

## **SECURITIES AND EXCHANGE COMMISSION**

### **17 CFR Part 202**

**[Release Nos. 33-9208 ; 34-64495 ; IC-29670 ]**

#### **Amendment to Procedures for Holding Funds in Dormant Filing Fee Accounts**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission is amending its procedures for holding funds in any filing fee account in which there has not been a deposit, withdrawal or other adjustment. The amendment extends the holding period from 180 days to three years, after which the Commission will initiate the return of funds to the account holder without any action by the account holder. As always, account holders may request a refund of such fees at any time.

**EFFECTIVE DATE:** May 19, 2011

**FOR FURTHER INFORMATION CONTACT:** Kenneth Johnson, (202) 551-4306, Chief Financial Officer, Office of Financial Management; Stephen Jung, (202) 551-5162, Assistant General Counsel, Office of the General Counsel; Michael Bloise, (202) 551-5116, Senior Counsel, Office of the General Counsel, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

#### **SUPPLEMENTARY INFORMATION**

The Commission is amending rule 3a (17 CFR 202.3a) of its Informal and Other Procedures under the Securities Act of 1933 (“Securities Act”).<sup>1</sup>

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<sup>1</sup> 15 U.S.C. 77a.

## I. Discussion

The federal securities laws impose a number of fees on filings.<sup>2</sup> Pursuant to rule 3a of the Commission's Informal and Other Procedures (17 CFR 202.3a), filing fees paid under the Securities Act, Exchange Act, and Investment Company Act currently are transmitted to a Treasury designated lockbox depository, where they are held in filing fee accounts maintained by the Commission for each filer who submits a filing requiring a fee on the Commission's EDGAR system or who submits funds to the Treasury designated lockbox depository in anticipation of paying a filing fee.<sup>3</sup> The Commission staff prepares account statements and sends these to account holders whenever a deposit, withdrawal, or other change occurs. The account holder, in turn, must maintain a current account address with the Commission to ensure timely access to such statements.<sup>4</sup> Pursuant to current 17 CFR 202.3a(e), the staff will initiate the return to the account holder of any funds held in any filing fee account in which there has not been a deposit, withdrawal or other adjustment for more than 180 calendar days, and account statements will not be sent again until a deposit, withdrawal or other adjustment is made with respect to the account.

The 180-day limitation on the time in which the Commission may hold such funds could lead to considerable inefficiency and administrative burden for both account holders and Commission staff. Increasing the length of time in which the funds may remain inactive in an account will allow greater flexibility to filers who still intend to pay

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<sup>2</sup> See, e.g., section 6(b) of the Securities Act, sections 13(e), 14(g), and 31 of the Securities Exchange Act of 1934 ("Exchange Act"), and section 24(f) of the Investment Company Act of 1940 ("Investment Company Act").

<sup>3</sup> 17 CFR 202.3a(d).

<sup>4</sup> Id.

fees and do not want to receive a mandatory disbursement only to return it to the Commission at the time a fee is due. This concern is particularly acute for those filers whose payment obligations involve fees that are due on a periodic basis in excess of 180 days, such as investment companies who submit approximately 5,800 Form 24F-2 filings annually.<sup>5</sup> And, while the amendment will create more flexibility for filers who wish to leave funds in their accounts, the right of an account holder to receive a disbursement of excess funds from its account any time upon request to the Commission will continue unchanged.

The amendment also will harmonize the Commission’s account-clearing procedure with Securities Act Rule 415(a)(5), which allows issuers eligible to conduct primary shelf offerings to sell securities relying on an effective registration statement for up to three years before they are required to file a new one.<sup>6</sup> This is particularly important in connection with automatic shelf registration statements, which allow issuers to register an indeterminate amount of securities when they initially file and defer payment of required fees until they later determine the amount of securities they wish to sell. As a result of this “pay-as-you-go” feature, issuers with automatic shelf registration statements may be required to pay additional fees throughout the life of the registration statement. Adoption of a three-year inactivity period before account balances are returned will ensure that funds paid at the time a shelf registration statement is initially filed will remain available to issuers in their lockbox accounts for the life of the registration statement. This could also benefit issuers by allowing them to review the

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<sup>5</sup> Form 24F-2 is the annual notice of securities sold by certain investment companies pursuant to rule 24f-2 under the Investment Company Act of 1940 that accompanies the payment of registration fees under the Securities Act of 1933.

<sup>6</sup> 17 CFR 230.415.

unused balances available in their lockbox accounts no more frequently than they are required to prepare and file new shelf registration statements. Issuers that review their capital-raising plans in connection with each required renewal of a shelf registration statement would be able to adjust the amounts on deposit in their lockbox accounts to match their future offering plans. Any resulting additional deposits or withdrawal requests would result in account activity, which would obviate the need for a refund until the expiration of an additional three-year time period. As a consequence, a three-year time period could help reduce the number of refund payments made to issuers who would prefer to have funds remain in their lockboxes to cover anticipated future filing needs. And, as noted above, the right of an issuer to receive a disbursement of excess funds from its account at any time upon request to the Commission will continue unchanged.

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

The Commission has determined that this amendment to its rules relates solely to the agency's organization, procedure, or practice. Therefore, the provisions of the Administrative Procedure Act ("APA") regarding notice of proposed rulemaking and opportunity for public participation are not applicable.<sup>7</sup> For the same reasons, and because this amendment does not substantially affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act are not applicable.<sup>8</sup> In addition, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other law, are

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<sup>7</sup> 5 U.S.C. 553(b).

<sup>8</sup> 5 U.S.C. 804.

not applicable.<sup>9</sup> Finally, this amendment does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.<sup>10</sup>

### **III. Cost-Benefit Analysis**

The Commission is sensitive to the costs and benefits imposed by its rules. The rule amendment the Commission is adopting today amends the Commission's rules to extend the period in which the Commission shall hold funds in a dormant account prior to issuing an automatic refund, so as to increase the efficiency of the procedure and harmonize the Commission's account clearing procedures with Securities Act Rule 415(a)(5). The right of an account holder to receive a full refund of fees held by the Commission in a dormant account, at any time upon request, remains unchanged. The Commission does not believe that the rule amendment will impose any costs on non-agency parties, or that if there are any such costs, they are negligible.

### **IV. 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 amendment that the Commission is adopting today will have any impact on competition.

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<sup>9</sup> 5 U.S.C. 601-12.

<sup>10</sup> 44 U.S.C. 3501-20.

**V. Statutory Basis and Text of Final Rule Amendments**

The Commission is adopting amendments pursuant to sections 6(b) and 19 of the Securities Act, sections 13(e), 14(g), 23, and 31 of the Exchange Act, and sections 24(f) and 38 of the Investment Company Act. List of Subjects

17 CFR Part 202

Administrative practice and procedure, Securities.

In accordance with the foregoing, 17 CFR, Chapter II of the Code of Federal Regulations is amended as follows:

**PART 202- INFORMAL AND OTHER PROCEDURES**

1. The authority citation for Part 202 continues to read in part as follows:

**Authority:** 15 U.S.C. 77s, 77t, 78d-1, 78u, 78w, 78ll(d), 79r, 79t, 77sss, 77uuu, 80a-37, 80a-41, 80b-9, 80b-11, and 7201 et seq., unless otherwise noted.

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2. Section 202.3a paragraph (e) is amended by removing the phrase “180 calendar days”, and adding in its place the phrase “three years”.

By the Commission.

Cathy H. Ahn  
Deputy Secretary

Dated: May 13, 2011