

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 201

[Release No. 34-52846; File No. S7-05-05]

Adoption of Amendments to the Rules of Practice and Related Provisions and Delegations of Authority of the Commission

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending its Rules of Practice, certain related provisions, and its delegations of authority to the staff as a result of its experience with these rules and to correct typographical errors and change certain citations. The amendments are intended to enhance the transparency and facilitate parties' understanding of the rules and to make practice under the rules easier and more efficient.

DATES: Effective January 4, 2006.

FOR FURTHER INFORMATION CONTACT: Diane V. White, Office of the General Counsel, (202) 551-5150, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9010.

SUPPLEMENTARY INFORMATION: On April 21, 2005, the Commission proposed amendments to the Rules of Practice.¹ The Commission proposed amendments to its Rules of Practice and related provisions as a result of the Commission's experience with its existing rules and in order to correct references and change certain citations. Additional amendments were proposed to correct typographical errors and change certain citations to conform to the amended rules. The majority of these proposals were technical and procedural.

I. Discussion

The Commission requested comment on the proposed amendments from interested persons. The Commission received no comments in response to its requests. The Commission is adopting the amendments to the Rules of Practice and related provisions, essentially as proposed.

A. Rule 141(a)(2)(ii) now generally authorizes service on other corporations or entities by delivering a copy of the order instituting proceedings ("OIP") to an officer, managing or general agent, or authorized agent by personal service or

by mail.² Particularly, in proceedings instituted under Section 12(j) of the Securities Exchange Act of 1934, 15 U.S.C. 78l(j), to revoke or suspend the registration of a class of securities for failure to make timely periodic filings, it sometimes has been difficult to serve the issuer of the securities. An issuer that is delinquent in its filings often does not keep current with the Commission the name of a valid agent to receive notice of the proceeding. In certain instances, the Commission's staff has sought to accomplish service on such an issuer by serving multiple copies of the OIP on various persons, such as the issuer's officers or directors.³ The Commission is amending Rule 141(a)(2)(ii) to authorize service on an issuer at the most recent address set forth in its most recent filing with the Commission, with confirmation of attempted delivery.

The Commission also is adopting Rule 141(a)(2)(vi) to authorize service on persons registered with self-regulatory organizations at the most recent address shown in the Central Registration Depository, with confirmation of attempted delivery. We requested comment as to whether this method would provide adequate notice of a proceeding. We recognize that the Central Registration Depository requires that addresses be kept current for only two years after a person ceases to be associated with a member of a self-regulatory organization. We further requested comment as to whether the rule should refer explicitly to such a two-year period. However, we received no comment in response to either request. We have determined to adopt the amendments to the rule as proposed.

B. Currently, Rule 430(a) provides that any person aggrieved by an action made by authority delegated in

§§ 200.30-1 through 200.30-8 or §§ 200.30-11 through 200.30-18 may seek review of the action pursuant to Rule 430(b). Rule 430(b) now provides that Commission review is to be sought by filing a written notice of intention to petition for review within five days "after actual notice to the party of the action or service of notice pursuant to § 201.141(b), whichever is earlier." Although the current rule permits appeals by any aggrieved person of action taken by delegated authority, an aggrieved person who is not a party may not receive actual notice or learn of service of notice promptly after the action. Nonetheless, it is important that a deadline for the filing of a notice of intention to petition for review be established, so it is possible to know when an action is beyond challenge. The amendment therefore provides that both parties and aggrieved persons may seek Commission review of the action by filing a written notice of intention to petition for review within five days after actual notice of the action to that party or aggrieved person, or 15 days after publication of the notice of action in the **Federal Register**, or five days after service of notice of the action pursuant to § 201.141(b), whichever is the earliest. The Commission requested comment on whether this form of publication would provide adequate notice, or whether another form of publication should be used to supplement the **Federal Register**. The Commission also sought comment on whether posting of a notice of action pursuant to delegated authority on the Commission's Web site would aid in giving notice to persons who might be aggrieved by such action. Although we received no comment in response to this request, the Commission intends to post, as appropriate, delegated actions on its Web site.⁴ The Commission also requested comment as to whether 15 days after publication would allow parties and aggrieved persons sufficient time to file a notice.⁵ Again, we received no comment. We have determined to adopt the rule as proposed.

C. Currently, Rule 55, which governs the conduct of Equal Access to Justice

² Rule 141(a)(2)(ii) states that notice to a corporation or other entity of a proceeding "shall be made" 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."

Rule 141(a)(2)(i) authorizes delivery by "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 confirmation of receipt; or giving confirmed telegraphic notice."

³ See, e.g., *Alcohol Sensors Int'l, Ltd.*, Exchange Act Rel. No. 50150 (Aug. 5, 2004), 83 SEC Docket 1748, 1749 n.1 (stating that more than 430 copies of the OIP were served in order to accomplish service on seventeen respondents in a Section 12(j) proceeding).

⁴ There are certain circumstances in which notice of an action taken by delegated authority will not be posted on the Commission's Web site or published in the **Federal Register**. For example, the Commission does not publish a delegated decision to grant or deny confidential treatment where the requestor has asked for confidential treatment for the request itself.

⁵ See 44 U.S.C. 1508 (stating that time between publication of notice in **Federal Register** and date fixed in notice for hearing or termination of opportunity to be heard should generally be not less than fifteen days unless otherwise specifically prescribed by Act of Congress).

¹ Proposed Amendments to the Rules of Practice and Related Provisions, Exchange Act Rel. No. 51595, 70 FR 22224 (Apr. 28, 2005).

Act ("EAJA") proceedings before an administrative law judge, authorizes the law judge considering an application for an award of fees and expenses under the EAJA, 5 U.S.C. 504, to order all proceedings that are otherwise available under Rule 8(d) of the Rules of Practice. Former Rule 8(d) authorized the conduct of prehearing conferences and briefings. When the Commission comprehensively revised and renumbered its Rules of Practice in 1995, former Rule 8(d) was incorporated into Rules 221 and 222(a).⁶ However, the reference to Rule 8(d) contained in EAJA Rule 55 was not changed at that time. The amendment replaces the reference to Rule 8(d) with a reference to Rules 221 and 222(a).

D. Current Rule 102(e)(3)(iii) provides that Commission review of a hearing officer's initial decision on a petition to lift a temporary suspension of a person from appearing and practicing before the Commission will be governed by the time limits set forth in § 201.531. The amendment corrects the reference to § 201.540, which governs the appeal and Commission review of certain initial decisions.

E. Currently, Rule 111(h) provides no time limit within which a law judge is required to rule upon a motion to correct a manifest error of fact in an initial decision. The amendment provides that such a ruling must be made within 20 days of the filing of any brief in opposition. The amendment further states that any brief in opposition must be filed within five days after service of the motion.

The Commission has received motions purportedly filed pursuant to Rule 111(h) that challenge the merits of an initial decision. However, Rule 111(h) has a much more limited purpose. Rule 111(h) is therefore amended to make clear that motions to correct manifest error are properly filed under this Rule only if they contest a patent misstatement of fact in the initial decision. Motions purporting to contest the substantive merits of the initial decision will be treated as a petition for review under Rule 410.

F. Current Rule 152(d) provides that an original and three copies of all papers shall be filed. The Commission is adopting the rule substantially as proposed. The amendment makes clear that if filing is made by facsimile pursuant to Rule 151, the filer must transmit only one non-facsimile original with a manual signature and does not need to transmit additional non-facsimile copies. The rule as adopted

provides that the non-facsimile original must be accompanied by a statement of the date on which, and the facsimile number to which, the party made transmission of the facsimile filing.

G. Currently, Rule 154(c) and Rule 250(c) provide page limitations for, respectively, motions in general and motions for summary disposition. Rule 450(c), however, now sets word-count limitations, instead of page limitations, for briefs filed with the Commission. The amendment to Rule 154(c) substitutes a limitation for motions of 7,000 words, exclusive of any table of contents, table of authority, or addendum of applicable cases, legislative provisions, or exhibits. Rule 470(b), which currently requires motions for reconsideration to comply with the page length limitation in Rule 154(c), is amended to refer to the word limitation in amended Rule 154(c).

The amendment to Rule 250(c) sets a limitation of 9,800 words for a motion for summary disposition and any supporting memorandum of points and authorities. The limitation excludes declarations, affidavits, or attachments. Motions for summary dispositions are often made in cases where a respondent has been criminally convicted or an injunction has been entered and the conviction or injunction provides the basis for an administrative order against the respondent. In such cases, documents establishing the conviction or injunction must be included as exhibits to the motion; these documents alone can total more than the entire word limitation allotted to the motion. The amendment excludes such attachments from the word-count restriction.

H. Current Rule 201(b) provides that, by order of the Commission, any proceeding may be severed with respect to some or all parties. The amendment allows severance with respect to "one or more" parties, making clear that severance is available as to a single party, under appropriate circumstances.

I. Current Rule 210(a)(2) contains a reference to § 201.612. Section 612 was renumbered as § 201.1103, effective April 19, 2004. The amendment changes the reference accordingly.⁷

J. Current Rule 411(c) refers to "any brief in opposition to a petition for review permitted pursuant to § 201.410(d)." The Rules of Practice no longer provide for briefs in opposition to a petition for review, and Section 410(d) was removed and reserved

effective April 19, 2004. The amendment deletes the reference.

K. Currently, Rule 601(a) provides that funds due pursuant to an order by a hearing officer shall be paid on the first day after the order becomes final pursuant to Rule 360. Under Rule 360(d)(2) as revised, effective April 19, 2004, an initial decision no longer becomes final automatically. That rule now provides that the Commission will issue an order stating that a decision has become final. Rule 360(d)(2) further provides for the order of finality to state the date on which sanctions, if any, take effect. Amended Rule 601(a) clarifies that funds due pursuant to an order by a hearing officer are to be paid in accordance with the order of finality.

L. Current Rule 900(b) requires the Chief Administrative Law Judge to apprise the Commission specifically if a proceeding assigned to an administrative law judge has not been concluded "within 30 days of the guidelines established in paragraph (a) of this section." Paragraph (a) no longer contains guidelines relevant to the timely conclusion of proceedings before law judges; these guidelines are now found in § 201.360(a)(2). Rule 360(a)(3) requires the Chief Administrative Law Judge to submit a motion for an extension to the Commission if it is determined that an initial decision cannot be issued within the period specified in the guidelines. The submission of such motions renders the specific appraisal by the Chief Administrative Law Judge under Rule 900(b) unnecessary. The amendment eliminates that requirement.

M. In proceedings where an order issued by the Commission requires a respondent to pay disgorgement and assesses a civil penalty against that respondent, current Rule 1100 allows the Commission to create a Fair Fund for the benefit of investors who were harmed by the violation found. The amendment makes clear that in such cases, hearing officers also have the authority to create Fair Funds.

N. Tables I, II, and III of Subpart D of the Commission Rules of Practice have been superseded by subsequent amendments to the federal securities laws and these rules, and are of little utility to the public. The amendment deletes these tables.

O. Although not previously proposed for comment, Rule 104, which sets the business hours of the Commission, is amended to reflect the new address of the Commission Headquarters office, which relocated to 100 F Street, NE., Washington, DC 20549 after the above amendments were proposed.

⁶ See Exchange Act Rel. No. 35833 (June 23, 1995), 59 SEC Docket 1546, 1631 tbl. III.

⁷ Language was inadvertently deleted from Rule 210(b) in an earlier revision of the Rules of Practice. This language is now being reinstated.

P. The Commission is also correcting existing delegations and making new delegations of authority to the staff. Title 17 CFR 200.30–7 (Delegation of authority to the Secretary of the Commission) currently delegates to the Commission's Secretary the authority, among other things, to extend the time within which to make filings and to enlarge the length limitation on those filings. The Commission is amending § 200.30–7(a)(4), which currently authorizes the Secretary to grant or deny extensions of time to make filings in administrative proceedings, to clarify that the Secretary is authorized to grant extensions to parties making filings related to the establishment and administration of Fair Funds and disgorgement plans under part 201, subpart F of the Commission's Rules of Practice, § 201.1100 *et seq.*

The Commission also is amending § 200.30–7(a)(5) and § 200.30–10(a)(5), which currently permit the Secretary or the Chief Administrative Law Judge, respectively, to authorize the filing of briefs exceeding 50 pages “in accordance with Rule 450(c).” Because Rule 450(c) now sets word-count limitations, instead of page limitations, for briefs filed with the Commission, the delegations are corrected to provide that the Secretary or the Chief Administrative Law Judge may authorize a party to file briefs exceeding 14,000 words. The Commission also amends § 200.30–7(a)(5) to delegate to the Secretary the authority to permit the filing of motions exceeding 7,000 words in length, pursuant to amended Rule 154(c) of the Commission's Rules of Practice.

The Commission amends § 200.30–14(g)(1)(xii), which delegates to the General Counsel the authority to determine requests for leave to file an opposition to a petition for review. This delegation is no longer necessary, as the Rules of Practice no longer provide for briefs in opposition to a petition for review. The Commission has enacted a new delegation to permit the General Counsel to set the effective date of sanctions imposed on a party that previously were stayed pending appeal to the federal courts, once the mandate affirming the imposition of sanctions has been issued by the court.

II. Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commission finds, in accordance with Section 533(b)(3)(A) of the Administrative Procedure Act,⁸ that this revision relates solely to agency

organization, procedure, or practice. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication.⁹ The Regulatory Flexibility Act¹⁰ therefore does not apply. Because these rules relate to “agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties,” they are not subject to the Small Business Regulatory Enforcement Fairness Act.¹¹

These rules do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.¹²

III. Costs and Benefits of the Proposed Amendments

Taken as a whole, the Commission's Rules of Practice create governmental review and remedial processes. That is, they are procedural and administrative in nature. The benefits to the parties are the familiar benefits of due process: Notice, opportunity to be heard, efficiency, and fairness. The costs of these processes fall largely on the Commission.

The amendments set forth in this release variously clarify existing practice, relate to internal agency management, increase the efficiency of proceedings, or promote due process. The Commission requested data to quantify the costs and the value of the benefits identified. We received no comments in response to this request.

IV. Effect on Efficiency, Competition, and Capital Formation

Section 2(b) of the Securities Act of 1933,¹³ Section 3(f) of the Exchange Act,¹⁴ Section 2(c) of the Investment Company Act of 1940,¹⁵ and Section 202(c) of the Investment Advisers Act of 1940¹⁶ require us, when engaging in rulemaking that requires us to consider or determine whether an act is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act¹⁷ prohibits us from adopting any rule that would impose a burden on competition not necessary or

appropriate in furtherance of the purposes of the Exchange Act. These rules and amendments are intended to enhance the transparency and facilitate parties' understanding of the Rules. The amendments are also intended to clarify existing practice and increase the efficiency of Commission enforcement and self-regulatory organization disciplinary review proceedings. The rules and amendments apply to all persons involved in administrative proceedings before the Commission, and therefore the Commission does not expect the rules and amendments to have an anti-competitive effect. To the extent the rules and amendments would foster making whole victims of securities laws violations and would increase the transparency and efficiency of the Commission's administrative proceedings, there might be an increase in investor confidence in market fairness and efficiency. However, the magnitude of the effect of the amendments in this regard is difficult to quantify. We requested comment on the possible effects of our rule proposals on efficiency, competition, and capital formation. We received no comments in response to this request.

V. Statutory Basis and Text of Proposed Amendments

These amendments to the Rules of Practice and related provisions are being adopted pursuant to statutory authority granted to the Commission, including section 3 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7202; section 19 of the Securities Act, 15 U.S.C. 77s; sections 4A, 19, and 23 of the Exchange Act, 15 U.S.C. 78d–1, 78s, and 78w; section 20 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79t; section 319 of the Trust Indenture Act of 1939, 15 U.S.C. 77sss; sections 38 and 40 of the Investment Company Act, 15 U.S.C. 80a–37 and 80a–39; and section 211 of the Investment Advisers Act, 15 U.S.C. 80b–11.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government Agencies).

17 CFR Part 201

Administrative practice and procedure.

Text of the Adopted Rules

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

⁹ Nonetheless, the Commission had previously determined that it would be useful to publish most of these proposed rules for notice and comment before adoption. See 5 U.S.C. 603. The Commission received no comments in response to its request.

¹⁰ 5 U.S.C. 601 *et seq.*

¹¹ 5 U.S.C. 804(3)(C).

¹² 44 U.S.C. 3501 *et seq.*

¹³ 15 U.S.C. 77b(b).

¹⁴ 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 80a–2(c).

¹⁶ 15 U.S.C. 80b–2(c).

¹⁷ 15 U.S.C. 78w(a)(2).

⁸ 5 U.S.C. 553(b)(3)(A).

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The authority citation for part 200, subpart A continues to read in part as follows:

Authority: 15 U.S.C. 77s, 77o, 77sss, 78d, 78d–1, 78d–2, 78w, 78ll(d), 78mm, 79t, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

■ 2. Section 200.30–7 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

§ 200.30–7 Delegation of authority to Secretary of the Commission.

* * * * *

(a) * * *

(4) To grant or deny extensions of time within which to file papers with the Commission under Rule 161 of the Commission's Rules of Practice, § 201.161 of this chapter, or under part 201, subpart F of the Commission's Rules pertaining to Fair Fund and Disgorgement Plans, §§ 201.1100–201.1106;

(5) To permit the filing of briefs with the Commission exceeding 14,000 words in length, pursuant to Rule 450(c) of the Commission's Rule of Practice, § 201.450(c) of this chapter, and to permit the filing of motions with the Commission in excess of 7,000 words pursuant to Rule 154(c) of the Commission's Rules of Practice, § 201.154(c) of this chapter;

* * * * *

§ 200.30–10 [Amended]

■ 3. In § 200.30–10, paragraph (a)(5), remove the words “50 pages” and, in their place, add the words “14,000 words”.

■ 4. Section 200.30–14 is amended by revising paragraph (g)(1)(xii) to read as follows:

§ 200.30–14 Delegation of authority to the General Counsel.

* * * * *

(g)(1) * * *

(xii) To issue an order setting the effective date of sanctions that were stayed pending appeal to the federal courts, upon issuance of the mandate affirming the Commission's order imposing those sanctions.

* * * * *

PART 201—RULES OF PRACTICE

■ 5. The authority citation for part 201 continues to read as follows:

Authority: 15 U.S.C. 77s, 78w, 78x, 79t, 77sss, 80a–37 and 80b–11; 5 U.S.C. 504(c)(1).

Subpart B—Regulations Pertaining to the Equal Access to Justice Act

§ 201.55 [Amended]

■ 6. In § 201.55(a), in the third sentence, remove the words “Rule 8(d) of the Commission's Rules of Practice” and, in their place, add the words “§ 201.221 and § 201.222(a)”.

■ 7. The authority citation for Part 201, subpart D, continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 78c(b), 78d–1, 78d–2, 78l, 78m, 78n, 78o(d), 78o–3, 78s, 78u–2, 78u–3, 78v, 78w, 79c, 79s, 79t, 79z–5a, 77sss, 77ttt, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, 80b–12, 7202, 7215, and 7217.

§ 201.102 [Amended]

■ 8. In § 201.102(e)(3)(iii), in the last sentence, remove the cite “§ 201.531” and, in its place, add the cite “§ 201.540”.

§ 201.104 [Amended]

■ 9. In § 201.104, remove the words “450 Fifth Street, NW., Washington, DC 20549” and, in their place, add the words “100 F Street, NE., Washington, DC 20549”.

■ 10. Section 201.111 is amended by revising paragraph (h) to read as follows:

§ 201.111 Hearing officer: Authority.

* * * * *

(h) Subject to any limitations set forth elsewhere in these Rules of Practice, considering and ruling upon all procedural and other motions, including a motion to correct a manifest error of fact in the initial decision. A motion to correct is properly filed under this Rule only if the basis for the motion is a patent misstatement of fact in the initial decision. Any motion to correct must be filed within ten days of the initial decision. A brief in opposition may be filed within five days of a motion to correct. The hearing officer shall have 20 days from the date of filing of any brief in opposition filed to rule on a motion to correct;

* * * * *

■ 11. Section 201.141 is amended by:

- a. Revising paragraph (a)(2)(ii); and
- b. Adding paragraph (a)(2)(vi).

The revision and addition read as follows.

§ 201.141 Orders and decisions: Service of orders instituting proceedings and other orders and decisions.

(a) * * *

(2) * * *

(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 law to receive such notice, by any method specified in paragraph (a)(2)(i) of this section, or, in the case of an issuer of a class of securities registered with the Commission, by sending a copy of the order addressed to the most recent address shown on the entity's most recent filing with the Commission by U.S. Postal Service certified, registered, or Express Mail and obtaining a confirmation of attempted delivery.

* * * * *

(vi) *To persons registered with self-regulatory organizations.* Notice of a proceeding shall be made to a person registered with a self-regulatory organization by any method specified in paragraph (a)(2)(i) of this section, or by sending a copy of the order addressed to the most recent address for the person shown in the Central Registration Depository by U.S. Postal Service certified, registered, or Express Mail and obtaining a confirmation of attempted delivery.

* * * * *

■ 12. Section 201.152 is amended by revising paragraph (d) to read as follows:

§ 201.152 Filing of papers: Form.

* * * * *

(d) *Number of copies.* An original and three copies of all papers shall be filed, unless filing is made by facsimile in accordance with § 201.151. If filing is made by facsimile, the filer shall also transmit to the Office of the Secretary one non-facsimile original with a manual signature, contemporaneously with the facsimile transmission. The non-facsimile original must be accompanied by a statement of the date on which, and the facsimile number to which, the party made transmission of the facsimile filing.

* * * * *

■ 13. Section 201.154 is amended by revising paragraph (c) to read as follows:

§ 201.154 Motions.

* * * * *

(c) *Length limitation.* No motion (together with the brief in support of the motion), brief in opposition to the motion, or reply brief shall exceed 7,000 words, exclusive of any table of contents or table of authorities. The word limit shall not apply to any addendum that consists solely of copies of applicable cases, pertinent legislative provisions or rules, or relevant exhibits. Requests for leave to file motions and briefs in excess of 7,000 words are disfavored. A motion

or brief, together with any accompanying brief, that does not exceed 15 pages in length, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits, but inclusive of pleadings incorporated by reference, is presumptively considered to contain no more than 7,000 words. Any motion or brief that exceeds these page limits must include a certificate by the attorney, or an unrepresented party, stating that the document complies with the length limitation set forth in this paragraph and stating the number of words in the document. The person preparing the certificate may rely on the word count of a word-processing program to prepare the document.

■ 14. Section 201.201 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 201.201 Consolidation and severance of proceedings.

(b) * * * By order of the Commission, any proceeding may be severed with respect to one or more parties. * * *

■ 15. Section 201.210 is amended by:

■ a. In paragraph (a)(2), removing the cite “§ 201.612” and, in its place, adding the cite “§ 201.1103”;

■ b. At the end of the introductory text of paragraph (b)(1), removing the colon and in its place adding a period; and

■ c. Adding a sentence at the end of the introductory text of paragraph (b)(1).

The addition reads as follows:

§ 201.210 Parties, limited participants and amici curiae.

(b) * * * (1) * * * No person, however, shall be admitted as a party to a proceeding by intervention unless it is determined that leave to participate pursuant to paragraph (c) of this section would be inadequate for the protection of the person's interests.

■ 16. Section 201.250 is amended by revising paragraph (c) to read as follows:

§ 201.250 Motion for summary disposition.

(c) The motion for summary disposition, together with any supporting memorandum of points and authorities (exclusive of any declarations, affidavits, or attachments), shall not exceed 9,800 words. Requests for leave to file motions and accompanying documents in excess of 9,800 words are disfavored. A motion that does not, together with any accompanying memorandum of points

and authorities, exceed 35 pages in length, inclusive of pleadings incorporated by reference (but excluding any declarations, affidavits, or attachments) is presumptively considered to contain no more than 9,800 words. Any motion that exceeds these page limits must include a certificate by the attorney, or an unrepresented party, stating that the brief complies with the length limitation set forth in this paragraph and stating the number of words in the motion. The person preparing the certificate may rely on the word count of a word-processing program to prepare the document.

■ 17. Section 201.411 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 201.411 Commission consideration of initial decisions by hearing officers.

(c) * * * The Commission may, on its own initiative, order review of any initial decision, or any portion of any initial decision, within 21 days after the end of the period established for filing a petition for review pursuant to § 210.410(b). * * *

■ 18. Section 201.430 is amended by revising paragraph (b)(1) to read as follows:

§ 201.430 Appeal of actions made pursuant to delegated authority.

(b) * * * (1) *Notice of intention to petition for review.* A party to an action made pursuant to delegated authority, or a person aggrieved by such action, may seek Commission review of the action by filing a written notice of intention to petition for review within five days after actual notice of the action to that party or aggrieved person, or 15 days after publication of the notice of action in the **Federal Register**, or five days after service of notice of the action on that party or aggrieved person pursuant to § 201.141(b), whichever is the earliest.

■ 19. Section 201.470 is amended by revising the third sentence of paragraph (b) to read as follows:

§ 201.470 Reconsideration.

(b) * * * A motion for reconsideration shall conform to the requirements, including the limitation on the numbers of words, provided in § 201.154. * * *

■ 20. Section 201.601 is amended by revising paragraph (a) to read as follows:

§ 201.601 Prompt payment of disgorgement, interest and penalties.

(a) *Timing of payments.* Unless otherwise provided, funds due pursuant to an order by the Commission requiring the payment of disgorgement, interest, or penalties shall be paid no later than 21 days after service of the order, and funds due pursuant to an order by a hearing officer shall be paid in accordance with the order of finality issued pursuant to § 201.360(d)(2).

■ 21. Section 201.900 is amended by revising the last sentence in paragraph (b) to read as follows:

§ 201.900 Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings.

(b) * * * In connection with these periodic reports, if a proceeding pending before the Commission has not been concluded within 30 days of the guidelines established in paragraph (a) of this section, the General Counsel shall specifically apprise the Commission of that fact, and shall describe the procedural posture of the case, project an estimated date for conclusion of the proceeding, and provide such other information as is necessary to enable the Commission to determine whether additional steps are necessary to reach a fair and timely resolution of the matter.

Subpart D [Amended]

■ 22. Part 201, subpart D, is amended by removing Tables I, II, and III at the end of the subpart.

Subpart F—Fair Fund and Disgorgement Plans

■ 23. The authority citation for subpart F continues to read as follows.

Authority: 15 U.S.C. 77h–1, 77s, 77u, 78c(b), 78d–1, 78d–2, 78u–2, 78u–3, 78v, 78w, 80a–9, 80a–37, 80a–39, 80a–40, 80b–3, 80b–11, 80b–12, and 7246.

■ 24. Section 201.1100 is revised to read as follows:

§ 201.1100 Creation of Fair Fund.

In any agency process initiated by an order instituting proceedings in which the Commission or the hearing officer issues an order requiring the payment of disgorgement by a respondent and also assessing a civil money penalty against that respondent, the Commission or the hearing officer may order that the amount of disgorgement and of the civil penalty, together with any funds received pursuant to 15 U.S.C. 7246(b),

be used to create a fund for the benefit of investors who were harmed by the violation.

Dated: November 29, 2005.

By the Commission.

Jonathan G. Katz,

Secretary.

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