

# SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Part 200

Release No. 34-65742

### Reporting Line for the Commission's Ethics Counsel

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission ("Commission") is amending its rules to reflect that the Commission's Office of the Ethics Counsel is now a stand-alone Office of the Commission and that the head of the Office, the Ethics Counsel, reports directly to the Chairman of the Commission.

**EFFECTIVE DATE:** [Insert date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Shira Pavis Minton, Ethics Counsel, at (202) 551-7938, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

### SUPPLEMENTARY INFORMATION

#### I. Discussion

On September 16, 2011, the Commission's Office of the Inspector General ("OIG") issued a report recommending, among other things, that the Commission's Ethics Counsel report directly to the Chairman, rather than to the General Counsel.<sup>1</sup> On October 14, 2011, pursuant to Section 1 of Reorganization Plan No. 10 of 1950<sup>2</sup>, the

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<sup>1</sup> Report of Investigation No. OIG-560, Sept. 16, 2011, pp. 116-117.

<sup>2</sup> 15 F.R. 3175, 64 Stat. 1265 (May 24, 1950).

Chairman implemented that recommendation and made the Office of the Ethics Counsel a stand-alone Office of the Commission.

These amendments conform the Commission's regulations, in part 200 of Title 17 of the Code of Federal Regulations, to the changes to the reporting line and organization of the Office of the Ethics Counsel. They do so by removing several references to oversight of the Ethics Counsel by the General Counsel. In addition, the amendments clarify that the Ethics Counsel, not the General Counsel, serves as Counselor to the Commission and its staff with regard to ethical and conflicts of interest questions and acts as the Commission's liaison on such matters with the Office of Administrative and Personnel Management, the Office of the Inspector General and the Department of Justice.

## **II. Related Matters**

### **A. Administrative Procedure Act and Other Administrative Laws**

The Commission has determined that these amendments to its rules relate solely to the agency's organization, procedure, or practice. Accordingly, the provisions of the Administrative Procedure Act regarding notice of proposed rulemaking and opportunity for public participation are not applicable.<sup>3</sup> The Regulatory Flexibility Act, therefore, does not apply.<sup>4</sup> Because these rules relate solely to the agency's organization, procedure, or practice and do not substantially affect the rights or obligations of non-agency parties, they are not subject to the Small Business Regulatory Enforcement

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<sup>3</sup> 5 U.S.C. 553(b).

<sup>4</sup> 5 U.S.C. 601 - 612.

Fairness Act.<sup>5</sup> Finally, these amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.<sup>6</sup>

**B. Cost-Benefit Analysis**

The Commission is sensitive to the costs and benefits imposed by its rules. The amendments adopted today are procedural in nature and will produce the benefit of conforming the Commission's rules to the changes to the reporting line and organizational structure of the Office of the Ethics Counsel. The Commission also believes that these rules will not impose any costs on non-agency parties, or that if there are any such costs, they are negligible.

**C. Consideration of Burden on Competition**

Section 23(a)(2) of the Exchange Act requires the Commission, in making rules pursuant to any provision of the Exchange Act, to consider among other matters the impact any such rule would have on competition. The Commission does not believe that the amendments that the Commission is adopting today will have any impact on competition.

**STATUTORY AUTHORITY**

The amendments to the Commission's rules are adopted pursuant to 15 U.S.C. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37, 80b-11, and 7202.

**List of Subjects in 17 CFR Part 200**

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

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<sup>5</sup> 5 U.S.C. 804.

<sup>6</sup> 44 U.S.C. 3501 - 3520.

## TEXT OF AMENDMENTS

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**

#### **SUBPART A – ORGANIZATION AND PROGRAM MANAGEMENT**

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.

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2. In § 200.21 paragraph (a), remove the 6<sup>th</sup> sentence, beginning with “He or she is responsible”, and the 7<sup>th</sup> sentence, beginning with “He or she serves”.

3. In § 200.21a:

a. In paragraph (a), remove the phrase “within the Office of the General Counsel of the Commission shall oversee compliance with subpart M of this part and 5 CFR part 2635.”, and add in its place, “is responsible for administering the Commission’s Ethics Program and for interpreting subpart M of this part and 5 CFR part 2635. He or she serves as Counselor to the Commission and its staff with regard to ethical and conflicts of interest questions and acts as the Commission’s liaison on such matters with the Office of Administrative and Personnel Management, the Office of the Inspector General and the Department of Justice.”;

b. In paragraph (b), remove the phrase “Subject to the oversight of the General Counsel or his or her delegate, the” and add in its place the word “The”;

**SUBPART M – REGULATION CONCERNING CONDUCT OF MEMBERS AND EMPLOYEES AND FORMER MEMBERS AND EMPLOYEES OF THE COMMISSION**

4. The authority citation for Part 200, Subpart M, continues to read as follows:

**Authority:** 15 U.S.C. 77s, 77sss, 78w, 80a-37, 80b-11; E.O. 11222, 3 CFR, 1964-1965 Comp., p. 36; 5 CFR 735.104 and 5 CFR 2634; and 5 CFR 2635, unless otherwise noted.

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5. In § 200.735-11, remove the words “Commission’s Office of the General Counsel’s” in paragraphs (c), (d) and (e);

6. In § 200.735-15:

(a) In paragraphs (a), (b), (c), and (d), remove the words “General Counsel” and add in their place the words “Ethics Counsel”;

(b) In paragraphs (b), (e), and (f), remove the phrase “Commission’s Office of the General Counsel’s”.

7. In § 200.735-17, remove the phrase “Under the general direction of the General Counsel, the”, and add in its place the word “The”.

Elizabeth M. Murphy  
Secretary

Dated: November 14, 2011