

Inability to Pay: Rule, Instructions, and Form D-A

A respondent who claims inability to pay monetary sanctions should read the below rule and instructions, and complete and file the attached Form D-A together with the required attachments listed on page 7, section K, of the form.

Rule 630. Inability to pay disgorgement, interest or penalties.

(a) *Generally.* In any proceeding in which an order requiring payment of disgorgement, interest or penalties may be entered, a respondent may present evidence of an inability to pay disgorgement, interest or a penalty. The Commission may, in its discretion, or the hearing officer may, in his or her discretion, consider evidence concerning ability to pay in determining whether disgorgement, interest or a penalty is in the public interest.

(b) *Financial disclosure statement.* Any respondent who asserts an inability to pay disgorgement, interest or penalties may be required to file a sworn financial disclosure statement and to keep the statement current. The financial statement shall show the respondent's assets, liabilities, income or other funds received and expenses or other payments, from the date of the first violation alleged against that respondent in the order instituting proceedings, or such later date as specified by the Commission or a hearing officer, to the date of the order requiring the disclosure statement to be filed. By order, the Commission or the hearing officer may prescribe the use of the Disclosure of Assets and Financial Information Form (*see* Form D-A at § 209.1 of this chapter) or any other form, may specify other time periods for which disclosure is required, and may require such other information as deemed necessary to evaluate a claim of inability to pay.

(c) *Confidentiality.* Any respondent submitting financial information pursuant to this rule or Rule 410(c) may make a motion, pursuant to Rule 322, for the issuance of a protective order against disclosure of the information submitted to the public or to any parties other than the Division of Enforcement. Prior to a ruling on the motion, no party receiving information as to which a motion for a protective order has been made may transfer or convey the information to any other person without the prior permission of the Commission or the hearing officer.

(d) *Service required.* Notwithstanding any provision of Rule 322, a copy of the financial disclosure statement shall be served on the Division of Enforcement.

(e) *Failure to file required financial information: sanction.* Any respondent who, after making a claim of inability to pay either disgorgement, interest or a penalty, fails to file a financial disclosure statement when such a filing has been ordered or is required by rule may, in the discretion of the Commission or the hearing officer, be deemed to have waived the claim of inability to pay. No sanction pursuant to Rule 155 or 180 shall be imposed for a failure to file such a statement.

FORM D-A

17 CFR 209.1 Form D-A: Disclosure of assets and financial information.

(a) Rules 410 and 630 of the Rules of Practice (17 CFR 201.410 and 201.630) provide that under certain circumstances a respondent who asserts or intends to assert an inability to pay disgorgement, interest or penalties may be required to disclose certain financial information. Unless otherwise ordered, this form may be used by individuals required to supply such information.

(b) The respondent filing Form D-A is required promptly to notify the Commission of any material change in the answer to any question on this form.

(c) Form D-A may not be withheld from the interested division. A respondent making financial information disclosures on this form after the institution of proceedings may make a motion, pursuant to Rule 322 of the Commission's Rules of Practice (17 CFR 201.322), for the issuance of a protective order to limit disclosure to the public or parties other than the interested division of the information submitted on Form D-A. A request for a protective order allows the requester an opportunity to justify the need for confidentiality. The making of a motion for a protective order, however, does not guarantee that disclosure will be limited.

(d) No party receiving information for which a motion for a protective order has been made may transfer or convey the information to any other person prior to a ruling on the motion without the prior permission of the Commission or a hearing officer.

(e) A person making financial information disclosures on Form D-A prior to the institution of proceedings, in connection with an offer of settlement or otherwise, may request confidential treatment of the information pursuant to the Freedom of Information Act. See the Commission's Freedom of Information Act ("FOIA") regulations, 17 CFR 200.83. A request for confidential treatment allows the requester an opportunity to substantiate the need for confidentiality. No

determination as to the validity of any request for confidential treatment will be made until a request for disclosure of the information under FOIA is received.

FORM D-A

Model Disclosure of Assets and Financial Information Form

Instructions: The Commission's Rules of Practice provide that under certain circumstances a respondent who asserts or intends to assert an inability to pay disgorgement, interest or penalties may be required to disclose certain financial information. See Rules 410 and 630. Unless otherwise ordered, this form may be used by individuals required to supply such information. Partnerships, corporations or other entities should submit a financial statement, including an income statement, balance sheet and federal tax returns for each year from the year of the earliest violation alleged against the entity in the order instituting proceedings to the present.

The respondent filing this form is required promptly to notify the Commission of any material change in the answer to any question on this form.

A respondent making financial information disclosures on this form or in another manner pursuant to the requirements of Rule 410 or Rule 630 may submit the form with a motion for a protective order pursuant to Rule 322 of the Commission's Rules of Practice. Any other person submitting this form may request that the Commission afford the information submitted confidential treatment under the Freedom of Information Act under the Commission's Freedom of Information Act ("FOIA") regulations, see 17 CFR 200.83. A request for confidential treatment allows the requester an opportunity to justify the need for confidentiality. A request for confidential treatment does not, however, guarantee confidentiality.

Notwithstanding any request for a protective order or for confidential treatment, copies of the financial disclosure statement shall be served on the interested division and will be included in the record of the proceeding. See Rule 630(d). If confidential treatment is sought, notice that a financial disclosure statement and request for confidential treatment have been filed shall be served on all other parties.

No party receiving information for which confidential treatment has been requested may transfer or convey the information to any person or entity not a party to the proceeding without the prior permission of the Commission or a hearing officer.

Complete and file the Form D-A that begins on the next page.

**United States of America
Before the
Securities and Exchange Commission**

In the Matter of _____

_____)
)
)
)
)

Administrative
Proceeding File No.
3- _____

Part I: Summary Financial Disclosure Statement

Full Name: _____
Last First Middle

A. Net Worth

- 1. Assets: (from Part II.B.) _____
- 2. Liabilities: (from Part II.C.) _____
- 3. Net Worth: (from Part II.D.) _____

B. Income and Payments Received

- 1. Gross income reported on most recent federal tax filing: _____
- 2. Last 12 calendar months (from Part II.E.): _____ *

* If this amount, divided by 12, does not equal your current monthly income, please explain the discrepancy on an attached sheet.

C. Expenses

- 1. Last 12 calendar months (from Part II.F.): _____ *

* If this amount, divided by 12, does not equal your current monthly expenses, please explain the discrepancy on an attached sheet.

**United States of America
Before the
Securities and Exchange Commission**

In the Matter of _____

_____)
)
)
)
)

Administrative
Proceeding File No.
3- _____

Part II: Detailed Financial Disclosure Information

Full Name: _____
Last First Middle

If this form is filled out by a respondent requesting a protective order pursuant to Rule of Practice 322 (17 CFR 201.322), please check the box below.

PROTECTIVE ORDER REQUESTED. Disclosure of this document is prohibited unless specifically authorized below. This document should be placed in a nonpublic file.

For Use Only by the Secretary of the Commission:

By order of _____, the Commission authorized this form to be placed in a public file.
Date

Secretary's Signature

A. Scope of Information Requested

Requests for information about you include a request for the same information about your spouse (unless you are legally separated and living apart), minor children and any other dependents.

B. Assets

List all assets owned by you, directly or indirectly, and all assets that are subject to your enjoyment or control, regardless of whether legal title or ownership is held in your name.

- 1. Cash _____
- 2. Listed Securities _____
- 3. Surrender Value of Insurance _____
- 4. Loans, Notes, Accounts Receivable Due to You _____
- 5. Real Estate _____
- 6. Furniture _____
- 7. Jewelry, Art, Rugs, Silver Collectibles, Other Valuables _____
- 8. Automobiles _____
- 9. Unlisted Securities _____
- 10. Partnership Interests (non-securities) _____
- 11. Net Value of Ownership Interest in Business _____
- 12. IRA, Keogh, 401(k), Annuity or Pension Accounts _____
- 13. Other (Itemize):

- 14. **Total Assets** _____

C. Liabilities

List all your liabilities including, but not limited to, the items listed below.

- 1. Mortgages _____
- 2. Auto Loans _____
- 3. Credit Card Debt _____
- 4. Margin Loans _____
- 5. Insurance Policy Loans _____
- 6. Installment Loans _____
- 7. Other Loans, Notes or Accounts Payable _____
- 8. Accrued Real Estate Taxes _____
- 9. Judgments/Settlements Owed _____
- 10. Other (Itemize):

- 11. **Total Liabilities** _____

D. Net Worth (assets minus liabilities) _____

E. Income/Payments Received

List all income or other payments received from any source in the last 12 months by you, or by any other person or entity if you have any right, power or authority to control or enjoy the use of the money or property received by such other person or entity. Identify the source, the recipient and the amount of payment, including but not limited to the items listed below.

<u>Description/Purpose</u>	<u>Source</u>	<u>Amount</u>
1. Salary/Wages	_____	_____
2. Commissions/Advances	_____	_____
3. Bonuses	_____	_____
4. Dividends	_____	_____
5. Interest	_____	_____
6. Distributions of Capital	_____	_____
7. Annuity, Pension Payments	_____	_____
8. Rents/Royalties (net)	_____	_____
9. Sales of Assets (net)	_____	_____
10. Repayment of Loans	_____	_____
11. Alimony/Child Support	_____	_____
12. Gifts over \$1,000	_____	_____
13. Payments by Others on Your Behalf (see section I below)	_____	_____
14. Other (itemize):		
_____	_____	_____
_____	_____	_____
15. Total Income/Receipts		_____

16. If you anticipate unusual income in the coming 12 months, please explain.

F. Expenses/Disbursements

List all your expenditures for the past 12 months, including but not limited to the items listed below. Identify the purpose and the amount of each expenditure.

<u>Description</u>	<u>Amount</u>
1. Mortgage/Rent	_____
2. Food	_____
3. Utilities	_____
4. Payments on Loans	_____
5. Real Estate Taxes	_____
6. Insurance Premiums	_____
7. Medical Expenses	_____
8. Automobile Expenses	_____
9. Alimony/Child Support	_____
10. Income Taxes (federal, state and local)	_____
11. Other Expenses (itemize):	
_____	_____
_____	_____
_____	_____
_____	_____
12. Total Expenses/Disbursements	_____

13. If you anticipate unusual expenses in the coming 12 months, please describe them.

G. Asset Schedules

1. For each asset or class of assets included in Section II.B(5-13) with a fair market value greater than \$2,000, describe the asset(s), state the form of ownership (e.g, individual, joint, beneficial interest), provide a fair market value, and explain how fair market value was determined (e.g, appraisal, comparison, estimate, etc.).
2. List all securities or commodities brokerage accounts and accounts at banks or other financial institutions in your name, under your control, in which you have or had a beneficial interest, or to which you are or were a signatory since the date of the first violation alleged against you. For each account, specify the location of the account, account number, balance and balance date. Please identify all accounts, regardless of their location.
3. List all 401(k) plans, pension plans, Keogh plans, individual retirement accounts, profit sharing plans, thrift plans, life insurance policies or annuities in which you have an interest, vested or otherwise. For each account, specify the account name, the location of the account, account number, balance and balance date. For each account state whether you are permitted to borrow against or make withdrawals from the account.

4. Identify the location and account number of all your safe deposit boxes. Include any boxes in which you have property or papers, whether or not you are the account holder.
5. Identify all patents, trademarks, service marks, royalty agreements, licenses, or other general intangibles in which you have an interest.

H. Liability Schedules

1. For each liability greater than \$2,000 listed in Section II.C., indicate the creditor, the account number, if any; the date incurred; the original amount of the liability; the length of the obligation; the interest rate; the collateral or security, if any; the outstanding balance; and the name(s) and address(es) of any other obligee(s). State whether you are related to or have a personal or social relationship with the creditor, its management or owners.
2. List all credit cards and lines of credit in your name or to which you are a signatory, including the name of the credit issuer, account number, credit limit, and amount of indebtedness.
3. List all contingent liabilities. Include any notes on which you are a co-maker, guarantor or endorser and all pending lawsuits in which you are named as a defendant.

I. Schedules of Income, Receipts and Disbursements

1. Disbursements by Others on Your Behalf. List any payments or disbursements having a value of \$1,000 or greater made by any other person or entity to a third party on your behalf since the date of the first violation alleged against you. Include the amount of the disbursement and the name and address of the person or entity who made the disbursement. If no such disbursements have been made, please so state.
2. Fringe Benefits. List any fringe benefits, such as the lease of an automobile, currently provided by your employer.
3. Asset Transfers by You. List any assets or property with a cost or fair market value of \$2,000 or more that you transferred or otherwise disposed of since the date of the first violation alleged against you. State the value of the asset, the consideration received, and your relationship with the transferee. If no such transfers have been made, please so state.
4. Additional Deposits by You. Identify any financial institution accounts (other than those identified in section G.2. above) in which you have deposited more than \$2,000 since the date of the first violation alleged against you. If no such deposits have been made, please so state.
5. Trusts and Inheritances Already Vested. Describe any vested interest in a trust or will pursuant to which you are receiving or will receive a devise, bequest, other inheritance or distribution.
6. Current and Prior Business Relations. List any sole proprietorships, joint ventures, corporations or other business enterprises in which you are now or have been a principal, holder of 10 percent or more of the issued stock, officer, director, manager or chief operating officer at any time since the date of the first violation alleged against you.

J. Personal Information

Current residence:

Street	Unit	
City	State	Zip Code

Current phone number(s):

Home	()	
Business	()	
Car	()	
Other	()	

Social Security Number: _____

List any other names (including a maiden name) you have used.

If currently married, please state your spouse's name, age and social security number, whether or not he or she resides with you, and the date of your marriage.

If you have previously been married, please state the name of your former spouse(s) and the date of your marriage(s). If the date of a marriage was after the date of the first violation alleged against you, include your former spouse's social security number and last known address.

Identify all dependents. For each, please state his or her age, social security number, and whether or not he or she resides with you.

Identify any other members of your household. For each, please state his or her age and relationship to you.

K. Attachments

1. Attach any federal tax returns filed by you (including personal, trust, or business returns) for the year of the first violation alleged against you and all subsequent years.
2. Attach any federal gift tax returns filed by you for the year of the first violation alleged against you and all subsequent years.
3. Attach any financial statement that you prepared for any purpose (e.g., a financial statement provided to a bank to secure a loan) in the year of the first violation alleged against you and all subsequent years.
4. If you are a trustee, executor or administrator, attach a copy of the instrument appointing you as such.

5. List of Attachments Submitted With This Form:

Please list all financial statements, tax returns and other materials submitted with this form. Do not submit originals. Make sure all copies are legible. Illegible copies do not satisfy the requirements for filing your financial disclosure information.

L. Declarations and Signature

I, _____, hereby declare under penalty of perjury that I have examined the information given in this statement and attached hereto and, to the best of my knowledge and belief, it is true, correct, and complete. I further declare that I have no assets, owned either directly or indirectly, or income of any nature other than as shown in, or attached to, this statement. I understand that any material misstatements or omissions made by me herein, or in any attachments hereto, may constitute criminal violations, punishable under 18 U.S.C. 1001 or other statutes.

The Securities and Exchange Commission and any of its staff are authorized to obtain any such information from credit bureaus, financial institutions or any other source as may be needed to verify the statements made on this form.

The statements herein and attached hereto represent my financial condition as of _____ .
Date

Signature

Date

Sworn before me this _____ day of _____, 20____ .

[Seal]

Notary Public

My commission expires on _____
Date