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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33–10913; 34–90787; IA–5656; IC–34151]

Modernization of Delegations of Authority to Commission Staff and Division and Office Descriptions

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the “Commission”) is amending its rules delegating authority to the Commission’s staff to modernize these rules and more efficiently use the Commission’s resources, as well as descriptions of the responsibilities of its divisions and offices.

DATES: This rule is effective February 16, 2021.

FOR FURTHER INFORMATION CONTACT: J. Matthew DeLesDernier, Assistant Secretary, Office of the Secretary, (202) 551–5400, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–9040.

SUPPLEMENTARY INFORMATION: The Commission is adopting new rules 17 CFR 200.19e (“Article 19e”), 17 CFR

200.30–2 (“Article 30–2”), and 17 CFR 200.30–3b (“Article 30–3b”); we are adding and reserving 17 CFR 200.20a; and we are adopting amendments to:

Commission reference	CFR citation (17 CFR)
Article 10	200.10
Article 11	200.11
Article 13	200.13
Article 13a	200.13a
Article 13b	200.13b
Article 14	200.14
Article 16	200.16
Article 17	200.17
Article 19a	200.19a
Article 19c	200.19c
Article 19d	200.19d
Article 21	200.21
Article 21a	200.21a
Article 23a	200.23a
Article 24	200.24
Article 24a	200.24a
Article 26a	200.26a
Article 27	200.27
Article 30–1	200.30–1
Article 30–3	200.30–3
Article 30–3a	200.30–3a
Article 30–5	200.30–5
Article 30–6	200.30–6
Article 30–7	200.30–7
Article 30–10	200.30–10
Article 30–11	200.30–11
Article 30–13	200.30–13
Article 30–14	200.30–14
Article 30–15	200.30–15
Article 30–16	200.30–16
Article 30–18	200.30–18

I. Discussion

The Commission is amending its rules delegating authority to the Commission’s staff. Currently, the Commission delegates to its staff certain authorities that would otherwise be exercised only by the Commission itself. These delegations are codified in our Rules of General Organization,¹ alongside descriptions of the responsibilities of the divisions and offices.² We are amending these rules to better reflect the way the Commission conducts its business and to use our resources more efficiently. In some cases, authority previously granted to a particular member of the staff is no longer appropriate, because, for example, the authority references a rule or process that has since been amended or rescinded or because the responsibility for the delegated activity should now rest with another member of the staff. In other instances, authority that is currently exercised only by the Commission could be exercised by the staff with appropriate Commission

¹ Articles 30–1 through 30–19 [17 CFR 200.30–1 through 200.30–19].

² Articles 10 through 27 [17 CFR 200.10 through 200.27].

oversight, thereby preserving the Commission’s resources for other activities. In addition, certain of the descriptions are no longer an accurate reflection of the responsibilities of the respective divisions and offices. We have determined, therefore, to make a number of amendments to our rules delegating authority to the staff and to the division and office descriptions, as discussed in detail below.

A. Delegation to the Director and Chief Economist of the Division of Economic and Risk Analysis

We are delegating authority to the Director of the Division of Economic and Risk Analysis (“DERA”) and Chief Economist to update taxonomies and schemas required for use in Commission filings and made available on the Commission’s website.³ DERA maintains on the Commission’s website a collection of taxonomies and schemas related to certain Commission structured data reporting requirements.⁴ A taxonomy is a list of standardized disclosure elements that covers a variety of concepts, and can contain descriptive labels, definitions, and authoritative references to standards and Commission regulations.⁵ Meanwhile, a schema defines the elements and attributes of a structured data report so that the report is appropriately constrained for machine-readability.⁶ Updates to these taxonomies and schemas are ministerial in nature. The updates generally reflect changes to the underlying standard—such as to U.S. generally accepted accounting principles—to the underlying technology, to industry practice, or to Commission requirements. We believe that delegating authority for updates to taxonomies and schemas to the Director of DERA and Chief Economist will

³ Article 30–2.

⁴ Taxonomies; www.sec.gov/structureddata/data_taxonomies.

⁵ By referencing the same underlying taxonomy, structured data from different filers and over different reporting periods can be instantly aggregated and compared for analysis. Currently, DERA’s website hosts the U.S. Generally Accepted Accounting Principles (“GAAP”) eXtensible Business Reporting Language (“XBRL”) Taxonomy, the International Financial Reporting Standards (“IFRS”) Taxonomy, the U.S. Mutual Fund Risk/Return XBRL Taxonomy, the SEC Reporting Taxonomies (“SRT”), the Record of Credit Ratings XBRL Taxonomy, the Draft Closed-End Fund Taxonomy, and the Draft Variable Insurance Product Taxonomy.

⁶ Currently, DERA’s website hosts the Order Handling Data Schema for Broker-Dealers, the Exchange Transaction Fee Summary Schema for National Market System Stocks, the Draft Volcker Rule Metrics Instructions and Technical Specifications, and the Draft Financial Products Markup Language (“FpML”) and FIXML Schemas for Security-Based Swap Data Repositories.

conserve our resources and increase efficiency, as these updates are ministerial in nature and in the normal course of business. In addition, we are updating the description of the responsibilities of the Director of DERA and Chief Economist in our rules to include that person's current title and responsibilities.⁷

B. Delegation to the Director of the Division of Trading and Markets

We are amending our rules delegating authority to the Director of the Division of Trading and Markets ("TM"), in some instances delegating new authority and, in others, eliminating current authority.

1. Delegation of Advance Notice Authority

We are delegating authority to the Director of TM for the publication of an advance notice ("Advance Notice") filed by a registered clearing agency designated as systemically important (a "DCA") by the Financial Stability Oversight Council;⁸ for the issuance of a request that the DCA provide any information necessary to assess the effect a proposed change would have on the nature or level of risks associated with such DCA's payment, clearing, or settlement activities and the sufficiency of any proposed risk management techniques;⁹ for the extension of the period of review when the proposed changes in an Advance Notice raise novel or complex issues and publication of notice thereof;¹⁰ and for the publication of a withdrawal of an Advance Notice.¹¹ The current process associated with Advance Notice processing requires Commission action to, among other things, publish notice of an Advance Notice and any amendments thereto; make an additional information request; extend the period of review of the Advance Notice when the proposed changes in an Advance Notice raise novel or complex issues; or publish notice of a withdrawal of an Advance Notice. These actions do not raise significant issues for Commission consideration and are more administrative in nature in that they provide notice to the public on the status of an Advance Notice proposal and seek public comment for information to assist the Commission as it considers each such action individually.

We believe that delegating authority for Advance Notices will conserve our

resources and increase efficiency, as the processing functions for Advance Notices are, in each instance, procedural matters that are ministerial in nature and in the normal course of business. In addition, this delegation will harmonize the staff's authority over issuance of Advance Notices and related self-regulatory organization ("SRO") rule change filings. Finally, the expedited process that would result from a delegation of authority to affect these matters would provide TM and the Commission additional time to analyze and consider a final determination on an Advance Notice proposal after the comment period has closed.

2. Delegation of Security-Based Swap Authority to the Director of TM and the Director of the Division of Examinations

We are delegating authority to the Director of TM and the Director of the Division of Examinations ("Examinations")¹² in connection with applications for registration as a security-based swap dealer or major security-based swap participant ("SBS Entities").¹³ We believe that permitting the Director of TM and the Director of Examinations to share this authority will more efficiently allocate agency resources. First, we are delegating authority to authorize issuance of orders granting ongoing registration to SBS Entities pursuant to 17 CFR 240.15Fb2-1(d)¹⁴ under the Securities Exchange Act of 1934 (the "Exchange Act").¹⁵ Once an applicant is conditionally registered as an SBS entity, the Commission may grant or deny ongoing registration. The Commission will grant ongoing registration if it finds that the requirements of section 15F(b) of the Exchange Act are satisfied.¹⁶ We believe that delegating the authority to the Director of TM and the Director of Examinations to make the necessary findings and grant ongoing registration will make efficient use of our resources, while still reserving for Commission consideration any recommendation to deny ongoing registration. Similar delegated authority exists for the

¹² Examinations was previously known as the Office of Compliance Inspections and Examinations, or "OCIE." See Public Statement on the Renaming of the Office of Compliance Inspections and Examinations to the Division of Examinations (Dec. 17, 2020), available at <https://www.sec.gov/news/public-statement/joint-statement-division-examinations>.

¹³ See *infra* footnotes 14–20 and accompanying text.

¹⁴ Rule 15Fb2-1(d).

¹⁵ 15 U.S.C. 78a *et seq.*; Article 30-3(a)(86); Article 30-18(m)(1)(i).

¹⁶ 17 CFR 240.15Fb2-1(e).

Director of TM to grant registration as a broker or dealer.¹⁷

Second, we are delegating authority to the Director of TM and the Director of Examinations to authorize the issuance of orders cancelling registrations of SBS Entities, or pending applications for registration, if such SBS Entities or applicants for registration are no longer in existence or have ceased to do business as an SBS Entity.¹⁸ We believe that delegated authority to cancel the registrations of, or applications for registration by, non-operational SBS Entities will make efficient use of our resources, while still reserving for Commission consideration any recommendation to revoke the registration of an operating SBS Entity. Similar delegated authority exists for staff to cancel registrations of non-operational brokers and dealers.¹⁹

Third, we are delegating to the Director of TM and the Director of Examinations authority to determine whether notices of withdrawal from registration by SBS Entities shall become effective sooner or later than the default 60-day waiting period.²⁰ We believe that delegated authority to change the waiting period for withdrawal of registration as an SBS Entity will make efficient use of our resources by allowing staff to determine, and communicate to registrants, the date on which a withdrawal of registration will become effective.

3. Delegation of SBS Entity Application Authority

We are also delegating authority to the Director of TM to grant certain applications made by SBS Entities. Section 201.194 of our Rules of Practice provides for applications by SBS Entities for statutorily disqualified associated persons to effect or be involved in effecting security-based swaps.²¹ We are delegating authority to the Director of TM to grant such applications.²² We believe that delegated authority to grant these applications will make efficient use of the Commission's resources, while still preserving the Commission's ability to deny applications. We have already delegated authority to the Director of TM to grant certain similar applications with respect to an SRO.²³

¹⁷ Article 30-3(a)(3).

¹⁸ Article 30-3(a)(87); Article 30-18(m)(1)(ii).

¹⁹ Article 30-3(a)(3)(ii).

²⁰ Article 30-3(a)(88); Articles 30-18(m)(1)(iii).

²¹ Rule 194 (17 CFR 201.194).

²² Article 30-3(a)(90).

²³ Article 30-3(a)(4)(i) (delegating authority to the Director of TM to grant applications with respect to membership in, association with a member of, or

⁷ Article 23a.

⁸ Article 30-3(a)(91).

⁹ Article 30-3(a)(93).

¹⁰ Article 30-3(a)(94).

¹¹ Article 30-3(a)(92).

4. Delegation of Substituted Compliance Authority

We are delegating authority to the Director of TM to authorize the publication in the **Federal Register** of notices that a complete application for substituted compliance has been submitted to the Commission, under 17 CFR 240.0–13.²⁴ Rule 0–13 provides the procedures for filing applications to request a substituted compliance or listed jurisdiction order under the Exchange Act.²⁵ We believe that delegating the authority to make the necessary findings will make efficient use of our resources. The action is administrative in nature and provides notice to the public of the completion of an application, beginning the process of seeking public comment for information to assist the Commission as it considers substituted compliance with respect to an application.

5. Eliminated Delegations of Authority

We are eliminating certain current delegations of authority. First, we are eliminating the following delegations of authority because they refer to rules or processes that have themselves been eliminated:

- Authority to grant requests for exemptions from former 17 CFR 240.10a–1(f) (rule 10a–1(f) under the Exchange Act), which we have previously rescinded.²⁶
- Authority to publish notice of the filing of a designation plan with respect to national market system securities, or any proposed amendment thereto, and to approve such plan or amendment under former 17 CFR 242.600 (rule 600),²⁷ which rule has already been amended to eliminate the relevant process.
- Authority to review and, where appropriate, approve the selection by the Municipal Securities Rulemaking Board (“MSRB”) of public representatives to serve on the MSRB

participation in, a self-regulatory organization and for other relief as to persons who are subject to an applicable disqualification where such relationships or other relief have been approved or recommended by a self-regulatory organization); *see also* 17 CFR 200.30–4(a)(5) [Article 30–4(a)(5)] (delegating authority to the Director of the Division of Enforcement to grant or deny applications made pursuant to 17 CFR 201.193 [Rule 193 of the Commission’s Rules of Practice] by barred individuals for consent to associate with other types of registrants); Article 30–1(10) (delegating authority to the Director of CF to grant or deny applications for relief from being considered an “ineligible issuer” under 17 CFR 230.403 [Securities Act Rule 405]).

²⁴ Rule 0–13 under the Exchange Act; Article 30–3(a)(89).

²⁵ 17 CFR 240.0–13.

²⁶ Current Article 30–3(a)(15).

²⁷ Current Article 30–3(a)(37).

under former section 15B(b)(2)(B) of the Exchange Act,²⁸ which has previously been amended to eliminate the relevant process.

- Authority to grant exemptions from former 17 CFR 240.3b–9 (rule 3b–9 under the Exchange Act),²⁹ because the rule was rescinded by the Commission after being invalidated by the U.S. Court of Appeals for the District of Columbia Circuit.³⁰

- Authority to grant exemptions from 17 CFR 240.17a–23 (Rule 17a–23 under the Exchange Act),³¹ which has been rescinded.

- Authority to issue notices related to a transaction fee pilot program that has been vacated.³²

Second, we are eliminating the following delegations of authority to the Director of TM because the contemplated activities are appropriately within the purview of other divisions and offices:

- Authority to grant or deny exemptions, either unconditionally or on specified terms and conditions, from 17 CFR 240.15c2–12 (Rule 15c2–12 under the Exchange Act),³³ which is similar to authority we are delegating to the Director of the Office of Municipal Securities (“OMS”).³⁴

- Authority to grant requests for exemptions from the tender offer provisions of 17 CFR 240.14e–1 (Rule 14e–1 of Regulation 14E under the Exchange Act),³⁵ which rule is administered by the Division of Corporation Finance (“CF”).³⁶

- Authority to designate officers empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records in the course of investigations instituted by the Commission under section 21(d) of the Exchange Act,³⁷ which is similar to authority currently exercised by the Division of Enforcement.³⁸

- Authority, in certain nonpublic investigatory proceedings, to grant requests of persons to procure copies of

the transcript of their testimony,³⁹ which is similar to authority currently exercised by the Division of Enforcement.⁴⁰

Finally, we are eliminating current authority to extend trading privileges and to deny applications for unlisted trading privileges (“UTP”) by national securities exchanges under 17 CFR 240.12f–1 (Rule 12f–1 under the Exchange Act), provided that any applicant exchange denied unlisted traded privileges is advised of its right to have such denial reviewed by the Commission.⁴¹ The UTP Act of 1994 changed the way UTP was extended by no longer requiring applications for UTP to be filed with and approved by the Commission. Prior to the enactment of the UTP Act, the Commission received hundreds of applications to extend UTP each year. Although section 12(f)(2) of the Act and Rule 12f–1 are not part of that UTP extension process and instead allow for the suspension and reinstatement of trading for securities that are already trading UTP, the Division has rarely used its delegated authority under these provisions so the delegation is being eliminated.⁴²

C. Delegation to the Director of the Office of Municipal Securities

We are delegating additional authority to the Director of OMS to carry out functions—with respect to the Municipal Securities Rulemaking Board (“MSRB”), municipal securities, and municipal securities dealers—that are currently delegated to the Director of TM. These authorities include:

- Authority to publish notices of proposed rule changes filed by the MSRB, to approve such proposed rule changes, to find good cause to approve a proposed rule change earlier than 30 days after publication of such proposed rule change, to disapprove a proposed rule change subject to certain requirements, and related authorities;⁴³
- Authority to extend for a period not exceeding 90 days from the date of publication of notice of the filing of a proposed rule change by the MSRB the period during which the Commission must by order approve or disapprove

²⁸ Current Article 30–3(a)(40).

²⁹ Current Article 30–3(a)(45).

³⁰ *See* Exchange Act Release No. 56502 (Sept. 24, 2007) [72 FR 56562 (Oct. 3, 2007)]; *see also American Bankers Association v. SEC*, 804 F.2d 739 (D.C. Cir. 1986).

³¹ Current Article 30–3(a)(60).

³² Current Article 30–3(a)(84).

³³ Current Article 30–3(a)(48).

³⁴ *See infra* Part II.C.

³⁵ Current Article 30–3(a)(67).

³⁶ Article 30–1(f)(16)(ii) [17 CFR 200.30–1(f)(16)(ii)].

³⁷ Current Article 30–3(b).

³⁸ Article 30–4(a)(1) [17 CFR 200.30–4(a)(2)].

³⁹ Current Article 30–3(c).

⁴⁰ Article 30–4(a)(2) [17 CFR 200.30–4(a)(2)].

⁴¹ Current Article 30–3(a)(2).

⁴² Article 30–3(a)(2) (removed and reserved). We are also making a technical correction to update the name of TM in a delegation. Article 30–3(l). In addition, we are correcting a scrivener’s error in a delegation to the Director of TM. Article 30–3(a)(47). We are also making a technical correction to a delegation to the Director of TM. Article 30–3(a)(49).

⁴³ Article 30–3a(a)(2). This authority is similar to authority already delegated to the Director of TM. *See* Article 30–3(a)(12).

the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, and related authorities;⁴⁴

- Authority to institute proceedings to determine whether a proposed rule change of the MSRB should be disapproved, to provide to the MSRB notice of the grounds for disapproval under consideration, and to extend for a period not exceeding 240 days from the date of publication of notice of the filing of the proposed rule during which the Commission must issue an order approving or disapproving the proposed rule, and related authorities;⁴⁵

- Authority to temporarily suspend a change in the rules of the MSRB;⁴⁶
- Authority to reduce the period before which a proposed rule change can become operative, and to reduce the period between an MSRB submission of a filing and a pre-filing notification;⁴⁷

- Authority to review and grant or deny exemptions from the rule filing requirements of section 19(b) of the Exchange Act,⁴⁸ in a case where the MSRB elects to incorporate by reference one or more rules of another self-regulatory organization, subject to certain terms and conditions;⁴⁹

- Authority to issue orders granting registration of municipal securities dealers within 45 days of the filing of an application for registration;⁵⁰
- Authority to grant, deny, and revoke applications for confidential treatment filed pursuant to section 24(b) of the Exchange Act and 17 CFR 240.24b-2 (rule 24b-2 thereunder);⁵¹

- Authority to notify and consult with the appropriate regulatory agency about a registered municipal securities dealer whose appropriate regulatory agency is not the Commission prior to any examination of that registered municipal securities dealer;⁵²

- Authority to notify such an appropriate regulatory agency about any examination of such a registered municipal securities dealer by the Commission;⁵³

- Authority to request from such an appropriate regulatory agency a copy of the report of any examination it conducted of any such registered municipal securities dealer and any data supplied to it in connection with such examination;⁵⁴

- Authority to furnish to such an appropriate regulatory agency on request a copy of the report of any examination of any such municipal securities dealer conducted by the Commission and any data supplied to it in connection with such examination;⁵⁵

- Authority to grant or deny exemptions, either unconditionally or on specified terms and conditions, from Rule 15c2-12 under the Exchange Act;⁵⁶

- Authority to administer the provisions of 17 CFR 240.24c-1 (Rule 24c-1 under the Exchange Act);⁵⁷

- Authority to administer the provisions of section 24(d) of the Exchange Act;⁵⁸ and

- Authority to consult on behalf of the Commission pursuant to section 18(t)(1) of the Federal Deposit Insurance Act⁵⁹ with respect to matters described in Article 19a.⁶⁰

We believe it is appropriate for the Director of OMS—like the Director of TM—to exercise such functions and that delegating this authority will conserve our resources and improve efficiency. In addition, we are updating the description of the responsibilities of the Director of OMS in our rules to include that person's current responsibilities.⁶¹

D. Delegation to the Director of the Division of Investment Management

The Commission is eliminating a current delegation to the Director of the Division of Investment Management (“IM”). The Commission previously delegated to the Director of IM the same authority with respect to certain rules under the Securities Act of 1933 (“Securities Act”)⁶² that it also delegated to each Regional Director.⁶³ This delegation to the Director of IM refers to the delegation to each Regional Director that has since been eliminated by the Commission.⁶⁴ We are therefore eliminating the delegation to the Director of IM that refers to the previously eliminated delegation to each Regional Director.⁶⁵

E. Delegation to the Chief Accountant

The Commission is delegating authority to its Chief Accountant to share with certain specified persons nonpublic information and files with the concurrence of the head of the division or office responsible for such information and files.⁶⁶ Rule 24c-1 under the Exchange Act provides that the Commission may, in its discretion and upon a showing that such information is needed, provide nonpublic information in its possession to certain persons if they provide such assurances of confidentiality as the Commission deems appropriate.⁶⁷ The Commission has previously delegated similar authority to several other divisions and offices.⁶⁸ The Chief Accountant's responsibilities related to the Public Company Accounting Oversight Board (the “PCAOB”) occasionally requires the sharing of nonpublic information. We believe that providing the Chief Accountant with the same authority delegated to other divisions and offices will make

⁴⁴ Article 30-3a(a)(7). This authority is similar to authority already delegated to the Director of TM. See Article 30-3(a)(31).

⁴⁵ Article 30-3a(a)(11). This authority is similar to authority already delegated to the Director of TM. See Article 30-3(a)(57).

⁴⁶ Article 30-3a(a)(12). This authority is similar to authority already delegated to the Director of TM. See Article 30-3(a)(58).

⁴⁷ Article 30-3a(a)(13). This authority is similar to authority already delegated to the Director of TM. See Article 30-3(a)(59).

⁴⁸ 15 U.S.C. 78s(b).

⁴⁹ Article 30-3a(a)(14). This authority is similar to authority already delegated to the Director of TM. See Article 30-3(a)(76).

⁵⁰ Article 30-3a(a)(3). This authority is similar to authority already delegated to the Director of TM. See Article 30-3(a)(13).

⁵¹ Article 30-3a(a)(4). This authority is similar to authority already delegated to the Director of TM. See Article 30-3(a)(19).

⁵² Article 30-3a(a)(5). This authority is similar to authority already delegated to the Director of TM. See Article 30-3(a)(23).

⁵³ Article 30-3a(a)(6)(i). This authority is similar to authority already delegated to the Director of TM. See Article 30-3(a)(24)(i).

⁵⁴ Article 30-3a(a)(6)(ii). This authority is similar to authority already delegated to the Director of TM. See Article 30-3(a)(24)(ii).

⁵⁵ Article 30-3a(a)(6)(iii). This authority is similar to authority already delegated to the Director of TM. See Article 30-3(a)(24)(iii).

⁵⁶ Article 30-3a(a)(8). This authority is current delegated to the Director of TM, but we are transferring it to the Director of OMS. See current Article 30-3(a)(48). See *supra* Part II.B.

⁵⁷ Article 30-3a(a)(9). This authority is similar to authority already delegated to the Director of TM. See Article 30-3(a)(53).

⁵⁸ Article 30-3a(a)(10). This authority is similar to authority already delegated to the Director of TM. See Article 30-3(a)(54).

⁵⁹ 12 U.S.C. 1828(t)(1).

⁶⁰ Article 30-3a(c). This authority is similar to authority already delegated to the Director of TM. See Article 30-3(g).

⁶¹ Article 19d.

⁶² 15 U.S.C. 77a *et seq.*

⁶³ Current article 30-5(h)(1).

⁶⁴ *Id.* (providing that Director of the Division of Investment Management shall have the same authority with respect to the Securities Act of 1933 and 17 CFR 230.251 through 230.262 (rules 251 through 263 thereunder) as that delegated to each Regional Director in Article 30-6(b) and (c)).

⁶⁵ See article 30-5(h)(1) (removed and reserved).

⁶⁶ Article 30-11(c).

⁶⁷ 17 CFR 240.24c-1(b).

⁶⁸ Article 30-1(f)(14) (delegating similar authority to the Director of the Division of Corporate Finance); article 30-3(a)(53) (delegating similar authority to the Director of the Division of Trading and Markets); article 30-4(a)(7) (delegating similar authority to the Director of the Division of Enforcement); article 30-5(c-1)(3) (delegating similar authority to the Director of the Division of Investment Management); article 30-15(m)(1) (delegating similar authority to the General Counsel of the Commission); article 30-18(a) (delegating similar authority to the Director of the Office of Compliance Inspections and Examinations).

coordination with the PCAOB more efficient.

F. Delegation to the General Counsel

The Commission is clarifying a delegation of authority to the General Counsel. We have previously delegated to the General Counsel authority to approve non-expert, non-privileged, factual testimony by present or former staff members, and the production of non-privileged documents, when validly subpoenaed, and to assert governmental privileges on behalf of the Commission in litigation where the Commission appears as a party or in response to third party subpoenas.⁶⁹ Our rules specify, however, that those functions are not delegated to the General Counsel with respect to proceedings in which the Chairman or the General Counsel determines that separation of functions requirements or other circumstances would make inappropriate the General Counsel's exercise of such delegated functions.⁷⁰ Rather, with respect to such proceedings, such functions had been delegated to the Executive Assistant to the Chairman.⁷¹ The Executive Assistant to the Chairman is a position that is no longer in use. We are therefore removing and reserving the provisions relating to description of and delegation to the Executive Assistant to the Chairman.⁷² We have determined, instead, to delegate such functions in those circumstances to the Secretary of the Commission.⁷³ This delegation is similar to a prior delegation that we made to the Secretary for functions otherwise carried out by the General Counsel when the Chairman or General Counsel determines that separation of functions requirements or other circumstances would make exercise of the delegated functions by the General Counsel inappropriate.⁷⁴

G. Delegation to the Director of the Division of Examinations

The Commission is eliminating certain current delegations of authority to the Director of Examinations that Examinations does not use. The Commission has previously delegated to the Director of Examinations authority to grant, deny, and revoke applications for confidential treatment filed pursuant to section 24(b) of the Exchange Act and

rule 24b-2 thereunder;⁷⁵ to administer the provisions of section 24(d) of the Exchange Act;⁷⁶ to notify the Securities Investor Protection Corporation ("SIPC") of facts concerning the activities and the operational and financial condition of any registered broker or dealer which is or appears to be a member of SIPC and which is in or approaching financial difficulty within the meaning of section 5 of the Securities Investor Protection Act of 1970, as amended;⁷⁷ to delay certain inspections of certain newly registered broker-dealers under section 15(b)(2)(C) of the Exchange Act;⁷⁸ and, in certain circumstances, to grant or deny exemptions from 17 CFR 240.17a-25 (rule 17a-25 under the Exchange Act), among other authorities.⁷⁹ The Commission is also eliminating a duplicative delegation that authorizes the issuance of orders canceling registrations or pending applications of registration of certain investment advisers.⁸⁰ We understand that the Director of Examinations does not exercise the above authorities, and we have determined that it is appropriate to eliminate them. In addition, we are updating the name and description of the responsibilities of the Director of Examinations in our rules to include the current name and the responsibilities related to security-based swaps.⁸¹

H. Delegation to the Director of the Office of Credit Ratings

The Commission is delegating authority to the Director of the Office of Credit Ratings ("OCR") for functions that are currently delegated to the Director of TM and others. First, we are delegating authority to grant and deny applications for confidential treatment

filed under section 24(b) of the Exchange Act,⁸² and to revoke a grant of confidential treatment for any such application.⁸³ The authority to grant and deny applications for confidential treatment and revoke a grant of confidential treatment is delegated to several members of our staff.⁸⁴ Second, we are delegating authority to administer the provisions of rule 24c-1 under the Exchange Act,⁸⁵ which the Commission has previously delegated to other members of the staff.⁸⁶ Finally, we are delegating authority to administer the provisions of section 24(d) of the Exchange Act,⁸⁷ which the Commission has similarly delegated to other members of the staff.⁸⁸ We believe it is appropriate for the Director of OCR to exercise such functions and that delegating this authority will conserve our resources and improve efficiency. In addition, we are adding a description of the responsibilities of the Director of OCR in our rules.⁸⁹

I. Additional Amendments to Division and Office Descriptions and Delegations

We are also amending the description for certain other divisions and offices to better reflect the current name or duties of those divisions and offices.⁹⁰ In addition, we are amending a number of our division and office descriptions and delegations to remove gender-specific language from them.⁹¹

⁶⁹ 15 U.S.C. 78x(b).

⁷⁰ Article 30-3b(a).

⁷¹ See Article 30-1(f)(3) (delegating similar authority to the Director of CF); Article 30-3(a)(19) (delegating similar authority to the Director of TM); Article 30-5(c-1)(4) (delegating similar authority to the Director of IM).

⁷² Article 30-3b(b)(1).

⁷³ See Article 30-1(f)(14) (delegating similar authority to the Director of CF); Article 30-3(a)(53) (delegating similar authority to the Director of TM); Article 30-4(a)(7) (delegating similar authority to the Director of the Division of Enforcement); Article 30-5(c-1)(3) (delegating similar authority to the Director of IM); Article 30-11(d) (delegating similar authority to the Chief Accountant); Article 30-14(m)(1) (delegating similar authority to the General Counsel); Article 30-18(a) (delegating similar authority to the Director of Examinations).

⁷⁴ 15 U.S.C. 78x(d).

⁷⁵ See Article 30-1(f)(15) (delegating similar authority to the Director of CF); Article 30-3(a)(54) (delegating similar authority to the Director of TM); Article 30-4(a)(9) (delegating similar authority to the Director of the Division of Enforcement); Article 30-5(c-1)(4) (delegating similar authority to the Director of IM); Article 30-14(m)(2) (delegating similar authority to the General Counsel); Article 30-17(b) (delegating similar authority to the Director of the Office of International Affairs).

⁷⁶ Article 19e.

⁷⁷ Article 11; Article 13; Article 13b; Article 24a; Article 26a; Article 27. We have also determined to eliminate the description of the Chief Management Analyst position, as this position is no longer in use. Article 17 (removed and reserved).

⁷⁸ Article 10; Article 11; Article 13a; Article 13b; Article 14; Article 21; Article 21a; Article 24;

⁷⁵ Current Article 30-18(b).

⁷⁶ Current Article 30-18(e) (providing for administration of provisions related to certain records obtained from foreign securities authorities).

⁷⁷ 15 U.S.C. 78aa *et seq.*; current Article 30-18(f). Currently, rather than exercising this authority directly, it is Examinations's practice to notify the Division of Trading and Markets, which will then determine whether to exercise its Director's authority to notify SIPC. See Article 30-3(d) (delegating similar authority to the Director of Trading and Markets).

⁷⁸ Current Article 30-18(g).

⁷⁹ Current Article 30-18(h).

⁸⁰ Current Article 30-18(k)(2). We believe that this authority is duplicative of authority separately delegated to the Director of Examinations to authorize the issuance of orders cancelling registration or applications for registration of certain investment advisers. Article 30-18(i)(1). As discussed above, we are also delegating authority to the Director of Examinations that is similar to the authority delegated to the Director of TM concerning security-based swaps. Article 30-18(m); see also *supra* footnotes 14-20 and accompanying text.

⁸¹ Article 19c.

⁶⁹ Article 30-14(g).

⁷⁰ Article 30-14(i).

⁷¹ Current Article 30-14(i).

⁷² Article 16 (removed and reserved); Article 30-16 (removed and reserved).

⁷³ Article 30-14(i).

⁷⁴ Article 30-14(k). In addition, we are correcting a typographical error in the rules delegating authority to the General Counsel. Article 30-14(b).

II. Administrative Law Matters

The Commission finds, in accordance with the Administrative Procedure Act (“APA”), that these amendments relate solely to agency organization, procedure, or practice.⁹² Accordingly, the APA’s provisions regarding notice of rulemaking and opportunity for public comment are not applicable. These changes are therefore effective on February 16, 2021. In accord with the APA, we find that there is good cause to establish an effective date less than 30 days after publication of these rules.⁹³ These rules do not substantially affect the rights or obligations of non-agency parties and pertain to increasing efficiency of internal Commission operations. For the same reasons, the provisions of the Small Business Regulatory Enforcement Fairness Act are not applicable.⁹⁴ Additionally, the provisions of the Regulatory Flexibility Act,⁹⁵ which apply only when notice and comment are required by the APA or other law, are not applicable.⁹⁶ These amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995.⁹⁷ Further, because these amendments impose no new burdens on private parties, the Commission does not believe that the amendments will have any impact on competition for purposes of section 23(a)(2) of the Exchange Act.⁹⁸

III. Statutory Authority

This rule is adopted pursuant to statutory authority granted to the Commission, including section 19 of the Securities Act of 1933, 15 U.S.C. 77s; sections 4A, 4B, and 23 of the Exchange Act, 15 U.S.C. 78d–1, 78d–2, and 78w; section 38 of the Investment Company Act of 1940, 15 U.S.C. 80a–37; section 211 of the Investment Advisers Act of 1940, 15 U.S.C. 80b–11; and section 3 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7202.

Article 27; Article 30–1; Article 30–3; Article 30–3a; Article 30–5; Article 30–6; Article 30–7; Article 30–10; Article 30–11; Article 30–13; Article 30–14; Article 30–15; Article 30–18. In addition, we are correcting certain outdated statutory references. Article 30–1; Article 30–2; Article 30–3; Article 30–5; Article 30–6; Article 30–7; Article 30–10.

⁹² 5 U.S.C. 553(b)(3)(A).

⁹³ 5 U.S.C. 553(d).

⁹⁴ See 5 U.S.C. 804(3)(C) (the term “rule” does not include “any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties”).

⁹⁵ 5 U.S.C. 60 *et seq.*

⁹⁶ See 5 U.S.C. 601(2).

⁹⁷ See 5 CFR 1320.3.

⁹⁸ 15 U.S.C. 78w(a)(2).

List of Subjects in 17 CFR Part 200

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

Text of Rule Amendments

For the reasons set out in the preamble, the Commission is amending title 17, chapter II of the *Code of Federal Regulations* as follows:

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

Subpart A—Organization and Program Management

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

Authority: 15 U.S.C. 77c, 77o, 77s, 77z–3, 77sss, 78d, 78d–1, 78d–2, 78o–4, 78w, 78ll(d), 78mm, 80a–37, 80b–11, 7202, and 7211 *et seq.*, unless otherwise noted.

* * * * *

Sections 200.27 and 200.30–6 are also issued under 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77q, 77u, 78e, 78g, 78h, 78i, 78k, 78m, 78o, 78o–4, 78q, 78q–1, 78t–1, 78u, 77hhh, 77uuu, 80a–41, 80b–5, and 80b–9.

Section 200.30–1 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 78c(b) 78l, 78m, 78n, 78o(d).

Section 200.30–3 is also issued under 15 U.S.C. 78b, 78d, 78f, 78k–1, 78q, 78s, and 78eee.

Section 200.30–5 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–20, 80a–24, 80a–29, 80b–3, 80b–4.

* * * * *

■ 2. Section 200.10 is revised to read as follows:

§ 200.10 The Commission.

The Commission is composed of five members, not more than three of whom may be members of the same political party. The members are appointed by the President, with the advice and consent of the Senate, for 5-year terms, one term ending each year. The Chairman is designated by the President pursuant to the provisions of section 3 of Reorganization Plan No. 10 of 1950 (3 CFR, 1949–1953 Comp., p. 1006). The terms Chair, Chairperson, Chairman, Chairwoman, and the like may be used interchangeably. The Commission is assisted by a staff, which includes lawyers, accountants, engineers, financial security analysts, investigators, and examiners, as well as administrative and clerical employees.

■ 3. Section 200.11 is amended by revising paragraph (a)(2) to read as follows:

§ 200.11 Headquarters Office—Regional Office relationships.

(a) * * *

(2) Each Regional Director is responsible for the direction and supervision of the Regional Director’s work force and for the execution of all programs in the Regional Director’s office’s region as shown in paragraph (b) of this section, in accordance with established policy, and reports, on enforcement matters, to the Director or Deputy Director of the Division of Enforcement who is responsible for Regional Office enforcement matters and, on examination matters, to the Director of the Division of Examinations.

* * * * *

■ 4. Section 200.13 is amended by revising paragraphs (a), (d)(1), (e), and (f) to read as follows:

§ 200.13 Chief Operating Officer.

(a) The Chief Operating Officer is responsible for developing and executing the overall management policies of the Commission for all its operating divisions and staff offices. The Chief Operating Officer also provides executive direction to, and exercises administrative control over, the Office of Human Resources, the Office of Acquisitions, the Office of Financial Management, the Office of Support Operations, the EDGAR Business Office, and the Office of Information Technology.

* * * * *

(d) * * *

(1) Implementing the goals of the Chairman and the mission of the Commission;

* * * * *

(e) Overseeing Commission-specific application of performance measures, procurement reforms, personnel reductions, financial management improvements, telecommunications and information technology policies, and other Government-wide systems reforms; and

(f) Reforming the Commission’s management practices.

■ 5. Section 200.13a is amended by revising paragraphs (a) and (c) to read as follows:

§ 200.13a The Secretary of the Commission.

(a) The Secretary of the Commission is responsible for the preparation of the daily and weekly agendas of Commission business; the orderly and expeditious flow of business at formal Commission meetings; the maintenance of the Official Minute record of all actions of the Commission; and the

service of all instruments of formal Commission action. The Secretary is custodian of the official seal of the Commission, and also has the responsibility for authenticating documents.

* * * * *

(c) In addition, the Secretary administers the Commission's Library.

■ 6. Section 200.13b is revised to read as follows:

§ 200.13b Director of the Office of Public Affairs.

The Director of the Office of Public Affairs is the chief public information officer for the Commission, and oversees activities that communicate the Commission's actions to those interested in or affected by them. The Director's responsibilities include serving as liaison with the news media, dissemination of information to the news media and to the general public, supervision of internal and some external publications and of audio-visual presentations. Responsibilities of the Director, and of the Director's staff, include special projects that may be deemed appropriate to communicate information on Commission actions.

■ 7. Section 200.14 is amended by revising paragraph (b) to read as follows:

§ 200.14 Office of the Administrative Law Judges.

* * * * *

(b) The Chief Administrative Law Judge performs the duties of an Administrative Law Judge under the Administrative Procedure Act and the duties delegated to the Chief Administrative Law Judge by the Commission that are compatible with those duties. The Chief Administrative Law Judge is responsible for the orderly functioning of the Office of Administrative Law Judges apart from the conduct of administrative proceedings and acts as liaison between that Office and the Commission.

§ 200.16 [Removed and Reserved]

■ 8. Section 200.16 is removed and reserved.

§ 200.17 [Removed and Reserved]

■ 9. Section 200.17 is removed and reserved.

■ 10. Section 200.19c is revised to read as follows:

§ 200.19c Director of the Division of Examinations.

The Director of the Division of Examinations ("Examinations") is responsible for the compliance inspections and examinations relating to the regulation of exchanges, national

securities associations, clearing agencies, securities information processors, the Municipal Securities Rulemaking Board, brokers and dealers, municipal securities dealers, municipal advisors, security-based swap data repositories, security-based swap dealers, major security-based swap participants, transfer agents, investment companies, and investment advisers, under sections 13(n)(2), 15B, 15C(d)(1), 15F, and 17(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(n)(2), 78o-4, 78o-5(d)(1), 78o-10, and 78q(b)), section 31(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-30(b)), and section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4).

■ 11. Section 200.19d is revised to read as follows:

§ 200.19d Director of the Office of Municipal Securities.

The Director of the Office of Municipal Securities is responsible to the Commission for the administration and execution of the Commission's programs under the Securities Exchange Act of 1934 relating to the registration and regulation of municipal advisors, the practices of municipal securities brokers and dealers, and oversight of the Municipal Securities Rulemaking Board. The functions involved include recommending the adoption and amendment of Commission rules, reviewing proposed rule changes of the Municipal Securities Rulemaking Board, and responding to interpretive and no-action requests.

■ 12. Section 200.19e is added to read as follows:

§ 200.19e Director of the Office of Credit Ratings.

The Director of the Office of Credit Ratings is responsible to the Commission for the administration and execution of the Commission's programs under the Securities Exchange Act of 1934 relating to the registration and regulation of nationally recognized statistical rating organizations. The functions involved in the regulation of such entities include compliance inspections and examinations, recommending the adoption and amendment of Commission rules, and responding to interpretive and no-action requests.

§ 200.20a [Added and Reserved]

■ 13. Add reserved § 200.20a.

■ 14. Section 200.21 is revised to read as follows:

§ 200.21 The General Counsel.

(a) The General Counsel is the chief legal officer of the Commission. The General Counsel is responsible for the representation of the Commission in judicial proceedings in which it is involved as a party or as amicus curiae, for directing and supervising all civil litigation involving the Commission in the United States District Courts, except for law enforcement actions filed on behalf of the Commission, for directing and supervising the Commission's responsibilities under the Bankruptcy Code and all related litigation, and for representing the Commission in all cases in appellate courts. The General Counsel is responsible for the review of cases which the Division of Enforcement recommends be referred to the Department of Justice with a recommendation for criminal prosecution. In addition, the General Counsel is responsible for advising the Commission at its request or at the request of any division director or office head, or on the General Counsel's own motion, with respect to interpretations involving questions of law; for the conduct of administrative proceedings relating to the disqualification of lawyers from practice before the Commission; for conducting preliminary investigations, as described in 17 CFR 202.5(a), into potential violations of 17 CFR 201.102(e) by attorneys; for the preparation of the Commission comments to the Congress on pending legislation; and for the drafting, in conjunction with appropriate divisions and offices, of legislative proposals to be sponsored by the Commission. The General Counsel is responsible for providing advice to Commission attorneys on professional responsibility issues relating to their official duties. The General Counsel is further responsible for investigating allegations of professional misconduct by Commission staff and, where appropriate, making referrals to state professional boards or societies. The General Counsel is also responsible for the review and clearance of the form and content of articles, treatises, and prepared speeches and addresses by members of the staff relating to the Commission or to the statutes and rules administered by the Commission. The General Counsel also is responsible for coordinating and reviewing the interpretive positions of the various divisions and offices. In addition, the General Counsel is responsible for appropriate disposition of all Freedom of Information Act and Privacy Act appeals pursuant to the authority delegated in § 200.30-14, and is the

Commission's advisor with respect to legal problems arising under the Freedom of Information Act, the Privacy Act, the Federal Reports Act, the Federal Advisory Committee Act, the Civil Service laws and regulations, the statutes and rules applicable to the Commission's procurement, contracting, fiscal and related administrative activities, and other statutes and regulations of a similar nature applicable to a number of Government agencies.

(b)(1) The General Counsel is also responsible for assisting members of the Commission in the preparation of the opinions of the Commission, and for the preparation of opinions and decisions on motions and certifications of questions and rulings by administrative law judges in the course of administrative law proceedings, except:

(i) In cases where, pursuant to a waiver by the parties of separation of function requirements, another Division or Office of the Commission's staff undertakes to prepare an opinion or decision, in which cases the General Counsel may assist in such preparation; and

(ii) With respect to administrative proceedings against lawyers under § 201.102(e) of this chapter (Rule 102(e) of the Commission's Rules of Practice) or other cases in which the Chairman or the General Counsel has determined that separation of function requirements or other circumstances would make inappropriate the exercise of such functions by the General Counsel.

(2) The General Counsel deals with general problems arising under the Administrative Procedure Act, including the revision or adoption of rules of practice. The General Counsel is also responsible for the exercise of such review functions with respect to adjudicatory matters as are delegated to the General Counsel by the Commission pursuant to 101 Stat. 1254 (15 U.S.C. 78d-1, 78d-2) or as may be otherwise delegated or assigned to the General Counsel.

(c) The General Counsel also is responsible to the Commission for the administration of the Government in the Sunshine Act for publicly certifying, pursuant to § 200.406, that, in the General Counsel's opinion, particular Commission meetings may properly be closed to the public. In the absence of the General Counsel, the Solicitor to the Commission shall be deemed the General Counsel for purposes of § 200.406. In the absence of the General Counsel and the Solicitor, the most senior Associate General Counsel available shall be deemed the General Counsel for purposes of § 200.406. In

the absence of the General Counsel, the Solicitor, and every Associate General Counsel, the most senior Assistant General Counsel available shall be deemed the General Counsel for purposes of § 200.406. In the absence of the General Counsel, the Solicitor, every Associate General Counsel and every Assistant General Counsel, such attorneys as the General Counsel may designate (in such order of succession as the General Counsel directs) shall exercise the responsibilities imposed by § 200.406.

■ 15. Section 200.21a is amended by revising paragraph (a) to read as follows:

§ 200.21a The Ethics Counsel.

(a) The Ethics Counsel is responsible for administering the Commission's Ethics Program and for interpreting subpart M of this part and 5 CFR part 2635. The Ethics Counsel serves as Counselor to the Commission and its staff with regard to ethical and conflicts of interest questions and acts as the Commission's liaison on such matters with the Office of Human Resources, the Office of Government Ethics, the Office of the Inspector General, and the Department of Justice. When appropriate and subject to the authority of, and in consultation with, the Inspector General, the Ethics Counsel shall inquire into alleged violations of subparts C, F, and M of this part, and 5 CFR part 2635.

* * * * *

■ 16. Section 200.23a is revised to read as follows:

§ 200.23a Director of the Division of Economic and Risk Analysis and Chief Economist.

The Director of the Division of Economic and Risk Analysis and Chief Economist serves as economic advisor to the Commission and its staff and is responsible to the Commission for sound economic analysis of market events and conditions; economic analysis in support of Commission rulemaking; economic and risk analysis to inform and support the Commission's enforcement actions and its examination program; development of financial and market data analysis tools; preparation of economic statistics; promotion of data standards; review and guidance of staff research and publications; and assisting the Commission and its staff in responding to policy, legislative, or international issues relating to securities markets.

■ 17. Section 200.24 is revised to read as follows:

§ 200.24 Office of Financial Management.

This Office, under the direction of the Chief Financial Officer, is responsible to the Chief Operating Officer, Chairman and Commission for the internal financial management and programming functions of the Securities and Exchange Commission. These functions include: Budgeting, accounting, payroll and administrative audit. The Chief Financial Officer, and the Chief Financial Officer's designees, serve as liaison to the Commission before the Office of Management and Budget and Congressional Appropriations Committees on appropriation matters, and the Treasury Department and the General Accounting Office on financial and programming matters.

■ 18. Section 200.24a is revised to read as follows:

§ 200.24a Director of the Office of Investor Education and Advocacy.

The Director of the Office of Investor Education and Advocacy is responsible to the Chairman for the Commission's investor education and investor assistance programs. These programs include, but are not limited to:

(a) Educating investors through in-person outreach, digital and social media, and other communication channels, including the Commission's website for individual investors, *Investor.gov*, by preparing and distributing to the public educational content describing the operations of the securities markets, developing strategies for prudent investor behavior, and increasing public knowledge of the functions of the Commission.

(b) Implementing and administering a nationwide system for resolving investor complaints against individuals and entities regulated by the Commission by processing complaints received from individual investors and seeking to ensure that regulated individuals and entities process and respond to such complaints.

(c) Providing information to investors and others who inquire about individuals and entities regulated by the Commission, the operation of the securities markets, or the functions of the Commission.

(d) Advising the Commission and its staff, and exchanging information with domestic and international regulators and self-regulatory organizations, about problems frequently encountered by investors and possible solutions to them.

(e) Transmitting to other offices and divisions of the Commission information provided by investors which concerns the responsibilities of these offices and divisions.

(f) Providing for greater investor input in Commission rulemaking proceedings.

■ 19. Section 200.26a is revised to read as follows:

§ 200.26a Office of Information Technology.

The Office of Information Technology is responsible for the analysis, design programming, operation, and maintenance of all agency information systems; developing and implementing long-range technology plans and programs; coordinating all information systems analysis activities being considered or carried out by other divisions and offices, and furnishing such organizations with appropriate assistance and support; providing technical advice to the staff in connection with development of Commission rules and regulations having technology implications; providing expert advice on the Commission's surveillance of technology in the securities industry; evaluating and recommending new technology concepts and capabilities for application within the Commission; and developing technology and automation capabilities and support within the Commission.

§ 200.27 [Amended]

■ 20. Section 200.27 is revised by:

■ a. Removing the words "his or her" and adding in their place the words "the Regional Director's";

■ b. Removing the words "by the Deputy Director of the Division of Enforcement who is responsible for Regional Office enforcement matters" and adding in their place the words "by the Director or Deputy Director of the Division of Enforcement"; and

■ c. Removing the words "Office of Compliance Inspections and Examinations" and adding in their place the words "Division of Examinations".

■ 21. Section 200.30-1 is amended by:

■ a. Revising the introductory text and paragraph (a)(3);

■ b. In paragraph (f)(2)(i), removing the word "omission" and adding in its place the word "omission"; and

■ c. Revising paragraphs (f)(5) and (g)(2).

The revisions read as follows:

§ 200.30-1 Delegation of authority to the Director of the Division of Corporation Finance.

Pursuant to sections 4A and 4B of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78d-1, 78d-2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Director of the Division

of Corporation Finance, to be performed by the Director or under the Director's direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) * * *

(3) To grant applications for confidential treatment of contract provisions pursuant to § 230.406 of this chapter (Rule 406 under the Act); to issue orders scheduling hearings on such applications and to deny any such application as to which the applicant waives the applicant's right to a hearing, provided such applicant is advised of the applicant's right to have such denial reviewed by the Commission.

* * * * *

(f) * * *

(5) To grant or deny applications filed pursuant to section 12(g)(1) of the Act (15 U.S.C. 78l(g)(1)) for extensions of time within which to file registration statements pursuant to that section, provided the applicant is advised of the applicant's right to have any such denial reviewed by the Commission.

* * * * *

(g) * * *

(2) In any case in which the Director of the Division of Corporation Finance believes it appropriate, the Director may submit the matter to the Commission.

* * * * *

■ 22. Section 200.30-2 is added to read as follows:

§ 200.30-2 Delegation of authority to the Director of the Division of Economic and Risk Analysis and Chief Economist.

Pursuant to sections 4A and 4B of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78d-21, 78d-22), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Director of the Division of Economic and Risk Analysis and Chief Economist, to be performed by that person or under that person's direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) To update taxonomies and schemas required for use in Commission filings and made available on the Commission's website.

(b) [Reserved]

■ 23. Section 200.30-3 is amended by:

■ a. Revising the introductory text;

■ b. Removing and reserving paragraph (a)(2);

■ c. In paragraphs (a)(5), (8), and (9), removing the word "his" and adding in its place the words "the applicant's";

■ d. Removing and reserving paragraphs (a)(15), (37), and (40);

■ e. In paragraph (a)(43), removing the citation "Pub. L. 87-592, 76 Stat. 394" and adding in its place the citation "sections 4A and 4B of the Securities Exchange Act of 1934, as amended";

■ f. Removing and reserving paragraph (a)(45);

■ g. Revising paragraph (a)(47);

■ h. Removing and reserving paragraph (a)(48);

■ i. In paragraph (a)(49):

■ i. Removing "Rule 609 thereunder (17 CFR 242.609)" and adding in its place "17 CFR 242.609 (Rule 609 thereunder)"; and

■ ii. Removing the words "that section and any rules or regulations promulgated thereunder" and adding in their place "Rule 609";

■ j. Removing and reserving paragraphs (a)(60), (67), and (84);

■ k. Adding paragraphs (a)(86) through (94);

■ l. Removing and reserving paragraphs (b) and (c); and

■ m. Revising paragraph (l).

The revisions and additions read as follows:

§ 200.30-3 Delegation of authority to Director of the Division of Trading and Markets.

Pursuant to sections 4A and 4B of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78d-1, 78d-2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Director of the Division of Trading and Markets to be performed by the Director or under the Director's direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) * * *

(47) Pursuant to section 15(a)(2) of the Act, 15 U.S.C. 78o(a)(2), to review and, either unconditionally or on specified terms and conditions, grant exemptions from the broker-dealer registration requirements of section 15(a)(1) of the Act, 15 U.S.C. 78o(a)(1), to Government securities brokers or Government securities dealers that have registered with the Commission under section 15C(a)(2) of the Act, 15 U.S.C. 78o-5(a)(2), solely with respect to effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security principally backed by a guaranty of the United States.

* * * * *

(86) To authorize the issuance of orders granting on-going registration to security-based swap dealers and major security-based swap participants based on the security-based swap dealer's or major security-based swap participant's application, pursuant to § 240.15Fb2-1(e) of this chapter (Rule 15Fb2-1(e)).

(87) To authorize the issuance of orders canceling the registration of security-based swap dealers and major security-based swap participants registered pursuant to § 240.15Fb2-1 of this chapter (Rule 15Fb2-1) if such persons are no longer in existence or have ceased to do business as security-based swap dealers or major security-based swap participants, pursuant to § 240.15Fb3-3(a) of this chapter (Rule 15Fb3-3(a)).

(88) To determine by order, pursuant to § 240.15Fb3-2(b) of this chapter (Rule 15Fb3-2(b)), whether notices of withdrawal of registration filed by security-based swap dealers or major security-based swap participants pursuant to section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-10(b)) shall become effective sooner than the normal 60 day period provided in Rule 15Fb3-2(b) (§ 240.15Fb3-2(b) of this chapter).

(89) To authorize the publication in the **Federal Register** of notices that a complete application for substituted compliance has been submitted to the Commission, pursuant to § 240.0-13 of this chapter (Rule 0-13).

(90) To grant applications made pursuant to § 201.194 of this chapter (Rule 194 of the Commission's Rules of Practice).

(91) Pursuant to section 19(b) of the Act, 15 U.S.C. 78s(b), and § 240.19b-4(n) of this chapter (Rule 19b-4), to publish notices of advance notices filed by designated clearing agencies.

(92) Pursuant to section 19(b) of the Act, 15 U.S.C. 78s(b), and § 240.19b-4(n) of this chapter (Rule 19b-4), to publish notices of withdrawals of advance notices filed by designated clearing agencies.

(93) Pursuant to section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1)(D), to require a designated clearing agency to provide any information necessary to assess the effect the proposed change would have on the nature or level of risks associated with the designated clearing agency's payment, clearing, or settlement activities and the sufficiency of any proposed risk management techniques.

(94) Pursuant to section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1)(H), to extend the review period for an additional 60 days for proposed changes that raise novel or complex issues and provide the designated clearing agency with prompt written notice of such extension.

* * * * *

(l) Notwithstanding anything in paragraphs (a) through (k) of this

section, in any case in which the Director of the Division of Trading and Markets believes it appropriate, the Director may submit the matter to the Commission.

■ 24. Section 200.30-3a is amended by:

■ a. In the introductory text, removing the words "him or under his" and adding in their place "the Director or under the Director's";

■ b. Adding paragraphs (a)(2) through (14);

■ c. Redesignating paragraph (b) as paragraph (c); and

■ d. Adding new paragraph (b).

The additions read as follows.

§ 200.30-3a Delegation of authority to the Director of the Office of Municipal Securities.

* * * * *

(a) * * *

(2) Pursuant to section 19(b) of the Act, 15 U.S.C. 78s(b), and § 240.19b-4 of this chapter (Rule 19b-4), to publish notices of proposed rule changes filed by the Municipal Securities Rulemaking Board and to approve such proposed rule changes, and to find good cause to approve a proposed rule change earlier than 30 days after the date of publication of such proposed rule change and to publish the reasons for such finding. Pursuant to section 19(b) of the Act, 15 U.S.C. 78s(b), and Rule 19b-4 (§ 240.19b-4 of this chapter), to disapprove a proposed rule change, provided that, with respect to a particular proposed rule change, if two (2) or more Commissioners object in writing to the Director within five (5) business days of being notified by the Director that the Office intends to exercise its authority to disapprove that particular proposed rule change, then the delegation of authority to approve or disapprove that proposal is withdrawn, and the Director shall either present a recommendation to the Commission or institute pursuant to delegated authority proceedings to determine whether the proposed rule change should be disapproved. In addition, pursuant to section 19(b)(10) of the Act, 15 U.S.C. 78s(b)(10), to notify the Municipal Securities Rulemaking Board that a proposed rule change does not comply with the rules of the Commission relating to the required form of a proposed rule change, and to determine that a proposed rule change is unusually lengthy and complex or raises novel regulatory issues and to inform the Municipal Securities Rulemaking Board of such determination.

(3) Pursuant to section 15B(a) of the Act [15 U.S.C. 78o-4(a)], to authorize the issuance of orders granting registration of municipal securities

dealers within forty-five days of the filing of an application for registration as a municipal securities dealer (or within such longer period as to which the applicant consents).

(4)(i) To grant and deny applications for confidential treatment filed pursuant to section 24(b) of the Act (15 U.S.C. 78x(b)) and § 240.24b-2 of this chapter (Rule 24b-2 thereunder);

(ii) To revoke a grant of confidential treatment for any such application.

(5) Pursuant to section 17(b) of the Act (15 U.S.C. 78q(b)), prior to any examination of a registered municipal securities dealer whose appropriate regulatory agency is not the Commission, to notify and consult with the appropriate regulatory agency for such municipal securities dealer.

(6) Pursuant to section 17(c)(3) of the Act, 15 U.S.C. 78q(c)(3), in regard to municipal securities dealers for which the Commission is not the appropriate regulatory agency:

(i) To notify the appropriate regulatory agency of any examination conducted by the Commission of any such municipal securities dealer;

(ii) To request from the appropriate regulatory agency a copy of the report of any examination of any such municipal securities dealer conducted by such appropriate regulatory agency and any data supplied to it in connection with such examination; and

(iii) To furnish to the appropriate regulatory agency on request a copy of the report of any examination of any such municipal securities dealer conducted by the Commission and any data supplied to it in connection with such examination.

(7) Pursuant to section 19(b)(2)(A) of the Act, 15 U.S.C. 78s(b)(2)(A), to extend for a period not exceeding 90 days from the date of publication of notice of the filing of a proposed rule change by the Municipal Securities Rulemaking Board pursuant to section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), the period during which the Commission must by order approve or disapprove the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved and to determine whether such longer period is appropriate and publish the reasons for such determination.

(8) Pursuant to 17 CFR 15c2-12(e) (Rule 15c2-12(e)), to grant or deny exemptions, either unconditionally or on specified terms and conditions, from Rule 15c2-12.

(9) To administer the provisions of § 240.24c-1 of this chapter; provided that access to nonpublic information as defined in § 240.24c-1 shall be provided

only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(10) To administer the provisions of section 24(d) of the Act (15 U.S.C. 78x(d)).

(11) Pursuant to section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), and section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to institute proceedings to determine whether a proposed rule change of the Municipal Securities Rulemaking Board should be disapproved and to provide to the Municipal Securities Rulemaking Board notice of the grounds for disapproval under consideration. If the Commission has not taken action on a proposed rule change for which delegated authority has been withdrawn under paragraph (a)(12) of this section prior to the expiration of the applicable time period specified in section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), then the Director shall institute pursuant to delegated authority proceedings to determine whether the proposed rule change should be disapproved. In addition, pursuant to section 19(b)(2)(B) of the Act, 15 U.S.C. 78s(b)(2)(B), to extend for a period not exceeding 240 days from the date of publication of notice of the filing of a proposed rule change pursuant to section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), the period during which the Commission must issue an order approving or disapproving the proposed rule change and to determine whether such longer period is appropriate and publish the reasons for such determination.

(12) Pursuant to section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C), to temporarily suspend a change in the rules of the Municipal Securities Rulemaking Board.

(13) Pursuant to § 240.19b-4(f)(6)(iii) of this chapter (Rule 19b-4(f)(6)(iii)), to reduce the period before which a proposed rule change can become operative, and to reduce the period between an Municipal Securities Rulemaking Board submission of a filing and a pre-filing notification.

(14) Pursuant to section 36 of the Act (15 U.S.C. 78mm), to review and grant or deny exemptions from the rule filing requirements of section 19(b) (15 U.S.C. 78s(b)) of the Act, in a case where the Municipal Securities Rulemaking Board elects to incorporate by reference one or more rules of another self-regulatory organization, provided that the following specified terms and conditions are met:

(i) The Municipal Securities Rulemaking Board, when electing to incorporate rules of another self-regulatory organization, has requested to

incorporate rules other than trading rules (e.g., the Municipal Securities Rulemaking Board has requested to incorporate rules such as margin, suitability, arbitration);

(ii) The Municipal Securities Rulemaking Board, when electing to incorporate rules of another self-regulatory organization has requested to incorporate by reference categories of rules (rather than to incorporate individual rules within a category); and

(iii) The Municipal Securities Rulemaking Board has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another self-regulatory organization.

(b) To consult on behalf of the Commission pursuant to section 18(t)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1828(t)(1)) with respect to matters described in § 200.19a.

* * * * *

■ 25. Section 200.30-3b is added to read as follows:

§ 200.30-3b Delegation of authority to Director of the Office of Credit Ratings.

Pursuant to the provisions of Public Law 100-181, 101 Stat. 1254, 1255 (15 U.S.C. 78d-1, 78d-2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Director of the Office of Credit Ratings to be performed by the Director or under the direction of the Director by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*):

(1) To grant and deny applications for confidential treatment filed pursuant to section 24(b) of the Act (15 U.S.C. 78x(b)) and § 240.24b-2 of this chapter (Rule 24b-2 thereunder);

(2) To revoke a grant of confidential treatment for any such application.

(b) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*):

(1) To administer the provisions of § 240.24c-1 of this chapter; provided that access to nonpublic information as defined in § 240.24c-1 shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(2) To administer the provisions of section 24(d) of the Act (15 U.S.C. 78x(d)).

§ 200.30-5 [Amended]

■ 26. Section 200.30-5 is amended by:

■ a. In the introductory text:

■ i. Removing the citation “Pub. L. 87-592, 76 Stat. 394” and adding in its place the citation “sections 4A and 4B of the Securities Exchange Act of 1934, as amended,”; and

■ ii. Removing the words “him or under his” and adding in their place the words “the Director or under the Director’s”;

■ b. In paragraph (a)(4)(ii), removing the word “he” and adding in its place the words “the applicant”;

■ c. In paragraph (b-1)(1), removing the word “him” and adding in its place the words “the Director”;

■ d. In paragraph (b-1)(2):

■ i. Removing the word “he” and adding in its place the words “the Director”; and

■ ii. Removing the word “him” and adding in its place the words “the Director”;

■ e. Removing and reserving paragraph (h)(1); and

■ f. In paragraph (h)(2), removing the word “he” and adding in its place the words “the Director”.

■ 27. Section 200.30-6 is amended by:

■ a. In the introductory text:

■ i. Removing “the provisions of Pub. L. 87-592, 76 Stat. 394” and adding in its place “sections 4A and 4B of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78d-1, 78d-2)”; and

■ ii. Removing the words “him or under his” and adding in their place the words “the Regional Director or under the Regional Director’s”;

■ b. Revising paragraph (e).

The revision reads as follows:

§ 200.30-6 Delegation of authority to Regional Directors.

* * * * *

(e) Notwithstanding anything in paragraphs (a) through (d) of this section, in any case in which the Regional Director believes it appropriate, the Regional Director may submit the matter to the Commission.

§ 200.30-7 [Amended]

■ 28. Section 200.30-7 is amended by:

■ a. In the introductory text:

■ i. Removing “the provisions of Pub. L. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1)” and adding in its place “sections 4A and 4B of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78d-1, 78d-2)”; and

■ ii. Removing the words “him or under his” and adding in their place the words “the Secretary or under the Secretary’s”;

■ b. In paragraph (d):

■ i. Removing the citation “§ 200.30-14(i)” and adding in its place the citation “§ 200.30-14(h) and (j)”; and

- ii. Removing the citation “§ 200.30–14(j)” and adding in its place the citation “§ 200.30–14(i) and (k)”;
- c. In paragraph (e):
 - i. Removing the words “the foregoing” and adding in their place “paragraphs (a) through (d) of this section”; and
 - ii. Removing the words “he or she” and adding in their place the words “the Secretary”.

§ 200.30–10 [Amended]

- 29. Section 200.30–10 is amended by:
 - a. In the introductory text:
 - i. Removing “the provisions of Pub. L. 87–592, 76 Stat. 394” and adding in its place “sections 4A and 4B of the Securities Exchange Act of 1934, as amended”; and
 - ii. Removing the word “his” and adding in its place “the Chief Administrative Law Judge’s”;
 - b. In paragraph (a)(6):
 - i. Removing the word “subpenas” and adding “subpoenas”; and
 - ii. Removing “Rule 232 of the Commission’s Rules of Practice, 201.232 of this chapter” and adding in its place “§ 201.232 of this chapter (Rule 232 of the Commission’s Rules of Practice)”; and
 - c. In paragraph (c):
 - i. Removing the words “the foregoing” and adding in their place “paragraphs (a) and (b) of this section”; and
 - ii. Removing the words “he or she” and adding in their place “the Chief Administrative Law Judge”.
- 30. Section 200.30–11 is amended by:
 - a. In the introductory text, removing the words “him or her or under his or her” and adding in their place the words “the Chief Accountant or under the Chief Accountant’s”;
 - b. In paragraph (a)(4):
 - i. Removing the words “he or she” and adding in their place the words “the Chief Accountant”; and
 - ii. Removing the citation “§ 202.140” and adding in its place “§ 202.140 of this chapter”;
 - c. In paragraph (b)(2), removing the words “his or her” and adding in their place the words “the Chief Accountant’s”;
 - d. Redesignating paragraph (c) as paragraph (d);
 - e. Adding new paragraph (c); and
 - f. In newly redesignated paragraph (d):
 - i. Removing the words “the foregoing” and adding in their place “paragraphs (a) through (c) of this section”; and
 - ii. Removing the words “he or she” and adding in their place the words “the Chief Accountant”.

The addition reads as follows:

§ 200.30–11 Delegation of authority to the Chief Accountant.

* * * * *

(c) To administer the provisions of § 240.24c–1 of this chapter; provided that access to nonpublic information as defined in § 240.24c–1 shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

* * * * *

§ 200.30–13 [Amended]

- 31. Section 200.30–13 is amended by:
 - a. In the introductory text, removing the words “him or her, or under his or her” and adding in their place the words “the Chief Financial Officer or under the Chief Financial Officer’s”; and
 - b. In paragraph (c), removing the words “his or her” and adding in their place the words “the Secretary of the Treasury’s”.

§ 200.30–14 [Amended]

- 32. Section 200.30–14 is amended by:
 - a. In the introductory text, removing the words “him or her or under his or her” and adding in their place the words “the General Counsel or under the General Counsel’s”;
 - b. In paragraph (b), removing the words “and amicus curiae” and adding in their place the words “an amicus curiae”;
 - c. In paragraph (h)(1)(iii), removing the word “his” and adding in its place the word “an”;
 - d. In paragraph (i):
 - i. Removing the words “paragraph (g) of this section, the functions described in paragraph (g)” and adding in their place the words “paragraph (h) of this section, the functions described in paragraph (h)”;
 - ii. Removing the words “Executive Assistant to the Chairman” and adding in its place the words “Secretary of the Commission”; and
 - iii. Removing the citation “§ 200.30–16” and adding in its place the citation “§ 200.30–7”; and
 - e. In paragraph (l):
 - i. Removing the citation “paragraphs (g) or (i)” and adding in its place “paragraph (h) or (j)”; and
 - ii. Removing the words “he or she” and adding in their place the words “the General Counsel”.

§ 200.30–15 [Amended]

- 33. Section 200.30–15 is amended by removing the words “him or her or under his or her” and adding in their place the words “the Chief Operating Officer or under the Chief Operating Officer’s”.

§ 200.30–16 [Removed and Reserved]

- 34. Section 200.30–16 is removed and reserved.
- 35. Section 200.30–18 is amended by:
 - a. Revising the section heading and introductory text;
 - b. Removing and reserving paragraphs (b), (e) through (h), and (k)(2);
 - c. In paragraph (l)(1), removing the words “him or her” and adding in their place the words “the member”;
 - d. Redesignating paragraph (m) as paragraph (n);
 - e. Adding new paragraph (m); and
 - f. In newly redesignated paragraph (n):
 - i. Removing the words “the foregoing” and adding in their place “paragraphs (a) through (m) of this section”; and
 - ii. Removing the words “the OCIE” and adding in their place the word “Examinations”.

The addition and revisions read as follows:

§ 200.30–18 Delegation of authority to Director of the Division of Examinations.

Pursuant to the provisions of Public Law 100–181, 101 Stat. 1254, 1255 (15 U.S.C. 78d–1, 78d–2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following authority to the Director of the Division of Examinations (“Examinations”) to be performed by the Director or by such other person or persons as may be designated from time to time by the Chairman of the Commission:

* * * * *

(m) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*):

(1) Under section 15F(b) of the Act (15 U.S.C. 78o–10(b)):

(i) To authorize the issuance of orders granting on-going registration to security-based swap dealers and major security-based swap participants based on the security-based swap dealer’s or major security-based swap participant’s application, pursuant to § 240.15Fb2–1(e) of this chapter (Rule 15Fb2–1(e));

(ii) To authorize the issuance of orders canceling the registration of security-based swap dealers and major security-based swap participants registered pursuant to § 240.15Fb2–1 of this chapter (Rule 15Fb2–1) if such persons are no longer in existence or have ceased to do business as security-based swap dealers or major security-based swap participants, pursuant to § 240.15Fb3–3(a) of this chapter (Rule 15Fb3–3(a)); and

(iii) To determine by order, pursuant to § 240.15Fb3–2(b) of this chapter (Rule 15Fb3–2(b)), whether notices of withdrawal of registration filed by

security-based swap dealers or major security-based swap participants pursuant to section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) shall become effective sooner than the normal 60 day waiting period provided in Rule 15Fb3–2(b) (§ 240.15Fb3–2(b) of this chapter).

* * * * *

By the Commission.

Dated: December 22, 2020.

Vanessa A. Countryman,
Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 342

[Docket No. RM20–14–000]

Five-Year Review of the Oil Pipeline Index

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Order establishing index level.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issues this Final Order concluding its five-year review of the index level used to determine annual changes to oil pipeline rate ceilings. The Commission establishes an index level of Producer Price Index for Finished Goods plus 0.78% (PPI–FG+0.78%) for the five-year period commencing July 1, 2021.

DATES: This order is effective February 16, 2021.

FOR FURTHER INFORMATION CONTACT: Evan Steiner (Legal Information), Office of the General Counsel, 888 First Street NE, Washington, DC 20426, (202) 502–8792

Monil Patel (Technical Information), Office of Energy Market Regulation, 888 First Street NE, Washington, DC 20426, (202) 502–8296

SUPPLEMENTARY INFORMATION:

1. On June 18, 2020, the Commission issued a Notice of Inquiry initiating its five-year review to establish the oil pipeline index level for the July 1, 2021 to June 30, 2026 time period.¹ The NOI requested comment regarding: (a) The proposed index level of Producer Price Index for Finished Goods plus 0.09% (PPI–FG+0.09%); and (b) any alternative

methodologies for calculating the index level.

2. For the reasons discussed below, we adopt an index level of PPI–FG+0.78%. The departure from the NOI results from: (a) Trimming the data set to the middle 80% of cost changes; (b) adopting Designated Carriers’² proposal to adjust the data set to remove the effects of the Commission’s 2018 income tax policy change for Master Limited Partnership (MLP)-owned pipelines; and (c) updated Form No. 6 filings and other corrections to the data set. The Commission’s indexing calculations and other data analysis are contained in Attachment A to this order. As discussed below, we decline to adopt other changes to the index calculation proposed by commenters.

I. Background

A. Establishment of the Indexing Methodology

3. The Energy Policy Act of 1992 (EPA Act 1992) required the Commission to establish a “simplified and generally applicable” ratemaking methodology³ that was consistent with the just and reasonable standard of the Interstate Commerce Act (ICA).⁴ To implement this mandate, the Commission issued Order No. 561⁵ establishing an indexing methodology that allows oil pipelines to change their rates subject to certain ceiling levels as opposed to making cost-of-service filings.⁶

4. In Order No. 561, the Commission committed to review the index level every five years to ensure that it adequately reflects changes to industry

² Designated Carriers include Buckeye Partners, L.P., Colonial Pipeline Company, Energy Transfer LP, Enterprise Products Partners L.P., and Plains All American Pipeline, L.P.

³ Public Law 102–486 1801(a), 106 Stat. 3010 (Oct. 24, 1992). This mandate to establish a simplified and generally applicable ratemaking methodology specifically excluded the Trans-Alaska Pipeline System (TAPS), or any pipeline delivering oil, directly or indirectly, into TAPS. *Id.* 1804(2)(B).

⁴ 49 U.S.C. app. 1 *et seq.*

⁵ *Revisions to Oil Pipeline Regulations Pursuant to Energy Policy Act of 1992*, Order No. 561, 58 FR 58753 (Nov. 4, 1993) FERC Stats. & Regs. ¶ 30,985 (1993) (cross-referenced at 65 FERC ¶ 61,109), *order on reh’g*, Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 (1994) (cross-referenced at 68 FERC ¶ 61,138), *aff’d sub nom. Ass’n of Oil Pipe Lines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996) (*AOPL I*).

⁶ Pursuant to the Commission’s indexing methodology, oil pipelines change their rate ceiling levels effective every July 1 by “multiplying the previous index year’s ceiling level by the most recent index published by the Commission.” 18 CFR 342.3(d)(1). Oil pipelines may adjust their rates to the ceiling levels pursuant to Commission’s regulations so long as no protest or complaint demonstrates that the index rate change substantially diverges from the pipeline’s cost changes. *Id.* 342.3(c)(1).

costs.⁷ The Commission conducted five-year index reviews in 2000,⁸ 2005,⁹ 2010,¹⁰ and 2015.¹¹ In the 2015 review, the Commission established the index level of PPI–FG+1.23%, to be effective for the five-year period beginning July 1, 2016.¹² The index level established herein results from the Commission’s fifth five-year review of the index level.

B. The Kahn Methodology

5. In Order No. 561 and each successive five-year review, the Commission has calculated the index level based upon a methodology developed by Dr. Alfred E. Kahn.¹³ The Kahn Methodology uses pipeline data from Form No. 6, page 700 from the prior five-year period to determine an appropriate adjustment to be applied to PPI–FG. The calculation is as follows. Each pipeline’s cost change on a per-barrel mile basis over the prior five-year period (*e.g.*, the years 2014–2019 in this proceeding) is calculated. In order to remove statistical outliers and spurious data, under the Kahn Methodology, the resulting data set is trimmed to those oil pipelines in the middle 50% of cost changes (middle 50%). The Kahn Methodology then calculates three measures of the middle 50%’s central tendency: The median, the mean, and a weighted mean.¹⁴ The Kahn Methodology calculates a composite by averaging these measures of central tendency and measures the difference between the composite and the PPI–FG over the prior five-year period. The Commission then sets the index level at PPI–FG plus (or minus) this differential.

C. The 2020 Five-Year Review

6. On June 18, 2020, the Commission issued the NOI initiating its five-year

⁷ Order No. 561, FERC Stats. & Regs. ¶ 30,985 at 30,941.

⁸ *Five-Year Review of Oil Pipeline Pricing Index*, 93 FERC ¶ 61,266 (2000), *aff’d in part and remanded in part sub nom. Ass’n of Oil Pipe Lines v. FERC*, 281 F.3d 239 (D.C. Cir. 2002) (*AOPL II*), *order on remand*, 102 FERC ¶ 61,195 (2003), *aff’d sub nom. Flying J Inc. v. FERC*, 363 F.3d 495 (D.C. Cir. 2004).

⁹ *Five-Year Review of Oil Pipeline Pricing Index*, 114 FERC ¶ 61,293 (2006) (2005 Index Review).

¹⁰ *Five-Year Review of Oil Pipeline Pricing Index*, 133 FERC ¶ 61,228 (2010) (2010 Index Review), *reh’g denied*, 135 FERC ¶ 61,172 (2011).

¹¹ *Five-Year Review of the Oil Pipeline Index*, 153 FERC ¶ 61,312 (2015) (2015 Index Review), *aff’d sub nom. Ass’n of Oil Pipe Lines v. FERC*, 876 F.3d 336 (D.C. Cir. 2017) (*AOPL III*).

¹² 2015 Index Review, 153 FERC ¶ 61,312 at P 9.

¹³ The United States Court of Appeals for the District of Columbia Circuit has affirmed the Commission’s use of the Kahn Methodology. *AOPL I*, 83 F.3d at 1433–37; *Flying J Inc. v. FERC*, 363 F.3d at 497–500.

¹⁴ The weighted mean assigns a different weight to each pipeline’s cost change based upon the pipeline’s total barrel-miles.

¹ *Five-Year Review of the Oil Pipeline Index*, 171 FERC ¶ 61,239, at P 1 (2020) (NOI).