

# SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Part 200

[Release Nos. 33-10757; 34-88245; IA-5446; IC-33802]

### Delegation of Authority to the General Counsel of the Commission

**AGENCY:** Securities and Exchange Commission

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is revising regulations with respect to the delegations of authority to the Commission’s General Counsel. The revisions are a result of the Commission’s experience with its bankruptcy program and they are intended to conserve Commission resources by delegating to staff the discretion to file objections in bankruptcy cases with respect to the frequently recurring issue of non-debtor third-party releases. The revisions will expedite and enhance the effectiveness of the Commission’s bankruptcy program by enabling staff to meet bankruptcy court deadlines that affect issues important to the Commission.

**DATES:** [insert date of publication in the Federal Register]

**FOR FURTHER INFORMATION CONTACT:** Morgan Bradylyons, Bankruptcy Counsel, and Tracey Hardin, Assistant General Counsel for Appellate Litigation and Bankruptcy, Office of the General Counsel, (202) 551-7926, Securities and Exchange Commission, 100 F Street NE, Washington, D.C. 20549-9040.

**SUPPLEMENTARY INFORMATION:**

## **I. Background**

The Commission is revising the delegations of authority to its General Counsel as a result of the Commission's experience with its bankruptcy program. The revisions are intended to increase the efficiency of the Commission's operations by delegating to staff the discretion to file objections in bankruptcy cases with respect to the frequently recurring issue of non-debtor third-party releases. The revisions will expedite and enhance the effectiveness of the Commission's bankruptcy program by enabling staff to meet bankruptcy court deadlines that affect issues important to the Commission. Congress has authorized such delegation by Public Law No. 87-592, 76 Stat. 394, 15 U.S.C. 78d-1(a), which provides that the Commission "shall have the authority to delegate, by published order or rule, any of its functions to . . . an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business or matter."

Accordingly, the Commission is amending its rules to delegate authority to the General Counsel to file objections in bankruptcy cases with respect to the routine, recurring issue of non-debtor third-party release provisions. Under this delegation, the General Counsel (or, under his or her direction, such persons as might be designated from time to time by the Chairman of the Commission) would authorize the staff, in bankruptcy cases, to take the following actions with respect to plan or settlement provisions that have the effect of releasing, exculpating, discharging, or permanently enjoining actions against non-debtor third parties in contravention of Section 524(e) of the Bankruptcy Code or applicable law: (1) object to approval of disclosure statements, including on the basis that the disclosure statement lacks adequate information under Section 1125(b) to support such release provisions; (2) object to confirmation of bankruptcy plans; or (3) object to approval of settlements.

Notwithstanding this delegation, the General Counsel may submit any matter he or she believes appropriate to the Commission. Furthermore, any action taken by the General Counsel pursuant to delegated authority would be subject to Commission review as provided by Rules 430 and 431 of the Commission's Rules of Practice, 17 CFR 201.430 – 201.431 and 15 U.S.C. 78d-1(b).

## **II. Administrative Law Matters**

The Commission finds, in accordance with the Administrative Procedure Act (“APA”), that these revisions relate solely to agency organization, procedure, or practice and do not constitute a substantive rule. 5 U.S.C. 553(b)(3)(A). Accordingly, the APA’s provisions regarding notice of rulemaking, opportunity for public comment, and advance publication of the amendments prior to their effective date are not applicable. These changes are therefore effective on [insert date of publication in the Federal Register]. For the same reason, and because these amendments do not affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act are not applicable. 5 U.S.C. 804(3)(C) (the term “rule” does not include “any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.”) Additionally, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which apply only when notice and comment are required by the APA or other law, are not applicable. These amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995. *See* 5 CFR 1320.3. Further, because the amendments impose no new burdens on private parties, the Commission does not believe that the amendments will have any impact on competition for purposes of Section 23(a)(2) of the Securities Exchange Act of 1934. 15 U.S.C. 78w(a)(2).

### **III. Statutory Authority**

This rule is adopted pursuant to statutory authority granted to the Commission, including Section 19 of the Securities Act of 1933, 15 U.S.C. 77s; Sections 4A, 4B, and 23 of the Exchange Act, 15 U.S.C. 78d-1, 78d-2, and 78w; Section 38 of the Investment Company Act of 1940, 15 U.S.C. 80a-37; Section 211 of the Investment Advisers Act of 1940, 15 U.S.C. 80b-11; and Section 3 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7202.

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

Administrative practice and procedure, Authority delegations (Government agencies)

### **TEXT OF AMENDMENTS**

For the reasons set out in the preamble, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as follows:

#### **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. 77c, 77o, 77s, 77z-3, 77sss, 78d, 78d-1, 78d-2, 78o-4, 78w, 78ll(d), 78mm, 80a-37, 80b-11, 7202, and 7211 *et seq.*, unless otherwise noted.

\* \* \* \* \*

2. Section 200.30-14 is amended by:
  - a. Redesignating paragraphs (f) through (o) as paragraphs (g) through (p); and
  - b. Adding new paragraph (f).

The addition and revisions read as follows.

**§200.30-14 Delegation of authority to the General Counsel.**

\* \* \*

(f) In bankruptcy cases, to take the following actions with respect to plan or settlement provisions that have the effect of releasing, exculpating, discharging, or permanently enjoining actions against non-debtor third parties in contravention of Section 524(e) of the Bankruptcy Code or applicable law:

(1) Object to approval of disclosure statements, including on the basis that the disclosure statement lacks adequate information under Section 1125(b) to support such release provisions;

(2) Object to confirmation of bankruptcy plans; or

(3) Object to approval of settlements.

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By the Commission.

Dated: February 19, 2020

Vanessa A. Countryman  
Secretary