

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 240

[RELEASE NO. 34-64913]

Technical Amendment to Commission Procedures for Filing Applications for Orders for Exemptive Relief under Section 36 of the Exchange Act

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendment.

SUMMARY: The Securities and Exchange Commission (“SEC” or “Commission”) is making technical amendments to the rule by which applications for exemptive relief under section 36 of the Securities and Exchange Act of 1934 (“Exchange Act”) may be submitted electronically. The amendments are intended only to clarify and update references to an SEC website address and to eliminate certain formatting requirements.

DATES: EFFECTIVE DATE: [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Linda Stamp Sundberg, Senior Special Counsel, at (202) 551-5550, Office of the Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

I. SUPPLEMENTARY INFORMATION:

The Commission is amending § 240.0-12(b) to update references to an SEC website address to be used in submitting applications for exemptive relief under section 36 of the Exchange Act and to eliminate certain formatting requirements.

II. CERTAIN FINDINGS

Under the Administrative Procedure Act (“APA”), notice of proposed rulemaking is not required when an agency, for good cause, finds “that notice and public procedure thereon are

impracticable, unnecessary, or contrary to the public interest.”¹ The Commission is making technical changes to update the instructions and method for submitting a petition. The Commission finds that because the amendment is technical in nature and is being made solely to reflect the changes in way a person would submit and the Commission would receive a petition, publishing the amendment for comment is unnecessary.²

The APA also requires publication of a rule at least 30 days before its effective date unless the agency finds otherwise for good cause.³ For the same reasons described above with respect to notice and opportunity for comment, the Commission finds that there is good cause for these technical amendments to take effect on [insert date of publication in Federal Register].

III. CONSIDERATION OF COMPETITIVE EFFECTS OF AMENDMENT

Section 3(f) of the Exchange Act,⁴ provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange

¹ 5 U.S.C. 553(b).

² For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act (“RFA”) or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. See 5 U.S.C. 601(2) (for purposes of RFA analysis, the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking); and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, 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).

³ See 5 U.S.C. 553(d)(3).

⁴ 15 U.S.C. 78c(f).

Act, to consider the competitive effects of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in the furtherance of the purposes of the Exchange Act.⁵

Because these procedural amendments are technical in nature, and do not impose any additional requirements beyond those already required, we do not anticipate that the amendments would have a significant effect on efficiency, competition, or capital formation, and we do not anticipate that any competitive advantages or disadvantages would be created.

IV. STATUTORY AUTHORITY AND TEXT OF AMENDMENT:

We are adopting these technical amendments pursuant to the authority set forth in the Exchange Act and particularly Sections 23(a) and 36(a) (15 U.S.C. 78w(a), and 78mm(a), respectively).

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

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

PART 240— GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934 1.

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4,

⁵ 15 U.S.C. 78w(a)(2).

78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b- 3, 80b-4, 80b-11, and 7201 et seq., 18 U.S.C. 1350, and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

2. Section 240.0-12 is amended by revising paragraph (b) to read as follows:

§ 240.0-12 Commission procedures for filing applications for orders for exemptive relief under Section 36 of the Exchange Act.

(a) * * *

(b) An applicant may submit a request electronically. The electronic mailbox to use for these applications is described on the Commission's website at www.sec.gov in the “Exchange Act Exemptive Applications” section. In the event the electronic mailbox is revised in the future, applicants can find the appropriate mailbox by accessing the “Electronic Mailboxes at the Commission” section.

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Elizabeth M. Murphy
Secretary

Date: July 19, 2011