

(2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for the Commission.

(b) The Commission's code of behavior regarding *ex parte* communications between persons outside the Commission and decisional employees, 17 CFR 200.110–200.114, governs other prohibited communications during a proceeding conducted under the Rules of Practice.

Comment: Paragraph (a) is based on Section 554(d)(1) of the Administrative Procedure Act (APA), 5 U.S.C. 554(d)(1). Paragraph (b) references the Commission's rules applying to communications between Commission members or decisional employees and persons outside the agency, which incorporate the requirements of Section 557(d)(1) of the APA, 5 U.S.C. 557(d)(1). See also 17 CFR 200.62 (ethical canon for Commission members regarding *ex parte* communications); Securities Act Release No. 5815 (Mar. 10, 1977), 11 SEC Docket 1933 (Mar. 22, 1977) (amending Commission's code of behavior governing *ex parte* communications between persons outside the Commission and decisional employees to conform to requirements of Section 4 of the Government in the Sunshine Act, 5 U.S.C. § 552b).

Revision Comment: Although the Commission's administrative proceedings were previously subject to the requirements of the Administrative Procedure Act governing *ex parte* communications, 5 U.S.C. 554(d)(1) and 557(d)(1), the prior rules did not mention them. Rule 120 makes no substantive changes to these requirements—it simply restates the APA's directive with regard to *ex parte* contacts. The Rule was added so that these requirements were more readily available to persons subject to proceedings under the Rules of Practice. See, Model Adjudication Rule 120(A), Administrative Conference of the United States (Dec. 1993).

Rule 121. Separation of Functions

Any Commission officer, employee or agent engaged in the performance of investigative or prosecutorial functions for the Commission in a proceeding as defined in Rule 101(a) may not, in that proceeding or one that is factually related, participate or advise in the decision, or in Commission review of the decision pursuant to Section 557 of the Administrative Procedure Act, 5 U.S.C. 557, except as a witness or counsel in the proceeding.

Comment: Rule 121 is based on Section 554(d) of the Administrative

Procedure Act (APA), 5 U.S.C. 554(d), which governs the separation of personnel involved in prosecutorial and investigative functions in certain cases from decisionmaking in those cases.

Revision Comment: Although the Commission's administrative proceedings were previously subject to the requirements of Section 554(d) of the APA governing separation of functions, 5 U.S.C. 554(d), the prior rules did not mention them. Rule 121 makes no substantive changes to these requirements—it simply restates the APA's position on separation of functions. The Rule was added so that these requirements were more readily available to persons subject to proceedings under the Rules of Practice. See Model Adjudication Rule 121, Administrative Conference of the United States (Dec. 1993).

Rule 140. Commission Orders and Decisions: Signature and Availability

(a) *Signature Required.* All orders and decisions of the Commission shall be signed by the Secretary or any other person duly authorized by the Commission.

(b) *Availability for Inspection.* Each order and decision shall be available for inspection by the public from the date of entry, unless the order or decision is nonpublic. A nonpublic order or decision shall be available for inspection by any person entitled to inspect it from the date of entry.

(c) *Date of Entry of Orders.* The date of entry of a Commission order shall be the date the order is signed. Such date shall be reflected in the caption of the order, or if there is no caption, in the order itself.

Revision Comment (b): Changes to the text of the Commission's rule regarding availability of orders are technical. The Office of the Secretary has for many years maintained a practice of holding Commission orders for five days before release to the public. Under Rule 140(b), unless an order or decision is nonpublic, it will be available to the public from the date of entry.

Revision comment (c): This paragraph has been simplified. No substantive change is intended.

Rule 141. Orders and Decisions: Service of Orders Instituting Proceeding and Other Orders and Decisions

(a) *Service of an Order Instituting Proceedings.*

(1) *By Whom Made.* The Secretary, or another duly authorized officer of the Commission, shall serve a copy of an order instituting proceedings on each person named in the order as a party.

The Secretary may direct an interested division to assist in making service.

(2) *How made.*

(i) *To Individuals.* Notice of a proceeding shall be made to an individual by delivering a copy of the order instituting proceedings to the individual or to an agent authorized by appointment or by law to receive such notice. *Delivery* means—handing a copy of the order to the individual; or leaving a copy at the individual's office with a clerk or other person in charge thereof; or leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or sending a copy of the order addressed to the individual by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of receipt; or giving confirmed telegraphic notice.

(ii) *To Corporations or Entities.* Notice of a proceeding shall be made to a person other than a natural person by delivering a copy of the order instituting proceedings to an officer, managing or general agent, or any other agent authorized by appointment or by law to receive such notice, by any method specified in paragraph (a)(2)(i) of this rule.

(iii) *Upon Persons Registered with the Commission.* In addition to any other method of service specified in paragraph (a)(2) of this rule, notice may be made to a person currently registered with the Commission as a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, investment company or transfer agent by sending a copy of the order addressed to the most recent business address shown on the person's registration form by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of attempted delivery.

(iv) *Upon Persons in a Foreign Country.* Notice of a proceeding to a person in a foreign country may be made by any method specified in paragraph (a)(2) of this rule, or by any other method reasonably calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country.

(v) *In Stop Order Proceedings.* Notwithstanding any other provision of paragraph (a)(2) of this rule, in proceedings pursuant to Sections 8 or 10 of the Securities Act of 1933, 15 U.S.C. 77h or 77j, or Sections 305 or 307 of the Trust Indenture Act of 1939, 15 U.S.C. 77eee or 77ggg, notice of the institution of proceedings shall be made by personal service or confirmed