

## **SECURITIES AND EXCHANGE COMMISSION**

17 CFR Part 200

[Release No. 34-53755]

### **DESCRIPTION OF DUTIES OF THE GENERAL COUNSEL**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (Commission) is amending its description of the duties of the General Counsel to include preliminary investigations, in which no process is issued or testimony compelled, where it appears that an attorney appearing and practicing before the Commission may have violated Rule 102(e) of the Commission's Rules of Practice. The Office of the General Counsel of the Commission already has the authority to conduct Commission-authorized proceedings and formal investigations under Section 21 of the Securities Exchange Act of 1934 (Exchange Act), including for violations by attorneys of Rule 102(e) of the Commission's Rules of Practice.

An amendment of the description of the duties of the General Counsel to include preliminary investigations makes it clear that the General Counsel may gather evidence in Rule 102(e) cases without compulsory process where witnesses are willing to testify or provide information voluntarily. This amendment would enable the General Counsel to identify, through informal means, those matters that do not warrant full-blown investigation and compulsory process.

**EFFECTIVE DATE:** May 3, 2006

**FOR FURTHER INFORMATION CONTACT:** Laura Walker, 202-551-5031, Office of the General Counsel, Office of Litigation and Administrative Practice.

**SUPPLEMENTARY INFORMATION:** Section 21(a)(1) of the Exchange Act authorizes the Commission to conduct investigations regarding violations of the Exchange Act or its related rules or regulations. Under 17 CFR 201.102(e), the Commission may discipline attorneys who practice before it who lack integrity or competence, engage in improper professional conduct, or who are determined to have violated the federal securities laws. Under 17 CFR 200.21(a), the General Counsel is responsible for conducting administrative proceedings relating to the disqualification of lawyers from practice before the Commission.

The Commission is amending its description of the duties of the General Counsel to include preliminary investigations, in which no process is issued or testimony compelled, where it appears that an attorney may have violated Rule 102(e) of the Commission's Rules of Practice.

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. It is therefore not subject to the provision of the APA requiring notice and opportunity for comment. Accordingly, it is effective May 3, 2006.

**TEXT OF AMENDMENT:**

List of Subjects in 17 CFR Part 200

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

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. 77s, 77o, 77sss, 78d, 78d-1, 78d-2, 78w, 7811(d), 78mm, 79t, 80a-37, 80b-11, and 7202, unless otherwise noted.

\* \* \* \* \*

2. Section 200.21 is amended by revising the fourth sentence of paragraph (a) to read as follows:

§ 200.21 The General Counsel.

(a) \* \* \* In addition, he or she is responsible for advising the Commission at its request or at the request of any division director or office head, or on his or her 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. \* \* \*

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By the Commission

Nancy M. Morris  
Secretary

May 3, 2006