

## Securities and Exchange Commission

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a proper appreciation of their duties to the public, their clients and others who are interested. Requests for continuances of matters should be determined in a manner consistent with this policy.

### § 200.69 Conduct toward parties and their counsel.

Members should be temperate, attentive, patient and impartial when hearing the arguments of parties or their counsel. Members should not condone unprofessional conduct by attorneys in their representation of parties. The Commission should continuously assure that its staff follows the same principles in their relationships with parties and counsel.

### § 200.70 Business promotions.

A member must not engage in any other business, employment or vocation while in office, nor may he ever use the power of his office or the influence of his name to promote the business interests of others.

### § 200.71 Fiduciary relationships.

A member should avoid service as a fiduciary if it would interfere or seem to interfere with the proper performance of his duties, or if the interests of those represented require investments in enterprises which are involved in questions to be determined by him. Such relationships would include trustees, executors, corporate directors, and the like.

### § 200.72 Supervision of internal organization.

Members and particularly the Chairman of the Commission should scrutinize continuously its internal organization in order to assure that such organization handles all matters before it efficiently and expeditiously, while recognizing that changing times bring changing emphasis in the administration of the laws.

## Subpart D—Information and Requests

AUTHORITY: 5 U.S.C. 552, as amended, 15 U.S.C. 77f(d), 77s, 77ggg(a), 78m(F)(3), 78w, 79t, 79v(a), 77sss, 80a-37, 80a-44(a), 80a-44(b), 80b-10(a), 80b-11.

Section 200.80 also issued under 5 U.S.C. 552b; 15 U.S.C. 78d-1, 78d-2; 78a *et seq.*; 11 U.S.C. 901, 1109(a).

Section 200.80a also issued under 5 U.S.C. 552b.

Sections 200.80b and 200.80c also issued under 11 U.S.C. 901, 1109(a).

Section 200.82 also issued under 15 U.S.C. 78n.

Section 200.83 also issued under Exec. Order 12,600, 3 CFR, 1987 Comp., p. 235.

### § 200.80 Commission records and information.

(a)(1) *Information published in the FEDERAL REGISTER.* Except as provided in paragraph (b) of this section the following materials are published in the FEDERAL REGISTER for the guidance of the public:

(i) Description of the Commission's central and field organization and the established places at which, the employees from whom, and the methods whereby the public may obtain information, make submittals or requests, or obtain decisions;

(ii) Statements of the general course and method by which the Commission's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(iii) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(iv) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Commission;

(v) Each amendment, revision, or repeal of the foregoing; and

(vi) The notice of Commission meetings described in § 200.403, but only to the extent, and under the conditions, specified in § 200.403.

(2) *Records available for public inspection and copying; documents published and indexed.* Except as provided in paragraph (b) of this section, the following materials are available for public inspection and copying during normal business hours at the public reference room located at 450 Fifth Street, NW., Room 1024, Washington, DC and at the Northeast and Midwest Regional Offices of the Commission,

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and, except for indices, they are published weekly in a document entitled "SEC Docket" (see paragraph (e)(8)(ii) of this section):

(i) Final opinions of the Commission, including concurring and dissenting opinions, as well as orders made by the Commission in the adjudication of cases;

(ii) Statements of policy and interpretations which have been adopted by the Commission and are not published in the FEDERAL REGISTER;

(iii) Administrative staff manuals and instructions to staff that affect a member of the public;

(iv) A record of the final votes of each member of the Commission in every Commission proceeding concluded after July 1, 1967;

(v) Current indices (published quarterly or more frequently) providing identifying information to the public as to the materials made available pursuant to paragraphs (a)(2) (i), (ii), and (iii) of this section which have been issued, adopted or promulgated after July 1, 1967, and such other indices as the Commission may determine; and

(vi) Copies and a general index of all records which have been released to any person under the Freedom of Information Act and which, because of the nature of their subject matter, the Commission determines have become or are likely to become the subject matter of subsequent requests for substantially the same records.

(3) Records created on or after November 1, 1996, which are required to be available for public inspection and copying under paragraph (a)(2) of this section, shall be made available on the Internet.

(4) *Other records available upon request.* Except with respect to the records made available under paragraphs (a) (1) and (2) of this section, and subject to the provisions of paragraph (b) of this section, pertaining to nonpublic matters, the Commission, upon request for records which (i) reasonably describes such records and (ii) is made in accordance with the rules set forth in paragraphs (d) and (e) of this section, stating the time, place, fees (if any) and procedures to be followed, shall make the records promptly available to any person. A compilation

of records generally available at the public reference room at the principal office of the Commission appears below as appendix A to this subpart (17 CFR 200.80a). Most of the records described in appendix A to this section are provided to the public pursuant to the Securities Act of 1933, 15 U.S.C. 77f(d), the Securities Exchange Act of 1934, 15 U.S.C. 78m(f)(3), the Public Utility Holding Company Act of 1935, 15 U.S.C. 79v(a), the Investment Company Act of 1940, 15 U.S.C. 80a-44(a)(b), and the Investment Advisers Act of 1940, 15 U.S.C. 80b-10(a). Arrangements can be made through the Public Reference Branch as explained in paragraph (c) of this section for materials to be copied by the Commission's contract copying service at fees found in appendix E to this section.

(5) *Records available with identifying details deleted.* To the extent required to prevent a clearly unwarranted invasion of personal privacy, identifying details may be deleted from materials made public as set forth in paragraphs (a) (1), (2), and (3), of this section, e.g., apparently defamatory statements made about any person, information received by or given to the Commission in confidence, or any contents of personnel and medical and similar files. In addition, certain materials which are considered to be nonpublic, as described in paragraph (b) of this section may, as authorized by the Commission from time to time, be made available for public inspection and copying in an abridged or summary form or with identifying details deleted.

(b) *Nonpublic matters.* Certain records are nonpublic, but any reasonably segregable portion of a record shall be provided to any person requesting such record in accordance with paragraphs (d) and (e) of this section and after deletion of the portions which are considered nonpublic under paragraph (b) of this section. Except for such reasonably segregable portions of records, the Commission will generally not publish or make available to any person matters that are:

(1)(i) Specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy,

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and (ii) are in fact properly classified pursuant to such executive order.

(2) Related solely to the internal personnel rules and practices of the Commission or any other agency, including, but not limited to:

(i) Operation rules, guidelines, and manuals of procedure for investigators, attorneys, accountants, and other employees other than those which establish legal requirements to which members of the public are expected to conform; or

(ii) Hiring, termination, promotion, discipline, compensation, or reward of any Commission employee or member, the existence, investigation, or disposition of a complaint against any Commission employee or member, the physical or mental condition of any Commission employee or member, the handling of strictly internal matters, matters which would tend to infringe on the privacy of the staff or members of the Commission, or similar subjects.

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, including, but not limited to:

(i) Information contained in letters of comment in connection with registration statements, applications for registration or other material filed with the Commission, replies thereto, and related material which is deemed to have been submitted to the Commission in confidence or to be confidential at the instance of the registrant or person who has filed such material unless the contrary clearly appears; and

(ii) Information contained in any document submitted to or required to be filed with the Commission where the Commission has undertaken formally or informally to receive such submission or filing for its use or the use of specified persons only, such as preliminary proxy material filed pursuant to Rule 14a-6 under the Securities Ex-

change Act (17 CFR 240.14a-6) or preliminary information statements filed pursuant to Rule 14c-5 (17 CFR 240.14c-5) before definitive material has been filed with the Commission, reports filed pursuant to Rule 316(a) under the Securities Act (17 CFR 230.316(a)), agreements filed pursuant to Rule 15c3-1d(c)(6)(i) under the Securities Exchange Act (17 CFR 240.15c3-1d(c)(6)(i)), schedules filed pursuant to Part II of Form X-17A-5 (17 CFR 249.617) in accordance with Rule 17a-5(b)(3) under the Securities Exchange Act (17 CFR 240.17a-5(b)(3)), statements filed pursuant to Rule 17a-5(k)(1) under the Securities Exchange Act (17 CFR 240.17a-5(k)(1)), and confidential reports filed pursuant to Rules 17a-10 and 17a-12 under the Securities Exchange Act (17 CFR 240.17a-10 and 240.17a-12); and

(iii) Information contained in reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of or in connection with an examination or inspection of the books and records of any person or any other investigation.

(5) Interagency or intra-agency memoranda or letters, including generally records which reflect discussions between or consideration by members of the Commission or members of its staff, or both, of any action taken or proposed to be taken by the Commission or by any member of its staff, and specifically, reports, summaries, analyses, conclusions, or any other work product of members of the Commission or of attorneys, accountants, analysts, or other members of the Commission's staff, prepared in the course of an inspection of the books or records of any person whose affairs are regulated by the Commission, or prepared otherwise in the course of an examination or investigation or related litigation conducted by or on behalf of the Commission, except those which by law would routinely be made available to a party other than an agency in litigation with the Commission.

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, including those concerning all employees of the

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Commission and those concerning persons subject to regulation by the Commission.

(7) Records or information compiled for law enforcement purposes to the extent that the production of such records or information:

(i) Could reasonably be expected to interfere with enforcement activities undertaken or likely to be undertaken by the Commission or the Department of Justice, or any United States Attorney, or any Federal, state, local, foreign governmental authority or foreign securities authority, any professional association, or any securities industry self-regulatory organization;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source including a state, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques or procedures or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could be reasonably expected to endanger the life or physical safety of any individual.

(8) Contained in, or related to, any examination, operating, or condition report prepared by, on behalf of, or for the use of, the Commission, any other Federal, state, local, or foreign governmental authority or foreign securities authority, or any securities industry self-regulatory organization, responsible for the regulation or supervision of financial institutions.

(9) Geological and geophysical information and data, including maps, concerning wells.

(c)(1) *Public reference facilities.* In order to disseminate records, including those listed in appendix A to this section, the Commission has a specially staffed and equipped public reference room located at 450 Fifth Street NW., Room 1024, Washington, DC and public reference facilities in its Northeast and Midwest Regional Offices. Copying machines, which are available to requesters on a self-service or contractor-operated basis, can be used to make immediate copies up to 8½×11 inches in size of materials that are available for inspection in the Washington, DC, Northeast and Midwest Regional Offices. Fees and levels of service are set out in the Commission's schedule of fees in appendix E to this section and in information available from the public reference room. The Commission accepts only written requests for copies of documents.

(i) The public reference room in Washington has available for public inspection all of the publicly available records of the Commission as described in paragraph (a) of this section. In addition, upon request, such records will be sent to the Commission's Northeast and Midwest Regional Offices for inspection in the public reference facilities at those offices, if the records are not needed by the Commission or the staff in connection with the performance of official duties. Also upon request, and only when suitable arrangements can be made with respect to the transportation, storage, and inspection of records, records may be sent to any other Commission office for inspection at that office, if the records are not needed by the Commission or the staff in connection with the performance of official duties. When records are sent to another office at the request of a member of the public, the requestor shall be charged all costs incurred by the Commission in transporting the records.

(ii) All regional and district offices of the Commission have available for public examination the materials set forth in paragraph (a)(2) of this section and the *SEC Docket*, *SEC News Digest* and other SEC publications. Blank forms as well as other general information about the operations of the Commission described in paragraph (a)(1) of

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this section may also be available at particular regional and district offices.

(iii) In the Northeast and Midwest Regional Offices, microfiche of all recent registration statements filed pursuant to the Securities Act of 1933, registration statements and periodic reports filed pursuant to the Securities Exchange Act of 1934, and periodic reports filed pursuant to the Investment Company Act from 1969 to date are available for inspection and reproduction.

The addresses of the Commission's regional and district offices are:

Northeast Regional Office. 7 World Trade Center, Suite 1300, New York, NY 10048. Office hours—9 a.m. to 5:30 p.m. E.S.T.

Boston District Office—73 Tremont Street, Suite 600, Boston, MA 02108. Office hours—9 a.m. to 5:30 p.m. E.S.T.

Philadelphia District Office—The Curtis Center, Suite 1005 E., 601 Walnut Street, Philadelphia, PA 19106. Office hours—9 a.m. to 5:30 p.m. E.S.T.

Southeast Regional Office. 1401 Brickell Avenue, Suite 200, Miami, FL 33131. Office hours—9 a.m. to 5:30 p.m. E.S.T.

Atlanta District Office—3475 Lenox Road, NE., Suite 1000, Atlanta, GA 30326. Office hours—9 a.m. to 5:30 p.m. E.S.T.

Midwest Regional Office. 500 West Madison Street, Suite 1400, Chicago, IL 60661. Office hours—8:45 a.m. to 5:15 p.m. C.S.T.

Central Regional Office. 1801 California Street, Suite 4800, Denver, CO 80202. Office hours—8 a.m. to 4:30 p.m. M.S.T.

Fort Worth District Office—801 Cherry Street, 19th Floor, Fort Worth, TX 76102. Office hours—8:30 a.m. to 5 p.m. C.S.T.

Salt Lake District Office—500 Key Bank Tower, 50 S. Main Street, Suite 500, Box 79, Salt Lake City, UT 84144. Office hours—8 a.m. to 4:30 p.m. M.S.T.

Pacific Regional Office. 5670 Wilshire Boulevard, 11th Floor, Los Angeles, CA 90036. Office hours 8:30 a.m. to 5 p.m. P.S.T.

San Francisco District Office—44 Montgomery Street, Suite 1100, San Francisco, CA 94104. Office hours—8:30 a.m. to 5 p.m. P.S.T.

(2) *Public reference inquiries.* Inquiries concerning the nature and extent of records available at the Commission's public reference room in Washington or at its other public reference facilities may be made in person or in writing. The addresses of all Commission Regional and District Offices are set forth at paragraph (c)(1) of this section. Written inquiries may be addressed to the Securities and Exchange Commis-

sion, Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549.

(3) Electronic filings made through the Electronic Data Gathering, Analysis, and Retrieval system are publicly available through the Commission's Web site (<http://www.sec.gov>).

(d) *Requests for Commission records and copies thereof*—(1) *Time and place of requests for access to Commission records.* Requests for access to records available through the Commission's public reference facilities may be made in person during normal business hours at those facilities or by mail directed to the Public Reference Branch, Securities and Exchange Commission, Washington, DC 20549. In addition, access to agency records not available in the public reference facilities may be requested pursuant to the Freedom of Information Act. Such requests must be in writing, should be clearly and prominently identified by a legend on the first page, such as "Freedom of Information Act Request", and should be addressed to the Freedom of Information Act Officer, SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413. The request may also be made by facsimile (703-914-1149) or by Internet ([foia/pa@sec.gov](mailto:foia/pa@sec.gov)).

(2) *Requests for copies of records.* Requests for copies of Commission records available through the Commission's public reference facilities, including those listed in appendix A to this section, may be made directly to the appropriate facility either in person or by mail addressed to the Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549. Levels of service and charges for copies are set out in the Commission's schedule of fees in appendix E to this section. Requests for copies of materials to which access has been granted pursuant to a Freedom of Information Act request will be processed pursuant to regulations found in this section in paragraphs (e)(9) and (e)(10) and at charges set out in appendix E to this section.

(3) *Description of requested records.* Each request for Commission records or copies thereof shall reasonably describe the records sought with sufficient specificity with respect to names,

dates and subject matter to permit the records to be located among the records maintained by or for the Commission. A person who has requested Commission records or copies thereof will be promptly advised if the records cannot be located on the basis of the description given and that further identifying information must be provided before his request can be satisfied.

(4) *Normal availability.* Records maintained in the Commission's public reference facilities or copies thereof will normally be made available in keeping with levels of service and fees set out in appendix E to this section. Records requested pursuant to the Freedom of Information Act will be made available as described in paragraphs (e)(9) and (e)(10) of this section.

(5) *Initial determination; multi-track processing, and denials.*—(i) *Time within which to respond.* When a request complies with the procedures in this section for requesting records under the Freedom of Information Act, a response shall be sent within 20 business days from the date the Office of Freedom of Information and Privacy Act Operations receives the request, except as described in paragraphs (d)(5)(ii) and (d)(5)(iii) of this section. If that Office has identified the requested records, the response shall state that the records are being withheld, in whole or in part, under a specific exemption or are being released.

(ii) *Voluminous records.* The amount of separate and distinct records which are demanded in a single request or the amount of time or work (or both) involved may be such that the review of the records cannot be completed within 20 business days, as prescribed in paragraph (d)(5)(i) of this section. In such a case, the Office of Freedom of Information and Privacy Act Operations shall inform the requester of the approximate volume of the records and give him or her the option of limiting the scope of the request to qualify for 20-day processing or placing the request in the Commission's first-in, first-out (FIFO) system for reviewing voluminous records. In the latter case, the Office will inform the requester of the approximate time when the review will start. The FIFO system allows the Commission to serve all those request-

ing voluminous records on a first-come, first-served basis, such that all releasable records sought will be released at one time, unless the requester specifically requests that releasable records be released piecemeal as they are processed.

(iii) *Expedited processing.* The Office of Freedom of Information and Privacy Act Operations shall grant a request for expedited processing if the requester demonstrates a compelling need for the records. "Compelling need" means that a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to an individual's life or physical safety or, if the requester is primarily engaged in disseminating information, an urgency to inform the public of actual or alleged Federal government activity. A compelling need shall be demonstrated by a statement, certified to be true and correct to the best of the requester's knowledge and belief. The Office of Freedom of Information and Privacy Act Operations shall notify the requester of the decision to grant or deny the request for expedited treatment within ten business days of the date of the request. A request for records that has been granted expedited processing shall be processed as soon as practicable.

(iv) *Notice of denial.* Any notification of denial of any request for records shall state the name and title or position of the person responsible for the denial of the request, the reason for the decision, and the right of the requester to appeal to the General Counsel. The decision shall estimate the volume of records that are being withheld in their entirety, unless giving such an estimate would harm an interest protected by the applicable exemption. The amount of information redacted shall be indicated on the released portion of the record and, if technically feasible, at the place where the redaction is made.

(v) *Form of releasable records.* Releasable records shall be made available in any form or format requested if they are readily reproducible in that form or format.

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(6) *Administrative review.* Any person who has received no response to a request within the period prescribed in paragraph (d)(5) of this section or within an extended period permitted under paragraph (d)(7) of this section, or whose request has been denied under paragraph (d)(5) of this section, may appeal the adverse decision or failure to respond to the General Counsel.

(i) The appeal shall be in writing, shall be clearly and prominently identified on the envelope or other cover and at the top of the first page by a legend such as "Freedom of Information Act Appeal," and shall identify the record in the form in which it was originally requested.

(ii) The appeal must be mailed to the Office of Freedom of Information and Privacy Act Operations, SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413 or delivered to Room 1418 at that address, and a copy of it must be mailed to the General Counsel, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549 or delivered to Room 1012-B at that address.

(iii) The appeal may include such facts and cite such legal or other authorities as the person submitting the appeal may consider appropriate.

(iv) The General Counsel shall have the authority to grant or deny all appeals, in whole or in part, and to release as an exercise of discretion records exempt from mandatory disclosure under 5 U.S.C. 552(b). In appropriate cases he or she may, in his or her sole and unfettered discretion, refer appeals to the Commission for determination.

(v) A determination with respect to any appeal shall be made within twenty days (excepting Saturdays, Sundays and legal public holidays) after the receipt of such appeal or within such extended period as may be permitted in accordance with paragraph (d)(7) of this section.

(vi) A denial of an appeal in whole or in part shall set forth the basis for the denial, and shall advise the requester that judicial review of the decision is available in accordance with 5 U.S.C. 552(a)(4).

(7) *Extension of time to consider requests and to consider administrative ap-*

*peals.* In unusual circumstances, as specified in this paragraph, the time limits prescribed in either paragraphs (d) (5) or (6) of this section may be extended by written notice to the person making a request for a record or a copy, setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten business days, except as provided in paragraph (d)(8) of this section. As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request. (Many records of the Commission are stored in Federal Records Centers in accordance with law—including many of the documents which have been on file with the Commission for more than 2 years—and cannot be made available for several days after a request has been made. Other records may temporarily be located at a regional or district office of the Commission. Any person who has requested for personal examination a record stored at the Federal Records Center or temporarily located in a regional or district office of the Commission will be notified when and where the record will be made available to him. Any person who has ordered a copy of such record will be provided with a copy as soon as practicable). Some records have been disposed of in accordance with the Commission's Records Control Schedule (17 CFR 200.80(f)).

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request. (While every reasonable effort will be made fully to comply with each request as promptly as possible on a first-come, first-served basis, work done to search for, collect and appropriately examine records in response to a request for a large number of records

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will be contingent upon the availability of processing personnel in accordance with an equitable allocation of time to all members of the public who have requested or wish to request records.)

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components within the Commission having substantial subject-matter interest therein.

(8) *Inability to meet time limits.* If a request for records cannot be processed within the time prescribed under paragraph (d)(7) of this section, the Commission shall so notify and give the requester an opportunity to modify the request so that it may be processed within that time or to arrange an alternative time for processing the request or a modified request.

(i) *Records in use for another member of the public.* Any record being inspected by or copied for another member of the public will be made available as soon as practicable.

(ii) *Records in use by a member of the Commission or its staff.* Although every effort will be made to make a record in use by a member of the Commission or its staff available when requested, it may occasionally be necessary to delay making such a record available when doing so at the time the request is made would seriously interfere with the work of the Commission or its staff.

(iii) *Missing or lost records.* Any person who has requested a record or copy will be notified if the record sought cannot be found. If he so requests, he will be notified if it should subsequently be located.

(9) *Misdirected written requests.* The Commission cannot assure that a timely or satisfactory response will be given to written requests for inspection or copies of records that are directed to the Commission other than in the manner prescribed in paragraphs (d) (1) and (2) of this section. Any staff member who receives a written request for records should promptly forward the request to the Freedom of Information Act Officer. Misdirected requests for records will be considered to have been

received for purposes of paragraph (d) of this section only when they have been actually received by the Freedom of Information Act Officer. The Commission will not entertain any appeal from an alleged denial or failure to comply with a misdirected request, unless it is clearly shown that the request was in fact received by the Freedom of Information Act Officer.

(e) *Fees for records services.* A current schedule of fees for record services, including locating, reviewing, and making records available, attestations and copying, appears in appendix E to this subpart D, 17 CFR 200.80e. Copies of the current schedule of fees may also be obtained upon request made in person, by telephone or by mail from the public reference room or at any regional or district office of the Commission.

(1) *Services provided without charge.* Generally, up to one-half hour of staff time devoted to searching for and reviewing Commission records will be provided without charge. Where a request for records pursuant to the Freedom of Information Act is determined not to serve a commercial purpose as defined in paragraph (e)(10)(ii) of this section, a total of two staff hours of search and review and one hundred pages of duplication as defined in paragraphs (e)(9)(i), (e)(9)(ii) and (e)(9)(iii) of this section, respectively, shall be made available without charge in the form most economical for the government.

(2) *Services for which fees are charged.* For records available through the Commission's public reference facilities, requestors may make arrangements for duplication in accordance with provisions of the Commission's dissemination contract. Copies of that contract, which contain tables of charges, may be inspected in the public reference room, 450 Fifth Street, NW., Room 1024, Washington, DC. A complete schedule of services offered by the contractor and fees charged for those services is available through the Commission's public reference facilities. Fees for services provided in connection with requests made pursuant to the Freedom of Information Act shall be assessed as set out in appendix E to this section and in keeping with guidelines

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and procedures described in paragraphs (e)(9) and (e)(10) of this section.

(3) *Requests requiring large expenditures.* A request for Commission records may state that the requesting person is willing to pay fees up to a stated limit for services to be provided in locating, reviewing and making available requested records. In such circumstances, no work will be done that will result in fees beyond the stated limit without further written authorization. If no limit is initially stated by the person requesting records or copies, services in locating and making available the requested records will not be done so as to exceed fees of \$28 (exclusive of applicable copying charges) without the express written authorization by the requesting person, and he will be so informed.

(4) *Waiver or reduction of fees.* (i) The Office of Freedom of Information and Privacy Act Operations may waive or reduce search, review, and duplication fees if:

(A) Disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(B) Disclosure is not primarily in the commercial interest of the requester.

(ii) The Office of Freedom of Information and Privacy Act Operations will determine whether disclosure is likely to contribute significantly to public understanding of the operations or activities of the government based upon four factors:

(A) Whether the subject of the requested records concerns the operations and activities of the Federal government;

(B) Whether the requested records are meaningfully informative on those operations or activities so that their disclosure would likely contribute to increased public understanding of specific operations or activities of the government;

(C) Whether disclosure will contribute to the understanding of the public at large, rather than the understanding of the requester or a narrow segment of interested persons; and

(D) Whether disclosure would contribute significantly to public under-

standing of the governmental operations or activities.

(iii) The Office of Freedom of Information and Privacy Act Operations will determine whether disclosure of the requested records is not primarily in the commercial interest of the requester based upon two factors:

(A) Whether disclosure would further any commercial interests of the requester; and

(B) Whether the public interest in disclosure is greater than the requester's commercial interest.

(iv) If only a portion of the requested records satisfies both the requirements for a waiver or reduction of fees, a waiver or reduction of fees will be granted for only that portion.

(v) A request for a waiver or reduction of fees may be a part of a request for records. Such requests should address all the factors identified in paragraphs (e)(4)(ii) and (e)(4)(iii) of this section.

(vi) Denials of requests for a waiver or reduction of fees may be appealed to the General Counsel in accordance with the procedure set forth in paragraph (d)(6) of this section.

(5) *Records obtained from Federal Records Centers.* When, to fill a request for inspection or copying, records are required to be obtained from a Federal Records Center, fees, in addition to those provided on the Commission's current schedule of fees, will be charged to the extent authorized or required by rules or regulations promulgated by the National Archives and Records Administration.

(6) *Attestations.* In addition to any other fees or charges which may apply, a fee will be charged for records attestations as provided in the Commission's current schedule of fees. The seal of the Commission will be affixed to all attestations without additional charge.

(7) *Copying services.* Copies of records filed with or retained by the Commission, or portions thereof, will be provided subject to fees established by agreement between the Commission and a private contractor as set forth in the Commission's current schedule of fees and, where applicable, procedures and guidelines for Freedom of Information Act requests as set out in paragraphs (e)(9) and (e)(10) of this section.

(i) *Facsimile copies.* Requests for facsimile copies may be made either in person at the Commission's Washington, DC, Northeast, or Midwest public reference rooms, or by mail addressed to the Securities and Exchange Commission, Public Reference Room, 450 Fifth Street, NW., room 1024, Washington, DC 20549. The contractor will send copies directly to the purchaser unless attestation is requested. Persons who request copies of documents through the public reference room will be billed by the contractor at regulated prices, and will be billed separately by the Commission for search, review and attestation charges, if any. Copies of documents requested directly from the contractor or from any other information service or vendor are not subject to regulated prices. Special classes of copying services, such as telecopies, not listed herein or in the current schedule of fees posted in the public reference room, are not provided or regulated by the Commission, but may be obtained from private vendors at market prices.

(ii) *Microfiche copies.* A contractor also makes available to the public microfiche copies of certain public documents on file with the Commission, at prices and on terms governed by its contract with the Commission. Microfiche services include subscription microfiche service on an annual basis. Microfiche subscription prices are regulated by the Commission whether requested through the public reference room or directly from the contractor. Certain other microfiche services are provided at prices that are regulated by the Commission only if ordered through the Commission's public reference room. The Commission will accept only subscription requests made in writing, although the contractor may elect to accept subscription requests by telephone. All microfiche subscription charges are payable directly to the contractor, whether placed through the Commission or not. Information concerning the types and cost of regulated microfiche services may be obtained by writing to the Commission at its public reference room located at 450 Fifth Street, NW., room 1024, Washington, DC 20549.

(iii) *Transcripts of public hearings.* Copies of the transcripts of recent public hearings may be obtained from the reporter subject to the fees established annually by contract between the Commission and the reporter. Copies of that contract, which contains tables of charges, may be inspected in the public reference room, 450 Fifth Street, NW., Room 1024, Washington, D.C. and in each regional and district office. Copies of other public transcripts may be obtained, in the manner of other Commission records, subject to the charges referred to in paragraph (e)(7)(i) of this section.

(8) *Releases and publications.* (i) The Commission's decisions, reports, orders, rules and regulations are published initially in the form of releases and distributed.

(ii) The Commission publishes daily the *SEC News Digest*, which summarizes the releases published by the Commission each day, contains Commission announcements, and lists certain filings with the Commission. The Commission publishes weekly the *SEC Docket*, which prints the full text of every Commission release.

(iii) The Commission publishes an annual report to the Congress which sets forth the results of the Commission's operations during the past fiscal year under the various statutes committed to its charge. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(iv) The Commission also makes other information in the fields of securities and finance, including economic studies, available to the public through the issuance of releases on specific subject matters.

(v) A classification of the releases available from the Commission appears below as appendix B to this section. Other publications available from the Commission are set forth in appendix C to this section. Copies of rules, regulations, and miscellaneous publications set forth in appendix D to this section may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(9) *Fees for services required for processing Freedom of Information Act Requests.* In cases where records are requested pursuant to the Freedom of Information Act and according to procedures set forth in paragraph (d)(1) of this section, fees shall be charged as set out in the Commission's current schedule of fees, appendix E to this section, for services as described in the following:

(i) *Search.* The term "search" includes all time spent looking for material manually or by using electronic data processing equipment that is responsive to a request, as distinguished from "review" as defined at paragraph (e)(9)(ii) of this section. Searching for requested and specifically identified information, as described in paragraph (d)(1) of this section, includes the cost of staff time devoted to the search as indicated in appendix E to this section and direct costs for use of Commission electronic data processing equipment.

(ii) *Review.* The term "review" refers to the process of examining documents located in response to a request to determine whether any portion of any document is permitted to be withheld pursuant to provisions of the Freedom of Information Act. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise material from and otherwise prepare them for release.

(iii) *Duplication.* The term "duplication" refers to producing paper or microform copies of records. The Commission shall charge for duplication as established by agreement between the Commission and a private contractor. These charges are currently set out in appendix E to this section. Such charges shall be set so as not to exceed the direct cost that would be incurred by the Commission if it were to perform such services itself, as calculated to include the salary of operators, the cost of reproduction machinery, the cost of material and any other direct costs incurred by the Commission in copying materials responsive to a Freedom of Information Act request.

(iv) *Partial exemption from fee provisions.* No fees shall be charged for the first two hours of search time and the first one hundred pages of materials for

requesters described in paragraphs (e)(10)(i) and (e)(10)(iii) of this section.

(v) *Minimum fee.* Fees will not be charged if the normal cost of collecting a fee would be equal to or greater than the fee itself.

(10) *Classification of Freedom of Information Act requesters for purposes of assessing fees.* Parties requesting records pursuant to the Freedom of Information Act will be classified and charged fees described in appendix E to this section as follows:

(i) The following types of requesters shall be charged for duplication of records as described in paragraph (e)(9)(iii) of this section as qualified in paragraph (e)(9)(iv) of this section: Educational institutions requesting information for purposes of scholarly research; non-commercial scientific institutions requesting information for purposes of scientific research; and representatives of the news media requesting information concerning current events or matters of current interest to the general public.

(ii) Commercial requesters, defined as parties other than those mentioned in paragraph (e)(10)(i) of this section who are requesting information to be used in any way which could reasonably be expected to result in corporate or personal financial gain or profit, shall be charged for search, review and duplication of records as described in paragraphs (e)(9)(i), (e)(9)(ii) and (e)(9)(iii), respectively, of this section.

(iii) All parties other than those described in paragraphs (e)(10)(i) and (e)(10)(ii) of this section requesting access to such records shall be charged for search and duplication of records as described in paragraphs (e)(9)(i) and (e)(9)(iii) of this section, respectively, as qualified in paragraph (e)(9)(iv) of this section.

(11) *Appeal of classification.* Classification under the provisions of paragraph (e)(10) of this section may be appealed to the General Counsel in accordance with the procedure set forth in paragraph (d)(6) of this section.

(12) *Aggregation of requests.* If the Freedom of Information Act Officer reasonably believes that a requester or group of requesters acting in concert is attempting to divide one request into a series of requests for the purpose of

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evading the assessment of fees, those requests may be aggregated and charges assessed accordingly.

(13) *Advance payment.* The Freedom of Information Act Officer may require advance payment of fees expected to be incurred in connection with a request, but only when the subject requester has failed to make timely payment in the past, or when the estimated processing costs exceed \$250.00 and the requester has no previous payment records or has failed to make timely payment in the past. Processing in such cases shall be delayed until advance payment is received and statutory time limits will be appropriately extended.

(14) *Interest on unpaid bills.* On the 31st day following the date of a bill to a requester, the Commission may begin assessing interest on the unpaid amount at the rate prescribed in section 3717 of title 31 of the U.S. Code. Interest will accrue from the date of the bill.

[40 FR 8799, Mar. 3, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 200.80, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

**§ 200.80a Appendix A—Documentary materials available to the public.**

[See footnotes at end of table]

Description	Pursuant to section—
<b>Securities Act of 1933</b>	
Registration statement providing financial and other information concerning securities offered for public sale, filed under Regulation C (17 CFR 230.400 <i>et seq.</i> ).	6
Prospectuses (selling circulars) in connection with registration statement.	10
Periodic reports (annual, quarterly, and current) to keep reasonably current the information in registration statement.	(1)
Requests for extension of time to file information, document, or report.	(2)
Reports of sales of registered securities and use of proceeds thereunder by first time registrants.	19(a), 20(a)
Report by issuers of securities quoted on NASDAQ Inter-Dealer Quotation System.	(1)
Preliminary data (prospectus, circular letters, etc.) to oil offering (Regulation B) (17 CFR 230.300 <i>et seq.</i> ).	3(b)
Offering sheets for oil or gas rights and royalties under Regulation B for exemption from registration provisions (17 CFR 230.300 <i>et seq.</i> ).	3(b)

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[See footnotes at end of table]

Description	Pursuant to section—
Notifications of exemption from registration filed under Regulation A, E, and F (17 CFR 230.251, 230.601, 230.651 <i>et seq.</i> ).	3(b)
Offering circulars and written advertisements or other communications under Regulations A, E, and F (17 CFR 230.251, 230.601, 230.651 <i>et seq.</i> ).	3(b)
Report of sales and use of proceeds (Regulations A and E) (17 CFR 230.251, 230.601 <i>et seq.</i> ).	3(b)
Consent by non-resident to service of process (Regulation A) (17 CFR 230.251 <i>et seq.</i> ).	3(b)
Application for relief from disability under Regulations A and F (17 CFR 230.651 <i>et seq.</i> ).	3(b)
Notice of proposed resale of restricted securities and resale of securities by control persons (17 CFR 230.144).	4(1), 4(4)
Notice of proposed sale by non-controlling person of restricted securities of issuers which do not satisfy all of the conditions of Rule 144 (17 CFR 230.237).	3(b)
Notice of sale of securities by closely held issuers (issuers with 100 or less beneficial owners) other than investment companies, registered or required to be registered under the Investment Company Act of 1940 (17 CFR 230.240).	3(b)

[See footnotes at end of table]

Description	Pursuant to section—
<b>Securities Exchange Act of 1934</b>	
Registration statement (securities listed on a national securities exchange).	12(b)
Registration statement (securities traded over-the-counter).	12(g)
Exemption from section 12(g), 13, 14, 15, or 16.	12(h)
Information by a foreign issuer temporarily exempt from section 12(g).	12(g)(3)
Certification of exchange approving securities for listing and registration.	12(d)
Periodic reports (annual, quarterly and current) to keep current the information in the above registration statements.	13(a)
Request for extension of time to file information, document, or report.	12(b)
Correspondence between the Commission and registrants that are delinquent in filing certain required reports.	13(a), 15(d)
Report by issuers of securities quoted on NASDAQ Inter-Dealer Quotation System.	15(d), 13(a)
Certificate of termination of Registration for a class of security.	(3)
Notices of suspension of trading .....	12(d)
Application to withdraw or strike a security from listing and registration on a national securities exchange.	12(d)
Notification by an exchange of the admission to trading of a substituted or additional class of security.	12(a)
Definitive proxy soliciting materials filed under Regulation 14A (17 CFR 240.14a–1 <i>et seq.</i> ).	14(a)