

# **SECURITIES AND EXCHANGE COMMISSION**

## **17 CFR Part 200**

**[Release No. 34-62821]**

### **Delegation of Authority to the Director of its Division of Enforcement**

**Agency:** Securities and Exchange Commission.

**Action:** Final rule.

**SUMMARY:** The Commission is amending its rules to delegate authority to the Director of the Division of Enforcement, in connection with the collection of delinquent debts arising from actions to enforce the federal securities laws, to terminate collection activity or discharge debts, to accept or reject offers to compromise debts, and to accept or reject offers to enter into payment plans. This action is intended to facilitate the Commission's debt resolution process.

**EFFECTIVE DATE:** September 8, 2010

**FOR FURTHER INFORMATION CONTACT:** Kenneth H. Hall, 202-551-4936, Office of Chief Counsel, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-6553.

**SUPPLEMENTARY INFORMATION:** The Division of Enforcement seeks actively to collect amounts imposed in the civil actions that it files in federal district court and in administrative proceedings; these amounts represent disgorgement of ill-gotten gains from violations of the federal securities laws and civil penalties. The Division pursues debts through further litigation, including contempt proceedings, against the debtor, and is authorized to refer delinquent debts to the U.S. Department of the Treasury for administrative collection activity, including offset of debts against amounts otherwise owed by the government to the debtor and administrative garnishment of a debtor's wages.

Based upon a debtor's financial condition, as substantiated by creditable evidence, the Commission may determine to accept a debtor's offer to pay the debt in installments, or to compromise, *i.e.*, satisfy the debt by payment of a lesser amount than the outstanding balance. In addition, when all reasonable steps have been taken to collect a debt, the Commission may authorize its staff to terminate collection activity or discharge the debt. Termination of collection activity preserves the debt as an obligation of the debtor, and does not bar future activity to collect the debt should that become practicable. Discharge of the debt is essentially a forgiveness of the debtor's obligation to pay, which may have tax consequences for the debtor. The Commission is delegating to the Director of the Division of Enforcement the authority to resolve certain debts arising from actions to enforce the federal securities laws; in particular, the Director is authorized to terminate collection activity or discharge debts, to accept offers to compromise debts (when the principal amount of the debt is \$5 million or less) or to reject any offers to compromise debts, and to accept or reject offers to enter into payment plans. This delegation will improve the efficiency of the Division's debt collection program.

In any case the Division Director deems appropriate, the recommendation that a debt be resolved through termination of collection activity, discharge or by payment plan or compromise, may be submitted to the Commission for review.

Administrative Law Matters:

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act ("APA") (5 U.S.C. 553(b)(3)(A)) that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, notice, opportunity for public comment, and publication of the amendment prior to its effective date are unnecessary. For the same reason, and because this amendment does not substantively

affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(3)(C), are not applicable. Additionally, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other law, 5 U.S.C. 603, are not applicable. Section 23(a)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78w(a)(2), requires the Commission, in adopting rules under that Act, to consider the anticompetitive effects of any rules it adopts. The Commission does not believe that the amendment the Commission is adopting today will have any impact on competition. Finally, this amendment does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended.

**List of Subjects in 17 CFR Part 200**

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

**Text of Amendment**

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

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

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

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

\* \* \* \* \*

2. Section 200.30-4 is amended by adding paragraph (a)(15) to read as follows:

**§ 200.30-4 Delegation of authority to Director of Division of Enforcement.**

\* \* \* \* \*

(a) \* \* \*

(15) With respect to debts arising from actions to enforce the federal securities laws, to terminate collection activity or discharge debts, to accept offers to compromise debts when the principal amount of the debt is \$5 million or less, to reject offers to compromise debts, and to accept or reject offers to enter into payment plans.

\* \* \* \* \*

By the Commission

Elizabeth M. Murphy  
Secretary

Dated: September 1, 2010