

February 24, 1999

MEMORANDUM TO: Commissioner McGaffigan
Commissioner Merrifield

FROM: Annette L. Vietti-Cook, Secretary /s/

SUBJECT: COMEXM-98-006/COMJSM-98-001 - SUNSHINE ACT PRACTICES

This memorandum is to inform you that the Commission has agreed to your proposal to move toward practice consistent with the 1985 Federal Register notice and the rules, [10 CFR 9.101\(c\)](#) in particular, that embody the analysis in that notice, and has requested the General Counsel to prepare a notice of the Commission's intent to implement the rule which considers the American Bar Association study results and the public comments on the rule. See memorandum attached.

This completes action on COMEXM-98-006/COMJSM-98-001.

Attachment: As stated

cc: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
EDO
OGC

February 24, 1999

MEMORANDUM FOR: Karen D. Cyr
General Counsel

FROM: Annette L. Vietti-Cook, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - COMEXM-98-006/COMJSM-98-001 - SUNSHINE ACT PRACTICES

The Commission has considered your memorandum on November 27, 1998, SUNSHINE ACT PRACTICES, and has agreed to move toward a practice consistent with the 1985 Federal Register notice and the rules, [10 CFR 9.101\(c\)](#) in particular, that embody the analysis in that notice.

Therefore, consistent with your recommendation, the Commission requests that you prepare, no later than 30 days after issuance of this SRM, a notice of the Commission's intent to implement the Sunshine Act rule which was issued and made effective in 1985. The notice should consider and discuss the American Bar Association study results and the public comments on the 1985 rule and should provide a short period (e.g., 30 days) for additional public comments before the Commission would implement the rule.

(OGC)

(SECY Suspense: 3/26/99)

In addition, the staff should prepare letters to Congress to be sent before the Commission implements the rule. The letters to Congress should include the notice of the Commission's intent to implement the rule that is proposed to be issued for public comment and should explain, with concrete examples, the kinds of non-Sunshine Act discussions that will be held by the Commission when it implements the rule. The letters should also state that, for the first six month period in which the Commission implements the rule, the agency will maintain a record of the date and subject of, and participants in, any scheduled non-Sunshine Act discussions that three or more Commissioners attend. After the six-month period, the Commission will revisit the usefulness of the record keeping practice.

It is not the Commission's intention to treat any public meetings currently being held under the Internal Commission Procedures as non-Sunshine Act discussions. Examples of the types of discussions sought to be held include, but are not limited to, generalized "big picture" discussions; preliminary, exploratory discussions that generate ideas (these ideas, if followed up with specific proposals, would become the subject of later "meetings" within the meaning of the Sunshine Act); spontaneous, casual discussions of matters of mutual interest; briefings in which the Commissioners are provided information but do not themselves deliberate on any proposal for action; discussions of business-related matters not linked to any particular proposal for Commission action; and discussions to enhance the effectiveness of intercommunications between and among Commissioners and their offices.

cc: Chairman Jackson
Commissioner Dicus

Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
EDO
OCA
OPA
CFO
CIO