

§ 140.735-5

17 CFR Ch. I (4-1-07 Edition)

(1) Deposit the gift or decoration for disposal with the Executive Director; or

(2) Subject to the approval of the Commission, upon the recommendation of the Executive Director, deposit the gift or decoration with the Commission for official use.

A gift or decoration may be retained for official use if the Commission determines that it can be properly displayed in an area accessible to employees and members of the public. Within 30 days after termination of the official use of a gift, the Executive Director shall forward the gift to the Administrator of General Services in accordance with paragraph (g) of this section.

(f) Whenever possible, gifts and decorations that have been deposited with the Executive Director for disposal shall be returned to the donor. The Executive Director, in coordination with the Office of the General Counsel, shall examine the circumstances surrounding the donation, assessing whether any adverse effect on the foreign relations of the United States might result from the return of the gift or decoration to the donor. The appropriate Department of State officials shall be consulted if a question of adverse effect on United States foreign relations arises.

(g) Gifts and decorations that have not been returned to the donor, retained for official use, or for which official use has terminated, shall be forwarded by the Executive Director to the Administrator of General Services for transfer, donation, or other disposal in accordance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended, and 5 U.S.C. 7342.

(h) In accordance with 5 U.S.C. 7342(h), the U.S. Attorney General may bring a civil action in any United States district court against any Commission member or employee who knowingly solicits or accepts a gift from a foreign government not consented to by the Congress of the United States in 5 U.S.C. 7342, or who fails to deposit or report such gift as required by 5 U.S.C. 7342. The court may assess a penalty against such Commission member or employee in any amount not exceeding the retail value of the

gift improperly solicited or received plus \$5,000.

(i) A violation of the requirements set forth in this section by a Commission employee may be cause for appropriate disciplinary action which may be in addition to any penalty prescribed by law.

(j)(1) The burden of proving minimal value shall be on the recipient. In the event of a dispute over the value of a gift, the Executive Director shall arrange for an outside appraiser to determine whether the gift is of more or less than minimal value.

(2) When requested by the Administrator of Government Services, the Executive Director shall arrange for an appraisal of a gift or decoration.

(k) No appropriated funds of the Commission may be used to buy any tangible gift of more than minimal value for any foreign individual, unless the gift has been approved by Congress.

[47 FR 24115, June 3, 1982. Redesignated at 58 FR 52658, Oct. 12, 1993; 63 FR 32733, June 16, 1998]

§ 140.735-5 Disclosure of information.

A Commission employee or former employee shall not divulge, or cause or allow to be divulged, confidential or non-public commercial, economic or official information to any unauthorized person, or release such information in advance of authorization for its release.⁹ Except as directed by the Commission or its General Counsel as provided in these regulations, no Commission employee or former employee is

⁹ Attention is directed to section 9(d) of the Commodity Exchange Act, which provides that it shall be a felony punishable by a fine of not more than \$500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution—(1) for any Commissioner of the Commission or any employee or agent thereof who, by virtue of his employment or position, acquires information which may affect or tend to affect the price of any commodity future or commodity and which information has not been promptly made public, to impart such information with intent to assist another person, directly or indirectly, to participate in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an option, privilege, indemnity, bid, offer, put,

authorized to accept service of any subpoena for documentary information contained in or relating to the files of the Commission. Any employee or former employee who is served with a subpoena requiring testimony regarding non-public information or documents shall, unless the Commission authorizes the disclosure of such information, respectfully decline to disclose the information or produce the documents called for, basing his refusal on these regulations.¹⁰ Any employee or former employee who is served with a subpoena calling for information regarding the Commission's business 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 of making such information or document available in the public interest.¹¹ In any proceeding in which the Commission is not a party, no employee of the Commission shall testify concerning matters related to the business of the Commission unless authorized to do so by the Commission.

[58 FR 52658, Oct. 12, 1993]

call, advance guaranty or decline guaranty, or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account or leverage contract, or under any contract or other arrangement that the Commission determines to serve the same function or is marketed in the same manner as such standardized contract, and (2) for any person to acquire such information from any Commissioner of the Commission or any employee or agent thereof and to use such information in any of the foregoing transactions.

¹⁰No employee shall disclose such information unless directed to do so by the Commission.

¹¹The prohibitions regarding confidential or nonpublic information stated above are intended to cover the matters addressed in sections 4(c), 8, and 9(d) of the Commodity Exchange Act as well as nonpublic information under the Freedom of Information Act, 5 U.S.C. 552, the rules of the Commission thereunder, 17 CFR part 145, the Privacy Act, 5 U.S.C. 552a, the rules of the Commission thereunder, 17 CFR part 146, and cases where, apart from specific prohibitions in any statute or rule, the disclosure or use of such information would be unethical.

§ 140.735-6 Practice by former members and employees of the Commission.

(a) *Personal and substantial participation or nonpublic knowledge of a particular matter.* No person who has been a member or employee of the Commission shall ever knowingly make, with the intent to influence, any communication to or appearance before the Commission in connection with any particular matter involving a specific party or parties¹² in which such person, or one participating with him or her in the particular matter, participated personally and substantially, or gained nonpublic knowledge of facts thereof, while with the Commission.¹³

(b) *Particular matter under an individual's official responsibility.* No person who has been a member or employee of the Commission shall, within two years after that employment has ceased, knowingly make, with the intent to influence, any communication to or appearance before the Commission in connection with a particular matter involving a specific party or parties which was actually pending under his official responsibility as a member or employee of the Commission at any

¹²The phrase "particular matter involving a specific party or parties" does not apply to general rulemaking, general policy and standards formulation or other similar matters. See § 2637.201(c)(1) of the regulations of the Office of Government Ethics, 5 CFR 2637.201(c)(1); *cf.*, memorandum of the Attorney General dealing with the conflict-of-interest provisions prior to amendment by the Ethics in Government Act (reproduced following 18 U.S.C. 201).

¹³Attention is directed to 18 U.S.C. 207(a)(1), as amended, which generally prohibits former Federal officers and employees permanently from knowingly making, with the intent to influence, any communication to or appearance before any Federal (or District of Columbia) department, agency or court, or court martial, or any officer or employee thereof, in connection with any particular matter involving a specific party or parties in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while with the government.