

## Commodity Futures Trading Commission

## § 140.735-2a

distinguished from a contingent right to acquire securities not subscribed for by others), or of rights in order to round out fractional shares in securities;

(5) The acceptance of stock dividends on securities already owned, the reinvestment of cash dividends on a security already owned, or the participation in a periodic investment plan when the original purchase was otherwise consistent with this rule; or

(6) Investment in any fund established pursuant to the Federal Employees Retirement System.

(e) *No prohibition on stocks or funds.* Nothing in paragraph (b)(1) or (2) of this section shall prohibit a member or employee from purchasing, selling, or retaining any share that represents ownership of a publicly-owned corporation or interest in a publicly-available pooled investment vehicle containing any such shares (such as a mutual fund or exchange-traded fund) other than one operated by a person who is a commodity pool operator with respect to such pooled investment vehicle, regardless of whether any security futures product may at any time be or have been based upon shares of such corporation or pooled investment vehicle, and regardless of whether such pooled investment vehicle may, by design or effect, track or follow any group of securities that also underlies a futures contract.

(f) *Exception applicable to legally separated employees.* This section shall not apply to transactions of a legally separated spouse of a member or employee, including transactions for the benefit of a minor child, if the member or employee has no power to control, and does not, in fact, advise or control with respect to such transactions. If the member or employee has actual or constructive knowledge of such transactions of a legally separated spouse or for the benefit of a minor child, the disqualification provisions of §140.735-2a(d)(2)(i)-(iii) and 18 U.S.C. 208 are applicable.

[67 FR 5939, Feb. 8, 2002]

### § 140.735-2a Prohibited interests.

(a) *Application.* This section applies to all financial interests of a Commission member or employee of the Com-

mission, including financial interests held by the member or employee for the account of other persons. A member or employee shall be deemed to have a sufficient interest in the financial interests of his or her spouse, minor child, or other relative who is a resident of the immediate household of the member or employee, so that such financial interests must be reported and are subject to all the terms of this section.

(b) *Prohibitions.* Except as otherwise provided in this subsection, no member or employee of the Commission shall:

(1) Have a financial interest, through ownership of securities or otherwise, in any person<sup>5</sup> registered with the Commission (including futures commission merchants, associated persons and agents of futures commission merchants, floor brokers, commodity trading advisors and commodity pool operators, and any other persons 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), or any contract market, board of trade, or other trading facility, or any clearing organization subject to regulation or oversight by the Commission;<sup>6</sup> or

(2) Own or control, through securities or otherwise, ten percent or more of the total ownership interests in any other person required to file reports under the Commodity Exchange Act, or pursuant to any rule or regulation promulgated by the Commission.<sup>7</sup>

(c) *Exceptions.* The prohibitions in paragraph (b) of this section shall not apply to:

(1) A financial interest in any publicly-available pooled investment vehicle (such as a mutual fund or exchange-

<sup>5</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>6</sup>Attention is directed to 18 U.S.C. 208.

<sup>7</sup>The Division of Market Oversight maintains information on persons whose commodity futures and options positions are or have been reportable under the Commission's large trader reporting system. Members and employees should consult with DEA to determine whether any of their financial interests involve entities subject to such reporting.

traded fund) other than one operated by a person who is a commodity pool operator with respect to such entity if such vehicle does not have invested, or indicate in its prospectus the intent to invest, ten percent or more of its assets in securities of persons described in paragraph (b) of this section and the member or employee neither exercises control nor has the ability to exercise control over the financial interests held in such vehicle;

(2) A financial interest in any corporate parent or affiliate of a person described in paragraph (b)(1) of this section if the operations of such person provide less than ten percent of the gross revenues of the corporate parent or affiliate;<sup>8</sup>

(3) A financial interest in any trust or estate of which the member or employee is solely a beneficiary, has no power to control, and does not in fact control or advise with respect to the investments of the trust or estate; except that such interest is subject to the provisions of paragraphs (d) and (f) of this section.

(d) *Retention or passive acquisition of prohibited financial interests.* Nothing in this section shall prohibit a member or employee, or a spouse or minor child or other related member of the immediate household of the member or employee, from:

(1) Retaining a financial interest that was permitted to be retained by the member or employee prior to the adoption of this regulation, was obtained prior to the commencement of employment with the Commission, or was acquired by a spouse prior to marriage to the member or employee; or

(2) Acquiring, retaining, or controlling an otherwise prohibited financial interest, including but not limited to

any security or option on a security (but not a security futures product), where the financial interest was acquired by inheritance, gift, stock split, involuntary stock dividend, merger, acquisition, or other change in corporate ownership, exercise of preemptive right, or otherwise without specific intent to acquire the financial interest, or by a spouse or minor child or other related member of the immediate household of the member or employee as part of an employment compensation package; *provided, however*, that retention of any interest allowed by paragraph (c)(3) or (d) of this section is permitted only where the employee:

(i) Makes full disclosure of any such interest on his or her annual financial disclosure (Standard Form 278 or Standard Form 450);

(ii) Makes full written disclosure to the General Counsel within 30 days of commencing employment or, for incumbents, within twenty days of his or her receipt of actual or constructive notice that the interest has been acquired;<sup>9</sup> and

(iii) Will be disqualified in accordance with 5 CFR part 2635, subpart D, and 18 U.S.C. 208 from participating in any particular matter that will have a direct and predictable effect on the financial interest in question. Any Commission member or employee affected by this section may, pursuant to 18 U.S.C. 208(b)(1) and 5 CFR 2640.301-303, request a waiver of the disqualification requirement.

NOTE: With respect to any financial interest retained under paragraph (c)(3) or (d) of this section, Commission members and employees are reminded of their obligations

<sup>8</sup>It is the member's or employee's responsibility to monitor his or her financial interests and those of a spouse or minor child or other related member of his or her immediate household, to promptly report relevant changes to the General Counsel in writing, and to seek the advice of the General Counsel as to what action may be appropriate. In this regard, attention is directed to 18 U.S.C. 208, which bars an employee from participating in any particular matter that will have a direct and predictable effect on the financial interest in question.

<sup>9</sup>Changes in holdings, other than by purchase, which do not affect disqualification, such as those resulting from the automatic reinvestment of dividends, stock splits, stock dividends or reclassifications, may be reported on the annual statement, SF 278 or SF 450, rather than when notification of the transaction is received. Acquisition by, for example, gifts, inheritance, or spinoffs, which may result in additional disqualifications pursuant to paragraph (d)(2)(iii) of this section and 18 U.S.C. 208 shall be reported to the General Counsel within 20 days of the receipt of actual or constructive notice thereof.

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under 18 U.S.C. 208 and 5 CFR part 2635, subpart D, to disqualify themselves from participating in any particular matter in which they, their spouses or minor children have a financial interest.

(e) *Exception applicable to legally separated employees.* This section shall not apply to the financial interests of a legally separated spouse of a Commission member or employee, including transactions for the benefit of a minor child, if the member or employee has no power to control and does not, in fact, advise or control with respect to such transactions. If the member or employee has actual or constructive knowledge of such financial interests held by a legally separated spouse or for the benefit of a minor child, the disqualification provisions of paragraphs (d)(2)(i)-(iii) of this section and 18 U.S.C. 208 are applicable.

(f) *Divestiture.* Based upon a determination of substantial conflict under 5 CFR 2635.403(b) and 18 U.S.C. 208, the Commission, or its designee, may require in writing that a member or employee, or the spouse or minor child or other related member of the immediate household of a member or employee, divest a financial interest that he or she is otherwise authorized to retain under this section.<sup>10</sup>

[67 FR 5940, Feb. 8, 2002, as amended at 67 FR 62353, Oct. 7, 2002]

### § 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]

### § 140.735-4 Receipt and disposition of foreign gifts and decorations.

(a) For purposes of this section only:

(1) *Commission member* or *employee* means any Commission member or any person employed by or who occupies an office or a position in the Commission; an expert or consultant under contract with the Commission, or in the case of an organization performing services under such contract, any individual involved in the performance of such service; and the spouse, unless the individual and his or her spouse are separated, and any dependent, as defined by section 152 of the Internal Revenue Code of 1954, of any such person.

(2) *Foreign government* means:

(A) Any unit of foreign governmental authority, including any foreign national, state, local, and municipal government;

(B) Any international or multinational organization whose membership is composed of any unit of foreign government described in paragraph (a)(2)(A) of this section; and

(C) Any agent or representative of any such unit or such organization, while acting as such.

(3) *Gift* means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government, except grants and other forms of assistance to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies.

(4) *Decoration* means an order, device, medal, badge, insignia, emblem, or award tendered by, or received from, a foreign government.

<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.

<sup>10</sup> Any evidence of a violation of 18 U.S.C. 208 must be reported by the General Counsel to the Commission, which may refer the matter to the Criminal Division of the Department of Justice and the United States Attorney in whose venue the violations lie. See 28 U.S.C. 535.