

REVISED
July, 1987

MEMORANDUM

TO: ALL STAFF MEMBERS
FROM: The Commission
RE: Guidelines for the Preparation of Staff
Memoranda and Calendar Procedures

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NOTE: These guidelines are intended solely to enhance the efficiency and effectiveness of the internal process by which information is communicated from the staff to the Commission. The guidelines do not create any legal rights; may not be invoked by persons who may be the subject of, or affected by, any matter under Commission consideration; and can have no impact on the validity of any Commission action.

INTRODUCTION

On October 1, 1980, the Commission issued to its staff a memorandum entitled "Guidelines for the Preparation of Staff Memoranda and Calendar Procedures," in order to enhance its efficiency and effectiveness in dealing with an expanding workload. The Commission's guidelines were issued with three objectives:

- (a) To provide the Commission with a better basis for decisionmaking;
- (b) To expedite the Commission's consideration of important staff matters; and
- (c) To increase Commission responsiveness to staff requests for formal and informal agency action.

This memorandum reflects revised and updated guidelines for the preparation of staff memoranda. In large measure, it codifies the best features of current practices; in some respects, however, it will require changes in staff procedures. While specific situations may warrant deviations from the guidelines, as a general matter, adherence to these suggestions will facilitate informed Commission decisionmaking and, in the long run, simplify the process of bringing matters to the attention of the Commission and interested staff members.

DISCUSSION

I. Categories of Staff Memoranda

There are three types of formal memoranda by which the staff communicates with the Commission: action, information, and advice. Action memoranda can be subdivided into five categories: regular calendar, emergency calendar, seriatim, Duty Officer, and supplemental memoranda. The proper use of each type of memorandum will be discussed in this section.

A. Action Memoranda

The basic tool by which the staff brings matters before the Commission is the action memorandum. Action memoranda need be prepared in all cases where formal Commission action, to be evidenced by the entry of an official Commission minute, is required.

(1) Regular Calendar Memoranda. The Commission meets at least twice during a typical week, and at these sessions considers all action memoranda which require joint deliberation among the Commissioners. 1/ The "regular calendar" consists of those action memoranda submitted to the Secretary's Office by noon on the Wednesday, twelve days before the beginning of the week of the Commission meeting. 2/ Barring adequate justification for expedited Commission consideration by means of the emergency calendar, seriatim procedure, or Duty Officer approval, all action memoranda will be placed on the Commission's regular calendar.

(2) Emergency Calendar Memoranda. Each week, the Commission considers "emergency" matters. Action memoranda requiring expedited treatment may be placed on this emergency calendar if approved for emergency treatment by the Commission's Secretary. The Secretary must receive such memoranda by noon two days before the emergency meeting for closed meeting items. 3/ For open meeting items, the Secretary at the earliest possible date must receive the Federal Register Notice and summary signed by the General Counsel.

1/ See 17 CFR 200.40.

2/ Regular calendar procedures, and related deadlines are treated at pp. 1-3 of Attachment No. 1, infra.

3/ Emergency calendar procedures, and related deadlines, are treated at pp. 3-4 of Attachment No. 1, infra.

(3) Seriatim Memoranda. The seriatim process involves the circulation of a cover form, along with an action memorandum, to be voted and initiated by each Commissioner as evidence of his or her vote. The seriatim procedure should be utilized only in extraordinary circumstances -- where expedited treatment is essential more rapidly than the emergency calendar will permit or where joint discussion is unnecessary or inappropriate in light of the nature of the matter. 4/ Any Commissioner may ask that an action memorandum circulated seriatim be placed on the Commission's calendar at the earliest available opportunity for joint Commission deliberation. 5/

(4) Duty Officer Memoranda. Each week, one Commissioner is designated as the Commission's "Duty Officer." Under certain circumstances, an action memorandum may be submitted to the Duty Officer for approval by virtue of delegated authority. 6/ Non-controversial items, which nevertheless require the entry of an official Commission minute and which must be approved more expeditiously than emergency calendar or seriatim procedures allow, are eligible for Duty Officer approval. In addition, in the event that a quorum of Commissioners is not available to deal with a matter before action is necessary, the Duty Officer procedure may be appropriate. 7/ All action memoranda approved by the Duty Officer must be circulated to the remaining Commissioners on a seriatim basis.

4/ See 17 CFR 200.41. Seriatim procedures are treated at pp. 4-5 of Attachment No. 1, infra. Note particularly that the Commission's Secretary must sign the cover sheet and assign a control number before a matter is circulated seriatim.

5/ See 17 CFR 200.41(b).

6/ See Id. at 200.42(b).

7/ Duty Officer memorandum procedures are treated at p. 6 of Attachment No. 1, infra.

(5) Supplemental Memoranda. Supplemental memoranda serve to augment action memoranda. Supplemental memoranda may be submitted by the Office or Division which originated the action memorandum, or by another interested Office or Division which has views in addition or opposition to those of the originating Office or Division. A supplemental memorandum should clearly reference the action memorandum which it augments and should contain a recommendation paragraph specifying exactly the action or non-action recommended to the Commission.

B. Advice Memoranda

Advice memoranda are used to alert the Commission to significant proposed staff action (or inaction) which does not require official Commission approval but concerning which the staff wishes to inform the Commission before proceeding. The staff's proposed course of action in the absence of Commission objection, and a "trigger date" on which the staff will implement its proposed action, must be set forth as captions. The trigger date should not be earlier than seven calendar days after the distribution of the memorandum. If no Commissioner requests calendaring of the matter within the allotted time, the Secretary's Office will inform the originating Office or Division that it may proceed. Under no circumstances should an advice memorandum be used when an official Commission minute is required. 8/

C. Information Memoranda

Information memoranda are utilized to inform the Commission of significant litigation, regulatory, and legislative matters of which the Commissioners should be timely apprised, but which do not require any formal Commission action. This vehicle should never be used where an action memorandum or advice memorandum would be appropriate. 9/

II. Content of Commission Memoranda

The Commission and its staff can be justifiably proud of the high quality of their work product. The following suggestions are designed to maintain this high level of

8/ Advice memorandum procedures are treated at pp. 6-7 of Attachment No. 1, infra.

9/ Information memoranda procedures are discussed at p. 7 of Attachment No. 1, infra.

performance by encouraging complete, clear, and concise exposition of all of the implications of the various actions the staff seeks to have the Commission take.

A. Length

Commission memoranda should be as short as possible, consistent with a full treatment of the matters involved. As a rule of thumb, most memoranda should not exceed 15 pages in length, although particularly complex or intricate matters obviously warrant exceptions. In all events, irrelevant, repetitious, or disorganized material should be edited out before memoranda are transmitted to the Commission; in general, while a shorter document is more difficult to prepare, it is likely to be more understandable and more persuasive.

In some cases, unnecessary length can be avoided by referring the reader to attached or other readily available documents rather than repeating their content in the text of the memorandum. Often, for example, a proposed Commission release on a regulatory matter will set forth the background of the subject in question. The staff memorandum recommending that the Commission publish such a release should not repeat this material. The memorandum should be limited to a discussion of issues which are not treated in the proposed release and to highlighting particularly significant matters. 10/

B. Factual Recitations

Memoranda should contain a concise, well-organized presentation of all relevant information necessary to a complete analysis of the issues presented. Where facts are in dispute, unknown, or merely surmised, this should be clear in the text of the memorandum. In addition to identifying conflicting factual contentions, the sources and reliability of the information presented and the identity and affiliation of persons advocating conflicting factual positions should also be included, and their views and interests discussed.

10/ Another device which may be useful in minimizing the length of staff memoranda is to place the discussion of background or tangential issues in an appendix to which those with a particular interest in, or lack of knowledge concerning, that issue may turn. See pp. 16-17, infra.

Where the facts are lengthy or complex, the use of graphs, tables, or charts -- as a supplement to, and not as a substitute for, narrative text -- may promote clarity and understanding. Particularly in enforcement matters where there are multiple proposed respondents or defendants, or multiple proposed charges or violations, a summary chart should be included containing the following information: (1) the name and identity of persons or entities to be charged; (2) a brief description of the conduct in which each such person or entity allegedly engaged; and (3) the charges or allegations proposed to be made against each person or entity. This chart is not a substitute for the recommendation paragraph required to be used for Minute purposes.

C. The "Fairness Doctrine"

While memoranda typically present an accurate description of factual and legal issues, careful consideration should always be given to opposing views. It is, of course, critical that the Commission fully appreciates the arguments and alternative courses of action applicable to the matters under its consideration. Accordingly, in all but the most noncontroversial staff memoranda, a separate section in the body of the memoranda should be captioned (and should discuss) "Alternative or Conflicting Views." ^{11/} Arguments against, or alternatives to, the staff's positions should be presented, and, if appropriate, the staff should briefly set forth in the body of the memorandum, its comments on these arguments or alternatives.

This section is particularly appropriate for staff analyses and summaries of (1) rule proposal comments; (2) so-called "Wells Committee" submissions; and (3) objections to staff proposals lodged by other Divisions or Offices. In this latter connection, the staff should continually be alert to the possibility that other Divisions or Offices may be interested in the subject of their memoranda, and all matters which entail Commission consideration -- including those to be considered on the emergency calendar, seriatim,

^{11/} See p. 15, infra.

or by Duty Officer -- should be coordinated among the interested Offices and Divisions at the earliest possible time. ^{12/} The distribution of calendar memoranda through the Secretary's Office should not be the first exposure which other interested Offices and Divisions have to a given matter. Where major internal legal or policy differences cannot be resolved prior to calendaring, they should be fully aired, either in the originating unit's memorandum or by separate memorandum. When a supplemental memorandum from another Office or Division proves necessary, that memorandum must be circulated to all Commissioners and interested staff no later than three business days before the Commission meeting in question. The originating office must respond within two days of a scheduled meeting to the memorandum if in disagreement.

D. Legal Discussions and Analyses

1. General Comments

A clear and complete statement of the legal theory and precedent which support a proposed Commission action is particularly important to the Commission's decisionmaking process. The staff should be especially sensitive to alert the Commission to positions which might be novel, unique, or otherwise unprecedented; contrary precedent or countervailing legal theories should always be pointed out and analyzed carefully, regardless of the staff's view of the merits. Proposed action should be analyzed in terms of its consistency with prior Commission positions, current Commission programs, and the Commission's overall policy and regulatory objectives. Where the staff is urging that conduct is or may be violative of the federal securities laws, or calls for some regulatory response, the rationale for these positions should be set forth concisely, and, unless the authority is obvious, citations to applicable administrative, judicial or legislative support should be included. Except where it is patent, each statutory provision upon which reliance is placed should be discussed fully.

^{12/} The fact of this intra-agency coordination, and its results, is highlighted in the "Views of Other Offices or Divisions Consulted" caption of the memorandum. See pp. 12-13, infra.

2. The "Theory of the Case"

In recommending that the Commission approve administrative or judicial enforcement proceedings or the filing of appellate briefs, the staff's legal theory, as intended to be argued in court or presented in a complaint, pleading, or other public document, should be set forth with as much specificity as possible. A major theory which was not presented to the Commission should be brought to its attention before it is employed in the conduct of the litigation. 13/

The preparation of pleadings often forces the drafter to consider his or her theory of the case in a much more disciplined fashion than does the preparation of the action memorandum. Accordingly, in cases which will be litigated, the staff should prepare its complaints and administrative orders prior to submission of the related action memoranda recommending commencement of proceedings. In nonroutine matters, whether settled or litigated, a copy of the complaint or order should be furnished to the Office of the General Counsel and other interested Offices and Divisions prior to filing. 14/ In extremely important or complex cases, or cases involving a unique theory of law, the complaint or order also should be circulated to the Commission, if possible as an attachment to the staff's memorandum to the Commission or otherwise when it is available. In all cases, the staff should be prepared to furnish copies of its complaints to the Commission if requested. Similarly, significant General Counsel briefs should also be furnished to the Commission before filing with the court.

III. Format of Commission Memoranda

The form of Commission memoranda can have a significant impact on the Commission's ability to analyze and act upon staff recommendations and views. Some specific suggestions

13/ Generally, this notice requirement could be satisfied by an advice memorandum. However, if the change in theory mandates a modification of a Commission minute, an action memorandum is necessary. See, p. 3, supra.

14/ Orders for administrative proceedings must be submitted to the Commission as an attachment to the memorandum, except when the staff is requesting authority to negotiate a settlement.

for improving the form of Commission memoranda follow; a few general guidelines should, however, be noted at the outset. First, Commission action memoranda should be typed, single-spaced, on 8-1/2" x 11" standard-size (not legal size) paper with a 1-1/2" margin on the left side of the page and one inch on the other sides. All footnotes should appear at the bottom of the same page as the textual reference to the footnoted material. Aids to a quick understanding of the facts and issues involved, such as tabular summaries and charts, should be employed wherever possible. 15/

Set forth below is a discussion of each of the parts of a Commission memorandum. Attachment No. 3 to this memorandum illustrates these points.

A. Memoranda Captions 16/

(1) "TO:" Generally, all action, advice, and information memoranda should be addressed to "The Commission." However, a memorandum originating in a Regional Office may be addressed to an interested Division (e.g., Enforcement, Corporation Finance, etc.), which will forward it to the Commission.

(2) "FROM:" All memoranda submitted to the Commission should indicate the originating Office or Division -- or, in the case of joint memoranda, all originating Offices and Divisions. Memoranda should typically be signed by the Division Director, Office Head, or Regional Administrator.

15/ Further, tabular summaries may prove particularly helpful in considering rule proposals. A chart can be used to juxtapose: (1) the issues raised, (2) the staff's proposals, and (3) the adverse comments or countervailing arguments against the staff's position. Similarly, charts outlining the chronology of events and identifying the proposed defendants or respondents and the charges to be alleged against them are helpful in considering enforcement recommendations.

16/ In order to permit those who review a given memorandum to account properly for their time, the STATS reporting code number of the individual case or project involved should appear in the upper right hand corner of all memoranda, wherever such a number has been assigned.

However, this authority may be delegated according to the needs of the particular Division or Office or in the superior's absence.

(3) "RECOMMENDATION:" All action memoranda should contain explicit and separately numbered recommendation paragraphs, indicating the precise action, or inaction, which the staff proposes that the Commission take. Supplemental memoranda should contain a complete recommendation paragraph.

Similarly, advice memoranda should indicate clearly the staff's proposed course of action in the absence of Commission objection. A format presenting possible alternative recommendations is appropriate, as long as the staff's order of preference is clear. An action memorandum's recommendation paragraphs should be usable, practically verbatim, as the official Commission minute on the item. 17/

(4) "SUBJECT:" All staff memoranda should clearly and succinctly state the subject. When presenting an enforcement or regulatory matter involving a particular entity, the name of the principal corporate or other entity on whose activities the matter focuses should be utilized as the subject. Memoranda which focus on general regulatory initiatives that transcend specific persons or entities -- such as rulemaking or legislative comments -- should utilize the name of the matter at issue and also any identifying citation -- such as that of a rule or bill -- as well. For any matter in which the Commission file number -- such as an administrative proceeding, investigation, case tracking, or public comment file number -- has been assigned, that number also must be included. Any supplemental memorandum submitted on a matter should reproduce the first line of the subject caption on the primary memorandum. Similarly, once a case or regulatory initiative has been assigned a principal name under the subject caption, all subsequent memoranda on that matter should bear that name.

17/ In an effort to be responsive to numerous requests from the press and the public for timely information on the outcome of open Commission meetings, the Secretary's Office posts the minutes of action taken by the Commission at such meetings within 24 hours. Accordingly, there is often little opportunity to polish the language of the recommendatin section before it becomes public. In the case of closed meetings, on the other hand, there is a substantial risk of both staff confusion and legal difficulty if the official minutes are inaccurate or imprecise. In those instances where several Divisions and Offices have submitted conflicting memoranda, it is especially important that each include a recommendation paragraph usable as a minute.

(5) "ACTION REQUESTED BY:" This caption is critical for scheduling purposes. All urgent action memoranda should specify the latest date by which Commission action is requested, including a brief statement of the reasons which call for Commission consideration by that date. 18/ This heading should not be used to request action "as soon as possible," nor should it be left blank. If a matter is not urgent, the phrase "routine calendar consideration" should be employed.

In the case of a matter circulated by means of an advice memorandum, this caption should read "TRIGGER DATE" and indicate the date -- preferably two weeks, and in no event less than seven calendar days, after the date of distribution -- by which the staff intends to follow its proposed course of action.

(6) "TENTATIVE SUNSHINE ACT STATUS:" All action memoranda to be considered on the regular or emergency calendars should contain a notation as to the originating Office's and Division's preliminary view as to the Sunshine Act status of the matter, including citations to the sections of the Act and the Commission's Sunshine rules on which the staff suggests that the General Counsel rely, if the meeting is thought to be closable. 19/ Final Sunshine Act decisions are, however, contingent on the General Counsel's certification (in the case of closed meetings) and on a Commission vote.

(7) "NOVEL, IMPORTANT, OR COMPLEX ISSUES:" In preparing memoranda of all types, the staff should be particularly aware of the existence of novel or sensitive issues, and such issues should be noted under this caption. Given the increasingly uncertain nature of the economic and regulatory climate, many questions once thought routine are no longer

18/ Factors which may preclude Commission consideration on a given day -- for example, the absence of key staff personnel -- should be brought to the attention of the Secretary's Office.

19/ The Sunshine Act is 5 U.S.C. 552b. The Commission's implementing rules are in 17 CFR 200.400 et seq.

so, and it is especially important that the Commission and staff be able to determine from the cover sheet of a memorandum whether it has implications beyond its particular facts. The use of this heading is also important for scheduling purposes -- to determine the relative priority of calendar items; to ensure that all interested Offices and Divisions have been alerted to important issues and have had an opportunity to provide their input; and to determine whether an item involves issues of such significance that it should be calendared on a day when all Commissioners can be present. As a rule of thumb, those drafting Commission memoranda should operate on the presumption that every item which merits formal Commission action involves at least one issue which deserves to be listed on the cover of the memorandum. Exceptions obviously exist, but Commission decisionmaking is more likely to suffer from insufficient, rather than excessive, designation of important issues. 20/

(8) "VIEWS OF OTHER OFFICES OR DIVISIONS CONSULTED:"

All calendar matters should be coordinated among interested Offices and Divisions prior to the submission of any memorandum to the Commission. This caption should identify these other staff units and the particular individuals familiar with the matter. The full name and telephone number of the individuals contacted should be included. 21/ In addition, the caption should include a very brief statement of the position -- or lack thereof -- of those contacted; merely listing individuals without indicating whether or not they concur is not helpful and may be misleading. Where the consulted Office or Division has views different from those of the originating Office or Division, a fuller treatment of the difference of opinion may also be appropriate in the

20/ Issues should be framed in the same manner as is employed in appellate briefs; that is, the statement of the issue should present a complete picture of the questions involved.

21/ In general, it is inappropriate to indicate that an individual has been "consulted" with respect to a matter unless that person has been timely furnished with a draft, in substantially final form, of the subject memorandum and the individual is authorized to speak for his or her Office or Division with respect to the matter. If the individual has been consulted only regarding particular matters in the memorandum, such limitations should be noted.

body of the memorandum. The caption should also indicate whether a supplemental memorandum is anticipated from the other Office or Division involved.

(9) "PRIOR COMMISSION ACTION:" Staff memoranda should set forth briefly any prior Commission consideration of, or action on, the matter. If an extensive discussion of prior Commission action, or of pending or contemplated related matters, is necessary to a full explication, that material should be included, not under this heading, but in the body of the memorandum, usually under the "Background and Introduction" heading.

(10) "PERSONS TO CONTACT:" The persons to contact from the originating Office or Division (and their telephone extensions) should be listed on the cover page -- rather than at the end -- of all memoranda. The individuals listed should include both those who are senior enough to represent the official views of the Office or Division and those who participated in preparing the memorandum and are, thus, in a position to clarify details.

(11) "SOURCE OR ORIGIN OF CASE:"

(12) "CRIMINAL CASE:" Except in cases of technical violations or at least in close cases where there is a possibility of criminal prosecution, the staff should advise the Commission of their decision regarding possible criminal prosecution and their reasons therefor.

B. Body of Memoranda

(1) Index. Lengthy memoranda -- those exceeding 10 pages -- should incorporate a page index immediately following the captions. This index should contain the major point headings and issues discussed in the text of the memorandum, together with page references. An index facilitates review by providing a brief outline of the discussion and typically aids the author in producing a better-organized product.

(2) Summary. In the case of lengthy or complex matters, the body of the memorandum should begin with a brief summary of the relevant facts, issues, and recommendations. Where appropriate, the summary may be preceded by, or include, a list and description of the individuals and entities which are the subjects of the memorandum.

(3) Background and Introduction. Not every staff memorandum requires a background and introduction section, although lengthy and complex matters, especially those with intricate histories, may benefit from such a section to place the issues in the proper factual and legal context, or to introduce terms, concepts, or relevant legal considerations in a difficult area. Procedural information which could be included under a background and introduction caption might best be presented under the "Prior Commission Action" caption. Reference should be made not only to the date of earlier memoranda to the Commission but also to the date of previous Commission consideration of, and any action on, the matter, where appropriate. Past releases and other documents referred to should be explained where appropriate. Particularly, when requesting approval of staff-negotiated or respondent-initiated settlements, this section of the memorandum should discuss any significant differences between the relief now recommended and the relief the staff originally was authorized to seek. Copies of prior Commission memoranda and releases should be attached to staff memoranda only if necessary to an understanding of the matter involved.

(4) Discussion. The heart of each memorandum is the discussion section. Part II of this memorandum contains some guidelines for the content of the analysis in Commission memoranda. In order to promote readability and clarity, appropriate subheadings should be utilized.

(5) Alternative or Conflicting Views. Staff memoranda should be coordinated among interested Offices and Divisions before submission to the Commission, and the views of other Offices or Divisions should be briefly summarized on the cover page. Where views conflict, the position of consulted Offices or Divisions should be explained in a separate section of the memorandum of the originating Office or Division. In addition, this section should discuss any views presented from outside the Commission by persons such as commentators or other interested governmental agencies or departments. However, in enforcement matters in which a "Wells Committee Submission" is provided, it may be unnecessary to include a

lengthy restatement of those views. Of course, the staff should set forth briefly its comments on, or responses to, any alternative or conflicting views. 22/

(6) Conclusion. Memoranda should have a brief concluding section which either restates, in very summary form, the recommendation contained in action or advice memoranda, or the theme of an information memorandum. In addition, this section can serve also as a convenient recap or summary.

C. Attachments and Appendices

(1) List of Attachments. Where documents or other materials are relevant to the discussion in a memorandum, the import of the document should be briefly noted, and an attachment letter or number assigned. At the end of the memorandum, a list of attachments should be furnished with a title or description of each item. Attachments should be labeled with their assigned letter or number, and tabs should be used to separate exhibits.

Care should be taken to ensure that unnecessary documents are not attached. Copies of prior Commission memoranda, minutes, formal orders, or releases should be attached to the memorandum only if brief and if essential to an understanding of the matter involved. Otherwise, a copy of such documents should be made available for inspection in the Office of the Secretary. Materials important enough to be attached to action memoranda should be attached to all copies submitted to the Secretary's Office.

(2) Regulatory Analysis Appendix. Every memorandum recommending that the Commission propose or adopt any rule should, to the maximum extent feasible, include a brief appendix indicating:

- (a) Whether a regulatory analysis would be required or otherwise desirable for the rule in question, and the reasons for that conclusion;

22/ The presentation of conflicting views is discussed further at pp. 7-8, supra.

- (b) If such an analysis would be required or useful to the Commission, a description, in summary form, of that analysis or the workplan that would be followed in developing the necessary data; and
- (c) Whether (regardless of the desirability of a preadoption regulatory analysis) it would be appropriate to establish a monitoring program to assist the Commission in studying the impact of the rule after it is adopted and, if so, a description of that program.

The memorandum should reflect that the General Counsel has given the Chairman an Opinion that he can sign.

These analyses are designed to aid the Commission by improving the sophistication of Commission rulemaking, sensitizing the Commission and staff to the impact of proposed rules, illuminating the alternative solutions to regulatory problems, and highlighting the costs and benefits of proposed new requirements. The nature and format of the proposed regulatory analysis appendix, including the role which the Directorate of Economic and Policy Analysis plays in their preparation, is described in detail in the Chairman's May 14, 1980 memorandum to all Division Directors and Office Heads. A copy of that memorandum is Attachment No. 2 to this memorandum. 23/

(3) Discussion Appendices. The readability and cogency of memoranda are often inversely proportional to their length. In order to prevent memoranda from becoming unduly long and burdened with discussion of subsidiary points, consideration should be given to treating tangential or background points in appendices rather than in the body of the memorandum. Of course, such discussion appendices should not prevent the memorandum itself from incorporating a complete exposition of the matter. 24/

23/ All attachments to the Chairman's May 14, 1980 memorandum, except Attachment A, have been omitted,

24/ One Judge is quoted as saying, "You can write your memorandum as long as you want. I stop reading after 15 pages."

CONCLUSION

Adherence to the guidelines set forth in this memorandum will result in more effective Commission consideration of staff recommendations and better coordination among interested Offices and Divisions. While there may be circumstances which justify deviations, as a general matter, the Secretary's Office will refuse to accept calendar items which substantially fail to conform to this memorandum. Accordingly, each Division and Office Head should ensure that those on his or her staff who are responsible for the preparation of Commission memoranda are familiar with these guidelines.

Attachments

- No. 1 - Discussion Appendix -- Commission calendar procedures
- No. 2 - Memorandum, dated May 14, 1980 to all Divisions
Directors and Office Heads re: Regulatory Analysis
in Commission Rulemaking (Attachments B, C, and D
thereto omitted).
- No. 3 - Sample Outline for a Commission Action Memorandum
- No. 4 - Sample Outline for a Commission Summary Memorandum
- No. 5 - Sunshine Act Certification Form
- No. 6 - Expedited Consideration Form

ATTACHMENT NO. 1 -- DISCUSSION APPENDIX

COMMISSION CALENDAR PROCEDURES

I. ACTION MEMORANDUM

A. Regular Calendar Procedure

Step 1: Summary Memorandum

Because of the requirements of the Sunshine Act, 1/ the procedures applicable to regular calendaring of an action memorandum must be initiated by the Thursday of the fourth week preceding the week in which the Commission will consider the item. 2/ On that Thursday by noon, a summary memorandum regarding the item must be submitted to the Office of General Counsel. 3/ The summary memorandum must recommend whether the item should be considered in an open meeting or a closed meeting and, if the latter, must explain the applicability of each relevant Sunshine Act exemption. Additionally, if closed consideration is recommended, the originating Office must prepare a Sunshine Act "certification" form for the General Counsel signature. 4/ On the following Tuesday the General Counsel, if he or she concurs with the originating office's Sunshine Act recommendation, will transmit to the originating office the summary memorandum. 5/ In addition, if the item may be considered in a closed meeting, the General Counsel will execute the Sunshine Act "certification."

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- 1/ 5 U.S.C. 552b. The Commission's rules implementing that Act are in 17 CFR 200.400 et seq.
- 2/ This means that, as a hypothetical illustration, for the Commission to consider a memorandum during a week beginning on Monday, the 15th of the month, and ending on Friday, the 19th of the month, the procedure for calendaring that item must be commenced on Thursday, the 28th of the previous month.
- 3/ A sample outline of the Commission summary memorandum is found at Attachment No. 4.
- 4/ See 17 CFR 200.406. Copies of the two Sunshine Act "certification" forms are found at Attachment No. 5.
- 5/ If the General Counsel agrees with a recommendation that an item should be considered in an open meeting, the summary memorandum will be initialled by the General Counsel. If the item is certified as appropriate for a closed meeting, the original certification, together with the summary memorandum, signed by General Counsel, must be brought to the Office of the Secretary, with the action memoranda.

Step 2: Submitting the Action Memorandum

By noon on the next day (the Wednesday of the third week preceding the week in which the item will be considered), 31 copies of the action memorandum must be submitted to the Office of the Secretary for distribution to the Commissioners, General Counsel and selected senior staff. 6/ Additionally, if the item will be considered in an open meeting, the following must be simultaneously submitted to the Office of the Secretary: (1) the Federal Register summary, which is a short explanation, understandable to laymen, of the item; (2) the public agenda summary, which is a more expansive explanation of the subject, suitable for public distribution at the open meeting; and (3) the summary memorandum. Alternatively, if the item is expected to be considered in a closed meeting, the Sunshine Act "certification" and the summary memorandum must be delivered with the copies of the action memorandum. 7/

Step 3: The Calendar Clerks' Function

At 12:15 p.m. of that same Wednesday, 22 additional copies of the memorandum must be submitted separately to the Sunshine Act Coordinator in the Office of the Secretary. These are distributed to other Commission staff units, including Regional Offices, for review by senior staff persons to determine what, if any, problems or disagreements may exist between the originating Division and the recipient Office or Division. 8/

6/ In the illustration in note 2, this day would be the 3rd of the month.

7/ The actual determination of whether an item will be considered as a closed calendar matter can only be made by the Commission. See 17 CFR 200.404(b) and 200.405(b).

8/ Of course, if any Office has a special interest in the item, consultation should have begun with that Office at the earliest possible date to allow its full consideration of the matter. The calendar clerks' memoranda exchange should not be used as a substitute for this process.

Step 4: Supplemental Memorandum

From time to time, the originating Office or another Office within the Commission may wish to provide the Commission with additional information, opinions, or insights regarding the subject of the action memorandum. That Office may submit a supplemental memorandum by delivering 53 copies to the Office of the Secretary. Copies of the supplemental memorandum should be delivered as soon as possible (in many instances, while still in draft form) by the Office submitting the supplemental memorandum to each Office which has a special interest in the item. In no event, however, should a supplemental memorandum be delivered to the Office of the Secretary or an interested Office after the third day prior to the date on which the Commission will consider the action memorandum, unless expressly authorized in advance by the Office of the Secretary.

Step 5: Releases and Orders

If the item in question is authorized by the Commission and involves the issuance of a release or an order, the originating Office is responsible for delivering the proper number of copies of the relevant documents -- such as copies of releases, the original signed offer of settlement and 2 copies, etc. -- to the Office of the Secretary in the prescribed format. Additional copies generally must be delivered to the Office of Public Affairs. The Office of the Secretary will, from time to time, circulate memoranda explaining these requirements in more detail.

B. Emergency Calendar Procedure

One copy of any action memorandum for the emergency calendar and an "expedited consideration form" 9/ should be submitted for approval to the Office of the Secretary no later than noon on the second day prior to the scheduled emergency calendar meeting. That copy of the memorandum, with the expedited consideration form, signed by the Secretary, a summary memorandum, and, in the case of a proposed closed item, a Sunshine Act "certification", should then be presented to the Office of the General Counsel, which will consider the Sunshine Act recommendation therein on an expedited basis.

9/ A sample expedited consideration form is found at Attachment No. 6. This form is required for every item which is to be considered on a seriatim basis, placed on the emergency calendar, or submitted to the Duty Officer for approval.

As soon as possible thereafter, the Office of the Secretary must receive 53 copies of the emergency memorandum with, as a cover page, the copy of the completed expedited consideration form, and all Sunshine Act materials that would have been required had the item been considered as an action memorandum under regular calendar procedures.

Copies of the emergency calendar memorandum should be hand-delivered to all interested Offices within the Commission as far as possible in advance of the time of the emergency calendar meeting; in no event, later than the transmission of the 53 copies to the Office of the Secretary. Any supplemental memoranda regarding emergency calendar items should be hand-delivered to the Office of the Secretary (53 copies) and interested Offices at the earliest possible time.

C. Seriatim Consideration Procedure

An original and 16 copies of any memorandum to be considered on a seriatim basis, 10/ each with an expedited consideration form as a cover sheet, must be transmitted to the Office of the Secretary for approval and assignment of a control number. The signed copy and three other copies must be taken to the Duty Officer; 11/ the remaining copies should be distributed immediately as follows: Chairman's Office - 2 copies, each Commissioner - 3 copies, and the Secretary's Office - 2 copies. If the Duty Officer approves the item and signs the original copy, the original signed copy is transmitted to the next Commissioner's Office. When the item

10/ See 17 CFR 200.41.

11/ The delegation of certain Commission functions to one of the Commissioners as "Duty Officer" is set forth in 17 CFR 200.42(a).

The Commission's rules also provide that the Chairman may authorize seriatim consideration. See 17 CFR 200.41(a). The Chairman should, however, be asked to perform this function only in the most unusual circumstances or if the Duty Officer is unavailable and the matter is of such urgency that it cannot await his or her return.

is approved by the Commissioners available to consider it 12/ the manually signed copy will be sent to the Office of the Secretary, which will so notify the staff. If any Commissioner requests that the matter be discussed in a Commission meeting, or if the Duty Officer declines to authorize the seriatim consideration, the Office of the Secretary will schedule the item for either a regular or emergency meeting and notify the originating Office accordingly. The originating Office will then be responsible for satisfying the requirements for calendaring the item. 13/

It is important that each Commissioner who has already approved the item be notified of, and agree to, any modifications in the item subsequently suggested by other Commissioners. If the item is approved as submitted three additional copies of the memorandum, and the original and eleven copies of the form only, should be transmitted to the Office of the Secretary. However, if revisions have been approved by the Commission, the original of the form, and eleven copies of the memorandum with the completed copy of the form, should be transmitted to the Secretary's Office. These copies should reflect any such revisions.

Copies of seriatim memoranda should be hand-delivered to interested Offices within the Commission as far as possible in advance of the commencement of seriatim voting.

12/ If a Commissioner is not present at the time of the seriatim consideration, the signed expedited consideration form must be initialed by a member of that Commissioner's personal staff to signify that the absent Commissioner would not object to disposition of the item in his or her absence.

The Chairman should be asked to vote on seriatim memoranda only after all other Commissioners have voted or their personal staffs have indicated that the matter may be handled without their participation.

13/ See, 17 CFR 200.41(b). Under no circumstances may a seriatim memorandum not be presented to a Commissioner even if his or her vote would not affect the outcome, since any Commissioner has the right to request that an item be considered in a full Commission meeting.

D. Duty Officer Approval Procedure

One copy of any memorandum to be presented to the Duty Officer for his or her approval 14/ and an expedited consideration form must be approved by the Office of the Secretary prior to consideration by the Duty Officer. 15/ If the Duty Officer approves the action and signs the expedited consideration form, copies of the memorandum and form should be immediately transmitted by the originating Office to the Offices of the Chairman and the other Commissioners for affirmation in the same manner as for approval of a seriatim as in C above.

Items approved by the Duty Officer must be affirmed by the full Commission.

II. ADVICE MEMORANDUM

In order to allow the Commissioners time adequately to consider the item, 53 copies of the advice memorandum must be submitted to the Office of the Secretary at least seven calendar days before the trigger date on which the staff proposes to take action on the matter. 16/ The Office of the Secretary will assign a control number to the advice

14/ See, 17 CFR 200.42.

15/ In addition, an effort should be made to apprise any Commission Office or Division likely to have an interest in the matter before it is presented to the Duty Officer. Because expedited treatment is generally essential in the case of Duty Officer matters, other Offices and Divisions will not, of course, be able to prepare written comments on such matters. In the rare case where a matter is of interest to more than one Office, staff views are conflicting, and emergency calendar treatment is impossible, the other staff unit involved should be afforded an opportunity to appear personally before the Duty Officer before he or she acts.

16/ The trigger date must appear as a caption on the first page of the advice memorandum.

memorandum, distribute it, and later inform the staff of the Commission's disposition. Copies of the memorandum should be delivered to interested offices simultaneously with transmission of the 53 copies to the Office of the Secretary.

III. INFORMATION MEMORANDUM

Fifty-three copies of all information memoranda must be submitted to the Office of the Secretary. Immediately thereafter, copies should be distributed to all interested Offices. In the case of information memoranda which transmit copies of significant judicial decisions, the originating Office -- normally the Office of the General Counsel -- must also arrange to have the memorandum and its attachments printed and distributed to all Commission staff attorneys.

ATTACHMENT NO. 2

MEMORANDUM, DATED May 14, 1980,
TO ALL DIVISION DIRECTORS AND OFFICE
HEADS, FROM HAROLD M. WILLIAMS, RE:
REGULATORY ANALYSIS IN COMMISSION RULEMAKING
(Attachments B, C, and D thereto omitted)

MEMORANDUM

May 14, 1980

TO : All Division Directors
and Office Heads

FROM : Harold M. Williams

RE : Regulatory Analysis in Commission Rulemaking

As you know, there has been considerable public and private discussion recently about the merits of performing a "regulatory analysis" in conjunction with the proposal or adoption of significant agency rules. While the preparation of a comprehensive economic analysis of Commission rules might be difficult, I believe that more limited analyses might prove useful, and that we should begin to experiment with some of the techniques associated with their preparation. In this regard, we might fruitfully look to the experience of the executive branch agencies under Executive Order 12044, which, for over a year, has required these agencies to generate regulatory analyses for all major rules. A Commission experiment with these new decision-making tools will not, of course, confer any rights on private or public parties interested in a Commission rulemaking proceeding. Rather, the limited new procedures described in this memorandum are designed as a management device to permit the Commission to test methods of increasing the sophistication of its rulemaking proceedings. It may also help prepare the Commission in the event that Congress extends the regulatory analysis requirements in Executive Order 12044 to all independent agencies.

When I discussed this matter with some of the Division Directors several weeks ago, they felt strongly that each Division or Office should have primary responsibility with respect to analyses affecting its work. Accordingly, as an initial step, I think that it would be helpful for the responsible Office or Division, in connection with any recommendation that the Commission propose or adopt any rule, to indicate in a brief appendix */ to the action memorandum:

- (1) whether (assuming that the proposed regulatory reform legislation described

*/ I recognize that it may take some additional time to prepare this appendix, and proposals already circulated need not be delayed. I am, however, suggesting that action memoranda concerning rulemaking which are transmitted to the Secretary's Office after May 27, 1980, contain the requested discussion.

in the attachment to this memorandum were in effect) a regulatory analysis would be required or otherwise desirable for the rule in question, and the reasons for that conclusion;

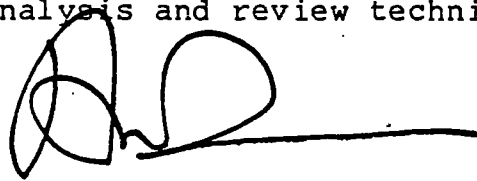
- (2) if such an analysis would be required or useful to the Commission, a description, in summary form, of the content of the analysis or the workplan that would be followed in developing the necessary data; and
- (3) whether (regardless of the desirability of a pre-adoption regulatory analysis) it would be appropriate to establish a monitoring program to assist the Commission in studying the impact of the rule after it is adopted and, if so, a description of that program.

Attachment A to this memorandum is a more detailed discussion of the format in which this information could be presented, and Attachment B is a sample regulatory analysis appendix. In that connection, several of us have discussed previously the possibility of preparing a hypothetical regulatory reform bill to serve as a guide in understanding potential regulatory analysis obligations. To this end, Attachment C to this memorandum is Chapter 6 of S. 262, the Senate bill that has moved furthest toward enactment at this point. */ Attachment A describes briefly how the regulatory analysis and review features of this bill would affect the Commission. Finally, Attachment D is the regulatory analysis section of OMB's booklet entitled Improving Government Regulations: A Progress Report. That material should also be useful since it discusses executive branch agency compliance with the regulatory analysis requirements of E.O. 12044.

I recognize that regulatory reform initiatives such as those suggested here and embodied in the various pending legislative proposals will place some extra burdens on Commission processes. Self-imposed measures now will, however, help considerably to prepare the Commission and the staff for the possibility that such analyses and reviews will become mandatory. At the same time, regulatory analysis and review can be valuable decision-making tools and should serve to improve the sophistication of Commission

*/ The handwritten amendments reflect changes already agreed to in committee or which appear likely as mark-up continues.

rulemaking, regardless of whether any statutory requirements eventuate. Accordingly, the Commission can substantially strengthen its rulemaking processes by beginning to develop its own expertise in regulatory analysis and review techniques.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Attachments

- (A) Discussion Paper Captioned "A Format For the Preparation of Experimental Regulatory Analysis Workplan Appendices"
- (B) Sample Regulatory Analysis Appendix
- (C) Chapter 6 of S. 262
- (D) Office of Management and Budget, Improving Government Regulations: A Progress Report 18-23 (September, 1979).

ATTACHMENT A

A Format For the Preparation of Experimental Regulatory Analysis Workplans

1. Regulatory Analysis

a) The standards in legislation

The regulatory analysis requirement in Section 601(3) of S. 262 would be triggered by a determination that a proposed rule is a "major rule." A major rule is defined as a rule which the agency determines --

(A) will have an annual impact on the economy of \$100,000,000 or more; or

(B) will cause a "substantial change in costs or prices for individual industries, geographic regions, or levels of government."

The latter, rather vague, standard is designed to cover rules that have significant impacts on some sector, although not reaching the \$100 million threshold, and would in all probability trigger most of the Commission's analyses.

The required analysis (Section 602 and 603) is intended to commence early in the policy formulation timetable -- not after the content of the policy has, as a practical matter, already been determined; the analysis is designed to be a management and decision-making technique, not merely a post hoc justification. Therefore, the bill contemplates two separate public statements of the agency's reasoning -- a summary "initial" analysis at the time the rule is proposed, and a more comprehensive "final" analysis if and when the rule is adopted. */

As indicated in Section 603, both analyses must contain --

- (1) a statement of the need for the rule, and its objectives;

*/ With respect to proposals published for comment before the legislation is adopted, the plain language of Section 603 would require a final analysis prior to adoption, even though an initial analysis was not prepared.

- (2) a description of alternatives considered;
- (3) an analysis of the projected economic -- as well as health, safety, and other noneconomic -- effects of the rule;
- (4) in the final analysis, a description of significant issues raised by public comments on the initial analysis; and
- (5) in the final analysis, either --
 - (A) an explanation of why the rule attains the objectives of the applicable statute and the public interest with the least adverse economic effect necessary to achieve such objectives; or
 - (B) an explanation of the agency's reasoning if it has selected an approach (i) which entails greater adverse economic effects, or (ii) which is less effective in meeting the objectives of the statute, than other alternatives. */

To the extent practicable, the analysis must also reflect agency consideration of --

- (1) the advantages and disadvantages of using performance rather than design standards;
- (2) the impact on productivity and competition;
- (3) paperwork burdens;
- (4) the impact on geographic regions of the country.

These standards do not in themselves offer much guidance, and, in large measure, the Commission would have to develop its own procedures and techniques. The legislation differs in

*/ These "economic effects" would relate, for example, to costs imposed, disincentives created, and similar factors. This requirement thus differs from the standard in Section 23(a) of the Securities Exchange Act which directs the Commission to consider anticompetitive factors in its rulemaking.

emphasis from current Commission practice with respect to the content of releases which publish rule proposals or adoptions. For example, the bill would require a summary of comments on the Commission's analysis of the proposal, not merely on the proposal itself. Moreover, a formal economic and cost/benefit analysis would be mandatory. */

b) Additions to action memoranda **/

The Chairman has suggested that each memorandum to the Commission containing proposed or final rules include an appendix discussing whether an analysis would be required under this bill or otherwise useful to the Commission as part of its decision-making process. The appendix should also include the reasons for this conclusion, and, if an analysis would be appropriate, a brief summary of its likely content or a "workplan" describing the methods by which the analysis would be performed. This latter summary should discuss the means by which the potential impact of the rule might be evaluated; whether significant alternatives could be explored; the extent to which quantification of costs and benefits is feasible; what analysis techniques are available; and what formats can be used for evaluating different types of impacts. This discussion should also include some indication of the scope of the regulatory objective (e.g., number of persons or filings affected, etc.). Those items in Section 603 that require no actual analysis -- such as a statement of the need for the rule -- should be set forth in full. Finally, from a management standpoint, it would also be helpful to indicate any likely impact on Commission internal operations, such as changes in the workload or procedures of ORIS or Data Processing, which might result if the rule were adopted.

*/ In view of the fact that the executive branch agencies are already operating under similar requirements, the Directorate of Economic and Policy Analysis and the Office of the General Counsel are exploring the reform activities of other agencies. Under Section 608 of S. 262, the Commission's compliance with the proposed statutory requirements would be evaluated by the Comptroller General.

**/ The Office of General Counsel has advised that, since these materials will become part of the Commission's deliberative process, they should be exempt from disclosure under the FOIA.

In reaching an initial determination as to whether a regulatory analysis would be required or otherwise desirable -- and if so, how the analysis would be performed -- each Division and Office should work closely with the Directorate of Economic and Policy Analysis. Section 624 of the bill would require each agency to establish a separate office, reporting directly to the agency head, to set standards and procedures for regulatory analysis, and generally assure compliance with the statute. If such a provision is adopted, it is likely that the Chairman would designate the Directorate to perform this role. Thus, DEPA would be involved at the early stages in developing the analysis workplan. Accordingly, each regulatory analysis appendix should either indicate that DEPA concurs in its content or that DEPA will be sending the Commission a separate memo setting forth its views with respect to the analysis.

Where questions arise concerning the scope or interpretation of the proposed regulatory reform statutory requirement, the Divisions should also consult with the Office of the General Counsel. General Counsel's advice as to the content of the analysis may also be useful, since any statutory regulatory analysis would become part of the rulemaking "record" and could, therefore, be the subject of limited judicial review. */ Similarly, the Office of Legislative Affairs can provide current information concerning the status of legislative initiatives which would affect Commission rulemaking.

It is important that the Commission become fully aware of the likely impact of the analysis requirement on Commission operations. Thus, significant differences of view between the recommending Division and General Counsel, or any other interested Division or Office, should be brought to the Commission's attention in accord with normal calendar procedures.

2. Monitoring and Review

A second major feature of the pending bills is a requirement that agencies review existing regulations to ensure their continued efficacy, and modify or repeal them if appropriate. Sections 641 through 646 of S. 262 would require an agency to identify all of its "major" rules (defined as in the regulatory analysis provision, above) and over a ten-year period review each, along with any other rules chosen under certain specified standards. The review must look, among other things, toward whether there is a continuing need for the rule; the extent to which it achieves its objectives;

*/ See Section 606 of S. 262.

the burdens it imposes; costs of compliance and enforcement; and whether there are less restrictive alternatives available. Public hearings are required during these reviews, and the agency must prepare a report to Congress setting forth the conclusions reached in the course of each review. As with the regulatory analysis requirement, the Comptroller General would oversee independent agency compliance with the review requirement.

In this regard, the regulatory analysis appendix to Commission rulemaking memoranda should include a short discussion concerning whether some monitoring system would be sensible and appropriate to track the impact of the rule after adoption. Although monitoring would not, per se, be required under the regulatory reform bill, monitoring may be a useful predicate to the sort of review of existing major rules which the bill contemplates and would in any event facilitate a decision as to whether the particular rule is indeed serving its intended purpose. From a management standpoint, it will also be helpful for the Commission to be aware, insofar as is feasible, of the impact of its rules, and, accordingly, the Chairman has asked that DEPA be consulted as to the desirability of monitoring. The regulatory analysis appendix to rulemaking action memoranda should therefore indicate whether the Directorate concurs with the Division's views regarding monitoring possibilities.

ATTACHMENT NO. 3 -- SAMPLE OUTLINE FOR
A COMMISSION ACTION MEMORANDUM

[STATS CODE]

ACTION MEMORANDUM

Date:

[I. HEADINGS]

TO: The Commission

FROM:

SUBJECT:

RECOMMENDATION:

ACTION REQUESTED BY:

TENTATIVE SUNSHINE
ACT STATUS:

NOVEL, IMPORTANT,
OR COMPLEX ISSUES:

VIEWS OF OTHER OFFICES
OR DIVISIONS CONSULTED:

PRIOR COMMISSION
ACTION:

PERSONS TO CONTACT:

SOURCE OR ORIGIN OF CASE:

CRIMINAL CASE:

- 2 -

[II. BODY OF MEMORANDUM]

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REGULATORY ANALYSIS APPENDIX

ATTACHMENT NO. 4 -- SAMPLE OUTLINE
FOR A COMMISSION SUMMARY MEMORANDUM

SUMMARY MEMORANDUM

DATE:

TO: Office of the General Counsel

FROM:

SUBJECT:

ACTION REQUESTED
DURING THE WEEK OF:

SUMMARY OF
RECOMMENDATION(S):

OTHER DIVISIONS OR
OFFICES CONSULTED:

DATE MEMORANDUM
CIRCULATED:

SUNSHINE ACT STATUS
RECOMMENDATION:

STAFF RESPONSIBLE
FOR MEMORANDUM:

ESTIMATED TIME
FOR COMMISSION
CONSIDERATION:

ATTACHMENT NO. 5
SUNSHINE ACT CERTIFICATION FORMS

[Short-form certification: to be used when, in addition to any other Sunshine Act exemptions, exemption 4, 8, 9A or 10 is claimed]

CERTIFICATION

I, Daniel L. Goelzer, General Counsel of the Securities and Exchange Commission, or my delegate, hereby certify, pursuant to 5 U.S.C. 552b(f)(1), and pursuant to Section 200.406 of the Commission's Regulations Pertaining to Public Observation of Commission Meetings, 17 CFR Part 200, Subpart I, that, in my opinion, Commission deliberations concerning

_____ scheduled to occur on _____

(and from time to time thereafter as the Commission may, pursuant to the provision in 17 CFR 200.404(a), find appropriate) may properly be closed to public observation.

The relevant exemptions on which this certification is based are set forth in the following provisions of law:

Subsection 552b(c) of Title 5
of the United States Code

Subsection 200.402(a) of Title
17 of the Code of Federal Regulations

Dated:

DANIEL L. GOELZER
General Counsel or Delegate

[Long-form certification: Not to be used when Sunshine Act exemption 4, 8, 9A or 10 is claimed]

CERTIFICATION

I, Daniel L. Goelzer, General Counsel of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 552(b)(f)(1), and pursuant to Section 200.406 of the Commission's Regulations Pertaining to Public Observation of Commission Meetings, 17 CFR Part 200, Subpart I, that, in my opinion Commission deliberations concerning

scheduled to occur on _____

(and from time to time thereafter as the Commission may, pursuant to the provisions in 17 CFR 200.404(a), find appropriate) may properly be closed to public observation.

The relevant exemptions on which this certification is based are set forth in the following provisions of law:

Subsection 552b(c) of Title 5
of the United States Code

Subsection 200.402(a) of Title 17
of the Code of Federal Regulations

DATE

DANIEL L. GOELZER
GENERAL COUNSEL

STATEMENT PURSUANT TO 17 CFR 200.404(d)(2)

The Commission has determined to close its deliberations concerning the matter described in the above Certification of the General Counsel for the following reasons:

It is anticipated that, in addition to the members of the Commission, their legal assistants, and the Commission's Secretary and members of the Secretary's staff, the following persons will attend the Commission's deliberations concerning this matter.

Date

Jonathan G. Katz
Secretary

ATTACHMENT NO. 6 -
EXPEDITED COMMISSION CONSIDERATION FORM

SUBJECT:

REQUESTED:

() SERIATIM CONSIDERATION - Pursuant to the provisions of 17 CFR 200.41(a), the Chairman or the undersigned member of the Securities and Exchange Commission, acting as Duty Officer of the Commission, is of the opinion that joint deliberation among the members of the Commission upon the above matter is unnecessary, impracticable, or contrary to the requirements of agency business in light of the nature of the matter, but is of the view that such matter should be the subject of a vote of the Commission.

() DUTY OFFICER CONSIDERATION - Pursuant to the provisions of 17 CFR 200.42(b).

() EMERGENCY CALENDAR CONSIDERATION - Week of _____

REASON EXPEDITED COMMISSION ACTION IS REQUESTED:

Action required by:

(Please allow, where possible, at least two days for Commission action)

Requesting Division Director

Secretary

Duty Officer Commissioner
Date: _____

	<u>Seriatim Commission Action</u>		<u>Duty Officer Action</u>		<u>Deferred for Regular Calendar</u>
	<u>Apprd</u>	<u>Date</u>	<u>Affirmed</u>	<u>Date</u>	
Chairman Ruder	_____	_____	_____	_____	_____
Commissioner Cox	_____	_____	_____	_____	_____
Commissioner Peters	_____	_____	_____	_____	_____
Commissioner Grundfest	_____	_____	_____	_____	_____
Commissioner Fleischman	_____	_____	_____	_____	_____

Date of Action: _____

Office Memorandum • SECURITIES AND EXCHANGE COMMISSION

DATE: January 12, 1961

George Fitzsimmons

Commissioner Friesman

Subject: Redlining Revised Memoranda

I have previously asked that all memoranda circulated for approval of changes made to an original document, as a result of discussion at the Commission table or with individual Commissioners, be redlined to show the changes. I would like to let you know that, except in an emergency situation, I do not intend to sign any memoranda circulated seriatim for approval unless those memoranda reflect changes by redlining or other easily legible notation.