

SAMPLE LABEL 13

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By direction of the Commission.

Donald S. Clark,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-62690]

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 remove a sunset provision from the delegation of authority to the Director of the Division of Enforcement to issue formal orders of investigation. Formal orders designate the enforcement staff authorized to issue subpoenas in connection with investigations under the Federal securities laws. On August 5, 2009, the Commission issued a release authorizing the Division Director to issue such orders for a one-year period beginning on August 11, 2009 and ending on August 11, 2010. The sunset provision was included to permit the Commission to evaluate the Division's use of the delegation and to consider whether extension of the delegation was appropriate.

DATES: *Effective Date:* August 16, 2010.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Hall, Assistant Chief Counsel, 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 Commission is authorized to conduct investigations of possible violations of the Federal securities laws, which provide that "any member of the Commission or any officer designated by it is empowered 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." Section 21(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(b). *See also* Section 19(c) of the Securities Act of 1933, 15 U.S.C. 77(c); Section 42(b) of the Investment Company Act of 1940, 15 U.S.C. 80a-41(b); and Section 209(b) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-9(b). The Commission issues formal orders of investigation that authorize specifically-designated enforcement staff to exercise the Commission's statutory power to subpoena witnesses and take the other actions authorized by the relevant cited provisions. The Commission delegated authority to issue formal orders of investigation to the Director of the Division of Enforcement on August 11, 2009. "Delegation of Authority to Director of Division of Enforcement," 74 FR 40068 (Aug. 11, 2009). The delegation was made effective for a one-year period, ending on August 11, 2010, to allow Commission review of the Division's exercise of formal order authority.

The Commission has determined that it is appropriate to extend the Division's authority to issue formal orders of investigation. In making this determination, the Commission considered the increased efficiency in the Division's conduct of its investigations permitted by the delegation, and the Division's continued effective communication and coordination in addressing pertinent legal and policy issues with other Commission Divisions and Offices when formal order authority is invoked.

Administrative Law Matters

The Commission finds, in accordance with 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, the provisions of the APA regarding notice of the proposed rulemaking, opportunities for public participation, and publication of the amendment prior to its effective date, 5 U.S.C. 553, are not applicable. 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,

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. Because the amendment imposes no new burdens on parties in investigations, the Commission does not believe it 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. Accordingly, the amendment is effective August 16, 2010.

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 revising paragraph (a)(13) to read as follows:

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

* * * * *

(a) * * *

(13) To order the making of private investigations pursuant to section 19(c) of the Securities Act of 1933 (15 U.S.C. 77s(c)), section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(b) and section 209(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(b)).
* * * * *

Dated: August 11, 2010.

By the Commission.

Elizabeth M. Murphy,
Secretary.

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