilities for their accomplishment. Division Directors, Office Heads and Regional Administrators may, for their own activities meeting the same criteria, obtain the concurrence of the Executive Director.

(ii) An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him or her.

(11) Participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity, including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

(12) Engage in unlawful or unethical conduct, or other conduct prejudicial to the Government.

[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]

§ 200.735-4 Outside employment and activities.

(a) No member or employee shall permit his or her name to be associated in any way with any legal, accounting or other professional firm or office.⁸

(b)(1) No employee shall have any outside or private employment, activity, or affiliation incompatible with concurrent employment by the Commission. Incompatible activities include but are not limited to

(i) Employment or association with any securities exchange, association of securities dealers, or other self-regulatory organization either registered under the Securities Exchange Act of 1934 or otherwise involved with the securities industry, any registered broker, dealer, registered municipal securities dealer, public utility holding company, investment company, investment adviser, securities information processor, transfer agent, clearing agency or other persons who are subject to regulation by the Commission, or where the facts relating to a particular employment would create an appearance of impropriety, because the employment is directly or indirectly related to the issuance, sale, purchase or investment of securities;

(ii) Legal, accounting, or engineering work for compensation involving matters in which the Federal government may be significantly interested;

(iii) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in or create the appearance of conflicts of interest;

(iv) Outside employment or activity which impairs the employee's mental or physical capacity to perform his or her Commission duties and responsibilities in an acceptable manner;

(2) For the purposes of this paragraph (b), the private employment of an employee's spouse, or other member of his or her immediate household with any securities exchange, association of securities dealers, or other self-regulatory organization either registered under the Securities Exchange Act of 1934 or otherwise involved in the securities industry, any registered broker, dealer, registered municipal securities dealer, public utility holding company, investment company, investment adviser, securities information processor, transfer agent, clearing agency or other persons who are subject to regulation by the Commission, or where the particular employment is directly related to the issuance, sale, purchase or investment of securities is deemed to be incompatible with the employee's

⁸With respect to members, this paragraph supplements the statutory prohibition against outside employment contained in section 4(a) of the Securities Exchange Act of 1934, quoted in footnote 2. Except as otherwise indicated, the remaining provisions of this section are not made applicable to members in view of the provisions of section 4(a) of the Securities Exchange Act of 1934.