

(c) *Review of documents not admitted.* Any document offered in evidence but excluded by the hearing officer or the Commission and any document marked for identification but not offered as an exhibit shall not be considered a part of the record before the Commission on appeal but shall be transmitted to the Commission by the Secretary if so requested by the Commission. In the event that the Commission does not request the document, the Secretary shall retain the document not admitted into the record until the later of:

- (1) The date upon which the Commission's order becomes final, or
- (2) The conclusion of any judicial review of that order.

[60 FR 32796, June 23, 1995, as amended at 69 FR 13180, Mar. 19, 2004]

§ 201.470 Reconsideration.

(a) *Scope of rule.* A party or any person aggrieved by a determination in a proceeding may file a motion for reconsideration of a final order issued by the Commission.

(b) *Procedure.* A motion for reconsideration shall be filed within 10 days after service of the order complained of, or within such time as the Commission may prescribe upon motion for extension of time filed by the person seeking reconsideration, if the motion is made within the foregoing 10-day period. The motion for reconsideration shall briefly and specifically state the matters of record alleged to have been erroneously decided, the grounds relied upon, and the relief sought. A motion for reconsideration shall conform to the requirements, including the limitation on the numbers of words, provided in § 201.154. No response to a motion for reconsideration shall be filed unless requested by the Commission. Any response so requested shall comply with § 201.154.

[60 FR 32796, June 23, 1995, as amended at 69 FR 13180, Mar. 19, 2004; 70 FR 72570, Dec. 5, 2005]

§ 201.490 Receipt of petitions for judicial review pursuant to 28 U.S.C. 2112(a)(1).

The Commission officer and office designated pursuant to 28 U.S.C. 2112(a)(1) to receive copies of petitions for review of Commission orders from

the persons instituting review in a court of appeals, are the Secretary and the Office of the Secretary at the Commission's Headquarters. Ten copies of each petition shall be submitted. Each copy shall state on its face that it is being submitted to the Commission pursuant to 28 U.S.C. 2112 by the person or persons who filed the petition in the court of appeals.

RULES RELATING TO TEMPORARY ORDERS AND SUSPENSIONS

§ 201.500 Expedited consideration of proceedings.

Consistent with the Commission's or the hearing officer's other responsibilities, every hearing shall be held and every decision shall be rendered at the earliest possible time in connection with:

(a) An application for a temporary sanction, as defined in § 201.101(a), or a proceeding to determine whether a temporary sanction should be made permanent;

(b) A motion or application to review an order suspending temporarily the effectiveness of an exemption from registration pursuant to Regulations A, B, E or F under the Securities Act, §§ 230.258, 230.336, 230.610 or 230.656 of this chapter; or,

(c) A motion to or petition to review an order suspending temporarily the privilege of appearing before the Commission under § 201.102(e)(3), or a sanction under § 201.180(a)(1).

§ 201.510 Temporary cease-and-desist orders: Application process.

(a) *Procedure.* A request for entry of a temporary cease-and-desist order shall be made by application filed by the Division of Enforcement. The application shall set forth the statutory provision or rule that each respondent is alleged to have violated; the temporary relief sought against each respondent, including whether the respondent would be required to take action to prevent the dissipation or conversion of assets; and whether the relief is sought *ex parte*.

(b) *Accompanying documents.* The application shall be accompanied by a declaration of facts signed by a person with knowledge of the facts contained

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therein, a memorandum of points and authorities, a proposed order imposing the temporary relief sought, and, unless relief is sought *ex parte*, a proposed notice of hearing and order to show cause whether the temporary relief should be imposed. If a proceeding for a permanent cease-and-desist order has not already been commenced, a proposed order instituting proceedings to determine whether a permanent cease-and-desist order should be imposed shall also be filed with the application.

(c) *With whom filed.* The application shall be filed with the Secretary or, if the Secretary is unavailable, with the duty officer. In no event shall an application be filed with an administrative law judge.

(d) *Record of proceedings.* Hearings, including *ex parte* presentations made by the Division of Enforcement pursuant to §201.513, shall be recorded or transcribed pursuant to §201.302.

§201.511 Temporary cease-and-desist orders: Notice; procedures for hearing.

(a) *Notice: how given.* Notice of an application for a temporary cease-and-desist order shall be made by serving a notice of hearing and order to show cause pursuant to §201.141(b) or, where timely service of a notice of hearing pursuant to §201.141(b) is not practicable, by any other means reasonably calculated to give actual notice that a hearing will be held, including telephonic notification of the general subject matter, time, and place of the hearing. If an application is made *ex parte*, pursuant to §201.513, no notice to a respondent need be given prior to the Commission's consideration of the application.

(b) *Hearing before the Commission.* Except as provided in paragraph (d) of this section, hearings on an application for a temporary cease-and-desist order shall be held before the Commission.

(c) *Presiding officer: designation.* The Chairman shall preside or designate a Commissioner to preside at the hearing. If the Chairman is absent or unavailable at the time of hearing and no other Commissioner has been designated to preside, the duty officer on the day the hearing begins shall pre-

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side or designate another Commissioner to preside.

(d) *Procedure at hearing.* (1) The presiding officer shall have all those powers of a hearing officer set forth in §201.111 and shall rule on the admissibility of evidence and other procedural matters, including, but not limited to whether oral testimony will be heard; the time allowed each party for the submission of evidence or argument; and whether post-hearing submission of briefs, proposed findings of fact and conclusions of law will be permitted and if so, the procedures for submission; provided, however, that the person presiding may consult with other Commissioners participating in the hearing on these or any other question of procedure.

(2) Each Commissioner present at the hearing shall be afforded a reasonable opportunity to ask questions of witnesses, if any, or of counsel.

(3) A party or witness may participate by telephone. Alternative means of remote access, including a video link, shall be permitted in the Commission's discretion. Factors the Commission may consider in determining whether to permit alternative means of remote access include, but are not limited to, whether allowing an alternative means of access will delay the hearing, whether the alternative means is reliable, and whether the party proposing its use has made arrangements to pay for its cost.

(4) After a hearing has begun, the Commission may, on its own motion, or the motion of a party, assign a hearing officer to preside at the taking of oral testimony or other evidence and to certify the record of such testimony or other evidence to the Commission within a fixed period of time. No recommended or initial decision shall be made by such a hearing officer.

§201.512 Temporary cease-and-desist orders: Issuance after notice and opportunity for hearing.

(a) *Basis for issuance.* A temporary cease-and-desist order shall be issued only if the Commission determines that the alleged violation or threatened violation specified in an order instituting proceedings whether to enter a permanent cease-and-desist order