

# **SECURITIES AND EXCHANGE COMMISSION**

## **17 CFR Part 200**

**[Release No. 34-60448]**

### **Delegation of Authority to Director of Division of Enforcement**

**Agency:** Securities and Exchange Commission.

**Action:** Final rule.

**SUMMARY:** The Commission is amending its rules to delegate authority to the Director of the Division of Enforcement to issue formal orders of investigation. These orders designate the enforcement staff authorized to issue subpoenas in connection with investigations under the federal securities laws. This action is intended to expedite the investigative process by removing the need for enforcement staff to seek Commission approval prior to performing routine functions. The Commission is adopting this delegation for a one-year period, and at the end of the period will evaluate whether to extend the delegation (though any formal orders issued during this period will remain in effect).

**EFFECTIVE DATE:** August 11, 2009.

**FOR FURTHER INFORMATION CONTACT:** Kenneth H. Hall, 202-551-4936, Office of Chief Counsel, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-6553.

**SUPPLEMENTARY INFORMATION:** The Commission is authorized to conduct investigations of possible violations of the federal securities laws, which provide that “any member of the Commission or any officer designated by it is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the

Commission deems relevant or material to the inquiry.” Section 21(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(b). See also, Section 19(c) of the Securities Act of 1933, 15 U.S.C. 77s(c); Section 42(b) of the Investment Company Act of 1940, 15 U.S.C. 80a-41(b); and Section 209(b) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-9(b). The Commission issues formal orders of investigation that authorize specifically-designated enforcement staff to exercise the Commission’s statutory power to subpoena witnesses and take the other actions authorized by the relevant cited provisions. The Commission is delegating the authority to issue formal orders of investigation to the Director of the Division of Enforcement. This delegation will expedite the investigative process by reducing the time and paperwork previously associated with obtaining Commission authorization prior to issuing subpoenas.

In any case the Division Director deems appropriate, the recommendation that a formal order be issued may be submitted to the Commission for review.

Administrative Law Matters:

The Commission finds, in accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(A)), that this amendment relates solely to agency organization, procedure, or practice. Accordingly, the provisions of the APA regarding notice of the proposed rulemaking and opportunities for public participation, 5 U.S.C. 553, are not applicable. For the same reason, and because this amendment does not substantively affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(3)(C), are not applicable. Additionally, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other law, 5 U.S.C. 603, are not applicable. Section 23(a)(2) of the Securities Exchange Act, 15 U.S.C. 78w, requires the Commission, in adopting rules under that Act, to consider the anticompetitive effects of any rules

it adopts. Because the amendment imposes no new burdens on parties in investigations, the Commission does not believe it will have any impact on competition. Finally, this amendment does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Accordingly, the amendment is effective [Insert date of publication in the Federal Register].

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

Administrative practice and procedure, Authority delegations (Government agencies).

**Text of Amendment**

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:

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

\* \* \* \* \*

2. Section 200.30-4 is amended by adding paragraph (a)(13) to read as follows:

**§ 200.30-4 Delegation of authority to Director of Division of Enforcement.**

\* \* \* \* \*

(a) \* \* \*

(13) For the period from August 11, 2009 through August 11, 2010, to order the making of private investigations pursuant to section 19(b) of the Securities Act of 1933 (15 U.S.C.

77s(b)), section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(b) and section 209(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(b)). Orders issued pursuant to this delegation during this period will continue to have effect after [insert date that is one year after date of publication in the Federal Register].

\* \* \* \* \*

By the Commission

Elizabeth M. Murphy  
Secretary

Dated: August 5, 2009