

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-52602]

ADOPTION OF AMENDMENT TO DELEGATION OF AUTHORITY TO SECRETARY OF THE COMMISSION

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is amending its Delegation of Authority to Secretary of the Commission to permit the Secretary to waive the bond requirement set forth in the Rules on Fair Fund and Disgorgement Plans if the fair or disgorgement funds are held at the U.S. Department of the Treasury (“Treasury”) and will be disbursed by the Treasury. This amendment is intended to enhance efficient processing of disgorgement/fair fund plans and to lower the cost of plan administration.

EFFECTIVE DATE: November 21, 2005.

FOR FURTHER INFORMATION CONTACT: J. Lynn Taylor, Assistant Secretary, Office of the Secretary 202-551-5400.

SUPPLEMENTARY INFORMATION:

The amendment is technical and procedural in nature.

I. Discussion:

The Commission has delegated authority to the Secretary to issue orders approving proposed fair fund and disgorgement plans following publication if no negative comments are received.¹ Rule 1105(c) of the Commission’s Rules on Fair Fund and Disgorgement Plans

¹ 17 CFR 200.30-7(a)(11).

requires that third-party administrators obtain a bond to protect against risk of loss of fair and disgorgement funds.² Obtaining a bond for funds which will be administered by a third party, but held at Treasury and disbursed by Treasury, is neither necessary nor cost efficient because these funds will not be subject to the risks of loss or other dissipation that could occur were the funds held by a private entity. Because of this, the Commission is adopting amended Rule 30-7(a)(11) to permit the Secretary to waive the bond requirement if the funds are held at Treasury, and Treasury is distributing the funds. Nevertheless, the staff may submit plans to the Commission for consideration, as it deems appropriate.

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

The Commission finds, in accordance with Section 533(b)(3)(A) of the Administrative Procedure Act,³ that this revision relates solely to agency organization, procedure, or practice. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice and opportunity for public comment. The Regulatory Flexibility Act⁴ therefore does not apply. Because the rule relates to “agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties,” it is are not subject to the Small Business Regulatory Enforcement Fairness Act.⁵

These rules do not contain any collection of information requirements as defined by the

² 17 CFR 201.1105(c). The cost of the bond may be paid as a cost of administration. The rule permits the Commission to waive the bond for good cause shown.

³ 5 U.S.C. 553(b)(3)(A).

⁴ 5 U.S.C. 601 *et seq.*

⁵ 5 U.S.C. 804(3)(C).

Paperwork Reduction Act of 1995, as amended.⁶

III. Costs and Benefits of the Amendment

The amendment is procedural and administrative in nature. The benefits to the parties are efficiency and fairness. The cost of the amendment, if any, falls on the Commission, not the parties.

IV. Effect on Efficiency, Competition, and Capital Formation

The amendment is procedural and administrative in nature and will enhance the efficiency of the approval process for disgorgement/fair fund plans. It will have no effect on competition or capital formation.

V. Statutory Basis and Text of Proposed Amendment

This amendment to Rule 30a-7 is being adopted pursuant to statutory authority granted to the Commission in Section 4A of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78d-1.

List of Subjects in 17 CFR Part 200

Authority delegation (Government agencies).

Text of the Adopted Rule

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:

⁶ 44 U.S.C. 3501 et seq.

Authority: 15 U.S.C. 77s, 77o, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 79t, 80a-37, 80b-11, and 7202, unless otherwise noted.

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2. Section 200.30-7 is amended by adding a sentence after the first sentence in paragraph (a)(11) to read as follows:

§ 200.30-7 Delegation of authority to Secretary of the Commission.

* * * * *

(a)* * *

(11)* * * As part of this plan approval, the requirement set forth in Rule 1105(c) (§ 201.1105(c) of this chapter) may be waived if the fair or disgorgement funds are held at the U.S. Department of the Treasury and will be disbursed by Treasury. * * *

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By the Commission.

Jonathan G. Katz
Secretary

October 13, 2005