Commodity Futures Trading Commission

§ 140.735–2a

Prohibited interests.

(a) Application. This section applies to all financial interests of a Commission member or employee of the Commission, 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 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, swap execution facility, swap data repository, board of trade, or other trading facility, or any derivatives clearing organization subject to regulation or oversight by the Commission:

(2) Have a financial interest, through ownership of securities or otherwise, in any person 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, swap execution facility, swap data repository, board of trade, or other trading facility, or any derivatives clearing organization subject to regulation or oversight by the Commission.

(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-traded fund) other than one operated by a person who is a commodity pool operator with respect to such vehicle, regardless of whether 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

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5 As defined in section 1a(38) of the Commodity Exchange Act and 17 CFR 1.3(u) thereunder, a “person” includes an individual, association, partnership, corporation and a trust.

6 Attention is directed to 18 U.S.C. 208.

7 [Reserved]
262

§ 140.735–2a 17 CFR Ch. I (4–1–14 Edition)

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 the 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 in which they, their spouses or minor children have a financial interest.

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 that the interest has been acquired.

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 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.

262
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 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.\(^\text{10}\)

\(^{10}\)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.

§ 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.

(5) Minimal value means a retail value in the United States at the time of acceptance of $140 or less, except as redefined to reflect changes in the consumer price index at three year intervals by the Administrator of General Services pursuant to authority granted in 5 U.S.C. 7342(a)(5)(A).

(b) Commission members and employees shall not:

263