

## § 200.406

## 17 CFR Ch. II (4-1-03 Edition)

properly be closed to the public pursuant to § 200.402(a) (4), (8), (9)(i), or (10), or any combination thereof.

(b) *Action to close meeting.* The Commission may, by recorded vote of a majority of its members at the commencement of any meeting or portion thereof, determine to close any meeting or a portion thereof properly subject to being closed pursuant to § 200.402(a) (4), (8), (9)(i), or (10), or any combination thereof. The procedure described in this rule may be utilized notwithstanding the fact that a meeting or portion thereof properly subject to being closed pursuant to § 200.402(a) (4), (8), (9)(i), or (10), or any combination thereof, could also be closed pursuant to § 200.402(a) (1), (2), (3), (5), (6), (7), or (9)(ii), or any combination thereof.

(c) *Announcement of action to close meeting.* In the case of a meeting or a portion of a meeting closed pursuant to this rule, as soon as practicable the Commission shall make publicly available:

(1) A written record reflecting the vote of each participating member of the Commission to close the meeting; and

(2) The certification described in § 200.406, executed by the Commission's General Counsel.

### § 200.406 Certification by the General Counsel.

For every Commission meeting closed pursuant to § 200.402(a) (1) through (10), the General Counsel of the Commission (or, in his or her absence, the attorney designated by General Counsel pursuant to § 200.21) shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision.

### § 200.407 Transcripts, minutes, and other documents concerning closed Commission meetings.

(a) *Record of closed meetings.* Except as provided in § 200.407(b), the Commission's Secretary shall prepare a complete transcript or electronic recording adequate to record fully the proceedings of each closed meeting, or closed portion of a meeting.

(b) *Minutes of closed meetings.* In the case of a meeting, or portion of a meet-

ing, closed to the public pursuant to § 200.402(a) (8), (9)(i), or (10), the Secretary may, in his or her discretion or at the direction of the Commission, prepare either the transcript or recording described in § 200.407(a), or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each participating Commission member on the question). All documents specifically considered by the Commission in connection with any action shall be identified in such minutes are maintained.

(c) *Retention of certificate and statement.* The Secretary shall retain a copy of every certification executed by the General Counsel pursuant to § 200.406, together with a statement from the presiding officer of the meeting, or portion of a meeting to which the certification applies, setting forth the time and place of the meeting, and the persons present.

(d) *Minute Record.* Nothing herein shall affect the provisions of §§ 200.13a and 200.40 requiring the Secretary to prepare and maintain a Minute Record reflecting the official actions of the Commission.

### § 200.408 Public access to transcripts and minutes of closed Commission meetings; record retention.

(a) *Public access to record.* Within twenty days (excluding Saturdays, Sundays, and legal holidays) of the receipt by the Commission's Freedom of Information Act Officer of a written request, or within such extended period as may be agreeable to the person making the request, the Secretary shall make available for inspection by any person in the Commission's Public Reference Room, the transcript, electronic recording, or minutes (as required by § 200.407 (a) or (b)) of the discussion of any item on the agenda, except for such item or items as the Freedom of Information Act Officer determines to involve matters which may be withheld under § 200.402 or otherwise. Copies of such transcript, or minutes, or a transcription of such recording disclosing