

§ 2203.4

record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would:

(i) Be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution, or

(ii) Be likely to significantly frustrate implementation of a proposed Commission action, except where the Commission has already disclosed to the public the content or nature of its proposed action, or where the Commission is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpoena or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, discussion or disposition by the Commission of a particular case of formal Commission adjudication.

(c) *Regularly-scheduled meetings.* The Commission will hold regularly-scheduled meetings for the purpose of considering matters that may properly be closed to the public under paragraph (b)(4), (8), (9)(i) or (10) of this section, or any combination thereof. Primarily, these meetings will be held for the purpose of considering or disposing of particular cases of formal Commission adjudication. The Commission therefore expects to close all regularly-scheduled meetings. The procedures established in § 2203.4 apply to the public announcement and closing of regularly-scheduled meetings.

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(d) *Other Commission meetings.* All other meetings of the Commission will be open to public observation unless the Commission determines that all or part of a meeting is likely to disclose information of the kind set forth in any subparagraph of paragraph (b) of this section. The procedures established in § 2203.5 apply to the public announcement of Commission meetings that are not regularly scheduled and to the total or partial closing of these meetings.

[50 FR 51679, Dec. 19, 1985, as amended at 62 FR 35963, July 3, 1997]

§ 2203.4 Procedures applicable to regularly-scheduled meetings.

(a) *Statutory authority to adopt expedited closing procedure.* The Government in the Sunshine Act provides, at 5 U.S.C. 552b(d)(4), that qualified agencies may establish by regulation expedited procedures for announcing and closing certain meetings. Specifically, “[a]ny agency, a majority of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c) [of the statute], or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof [through the expedited closing procedure].” See § 2203.3(b)(4), (8), (9)(i) and (10), which are equivalent to the referenced paragraphs of the statute. The Commission had determined, for the reasons stated in paragraph (b) of this section, that it is qualified to adopt implementing regulations under 5 U.S.C. 552b(d)(4). It hereby announces that it will follow the expedited closing procedure authorized under that statutory provision in conducting its regularly-scheduled meetings.

(b) *Commission qualification to adopt expedited closing procedure.* The Commission has determined that a majority of its meetings may be closed to the public under 5 U.S.C. 552b(c)(10). See § 2203.3(b)(10). The Commission is an adjudicatory agency that has no regulatory functions. It was established to resolve disputes arising out of enforcement actions brought by the Secretary of Labor under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651-

678. See 29 U.S.C. 659(c). The Commission's experience under the Government in the Sunshine Act has been that almost all of its meetings have been closed, in whole or in part, under 5 U.S.C. 552b(c)(10) because they involved only formal agency adjudication of specific cases.

(c) *Announcements.* Regularly-scheduled meetings of the Commission will be held at 10 a.m. every Thursday, except for legal holidays, in the Hearing Room (Suite 965) of the Commission's national office at One Lafayette Centre, 1120-20th Street NW., Washington, DC 20036-3419. If a regularly-scheduled meeting is scheduled, public announcement of the time, date and place of the meeting will be made at the earliest practicable time by posting a notice in a prominent place at the Commission's national office. If a regularly-scheduled meeting is cancelled, a notice of cancellation will be posted in the same manner. Information about the subject of each regularly-scheduled meeting will be made available in the Office of the General Counsel, telephone number (202) 606-5410, at the earliest practicable time. However, no information that may be withheld under § 2203.3(b) will be made available, and individual items may be added to or deleted from the agenda at any time. Inquiries from the public regarding any regularly-scheduled meeting will be directed to the Office of the General Counsel.

(d) *Voting.* At the beginning of each regularly-scheduled meeting, the Commission will vote on whether to close the meeting. No proxy vote will be permitted and the vote of each Commissioner will be recorded. This record of each Commissioner's vote will be made available to the public at the Commission's national office immediately after the meeting.

[50 FR 51679, Dec. 19, 1985, as amended at 58 FR 26066, Apr. 30, 1993]

§ 2203.5 Procedures applicable to other meetings.

(a) *Announcements*—(1) *Meetings announced.* Public announcement will be made of every meeting that is not a regularly-scheduled meeting. This announcement will state the time, place, and subject of the meeting, whether it is to be open or closed, and

the name and phone number of the person designated to respond to requests for information about the meeting. The announcement will be made at least one week before the meeting unless at least two Commissioners determine by a recorded vote that Commission business requires that such meeting be called at an earlier date. In that case, the Commission will make its public announcement at the earliest practicable time.

(2) *Changes announced.* The time or place of a meeting may be changed following the public announcement required by paragraph (a)(1) of this section, but only if public announcement of the change is made at the earliest practicable time. The subject of a meeting, or the determination by the Commission to open or close all or part of a meeting, may also be changed following the public announcement required by paragraph (a)(1) of this section; however, these changes may be made only if:

(i) At least two Commissioners determine by recorded vote that Commission business so requires and that no earlier announcement of the change was possible and

(ii) Public announcement of the change and the vote of each Commissioner on the change is made at the earliest practicable time.

(3) *Form of announcements.* The announcements required under paragraph (a) of this section will be made by posting a notice in a prominent place at the Commission's national office. In addition, immediately following each announcement required by paragraph (a) of this section, notice of the same matters described in the posted notice will also be submitted for publication in the FEDERAL REGISTER.

(b) *Voting*—(1) *Requirement that vote be taken.* Action to close all or part of a meeting that is not regularly scheduled or to withhold information about a meeting that is not regularly scheduled, under any paragraph of § 2203.3(b), will be taken only when at least two Commissioners vote to take the proposed action.

(2) *Separate votes required.* A separate vote of the Commissioners will be taken with respect to each Commission meeting or each part of a meeting that