

## Securities and Exchange Commission

## § 202.2

### PART 202—INFORMAL AND OTHER PROCEDURES

Sec.

202.1 General.

202.2 Pre-filing assistance and interpretative advice.

202.3 Processing of filings.

202.3a Instructions for filing fees.

202.4 Facilitating administrative hearings.

202.5 Enforcement activities.

202.6 Adoption, revision and rescission of rules and regulations of general application.

202.7 Submittals.

202.8 Small entity compliance guides.

202.9 Small entity enforcement penalty reduction policy.

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

Section 202.5 is also issued under sec. 20, 48 Stat. 86, sec. 21, 48 Stat. 899, sec. 18, 49 Stat. 831, sec. 321, 53 Stat. 1174, sec. 1, 76 Stat. 394, 15 U.S.C. 77t, 78u, 79r, 77uuu, 80a-41, 80b-9, 78d-1.

Section 202.9 is also issued under section 223, 110 Stat. 859 (Mar. 29, 1996).

SOURCE: 25 FR 6736, July 15, 1960, unless otherwise noted.

#### § 202.1 General.

(a) The statutes administered by the Commission provide generally (1) for the filing with it of certain statements, such as registration statements, periodic and ownership reports, and proxy solicitation material, and for the filing of certain plans of reorganization, applications and declarations seeking Commission approvals; (2) for Commission determination through formal procedures of matters initiated by private parties or by the Commission; (3) for the investigation and examination of persons and records where necessary to carry out the purposes of the statutes and for enforcement of statutory provisions; and (4) for the adoption of rules and regulations where necessary to effectuate the purposes of the statutes.

(b) In addition to the Commission's rules of practice set forth in part 201 of this chapter, the Commission has promulgated rules and regulations pursuant to the several statutes it administers (parts 230, 240, 250, 260, 270 and 275 of this chapter). These parts contain substantive provisions and include as well numerous provisions detailing the procedure for meeting specific stand-

ards embodied in the statutes. The Commission's rules and regulations under each of the statutes are available in pamphlet form upon request to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(c) The statutes and the published rules, regulations and forms thereunder prescribe the course and method of formal procedures to be followed in Commission proceedings. These are supplemented where feasible by certain informal procedures designed to aid the public and facilitate the execution of the Commission's functions. There follows a brief description of procedures generally followed by the Commission which have not been formalized in rules.

(d) The informal procedures of the Commission are largely concerned with the rendering of advice and assistance by the Commission's staff to members of the public dealing with the Commission. While opinions expressed by members of the staff do not constitute an official expression of the Commission's views, they represent the views of persons who are continuously working with the provisions of the statute involved. And any statement by the director, associate director, assistant director, chief accountant, chief counsel, or chief financial analyst of a division can be relied upon as representing the views of that division. In certain instances an informal statement of the views of the Commission may be obtained. The staff, upon request or on its own motion, will generally present questions to the Commission which involve matters of substantial importance and where the issues are novel or highly complex, although the granting of a request for an informal statement by the Commission is entirely within its discretion.

#### § 202.2 Pre-filing assistance and interpretative advice.

The staff of the Commission renders interpretative and advisory assistance to members of the general public, prospective registrants, applicants and declarants. For example, persons having a question regarding the availability of

### § 202.3

an exemption may secure informal administrative interpretations of the applicable statute or rule as they relate to the particular facts and circumstances presented. Similarly, persons contemplating filings with the Commission may receive advice of a general nature as to the preparation thereof, including information as to the forms to be used and the scope of the items contained in the forms. Inquiries may be directed to an appropriate officer of the Commission's staff. In addition, informal discussions with members of the staff may be arranged whenever feasible, at the Commission's central office or, except in connection with matters under the Public Utility Holding Company Act of 1935 and certain matters under the Investment Company Act of 1940, at one of its regional or district offices.

[25 FR 6736, July 15, 1960, as amended at 59 FR 5945, Feb. 9, 1994]

#### § 202.3 Processing of filings.

(a) Registration statements, proxy statements, letters of notification, periodic reports, applications for qualification of indentures, and similar documents filed with the Commission under the Securities Act of 1933 and the Trust Indenture Act of 1939, and certain filings under the Securities Exchange Act of 1934 and the Public Utility Holding Company Act of 1935 are routed to the Division of Corporation Finance, which passes initially on the adequacy of disclosure and recommends the initial action to be taken. If the filing appears to afford inadequate disclosure, as for example through omission of material information or through violation of accepted accounting principles and practices, the usual practice is to bring the deficiency to the attention of the person who filed the document by letter from the Assistant Director assigned supervision over the particular filing, and to afford a reasonable opportunity to discuss the matter and make the necessary corrections. This informal procedure is not generally employed when the deficiencies appear to stem from careless disregard of the statutes and rules or a deliberate attempt to conceal or mislead or where the Commission deems formal proceedings nec-

### 17 CFR Ch. II (4-1-06 Edition)

essary in the public interest. If an electronic filing is not prepared in accordance with the requirements of the current EDGAR Filer Manual, the filing may be suspended and the filer so notified. Reasonable opportunity will be afforded the filer to make the necessary corrections or resubmit the filing as needed. Where it appears that the filing affords adequate disclosure, acceleration of its effectiveness when appropriate normally will be granted. A similar procedure is followed with respect to filings under the Investment Company Act of 1940 and certain filings relating to investment companies under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939, which are routed to the Division of Investment Management, and filings under the Public Utility Holding Company Act of 1935 which are also routed to the Division of Investment Management. A similar procedure is also followed in the Commission's Regional Offices with respect to registration statements on Forms SB-1 and SB-2 (17 CFR 239.9 and 239.10) and related filings under the Trust Indenture Act of 1939.

(b)(1) Applications for registration as brokers, dealers, investment advisers, municipal securities dealers and transfer agents are submitted to the Office of Filings and Information Services where they are examined to determine whether all necessary information has been supplied and whether all required financial statements and other documents have been furnished in proper form. Defective applications may be returned with a request for correction or held until corrected before being accepted as a filing. The files of the Commission and other sources of information are considered to determine whether any person connected with the applicant appears to have engaged in activities which would warrant commencement of proceedings on the question of denial of registration. The staff confers with applicants and makes suggestions in appropriate cases for amendments and supplemental information. Where it appears appropriate in the public interest and where a basis therefore exists, denial proceedings may be instituted. Within 45 days of

the date of the filing of a broker-dealer, investment adviser or municipal securities dealer application (or within such longer period as to which the applicant consents), the Commission shall by order grant registration or institute proceedings to determine whether registration should be denied. An application for registration as a transfer agent shall become effective within 30 days after receipt of the application (or within such shorter period as the Commission may determine). The Office of Filings and Information Services is also responsible for the processing and substantive examination of statements of beneficial ownership of securities and changes in such ownership filed under the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, and the Investment Company Act of 1940, and for the examination of reports filed pursuant to § 230.144 of this chapter.

(2) Applications for registration as national securities exchanges, or exemption from registration as exchanges by reason of such exchanges' limited volume of transactions filed with the Commission are routed to the Division of Market Regulation, which examines these applications to determine whether all necessary information has been supplied and whether all required financial statements and other documents have been furnished in proper form. Defective applications may be returned with a request for correction or held until corrected before being accepted as a filing. The files of the Commission and other sources of information are considered to determine whether any person connected with the applicant appears to have engaged in activities which would warrant commencement of proceedings on the question of denial of registration. The staff confers with applicants and makes suggestions in appropriate cases for amendments and supplemental information. Where it appears appropriate in the public interest and where a basis therefore exists, denial proceedings may be instituted. Within 90 days of the date of publication of a notice of the filing of an application for registration as a national securities exchange, or exemption from registration by reason of such exchanges' limited

volume of transactions (or within such longer period as to which the applicant consents), the Commission shall by order grant registration, or institute proceedings to determine whether registration should be denied as provided in § 240.19(a)(1) of this chapter.

(3) Notice forms for registration as national securities exchanges pursuant to Section 6(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(1)) filed with the Commission are routed to the Division of Market Regulation, which examines these notices to determine whether all necessary information has been supplied and whether all other required documents have been furnished in proper form. Defective notices may be returned with a request for correction or held until corrected before being accepted as a filing.

[41 FR 44699, Oct. 12, 1976, as amended at 44 FR 21567, Apr. 10, 1979; 49 FR 12686, Mar. 30, 1984; 57 FR 18216, Apr. 29, 1992; 58 FR 15004, Mar. 18, 1993; 59 FR 5945, Feb. 9, 1994; 63 FR 70916, Dec. 22, 1998; 64 FR 19451, April 21, 1999; 66 FR 43741, Aug. 20, 2001]

#### § 202.3a Instructions for filing fees.

Payment of filing fees specified by the following rules shall be made according to the directions listed in this part: § 230.111 (17 CFR 230.111), § 240.0-9 (17 CFR 240-0.9), § 260.7a-10 (17 CFR 260.7a-10), and § 270.0-8 (17 CFR 270.0-8). All such fees payable by electronic filers (§ 232.11(e) of this chapter), including those pertaining to documents filed in paper pursuant to a hardship exemption, shall be remitted to the U.S. Treasury designated lockbox depository at the Mellon Bank in Pittsburgh, Pennsylvania, by wire transfer, mail or hand delivery. Fees payable by paper filers may be either remitted to the lockbox depository, or remitted directly to the Commission at 450 Fifth Street NW., Washington DC 20549. Personal checks cannot be accepted for payment of fees. To ensure proper posting, all filers must include their assigned CIK account numbers on fee payments. If a third party submits a fee payment, the fee payment must specify the account number to which the fee is to be applied. Filing fees paid pursuant to Section 6(b) of the Securities Act of 1933, including fees paid pursuant to section 24(f) of the Investment

§ 202.3a

17 CFR Ch. II (4-1-06 Edition)

Company Act of 1940 (15 U.S.C. 80a-24(f)) or pursuant to Section 307(b) of the Trust Indenture Act of 1939 should be designated as "restricted," except that filing fees paid with respect to registration statements filed pursuant to Rule 462(b) (§230.462(b) of this chapter) should be designated as "unrestricted." Specific instructions on the various methods of making fee payments to the lockbox depository are as follows:

(a) *Wire transfer*: Those who wish to wire fee payments may use any bank or wire transfer service to initiate the transaction. All remitters must follow standard Federal Reserve instructions to ensure that fees transferred are received and identifiable. Specific information required for transmission to the Mellon Bank is listed below. Where an item is in BOLD FACE TYPE, the entry should be made exactly as indicated. Where an item is in *italics*, the filer-specific information should be included.

(1) Receiving Bank's ABA Number (field two): 043000261

(2) Type Code (field three): 1040

(3) Name of registrant and name of payor, if different (field nine): ORG=*registrant's name/payor's name (if different)*

(4) Receiving Bank's Name (field ten): MELLONBANK

(5) Transaction Code (field eleven): CTR/

(6) Beneficiary of payment (field twelve): BNF=SEC/AC-9108739/WRE

(7) Reference for Beneficiary (field thirteen): RFB=*account number to which the fee is to be applied*

(8) Payment Details (field fourteen): To designate funds as restricted: OBI=R, Otherwise: OBI=N.

(b) *Mail and hand delivery*: Checks and money orders are to be made payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. The account number and a notation of "R" (restricted), as applicable, are to be written on the front of the check or money order. Fees transmitted by mail must be addressed to the Securities and Exchange Commission, Post Office Box 360055M, Pittsburgh, Pennsylvania 15252. Fees that are hand delivered must be brought to the Mellon Bank,

27th floor, Three Mellon Bank Center, Fifth Avenue at William Penn Way, Pittsburgh, PA. Hand deliveries will be accepted weekdays from 7:30 a.m. to 4:00 p.m. (eastern time). No deliveries can be made on Federal holidays. All hand deliveries must be in a sealed envelope, with the Commission's lockbox number, 360055M, and the Commission's account number, 910-8739, written on the outside. Cash payments must be accompanied by a separate sheet of paper providing the same information specified for checks and money orders.

(c) *Filing fee accounts*. (1) A filing fee account is maintained for each filer who submits a filing requiring a fee on the Commission's EDGAR system or who submits funds to the U.S. Treasury designated depository in anticipation of paying a filing fee. Account statements are regularly prepared and provided to account holders. Account holders must maintain a current account address with the Commission to ensure timely access to these statements.

(2) 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 will be returned to the account holder, and account statements will not be sent again until a deposit, withdrawal or other adjustment is made with respect to the account. Filers must maintain a current account address to assure the timely return of funds. It may not be possible to return funds from inactive accounts if the Commission is unable to identify a current account address of an account holder after making reasonable efforts to do so.

*Note to paragraph (c)*. A company may update its account and other addresses using two different methods. The preferred and most efficient method is to change them online using the EDGAR filing website. This method ensures data integrity and the most timely update. Alternatively, a company may report a change of addresses on an amended Form ID [17 CFR 239.63; 17 CFR 249.446 and 17 CFR 274.402]. Simply changing an address in the text of the cover page of a filing made on the EDGAR system will not be sufficient to

## Securities and Exchange Commission

## § 202.5

update the Commission's account address records.

[58 FR 15010, Mar. 18, 1993, as amended at 60 FR 26613, May 17, 1995; 61 FR 49959, Sept. 24, 1996; 62 FR 47938, Sept. 12, 1997; 68 FR 50955, Aug. 22, 2003]

### § 202.4 Facilitating administrative hearings.

(a) Applications, declarations, and other requests involving formal Commission action after opportunity for hearing are scrutinized by the appropriate division for conformance with applicable statutory standards and Commission rules and generally the filing party is advised of deficiencies. Prior to passing upon applications and declarations the Commission receives the views of all interested persons at public hearings whenever appropriate; hence, any applicant or declarant seeking Commission approval of proposed transactions by a particular time should file his application or declaration in time to allow for the presentation and consideration of such views.

(b) After the staff has had an opportunity to study an application or declaration, interested persons may informally discuss the problems therein raised to the extent that time and the nature of the case permit (e.g., consideration is usually given to whether the proceeding is contested and if so to the nature of the contest). In such event, the staff will, to the extent feasible, advise as to the nature of the issues raised by the filing, the necessity for any amendments to the documents filed, the type of evidence it believes should be presented at the hearing and, in some instances, the nature, form, and contents of documents to be submitted as formal exhibits. The staff will, in addition, generally advise as to Commission policy in past cases which dealt with the same subject matter as the filing under consideration.

(c) During the course of the hearings, the staff is generally available for informal discussions to reconcile bona fide divergent views not only between itself and other persons interested in the proceedings, but among all interested persons; and, when circumstances permit, an attempt is made to narrow, if possible, the issues to be considered at the formal hearing.

(d) In some instances the Commission in the order accompanying its findings and opinion reserves jurisdiction over certain matters relating to the proceeding, such as payment of fees and expenses, accounting entries, terms and conditions relating to securities to be issued, and other matters. In such cases, upon receipt of satisfactory information and data the Commission considers whether further hearing is required before releasing jurisdiction.

### § 202.5 Enforcement activities.

(a) Where, from complaints received from members of the public, communications from Federal or State agencies, examination of filings made with the Commission, or otherwise, it appears that there may be violation of the acts administered by the Commission or the rules or regulations thereunder, a preliminary investigation is generally made. In such preliminary investigation no process is issued or testimony compelled. The Commission may, in its discretion, make such formal investigations and authorize the use of process as it deems necessary to determine whether any person has violated, is violating, or is about to violate any provision of the federal securities laws or the rules of a self-regulatory organization of which the person is a member or participant. Unless otherwise ordered by the Commission, the investigation or examination is non-public and the reports thereon are for staff and Commission use only.

(b) After investigation or otherwise the Commission may in its discretion take one or more of the following actions: Institution of administrative proceedings looking to the imposition of remedial sanctions, initiation of injunctive proceedings in the courts, and, in the case of a willful violation, reference of the matter to the Department of Justice for criminal prosecution. The Commission may also, on some occasions, refer the matter to, or grant requests for access to its files made by, domestic and foreign governmental authorities or foreign securities authorities, self-regulatory organizations such as stock exchanges or the National Association of Securities Dealers, Inc., and other persons or entities.

## § 202.6

## 17 CFR Ch. II (4–1–06 Edition)

(c) Persons who become involved in preliminary or formal investigations may, on their own initiative, submit a written statement to the Commission setting forth their interests and position in regard to the subject matter of the investigation. Upon request, the staff, in its discretion, may advise such persons of the general nature of the investigation, including the indicated violations as they pertain to them, and the amount of time that may be available for preparing and submitting a statement prior to the presentation of a staff recommendation to the Commission for the commencement of an administrative or injunction proceeding. Submissions by interested persons should be forwarded to the appropriate Division Director, Regional Director, or District Administrator with a copy to the staff members conducting the investigation and should be clearly referenced to the specific investigation to which they relate. In the event a recommendation for the commencement of an enforcement proceeding is presented by the staff, any submissions by interested persons will be forwarded to the Commission in conjunction with the staff memorandum.

(d) In instances where the staff has concluded its investigation of a particular matter and has determined that it will not recommend the commencement of an enforcement proceeding against a person, the staff, in its discretion, may advise the party that its formal investigation has been terminated. Such advice if given must in no way be construed as indicating that the party has been exonerated or that no action may ultimately result from the staff's investigation of the particular matter.

(e) The Commission has adopted the policy that in any civil lawsuit brought by it or in any administrative proceeding of an accusatory nature pending before it, it is important to avoid creating, or permitting to be created, an impression that a decree is being entered or a sanction imposed, when the conduct alleged did not, in fact, occur. Accordingly, it hereby announces its policy not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint

or order for proceedings. In this regard, the Commission believes that a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations.

(f) In the course of the Commission's investigations, civil lawsuits, and administrative proceedings, the staff, with appropriate authorization, may discuss with persons involved the disposition of such matters by consent, by settlement, or in some other manner. It is the policy of the Commission, however, that the disposition of any such matter may not, expressly or impliedly, extend to any criminal charges that have been, or may be, brought against any such person or any recommendation with respect thereto. Accordingly, any person involved in an enforcement matter before the Commission who consents, or agrees to consent, to any judgment or order does so solely for the purpose of resolving the claims against him in that investigative, civil, or administrative matter and not for the purpose of resolving any criminal charges that have been, or might be, brought against him. This policy reflects the fact that neither the Commission nor its staff has the authority or responsibility for instituting, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and representatives of the Department of Justice.

[25 FR 6736, July 15, 1960, as amended at 37 FR 23829, Nov. 9, 1972; 37 FR 25224, Nov. 29, 1972; 44 FR 50835, Aug. 30, 1979; 46 FR 47532, Sept. 29, 1981; 47 FR 26822, June 22, 1982; 54 FR 24332, June 7, 1989; 59 FR 5945, Feb. 9, 1994]

### **§ 202.6 Adoption, revision, and rescission of rules and regulations of general application.**

(a) The procedure followed by the Commission in connection with the adoption, revision, and rescission of rules of general application necessarily varies in accordance with the nature of the rule, the extent of public interest therein, and the necessity for speed in its adoption. Rules relating to Commission organization, procedure and management, for example, are generally

## Securities and Exchange Commission

## § 202.8

adopted by the Commission without affording public discussion thereof. On the other hand, in the adoption of substantive rules materially affecting an industry or a segment of the public, such as accounting rules, every feasible effort is made in advance of adoption to receive the views of persons to be affected. In such cases, proposals for the adoption, revision, or rescission of rules are initiated either by the Commission or by members of the public, and to the extent practicable, the practices set forth in paragraph (b) of this section are observed.

(b) After preliminary consideration by the Commission a draft of the proposed rule is published in the FEDERAL REGISTER and mailed to interested persons (e.g., other interested regulatory bodies, principal registrants or persons to be affected, stock exchanges, professional societies and leading authorities on the subject concerned and other persons requesting such draft) for comments. Unless accorded confidential treatment pursuant to statute or rule of the Commission, written comments filed with the Commission on or before the closing date for comments become a part of the public record upon the proposed rule. The Commission, in its discretion, may accept and include in the public record written comments received by the Commission after the closing date.

(c) Following analysis of comments received, the rule may be adopted in the form published or in a revised form in the light of such comments. In some cases, a revised draft is prepared and published and, where appropriate, an oral hearing may be held before final action upon the proposal. Any interested person may appear at the hearing and/or may submit written comment for consideration in accordance with the Commission's notice of the rule-making procedure to be followed. The rule in the form in which it is adopted by the Commission is publicly released

and is published in the FEDERAL REGISTER.

(Sec. 19(a), 48 Stat. 908; sec. 23(a), 48 Stat. 901; sec. 20(a), 49 Stat. 833; sec. 319(a), 53 Stat. 1173; sec. 38(a), 54 Stat. 841; sec. 211(a), 54 Stat. 855; (15 U.S.C. 77s(a), 78w(a), 78t(a), 77sss(a), 80a-37(a), 80b-11(a))

[25 FR 6736, July 15, 1960, as amended at 44 FR 35208, June 19, 1979]

### § 202.7 Submittals.

(a) All required statements, reports, applications, etc. must be filed with the principal office of the Commission unless otherwise specified in the Commission's rules, schedules and forms. Reports by exchange members, brokers and dealers required by §240.17a-5 of this chapter under the Securities Exchange Act of 1934 must be filed with the appropriate regional or district office as provided in §230.255(a) of this chapter under the Securities Act of 1933, and with the principal office of the Commission and the appropriate regional or district office as provided under §240.17a-5(a) *et seq.* of this chapter under the Securities Exchange Act of 1934.

(b) *Electronic filings.* All documents required to be filed in electronic format with the Commission pursuant to the federal securities laws or the rules and regulations thereunder shall be filed at the principal office in Washington, DC via EDGAR by delivery to the Commission of a magnetic tape or diskette, or by direct transmission.

[41 FR 44699, Oct. 12, 1976, as amended at 58 FR 14659, Mar. 18, 1993; 59 FR 5945, Feb. 9, 1994]

### § 202.8 Small entity compliance guides.

The following small entity compliance guides are available to the public from the Commission's Publications Room and regional offices:

(a) *Q & A: Small Business and the SEC.*<sup>1</sup>

(b) *The Work of the SEC.*<sup>1</sup>

(c) *Broker-Dealer Registration Package.*

(d) *Investment Adviser Registration Package.*

(e) *Investment Company Registration Package.*

<sup>1</sup>These items are also available on the Securities and Exchange Commission Web site on the Internet, <http://www.sec.gov>.

## § 202.9

(f) *Examination Information for Broker-Dealers, Transfer Agents, Investment Advisers and Investment Companies.*

[62 FR 4105, Jan. 28, 1997]

### § 202.9 Small entity enforcement penalty reduction policy.

The Commission's policy with respect to whether to reduce or assess civil money penalties against a small entity is:

(a) The Commission will consider on a case-by-case basis whether to reduce or not assess civil money penalties against a small entity. In determining whether to reduce or not assess penalties against a specific small entity, the following considerations will apply:

(1) Except as provided in paragraph (a)(3) of this section, penalty reduction will not be available for any small entity if:

(i) The small entity was subject previously to an enforcement action;

(ii) Any of the small entity's violations involved willful or criminal conduct; or

(iii) The small entity did not make a good faith effort to comply with the law.

(2) In considering whether the Commission will reduce or refrain from assessing a civil money penalty, the Commission may consider:

(i) The egregiousness of the violations;

(ii) The isolated or repeated nature of the violations;

(iii) The violator's state of mind when committing the violations;

(iv) The violator's history (if any) of legal or regulatory violations;

(v) The extent to which the violator cooperated during the investigation;

(vi) Whether the violator has engaged in subsequent remedial efforts to mitigate the effects of the violation and to prevent future violations;

(vii) The degree to which a penalty will deter the violator or others from committing future violations; and

(viii) Any other relevant fact.

(3) The Commission also may consider whether to reduce or not assess a civil money penalty against a small entity, including a small entity otherwise excluded from this policy under paragraphs (a)(1) (i)-(iii) of this section, if the small entity can demonstrate to

## 17 CFR Ch. II (4-1-06 Edition)

the Commission's satisfaction that it is financially unable to pay the penalty, immediately or over a reasonable period of time, in whole or in part.

(4) For purposes of this policy, an entity qualifies as "small" if it is a small business or small organization as defined by Commission rules adopted for the purpose of compliance with the Regulatory Flexibility Act.<sup>1</sup> An entity not included in these definitions will be considered "small" for purposes of this policy if it meets the total asset amount that applies to issuers as set forth in § 230.157a of this chapter.<sup>2</sup>

(b) This policy does not create a right or remedy for any person. This policy shall not apply to any remedy that may be sought by the Commission other than civil money penalties, whether or not such other remedy may be characterized as penal or remedial.

[62 FR 16079, Apr. 4, 1997]

## PART 203—RULES RELATING TO INVESTIGATIONS

### Subpart A—In General

Sec.

203.1 Application of the rules of this part.

<sup>1</sup>Pursuant to the Reg. Flex. Act, 5 U.S.C. § 601(3), the Commission has adopted appropriate definitions of "small business" for purposes of the Reg. Flex. Act. See 17 CFR 270.0-10, 275.0-7, 240.0-10, 230.157, 250.110, and 260.0-7. The Commission recently proposed amendments to certain of these definitions. *Definitions of "Small Business" or "Small Organization" Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933*, Securities Act Rel. No. 7383, 62 FR 4106 (Jan. 28, 1997). The Commission extended the comment period for the proposed amendments to April 30, 1997, 62 FR 13356 (Mar. 20, 1997). Based on an analysis of the language and legislative history of the Reg. Flex. Act, Congress does not appear to have intended that Act to apply to natural persons (as opposed to individual proprietorships) or to foreign entities. The Commission understands that staff at the Small Business Administration have taken the same position.

<sup>2</sup>At present, this threshold is \$5 million. Thus, non-regulated entities, such as general partnerships, privately held corporations or professional service organizations, with assets of \$5 million or less may qualify for penalty-reduction.