

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

Release No. 34-75977; File No. S7-19-15

RIN 3235-AL87

Amendments to the Commission's Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing for public comment amendments to its Rules of Practice that would require persons involved in administrative proceedings to submit all documents and other items electronically. The proposed amendments are intended to enhance the accessibility of administrative proceedings by ensuring that filings and other information concerning administrative proceedings are more readily available to the public.

DATES: Comments should be received on or before December 4, 2015.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-19-15 on the subject line; or

- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-19-15. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information in submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Adela Choi, Senior Counsel, and Laura Jarsulic, Associate General Counsel, Office of the General Counsel, (202) 551-5150, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission proposes to amend its Rules of Practice. The amendments are being proposed as a result of the Commission's experience with its existing rules.

I. Introduction

The Commission proposes to make targeted amendments to its Rules of Practice that would automate and modernize aspects of the filing process in administrative proceedings to facilitate the flow of information to the public. The Commission recognizes the need to ensure that public administrative proceeding records are made available to the public as quickly as possible. Roughly 100 requests for records related to administrative proceedings were made each year over the last three years, and certain records were requested by multiple members of the public.

The Commission currently is developing a comprehensive Internet-based electronic system that would, among other things, allow persons in administrative proceedings to file and serve documents electronically and facilitate the prompt distribution of public information regarding administrative proceedings. In conjunction with the development of this system, the Commission proposes to require electronic submissions. The Commission believes that electronic submissions will enhance the transparency of administrative proceedings by providing a quicker way for the Commission to make records available to the public. In addition, the Commission believes that the electronic system will increase its ability to efficiently process filings, and may decrease costs for parties who may file and serve submissions electronically, rather than in paper format.¹

There are three main components to the proposed approach. First, persons involved in administrative proceedings who currently are required to file documents under Rules 151 and

¹ As part of the ongoing effort to make records available to the public promptly, the Commission now posts on its website more types of documents associated with administrative proceedings, such as significant pleadings filed by parties. Previously, only documents issued by the Commission and Administrative Law Judges, such as adjudicatory initial decisions, opinions, and orders, were posted on the website.

152 of the Commission's Rules of Practice would be required to file such documents electronically through a secure system on the Commission's website at www.sec.gov that is designed to receive uploads of documents and attachments. Filing by facsimile and in paper format would no longer be permitted absent the filing of a certification that the person reasonably cannot comply with the electronic filing requirement. However, as discussed further below, for the first 90 days after the proposed amendments become final, the Commission intends to administer a phase-in period that would require all filings to be made both electronically and in paper format. Second, parties that are required to serve documents under Rule 150 would be required to serve each other electronically in the form and manner that is prescribed in the guidance posted on the Commission's website.

The third component would require filers to exclude or redact sensitive personal information from electronic filings and submissions in accordance with the Commission's obligation to protect such information under the Privacy Act of 1974, as amended.² Sensitive personal information would be defined as a Social Security number, taxpayer identification number, financial account number, credit card or debit card number, passport number, driver's license number, state-issued identification number, home address (other than city and state), telephone number, date of birth (other than year), names and initials of minor children, as well as any sensitive health information identifiable by individual, such as an individual's medical

² 5 U.S.C. 552a. Federal courts and certain federal agencies require the exclusion or redaction of certain sensitive personal information contained in filings. *See, e.g.*, Fed. R. Civ. P. 5.2 (Privacy Protection for Filings Made with the Court); Consumer Financial Protection Bureau, Rules of Practice for Adjudication Proceedings, Rule 112, 12 CFR 1081.112 (Formal Requirements as to Papers Filed); National Labor Relations Board, E-Filing Terms for Selected Documents in Unfair Labor Practice and Representation Cases, *available at* http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1673/electronic_filings.pdf (last visited Sept. 10, 2015). The electronic filings and submissions discussed herein are systems of records that the Commission has previously identified as covered by the Privacy Act.

records. There are exceptions to this proposed definition. Specifically, persons need not redact the last four digits of a taxpayer identification number, financial account number, credit card or debit card number, passport number, driver's license number, and state-issued identification number. Nor would persons need to redact home addresses and telephone numbers of parties and persons filing documents with the Commission; business telephone numbers; and copies of unredacted filings by regulated entities or registrants that are available on the Commission's public website. The definition of sensitive personal information would not include a personal e-mail address. We seek comments about whether the disclosure of personal e-mail addresses generally and home addresses of parties and persons filing documents with the Commission could have an adverse effect on persons or parties, and whether, as a result, these terms should be included in the definition of sensitive personal information that must be excluded or redacted.

If the person making a filing believes that sensitive personal information is necessary to the proceeding, the person would need to file a motion for a protective order in accordance with Rule 322 to limit disclosure of the sensitive personal information. In accordance with the proposed amendments to Rule 322, and only if review of the documents is necessary to a ruling on the motion, the person would be required to file an unredacted version of the submission to be used by the hearing officer and the Commission for purposes of the proceeding, and a redacted version to be used for distribution to the public. A redacted version would not need to be filed if the submission would be redacted in its entirety. This reflects current practice when parties file motions for protective orders pursuant to the Rules of Practice.

As a corollary to incorporating electronic filings into the Rules of Practice, self-regulatory organizations and the Public Company Accounting Oversight Board ("PCAOB")

would be required to file electronically with the Commission a copy of a record that is the subject of an appeal.

II. Discussion of Proposed Amendments

The proposed amendments are as follows:

A. Proposed Amendments to Rule 140

Rule 140³ requires the Secretary or other authorized person to sign Commission orders and decisions. The proposed amendment would clarify that the signature may be an electronic signature. An electronic signature could consist of an "/s/" notation or any other digital signature.

B. Proposed Amendments to Rule 151

Rule 151(a)⁴ currently sets forth the procedural requirements for filing papers with the Commission. The proposed amendment would require a person to make filings electronically pursuant to the requirements of Rule 152(a).⁵ Filing by facsimile and in paper format would no longer be permitted absent a certification filed under Rule 152(a)(1) that explains why the person reasonably cannot comply with the electronic filing requirement. During a 90-day phase-in period after adoption, filings would have to be made in both paper and electronic format.

Rule 151(d)⁶ would be amended to include an e-mail address in the certificate of service for those parties served by e-mail.

³ 17 CFR 201.140.

⁴ 17 CFR 201.151(a).

⁵ 17 CFR 201.152(a).

⁶ 17 CFR 201.151(d).

Proposed new Rule 151(e)⁷ would require persons to exclude or redact sensitive personal information, which would be defined as a Social Security number, taxpayer identification number, financial account number, credit card or debit card number, passport number, driver's license number, state-issued identification number, home address (other than city and state), telephone number, date of birth (other than year), names and initials of minor children, as well as any sensitive health information identifiable by individual, such as an individual's medical records. There would be three exceptions to the definition. First, persons may, but would not be required to, exclude or redact the last four digits of a taxpayer identification number, financial account number, credit card or debit card number, passport number, driver's license number, and state-issued identification number. Second, persons would not be required to redact home addresses and telephone numbers of parties and persons filing documents with the Commission. Third, persons would not be required to redact any information from copies of filings by regulated entities or registrants that are available on the Commission's public website. All filings must include a certification that any sensitive personal information has been excluded or redacted from the filing or, if necessary to the filing, has been filed under seal pursuant to Rule 322.

If the person making a filing believes that sensitive personal information is necessary to the proceeding, the person would need to file a motion for a protective order in accordance with Rule 322⁸ to limit disclosure of the sensitive personal information. If review of the documents that are the subject of a motion for a protective order is necessary to a ruling on the motion, the proposed amendment to Rule 322 would require a person to file an unredacted version of the

⁷ 17 CFR 201.151(e).

⁸ 17 CFR 201.322.

submission to be used by the hearing officer and the Commission for purposes of the proceeding, and a redacted version to be used for distribution to the public. The unredacted version would be required to have the confidential information marked and include the words "Under Seal" on the first page of the document. The redacted version would be required to be identical in all other respects to the unredacted version. A person would not be required to file a redacted version if the submission would be redacted in its entirety. This process would be required for all kinds of motions for protective orders made pursuant to Rule 322, *i.e.*, not just those motions filed regarding sensitive personal information.

C. Proposed Amendments to Rule 152

Like Rule 151, the proposed amendments to Rule 152(a) would make clear that all filings shall be made electronically. Rule 152(a) would direct persons to follow guidance issued by the Secretary on the Commission's website at www.sec.gov. For example, the guidance would provide instructions on how to file electronically through a secure system on the Commission's website or other means; information about the Commission's Privacy Act obligations, including information about a filer's responsibilities to redact sensitive personal information; and the terms and conditions of using the website. Generally speaking, persons would use the secure system on the Commission's website pursuant to Rule 152 to file documents, such as briefs and motions and their attachments, petitions for review, and applications for review. Under Rule 152(a), papers would need to be filed on the secure system before midnight Eastern Time, as opposed to 5:30 p.m. Eastern Time, the current deadline for filing papers.

The Commission recognizes that a person involved in an administrative proceeding may be unable to submit documents electronically during either the entire proceeding or a portion

thereof. For example, a person who is incarcerated at the time of the proceeding may not have access to the Internet or other electronic media necessary to file documents through the Commission's secure system. There may be other reasons why a person reasonably cannot comply with the electronic filing requirement.

A person who reasonably cannot comply with the requirement must file a certification under Rule 152(a)(1) that explains why the person reasonably cannot comply. The filing also must indicate the expected duration of the person's reasonable inability to comply, such as whether the certification is intended to apply to a solitary filing or all filings made during the proceeding. The certification is immediately effective. Upon filing the certification, it will be part of the record of the proceeding, and the person may file paper documents by any additional method listed in Rule 152(d).

Rule 152(a) would be amended to provide additional methods of filing if a person reasonably cannot comply with the electronic filing requirements. Filers should take note that the Commission would need to receive mailed, couriered, or hand-delivered filings by 5:30 p.m. Eastern Time because the Commission is unable to accept such filings after that time. The Commission would need to receive facsimile transmissions by midnight Eastern Time.

The proposed amendment also would provide that electronic filings that require a signature pursuant to Rule 153⁹ may be signed with an "/s/" notation, which shall be deemed the signature of the person making the filing for purposes of Rule 153.

⁹ 17 CFR 201.153.

D. Proposed Amendments to Rule 351

Rule 351¹⁰ currently sets forth the requirements regarding the transmittal of documents to the Secretary and the preparation, issuance, and certification of a record index. Rule 351(b)¹¹ requires the hearing officer to transmit to the Secretary an index of the originals of any motions, exhibits or any other documents filed with or accepted into evidence by the hearing officer that have not been previously transmitted to the Secretary. The Secretary then shall prepare a record index and transmit it to the hearing officer and serve a copy on each party. Any person may file proposed corrections to the record index with the hearing officer within fifteen days of service of the record index. The proposed amendment to Rule 351(b) would reduce that amount of time to three days but would provide persons who oppose the proposed corrections three days to file an opposition.

Proposed new Rule 351(c)¹² would state that, no later than five days after the Secretary serves a final record index, the parties shall submit electronically, through the same secure system used for filings under Rules 151 and 152, copies of all exhibits that were admitted, or offered and not admitted, during the hearing, and any other exhibits that were admitted after the hearing. The parties shall submit such evidence in the form and manner that is prescribed in the guidance posted on the Commission's website and shall certify that exhibits and other documents or items submitted to the Secretary are true and accurate copies of exhibits that were admitted, or offered and not admitted, during the hearing. Generally speaking, parties would follow Rule 351 to submit record exhibits and other documents or items that are not attached to filings, *i.e.*,

¹⁰ 17 CFR 201.351.

¹¹ 17 CFR 201.351(b).

¹² 17 CFR 201.351(c).

materials accepted into evidence by a hearing officer under Rule 351 in connection with an in-person hearing. As under Rule 151(a), the submission deadline depends on the method of delivery that is used.

As under Rule 151(e), the proposed amendment to Rule 351(c) would set forth the same definition of sensitive personal information, require its redaction or omission from all submissions under Rule 351, provide a process for seeking a protective order under Rule 322 with respect to sensitive personal information that is necessary to the proceeding, and require a certification that sensitive personal information has been excluded or redacted or filed under seal. A person who reasonably cannot submit exhibits electronically must file a certification under Rule 351(c)(2) that explains why the person reasonably cannot comply. The filing also must indicate the expected duration of the person's reasonable inability to comply, such as whether the certification is intended to apply to a solitary submission or all submissions made during the proceeding. The certification is immediately effective. Upon filing the certification, it will be part of the record of the proceeding, and the person shall submit originals of any exhibits that have not already been submitted to the Secretary by other means. Rule 351(c) also would state that electronic submissions that require a signature pursuant to Rule 153 may be signed with an "/s/" notation, which shall be deemed the signature of the person making the filing for purposes of Rule 153.

E. Phase-In Period

For the first 90 days after the proposed amendments become final, the Commission intends to administer a phase-in period that would require all filings to be made both electronically and in paper format. The Commission preliminarily believes that a 90-day phase-

in period is a reasonable amount of time for persons to become proficient in the electronic filing procedures while ensuring that the Commission receives the filing should there be an electronic transmission failure. However, it may be appropriate to extend the phase-in period if persons are experiencing substantial difficulties with the electronic filing.

F. Other Proposed Amendments

Rule 150(c)¹³ would be amended to require parties to serve each other electronically in the form and manner that is prescribed in the guidance posted on the Commission's website. Electronic service by e-mail is a practice that appears to occur already in administrative proceedings. Electronic service would need to occur contemporaneously with filing, and the timing of service would therefore differ depending on the filing method. As with electronic filing, a party who reasonably cannot comply with the electronic service requirement must file a certification under Rule 150(c)(1) that explains why the person reasonably cannot comply. The filing also must indicate the expected duration of the person's reasonable inability to comply, such as whether the certification is intended to apply to a solitary instance of service or all instances of service made during the proceeding. The certification is immediately effective. Upon filing the certification, it will be part of the record of the proceeding, and the person may serve paper documents by any additional method listed in Rule 150(d). Rule 150(d) would be amended to provide additional methods of service if a person reasonably cannot comply with the electronic service requirements, or if service is of an investigative subpoena pursuant to 17

¹³ 17 CFR 201.150(c).

C.F.R. 203.8. Under Rule 150(e),¹⁴ electronic service would be deemed complete upon transmission.

Rule 141(b)¹⁵ would be amended to allow the Secretary to serve orders and decisions, other than an order instituting proceedings, electronically.

Currently, Rule 102(d)¹⁶ requires a person to provide to the Commission certain contact information that may be used during an administrative proceeding. The proposed amendment clarifies that a mailing address and an e-mail address shall be provided under paragraphs (d)(1), (d)(2), and (d)(4).¹⁷

Rule 193¹⁸ currently provides that an original and three copies of an application shall be filed under Rules 151, 152, and 153, and that such application shall be supported by a manually signed affidavit. The proposed amendment would delete the term “manually,” delete the reference to one original and three copies, and leave the cross reference to Rules 151, 152, and 153 to account for electronic filing.

Rule 420¹⁹ sets forth the requirements regarding appeals of determinations by self-regulatory organizations. Currently, Rule 420(e)²⁰ requires a self-regulatory organization to certify and file with the Commission one copy of the record upon which the action complained

¹⁴ 17 CFR 201.150(e).

¹⁵ 17 CFR 201.141(b).

¹⁶ 17 CFR 201.102(d).

¹⁷ 17 CFR 201.102(d)(1), (d)(2), (d)(4).

¹⁸ 17 CFR 201.193.

¹⁹ 17 CFR 201.420.

²⁰ 17 CFR 201.420(e).

of was taken, to file with the Commission three copies of an index to such record, and to serve upon each party one copy of the index within fourteen days after receiving an application for review or a Commission order for review. The proposed amendment would require the self-regulatory organization to file such information electronically. Further, if such information contains sensitive personal information, the self-regulatory organization would be required to file electronically a copy of the record and index that redacts or omits the sensitive personal information and to certify that any sensitive personal information has been excluded or redacted. The requirements for filing and serving would continue to be governed by Rules 150-152.

Rule 440²¹ sets forth the requirements regarding appeals of determinations by the PCAOB. Rule 440(d)²² currently requires the PCAOB to certify and file with the Commission one copy of the record upon which it took the complained of action, to file with the Commission three copies of an index to such record, and to serve upon each party one copy of the index within fourteen days after receiving an application for review. The proposed amendment would require the PCAOB to file such information electronically. Further, if such information contains sensitive personal information, the PCAOB would be required to file electronically a redacted copy of the record and index that redacts or omits the sensitive personal information and to certify that any sensitive personal information has been excluded or redacted. The requirements for filing and serving would continue to be governed by Rules 150-152.

The United States Postal Service changed the name of the product known as Express Mail to Priority Mail Express. Rule 141(a)(2)(i), (ii), (iii), (vi), (a)(3) and Rule 150(a)(2), (d) would be amended to refer generically to “express mail.”

²¹ 17 CFR 201.440.

²² 17 CFR 201.440(d).

III. Request for Public Comment

We request and encourage any interested person to submit comments regarding: (1) the definition of sensitive personal information, (2) the potential adverse effects, if any, of disclosing personal e-mail addresses and home addresses of parties and persons filing documents with the Commission, (3) alternative approaches to handling personal e-mail addresses and home addresses of parties and persons filing documents with the Commission, (4) the other proposed changes that are the subject of this release, (5) additional or different changes, or (6) other matters that may have an effect on the proposals contained in this release.

IV. Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act,²³ that these revisions relate solely to agency organization, procedure, or practice. They are therefore not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act²⁴ therefore does not apply.²⁵ Nonetheless, the Commission has determined that it would be useful to publish these proposed rules for notice and comment before adoption. Because these rules relate to "agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties," they are not subject to the Small Business Regulatory Enforcement Fairness Act.²⁶ To the extent these rules relate to agency information collections

²³ 5 U.S.C. 553(b)(3)(A).

²⁴ 5 U.S.C. 601- 612.

²⁵ See 5 U.S.C. 603.

²⁶ 5 U.S.C. 804(3)(C).

during the conduct of administrative proceedings, they are exempt from review under the Paperwork Reduction Act.²⁷

V. Economic Analysis

The Commission is sensitive to the costs and benefits of its rules. The current processes and filing requirements for administrative proceedings serve as the baseline against which the economic impacts of the proposed rules are measured. At present, submissions are permitted to be filed with the Commission in paper format or by facsimile followed by a paper submission. The Commission's current Rules of Practice do not identify sensitive personal information that must be redacted from these documents by those who file them. Instead, such redaction is undertaken by the Commission when necessary in responding to document requests from the public or posting documents on the Commission's public website. Service by e-mail is already generally an accepted practice by parties to administrative proceedings who mutually agree to it, although it is not expressly permitted by rule.

The scope of the benefits and costs of the proposed rules depends on the expected volume of administrative proceedings and the number of filed documents and document requests associated with these proceedings. In fiscal year 2014, 230 new administrative proceedings were initiated and not settled immediately. New proceedings initiated and not immediately settled in fiscal years 2013 and 2012 totaled 202 and 207 respectively.²⁸ From 2011 to 2013, an average of

²⁷ See 44 U.S.C. 3518(c)(1)(B)(ii); 5 CFR 1320.4 (exempting collections during the conduct of administrative proceedings or investigations).

²⁸ The total number of administrative proceedings initiated and not immediately settled each fiscal year encompasses a variety of types of proceedings, including proceedings instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 seeking to determine whether it is necessary and appropriate for the protection of investors to suspend or revoke the registration of an issuer's securities and proceedings instituted under Section 15(b) of the

approximately 1,900 filings were submitted per fiscal year in relation to litigated proceedings, including filings by outside parties as well as Commission staff. These filings consist of one or more documents, such as motions, briefs, and record exhibits, and the length of the filings generally ranges from one page to a few thousand pages. The Commission also received numerous requests from the public to release documents related to these proceedings. Requests for records related to administrative proceedings (both settled and litigated) numbered 127, 83, and 100 for fiscal years 2013, 2012, and 2011 respectively.

The implementation of electronic filing and the related proposed rules are intended to improve the efficiency and transparency of the Commission's operations and to modernize the document management process to be consistent with common practice in other tribunals. Benefits of the proposed rules are anticipated to accrue to the public and outside parties to administrative proceedings as well as the Commission.

Specifically, the proposed rules may benefit members of the public with an interest in the Commission's administrative proceedings by permitting the Commission to more quickly make public the documents relating to these proceedings. The proposed rules may increase the speed at which information from administrative proceedings is transmitted as well as the overall transparency of these proceedings. Additionally, parties to administrative proceedings may benefit from the increased flexibility enabled by the changes, such as the Commission's acceptance of electronic and facsimile submissions until midnight rather than the close of business on a given day. These parties may also benefit from savings on printing and mailing costs because, after the phase-in period, filing paper copies generally will not be required. In

Exchange Act or Section 203(f) of the Investment Advisers Act of 1940 seeking to determine what, if any, remedial action is appropriate in the public interest.

addition, the changes expressly require service by electronic means, which may increase further the savings in printing and mailing. The Commission's response to document requests is expected to be more time- and cost-effective due to the efficiency of electronic retrieval and the fact that sensitive information will have been redacted in advance. However, the magnitude of the above benefits is difficult to quantify due to the limitations of existing data.

The costs of the proposal will be borne by the Commission as well as the outside parties to administrative proceedings. The proposed rules place the primary burden of redacting sensitive personal information on the parties submitting documents in administrative proceedings—either outside parties or Commission staff—following common practice in federal courts. The Commission believes that parties filing documents are well positioned to redact the documents—or initially draft documents to avoid the use of sensitive personal information—and that the proposed narrow definition of sensitive personal information will limit the burden on parties required to redact documents. The Commission recognizes, however, that the costs of reviewing and editing the content to protect sensitive information might be significant for some parties. Additionally, when sensitive personal information is necessary to the proceedings, outside parties or the Commission may expend additional resources filing a motion for a protective order in accordance with Rule 322 to limit disclosure of the sensitive information and to prepare a redacted and unredacted version of the documents.

Parties to administrative proceedings will also bear any incremental burden of electronic filings over the current practice of facsimile or paper transmissions. The magnitude of costs will depend primarily on whether the original format of the documents to be submitted is electronic or whether they must be scanned or otherwise converted to an electronic format. Other factors

that may affect these costs include the ease of access the party has to the internet and to any hardware and software that may be involved in processing the documents. For most parties, we do not expect these costs to be significant because, among other things, most parties already are subject to similar requirements in other kinds of legal proceedings or have access to the Internet and conversion programs at a reasonable cost. Further, these potential burdens may be mitigated for some parties as the proposed rules provide for relief from the electronic filing requirements in situations in which a party certifies a reasonable inability to comply with the electronic filing requirements.

As an alternative to the proposed rules, the Commission could implement electronic filing with different requirements. In particular, the Commission could continue to allow the filing of unredacted documents—requiring that redaction be undertaken by Commission staff when necessary—or could permit electronic filing on a voluntary, rather than mandatory, basis. Relative to these alternatives, or to the existing paper format and facsimile document submission and management system for administrative proceedings, the Commission believes that the proposed changes achieve the benefits described above in a cost-efficient manner. The Commission does not expect significant effects on efficiency, competition, or capital formation to result from the proposed changes. And to the extent that the changes impose any burden on competition, the Commission believes that such burden would be necessary and appropriate in furtherance of the purposes of the Exchange Act.²⁹

The Commission requests comment on all aspects of the economic effects of the proposal, including any anticipated impacts that are not mentioned here. We are particularly

²⁹ See 15 U.S.C. 78w(a)(2).

interested in quantitative estimates of the benefits and costs, in general or for particular types of participants in administrative proceedings, including smaller entities. We also request comment on reasonable alternatives to the proposed rules and on any effect the proposed rules may have on efficiency, competition, and capital formation.

VI. Statutory Basis and Text of Proposed Amendments

These amendments to the Rules of Practice are being proposed pursuant to statutory authority granted to the Commission, including section 3 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7202; section 19 of the Securities Act, 15 U.S.C. 77s; sections 4A, 19, and 23 of the Exchange Act, 15 U.S.C. 78d-1, 78s, and 78w; section 319 of the Trust Indenture Act of 1939, 15 U.S.C. 77sss; sections 38 and 40 of the Investment Company Act, 15 U.S.C. 80a-37 and 80a-39; and section 211 of the Investment Advisers Act, 15 U.S.C. 80b-11.

List of Subjects

17 CFR Part 201

Administrative practice and procedure.

Text of the Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 201 – RULES OF PRACTICE

4. The authority citation for Part 201, subpart D, is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h-1, 77j, 77s, 77u, 78c(b), 78d-1, 78d-2, 78l, 78m, 78n, 78o(d), 78o-3, 78s, 78u-2, 78u-3, 78v, 78w, 77sss, 77ttt, 80a-8, 80a-9, 80a-37, 80a-38, 80a-39, 80a-40, 80a-41, 80a-44, 80b-3, 80b-9, 80b-11, 80b-12, 7202, 7215, and 7217.

5. § 201.102 is amended by revising paragraphs (d), (d)(2) and (d)(4) to read as follows:

§ 201.102 Appearance and practice before the Commission.

* * * * *

(d) *Designation of address for service; notice of appearance; power of attorney; withdrawal*—(1) *Representing oneself*. When an individual first makes any filing or otherwise appears on his or her own behalf before the Commission or a hearing officer in a proceeding as defined in § 201.101(a), he or she shall file with the Commission, or otherwise state on the record, and keep current, a mailing address and e-mail address at which any notice or other written communication required to be served upon him or her or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.

(2) *Representing others*. When a person first makes any filing or otherwise appears in a representative capacity before the Commission or a hearing officer in a proceeding as defined in § 201.101(a), that person shall file with the Commission, and keep current, a written notice stating the name of the proceeding; the representative's name, business address, e-mail address, and telephone number; and the name, e-mail address, and address of the person or persons represented.

* * * * *

(4) *Withdrawal*. Any person seeking to withdraw his or her appearance in a representative capacity shall file a notice of withdrawal with the Commission or the hearing officer. The notice shall state the name, mailing address, e-mail address, and telephone number of the withdrawing representative; the name, address, and telephone number of the person for whom the appearance was made; and the effective date of the withdrawal. If the person seeking

to withdraw knows the name, mailing address, e-mail address, and telephone number of the new representative, or knows that the person for whom the appearance was made intends to represent him- or herself, that information shall be included in the notice. The notice must be served on the parties in accordance with § 201.150. The notice shall be filed at least five days before the proposed effective date of the withdrawal.

* * * * *

6. § 201.140 is amended by revising paragraph (a).

The revisions read as follows:

§ 201.140 Commission Orders and Decisions: Signature and Availability.

* * * * *

(a) *Signature required.* All orders and decisions of the Commission shall be signed by the Secretary or any other person duly authorized by the Commission. The signature may be an electronic signature that consists of an "/s/" notation or any other digital signature.

* * * * *

7. § 201.141 is amended by:

a. Removing each time they appear the words "Express Mail" and, in their place, adding the words "express mail"; and

b. Revising the first sentence of paragraph (b).

The revisions read as follows:

§ 201.141 Orders and decisions: Service of orders instituting proceedings and other orders and decisions.

* * * * *

(b) *Service of Orders or Decisions Other than an Order Instituting Proceedings.* Written orders or decisions issued by the Commission or by a hearing officer shall be served promptly on each party pursuant to any method of service authorized under paragraph (a) of this Rule or Rule 150(c) and (d). * * *

8. § 201.150 is amended by:

- a. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e);
- b. Adding new paragraph (c);
- c. Revising new paragraphs (d) and (d)(4);
- d. Revising new paragraph (e); and
- e. Removing each time they appear the words "Express Mail" and, in their place, adding the words "express mail".

The revisions read as follows:

§ 201.150 Service of papers by parties.

* * * * *

(c) *How Made.* Service shall be made electronically in the form and manner that is prescribed in the guidance posted on the Commission's website. Persons serving each other shall have provided the Commission and the parties with notice of an e-mail address.

(1) *Certification of Inability to Serve Electronically.* If a person reasonably cannot serve electronically, due to a lack of access to electronic transmission devices (due to incarceration or otherwise), the person promptly shall file a certification under this paragraph that explains why

the person reasonably cannot comply. The filing also must indicate the expected duration of the person's reasonable inability to comply, such as whether the certification is intended to apply to a solitary instance of service or all instances of service made during the proceeding. The certification is immediately effective. Upon filing the certification, it will be part of the record of the proceeding, and the person may serve paper documents by any additional method listed in Rule 150(d).

(d) *Additional methods of service.* If a person reasonably cannot serve electronically, or if service is of an investigative subpoena pursuant to 17 C.F.R. 203.8, service may be made by delivering a copy of the filing. *Delivery* means:

* * * * *

(4) Transmitting the papers by facsimile transmission to the person required to be served. The persons so serving each other shall have provided the Commission and the parties with notice of a facsimile machine telephone number.

(e) *When service is complete.* Electronic service is complete upon transmission. Personal service, service by U.S. Postal Service express mail or service by a commercial courier or express delivery service is complete upon delivery. Service by mail is complete upon mailing. Service by facsimile is complete upon confirmation of transmission.

9. § 201.151 is amended by:

- a. Revising paragraph (a);
- b. Revising paragraph (d); and
- c. Adding paragraph (e).

The revisions read as follows:

§ 201.151 Filing of papers with the Commission: Procedure.

(a) *When to file.* All papers required to be served upon any person shall also be filed contemporaneously with the Commission electronically pursuant to the requirements of § 201.152(a). The person making such filing is responsible for ensuring that the Commission receives a complete and legible filing within the time limit set for such filing. Documents that are attached to filings shall be filed in accordance with this Rule. Documents or items that are not attached to filings (*i.e.*, are admitted by the hearing officer at an in-person hearing), shall be submitted in accordance with § 201.351.

* * * * *

(d) *Certificate of service.* Papers filed with the Commission or a hearing officer shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service, and the mailing address or e-mail address to which service was made, if not made in person.

(e) *Sensitive personal information.* Sensitive personal information is defined as a Social Security number, taxpayer identification number, financial account number, credit card or debit card number, passport number, driver's license number, state-issued identification number, home address (other than city and state), telephone number, date of birth (other than year), names and initials of minor children, as well as any sensitive health information identifiable by individual, such as an individual's medical records. Sensitive personal information shall not be included in, and must be redacted or omitted from, all filings subject to:

(1) *Exceptions.* The following information may be included and is not required to be redacted from filings:

(i) The last four digits of a taxpayer identification number, financial account number, credit card or debit card number, passport number, driver's license number, and state-issued identification number;

(ii) Home addresses and telephone numbers of parties and persons filing documents with the Commission;

(iii) Business telephone numbers; and

(iv) Copies of unredacted filings by regulated entities or registrants that are available on the Commission's public website.

(2) *Confidential treatment of information.* If the person making any filing believes that sensitive personal information (as defined above) contained therein is necessary to the proceeding, the person shall file unredacted documents, along with a motion for a protective order in accordance with § 201.322 to limit disclosure of unredacted sensitive personal information.

(3) *Certification.* Any filing must include a certification that any sensitive personal information as defined in § 201.151(e) has been excluded or redacted from the filing or, if necessary to the filing, has been filed under seal pursuant to § 201.322.

10. § 201.152 is amended by:

a. Redesignating paragraph (a) as paragraph (b);

b. Removing new paragraph (b)(6);

c. Adding new paragraph (a);

d. Removing paragraph (d);

e. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d);

- f. Revising new paragraph (b); and
- g. Revising new paragraph (c);
- h. Removing the phrase "or microfilming" from paragraph (d).

The revisions read as follows:

§ 201.152 Filing of papers: Form.

(a) *Electronic filing.* Papers filed in connection with any proceeding as defined in §201.101(a) shall be filed electronically in the form and manner that is prescribed in the guidance posted on the Commission's website. Papers filed electronically must be received by the Commission by midnight Eastern Time on the date the filing is due.

(1) *Certification of Inability to File Electronically.* If a person reasonably cannot comply with the requirements of this Rule, due to a lack of access to electronic transmission devices (due to incarceration or otherwise), the person promptly shall file a certification under this paragraph that explains why the person reasonably cannot comply. The filing also must indicate the expected duration of the person's reasonable inability to comply, such as whether the certification is intended to apply to a solitary filing or all filings made during the proceeding. The certification is immediately effective. Upon filing the certification, it will be part of the record of the proceeding, and the person may file paper documents by any additional method listed in § 201.152(a)(2).

(2) *Additional methods of filing.* If a person reasonably cannot file electronically, filing may be made by hand delivering the filing by 5:30 p.m. Eastern Time through a commercial courier service or express delivery service; mailing the filing through the U.S Postal Service by first class, certified, registered, or express mail delivery so that it is received by the Commission

by 5:30 p.m. Eastern Time; or transmitting the filing by facsimile transmission so that it is received by the Commission by midnight Eastern Time.

(b) *Form.* Papers filed in connection with any proceeding as defined in § 201.101(a) shall:

(1) Reflect a page, electronically or otherwise, that measures $8\frac{1}{2} \times 11$ inches when printed, except that, to the extent that the reduction of larger documents would render them illegible when printed, such documents may be filed on larger paper;

(2) Use 12-point or larger typeface;

(3) Include at the head of the paper, or on a title page, the name of the Commission, the title of the proceeding, the names of the parties, the subject of the particular paper or pleading, and the file number assigned to the proceeding;

(4) Be paginated with left hand margins at least 1 inch wide, and other margins of at least 1 inch; and

(5) Be double-spaced, with single-spaced footnotes and single-spaced indented quotations.

(c) *Signature required.* All papers must be dated and signed as provided in § 201.153. Electronic filings that require a signature pursuant to § 201.153 may be signed with an "/s/" notation, which shall be deemed the signature of the person making the filing for purposes of § 201.153.

(d) *Suitability for recordkeeping.* Documents which, in the opinion of the Commission, are not suitable for computer scanning may be rejected.

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11. § 201.193 is amended by revising the introductory text of paragraph (b).

The revisions read as follows:

§ 201.193 Applications by barred individuals for consent to associate.

* * * * *

(b) *Form of application.* Each application shall be supported by an affidavit, signed by the applicant, that addresses the factors set forth in paragraph (d) of this section. The application shall be filed pursuant to §§ 201.151, 201.152 and 201.153. Each application shall include as exhibits:

* * * * *

12. § 201.322 is amended by:

- a. Revising paragraph (a);
- b. Redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e); and
- c. Adding new paragraph (b).

§ 201.322 Evidence: Confidential information, protective orders.

(a) *Procedure.* In any proceeding as defined in § 201.101(a), a party, any person who is the owner, subject or creator of a document subject to subpoena or which may be introduced as evidence, or any witness who testifies at a hearing may file a motion requesting a protective order to limit from disclosure to other parties or to the public documents or testimony that contain confidential information. The motion should include a general summary or extract of the documents without revealing confidential details.

(b) If review of the documents that are the subject of a request for a protective order is necessary to a ruling on the motion and the information as to which a protective order is sought is available to the movant, the motion shall be accompanied by:

(1) A complete, sealed copy of the materials containing the information as to which a protective order is sought, with the allegedly confidential information marked as such, and with the first page of the document labeled "Under Seal." If the movant seeks a protective order against disclosure to other parties as well as the public, copies of the documents shall not be served on other parties; and

(2) A redacted copy of the materials containing the information as to which a protective order is sought, with the allegedly confidential information redacted. The redacted version shall indicate any omissions with brackets or ellipses, and its pagination and depiction of text on each page shall be identical to that of the sealed version. A redacted copy need not accompany a motion requesting a protective order if the materials would be redacted in their entirety.

* * * * *

13. § 201.351 is amended by:

- a. Revising paragraph (b);
- b. Redesignating paragraph (c) as paragraph (d); and
- c. Adding new paragraph (c).

The revisions read as follows:

§ 201.351 Transmittal of documents to Secretary; record index; electronic copy of exhibits; certification.

* * * * *

(b) *Preparation, certification of record index.* Promptly after the close of the hearing, the hearing officer shall transmit to the Secretary an index of the originals of any motions, exhibits or any other documents filed with or accepted into evidence by the hearing officer that have not been previously transmitted to the Secretary, and the Secretary shall prepare a record index. Prior to issuance of an initial decision, or if no initial decision is to be prepared, within 30 days of the close of the hearing, the Secretary shall transmit the record index to the hearing officer and serve a copy of the record index on each party. Any person may file proposed corrections to the record index with the hearing officer within three days of service of the record index. Any opposition to the proposed corrections shall be filed within three days of service of the proposed corrections. The hearing officer shall, by order, direct whether any corrections to the record index shall be made. The Secretary shall make such corrections, if any, and issue a revised record index. If an initial decision is to be issued, the initial decision shall include a certification that the record consists of the items set forth in the record index or revised record index issued by the Secretary.

(c) *Electronic exhibits.* Within two weeks after the close of a hearing, the parties shall submit electronically to the Secretary a copy of all exhibits that were admitted, or offered and not admitted, during the hearing, and any other exhibits that were admitted after the hearing. The parties shall submit such evidence in the form and manner that is prescribed in the guidance posted on the Commission's website.

(1) *Sensitive personal information.* Sensitive personal information is defined as a Social Security number, taxpayer identification number, financial account number, credit card or debit card number, passport number, driver's license number, state-issued identification number, home address (other than city and state), telephone number, date of birth (other than year), names and initials of minor children, as well as any sensitive health information identifiable by individual, such as an individual's medical records. Sensitive personal information shall not be included in, and must be redacted or omitted from, all filings subject to:

(i) *Exceptions.* The following information may be included and is not required to be redacted from filings:

(A) The last four digits of a taxpayer identification number, financial account number, credit card or debit card number, passport number, driver's license number, and state-issued identification number;

(B) Home addresses and telephone numbers of parties and persons filing documents with the Commission;

(C) Business telephone numbers; and

(D) Copies of unredacted filings by regulated entities or registrants that are available on the Commission's public website.

(ii) *Confidential treatment of information.* If the person submitting record exhibits and other documents or items that are not attached to filings believes that sensitive personal information (as defined above) contained therein is necessary to the proceeding, the person shall file unredacted documents, along with a motion for a protective order in accordance with § 201.322 to limit disclosure of unredacted sensitive personal information.

(2) *Certification of Inability to Submit Exhibits Electronically.* A person who reasonably cannot submit exhibits electronically must file a certification under § 201.351(c)(2) that explains why the person reasonably cannot comply. The filing also must indicate the expected duration of the person's reasonable inability to comply, such as whether the certification is intended to apply to a solitary submission or all submissions made during the proceeding. The certification is immediately effective. Upon filing the certification, it will be part of the record of the proceeding, and the person shall submit originals of any exhibits that have not already been submitted to the Secretary by other means.

(3) *Signature requirement.* Electronic submissions that require a signature pursuant to § 201.153 may be signed with an "/s/" notation, which shall be deemed the signature of the person making the submission for purposes of § 201.153.

(4) *Certification.* The parties shall certify that exhibits and other documents or items submitted to the Secretary under this rule:

(i) are true and accurate copies of exhibits that were admitted, or offered and not admitted, during the hearing; and

(ii) that any sensitive personal information as defined in § 201.351(c) has been excluded or redacted, or, if necessary, has been filed under seal pursuant to § 201.322

(d) *Final transmittal of record items to the Secretary.* * * * * *

14. § 201.420 is amended by revising paragraph (e).

The revisions read as follows:

§ 201.420 Appeal of determinations by self-regulatory organizations.

* * * * *

(e) *Certification of the record; service of the index.* Fourteen days after receipt of an application for review or a Commission order for review, the self-regulatory organization shall certify and file electronically in the form and manner that is prescribed in the guidance posted on the Commission's website one unredacted copy of the record upon which the action complained of was taken. If such record contains any sensitive personal information, as defined in paragraph (e)(1) of this Rule, the self-regulatory organization also shall file electronically with the Commission one redacted copy of such record, subject to the following:

(1) *Sensitive personal information.* Sensitive personal information is defined as a Social Security number, taxpayer identification number, financial account number, credit card or debit card number, passport number, driver's license number, state-issued identification number, home address (other than city and state), telephone number, date of birth (other than year), names and

initials of minor children, as well as any sensitive health information identifiable by individual, such as an individual's medical records. Sensitive personal information shall not be included in, and must be redacted or omitted from, all filings subject to:

(i) *Exceptions.* The following information may be included and is not required to be redacted from filings:

(A) The last four digits of a taxpayer identification number, financial account number, credit card or debit card number, passport number, driver's license number, and state-issued identification number;

(B) Home addresses and telephone numbers of parties and persons filing documents with the Commission;

(C) Business telephone numbers; and

(D) Copies of unredacted filings by regulated entities or registrants that are available on the Commission's public website.

(2) The self-regulatory organization also shall file electronically with the Commission one copy of an index to such record, and shall serve upon each party one copy of the index. If such index contains any sensitive personal information, as defined in paragraph (e)(1) of this Rule, the self-regulatory organization also shall file electronically with the Commission one redacted copy of such index, subject to the requirements of paragraphs (e)(1) and (e)(1)(i).

(3) *Certification.* Any filing made pursuant to this Rule must include a certification that any sensitive personal information as defined in § 201.420(e)(1) has been excluded or redacted from the filing.

15. § 201.440 is amended by revising paragraph (d).

§ 201.440 Appeal of determinations by the Public Company Accounting Oversight Board.

* * * * *

(d) *Certification of the record; service of the index.* Within fourteen days after receipt of an application for review, the Board shall certify and file electronically in the form and manner that is prescribed in the guidance posted on the Commission's website one unredacted copy of the record upon which it took the complained-of action. If such record contains any sensitive personal information, as defined in paragraph (d)(1) of this Rule, the Board also shall file electronically with the Commission one redacted copy of such record, subject to the following:

(1) *Sensitive personal information.* Sensitive personal information is defined as a Social Security number, taxpayer identification number, financial account number, credit card or debit card number, passport number, driver's license number, state-issued identification number, home address (other than city and state), telephone number, date of birth (other than year), names and initials of minor children, as well as any sensitive health information identifiable by individual, such as an individual's medical records. Sensitive personal information shall not be included in, and must be redacted or omitted from, all filings subject to:

(i) *Exceptions.* The following information may be included and is not required to be redacted from filings:

(A) The last four digits of a taxpayer identification number, financial account number, credit card or debit card number, passport number, driver's license number, and state-issued identification number;

(B) Home addresses and telephone numbers of parties and persons filing documents with the Commission;

(C) Business telephone numbers; and

(D) Copies of unredacted filings by regulated entities or registrants that are available on the Commission's public website.

(2) The Board shall file electronically with the Commission one copy of an index of such record, and shall serve one copy of the index on each party. If such index contains any sensitive personal information, as defined in paragraph (d)(1) of this Rule, the Board also shall file electronically with the Commission one redacted copy of such index, subject to the requirements of paragraphs (d)(1) and (d)(1)(i).

(3) *Certification.* Any filing made pursuant to this Rule must include a certification that any sensitive personal information as defined in § 201.440(d)(1) has been excluded or redacted from the filing.

By the Commission.

Brent J. Fields
Secretary

September 24, 2015