§ 200.112  Duties of recipient; notice to participants.

(a) Duties of recipient. A member of the Commission or decisional employee who receives, or who makes or knowingly causes to be made, a communication prohibited by this section, or who receives or makes a communication prohibited by this section, or who

(c) Period during which prohibitions apply. (1) The prohibitions in §200.111(a) shall begin to apply when the Commission issues an order for hearing; Provided,

(i) That in suspension proceedings pursuant to Regulations A, B, E and F of the Securities Act of 1933 (§230.251 et seq. of this chapter), these prohibitions shall commence when the Commission enters an order temporarily suspending the exemption; and

(ii) That in proceedings under section 19(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(d), these prohibitions shall commence at the time that a copy of an application for review has been filed with the Commission and served on the self-regulatory organization;

(iii) That in proceedings under Title I of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7211–7219, these prohibitions shall commence at the time that a copy of an application for review has been filed with the Commission and served on the Public Company Accounting Oversight Board; and

(iv) In no case shall the prohibitions in §200.111(a) begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his or her acquisition of such knowledge.

(2) The prohibitions in §200.111(a) shall continue until the time to file a petition for rehearing from the final order of the Commission has expired. In the event a petition for rehearing is filed, these prohibitions shall cease if and when the petition for rehearing is denied.

(3) The Commission may, by specific order entered in a particular proceeding, determine that these prohibitions shall commence from some date earlier than the time specified in this paragraph (c) or shall continue until a date subsequent to the time specified herein.

(d) Definitions. As used in this subpart:

(1) Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all participants to the proceeding is not given, but it shall not include requests for status reports on any matter or proceeding. In addition, an ex parte communication shall not include:

(i) Any written communication of which copies are served by the communicator contemporaneously with the transmittal of the communication in accordance with requirements of Rule 150 of the Commission’s Rules of Practice, §201.150 of this chapter, upon all participants to the proceeding (including the interested Division or Office of the Commission); or

(ii) Any oral communication where 48 hours advance written notice is given to all participants to the proceeding (including the interested division of the Commission).

(2) Participants to the proceeding means all parties to the proceeding (including the interested Division or Office of the Commission) and any other persons who have been granted limited participation pursuant to the provisions of Rule 210(c) of the Commission’s Rules of Practice, §201.210(c) of this chapter.

(3) Decisional employee means: (i) The administrative law judge assigned to the proceeding in question; and

(ii) All members of the staff of the Office of Opinions and Review; and

(iii) The legal and executive assistants to members of the Commission; and

(iv) Any employee of the Commission who has been specifically named by order of the administrative law judge or the Commission in the proceeding to assist thereafter in making or recommending a particular decision; and

(v) Any other employee of the Commission who is, or may reasonably be expected to be, involved in the decisional process of the proceeding.

which he or she concludes should, in fairness, be brought to the attention of all participants to the proceeding, shall transmit to the Commission’s Secretary, who shall place on the public record of the proceeding:

(1) All such written communications; and
(2) Memoranda stating the substance of all such oral communications; and
(3) All written responses, and memorandum stating the substance of all oral responses, to the materials described in paragraphs (a) (1) and (2) of this section.

(b) Notice to participants. The Secretary shall send copies of the communication to all participants to the proceeding with respect to which it was made, and shall notify the communicator of the provisions of this Code prohibiting ex parte communications. If the communications are from persons other than participants to the proceedings or their agents, and the Secretary determines that it would be too burdensome to send copies of the communications to all participants because: (1) The communications are so voluminous, or (2) the communications are of such borderline relevance to the issues of the proceedings, or (3) the participants to the proceeding are so numerous, the Secretary may, instead, notify the participants that the communications have been received, placed in the file, and are available for examination.

(c) Post decisional communications. Any Commission member or decisional employee who receives a communication which would be prohibited by this Code, but for the fact that it was received subsequent to the date when the prohibitions imposed hereby have ceased to apply, shall comply with the provisions of §200.112(a) with respect to such communication in the event that he or she is to act in a decisional capacity in the same proceeding pursuant to remand where he or she concludes, in fairness, that such communication should be brought to the attention of all participants to the proceeding.

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