

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 200

[Release No. 34-57262]

Delegation of Authority to the Director of the Division of Corporation Finance

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending its Rules of Organization and Program Management to delegate its authority to the Director of the Division of Corporation Finance to grant or deny exemptions pursuant to Section 36 of the Securities Exchange Act of 1934 from the requirement for registrants in connection with an annual meeting of security holders to furnish an annual report to security holders that contains audited financial statements as required by rules under the Exchange Act under certain limited circumstances. The delegation of authority is intended to conserve Commission resources by permitting the staff to review and act on exemptive applications under Section 36 when appropriate.

EFFECTIVE DATE: February 7, 2008.

FOR FURTHER INFORMATION CONTACT: Celeste M. Murphy, Special Counsel, at (202) 551-3440, Office of Mergers and Acquisitions, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3628.

SUPPLEMENTARY INFORMATION:

The Commission today announces an amendment to its Organization and Program Management Rules governing Delegations of Authority to the Director of the Division of Corporation Finance.¹ The amendment adds to Rule 30-1 a new paragraph (e)(18) authorizing the Director to grant or deny exemptions from the requirements of Rule 14a-3(b) and Rule 14c-3(a) under the Exchange Act, pursuant to Section 36 of the Exchange Act, for audited financial statements to be included in the annual report to be furnished to security holders in connection with an annual meeting of security holders.

A number of companies have faced the dilemma of being required to hold a meeting of security holders when they are unable to deliver current audited financial statements. These companies may be compelled to hold meetings of their security holders pursuant to the provisions of certain state corporation laws, despite the inability to comply with the requirements of Rule 14a-3(b) and Rule 14c-3(a) under the Exchange Act. Although these situations are infrequent, we recognize the need to flexibly address this conflict in limited circumstances.

Section 36(a) provides that “the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”²

¹ 17 CFR 200.30-1.

² 15 U.S.C. 78mm(a).

Section 4A(a) of the Exchange Act grants the Commission “the authority to delegate, by published order or rule, any of its functions to a division of the Commission.”³

The delegation of authority to the Director is intended to conserve Commission resources by permitting the staff, pursuant to Section 36(a), to review and act on applications for exemption from Rule 14a-3(b) and Rule 14c-3(a) in cases where upon examination, the matter does not appear to present significant issues that have not been addressed previously or to raise questions of fact or policy indicating that the public interest or the interest of investors warrants that the Commission consider the matter. Nevertheless, the staff may submit matters to the Commission for consideration as it deems appropriate. In addition, under Section 4A(b) of the Exchange Act, the Commission retains discretionary authority to review upon its own initiative or, pursuant to Commission Rule 430, upon application by a party adversely affected, any exemption granted or denied by the Director pursuant to delegated authority.⁴

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act,⁵ 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.

³ 15 U.S.C. 78d-1(a).

⁴ For information concerning the filing of exemptive relief applications, see Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998); 17 CFR 240.0-12.

⁵ 5 U.S.C. 553(b)(3)(A).

List of Subjects in 17 CFR Part 200

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

TEXT OF AMENDMENT

In accordance with the preamble, the Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations 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 200.30-1 is amended by adding paragraph (e)(18) to read as follows:

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

* * * * *

(e) * * *

(18) To review and, either unconditionally or upon specified terms and conditions, grant or deny exemptions from the requirements of Rules 14a-3(b) and 14c-3(a) (§§ 240.14a-3(b) and 240.14c-3(a) of this chapter) under the Act pursuant to Section 36 of the Act, in cases where upon examination, the matter does not appear to the Director to present significant issues that have not been addressed previously or to raise questions of fact or policy indicating that the public interest or the interest of investors

warrants that the Commission consider the matter, where an applicant demonstrates that it:

- (i) Is required to hold a meeting of security holders as a result of an action taken by one or more of the applicant's security holders pursuant to state law;
 - (ii) Is unable to comply with the requirements of Rule 14a-3(b) or Rule 14c-3(a) under the Act for audited financial statements to be included in the annual report to security holders to be furnished to security holders in connection with the security holder meeting required to be held as a result of the security holder demand under state law;
 - (iii) Has made a good faith effort to furnish the audited financial statements before holding the security holder meeting;
 - (iv) Has made a determination that it has disclosed to security holders all available material information necessary for the security holders to make an informed voting decision in accordance with Regulation 14A or Regulation 14C (§§240.14a-1 – 240.14b-2 or §§240.14c-1 – 240.14c-101 of this chapter); and
- Absent a grant of exemptive relief, it would be forced to violate either state law or the rules and regulations administered by the Commission.

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By the Commission.

Nancy M. Morris
Secretary

Dated: February 4, 2008