

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

(Release No. 34-59829)

Delegation of Authority to the General Counsel

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules to delegate to the General Counsel its authority to designate officers in authorized investigations conducted by the Office of General Counsel. The Office of General Counsel of the Commission has the authority to conduct authorized investigations under Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) of possible violations by attorneys of the Commission Rules of Practice. In connection with these investigations, it may be necessary from time to time to amend the formal orders to add or remove officers designated to conduct the inquiry.

A delegation of authority to the General Counsel to designate officers would spare the Commissioners and their staffs from having to review matters in which the Commission has already issued an order and which implicate no policy issues. This would allow the General Counsel to designate additional officers to take testimony and conduct investigations in those matters or similarly remove officer designations as may be necessary. This authority is identical to that granted to the Director of the Division of Enforcement with respect to authorized investigations conducted by that Division.

EFFECTIVE DATE: May 4, 2009

FOR FURTHER INFORMATION CONTACT: Donna McCaffrey, 202-551-5174, Office of

General Counsel, Office of Litigation and Administrative Practice, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9612.

SUPPLEMENTARY INFORMATION: Section 21 (a)(1) of the Securities Exchange Act of 1934 ("Exchange Act") authorizes the Commission to conduct investigations regarding violations of the Exchange Act or its related rules or regulations. As part of such investigations, under Section 21(b) of the Exchange Act, the Commission may designate officers to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records which the Commission deems relevant or material to the inquiry.

The Commission is delegating to the General Counsel the authority to designate additional officers in authorized investigations and to remove designated officers as necessary. This delegated authority will also apply to already authorized investigations by the Commission, so the delegation will allow the General Counsel to designate additional officers for an authorized investigation or rescind designations as the investigation proceeds.

Nevertheless, the staff may submit matters to the Commission for consideration, as it deems appropriate.

ADMINISTRATIVE LAW MATTERS:

The Commission finds, in accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(A)), that this revision relates solely to agency organization, procedures, or practices. Therefore, the provisions of the APA regarding notice of the proposed rulemaking and opportunities for public participation are not applicable.¹ For the same reason, and because these amendments do not substantially affect the rights or obligations of non-agency parties, the

¹ 5 U.S.C. 533.

provisions of the Small Business Regulatory Enforcement Fairness Act are not applicable.² Additionally, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other law, are not applicable.³ Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Act, to consider the anticompetitive effects of any rules it adopts. The Commission does not believe this rule will have any impact on competition because it imposes no new burdens on parties in authorized investigations. Finally, these amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.⁴ Accordingly, it is effective May 4, 2009.

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 200.30-14 is amended by adding paragraph (m) to read as follows:

² 5 U.S.C. 804(3)(C).

³ 5 U.S.C. 603.

⁴ 44 U.S.C. 3501 *et seq.*

200-30-14 Delegation of authority to the General Counsel.

(m) (1) 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 pursuant to Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) including for possible violations by attorneys of Rule 102(e) of the Commission Rules of Practice (17 CFR 201.102(e)).

(2) To terminate the authority of officers 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 pursuant to Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) including for possible violations by attorneys of Rule 102(e) of the Commission Rules of Practice (17 CFR 201.102(e)).

By the Commission.

Elizabeth M. Murphy
Secretary

Date: April 28, 2009