

or decide the matter on the facts presented in the petition and any other relevant facts known to the Commission. If the petitioner fails to cooperate with, obstructs, or refuses to permit the making of an examination by the Commission, such conduct shall be grounds to deny the petition.

RULES REGARDING DISGORGEMENT AND  
PENALTY PAYMENTS

**§ 201.600 Interest on sums disgorged.**

(a) *Interest required.* Prejudgment interest shall be due on any sum required to be paid pursuant to an order of disgorgement. The disgorgement order shall specify each violation that forms the basis for the disgorgement ordered; the date which, for purposes of calculating disgorgement, each such violation was deemed to have occurred; the amount to be disgorged for each such violation; and the total sum to be disgorged. Prejudgment interest shall be due from the first day of the month following each such violation through the last day of the month preceding the month in which payment of disgorgement is made. The order shall state the amount of prejudgment interest owed as of the date of the disgorgement order and that interest shall continue to accrue on all funds owed until they are paid.

(b) *Rate of interest.* Interest on the sum to be disgorged shall be computed at the underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), and shall be compounded quarterly. The Commission or the hearing officer may, by order, specify a lower rate of prejudgment interest as to any funds which the respondent has placed in an escrow or otherwise guaranteed for payment of disgorgement upon a final determination of the respondent's liability. Escrow and other guarantee arrangements must be approved by the Commission or the hearing officer prior to entry of the disgorgement order.

**§ 201.601 Prompt payment of disgorgement, interest and penalties.**

(a) *Timing of payments.* Unless otherwise provided, funds due pursuant to an order by the Commission requiring the

payment of disgorgement, interest, or penalties shall be paid no later than 21 days after service of the order, and funds due pursuant to an order by a hearing officer shall be paid in accordance with the order of finality issued pursuant to § 201.360(d)(2).

(b) *Stays.* A stay of any order requiring the payment of disgorgement, interest or penalties may be sought at any time pursuant to § 201.401.

(c) *Method of making payment.* Payment shall be made by United States postal money order, wire transfer, certified check, bank cashier's check, or bank money order made payable to the Securities and Exchange Commission. The payment shall be mailed or delivered to the office designated by this Commission. Payment shall be accompanied by a letter that identifies the name and number of the case and the name of the respondent making payment. A copy of the letter and the instrument of payment shall be sent to counsel for the Division of Enforcement.

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

**§§ 201.610–201.614 [Reserved]**

**§ 201.620 [Reserved]**

**§ 201.630 Inability to pay disgorgement, interest or penalties.**

(a) *Generally.* In any proceeding in which an order requiring payment of disgorgement, interest or penalties may be entered, a respondent may present evidence of an inability to pay disgorgement, interest or a penalty. The Commission may, in its discretion, or the hearing officer may, in his or her discretion, consider evidence concerning ability to pay in determining whether disgorgement, interest or a penalty is in the public interest.

(b) *Financial disclosure statement.* Any respondent who asserts an inability to pay disgorgement, interest or penalties may be required to file a sworn financial disclosure statement and to keep the statement current. The financial statement shall show the respondent's assets, liabilities, income or other funds received and expenses or other payments, from the date of the first

## § 201.700

violation alleged against that respondent in the order instituting proceedings, or such later date as specified by the Commission or a hearing officer, to the date of the order requiring the disclosure statement to be filed. By order, the Commission or the hearing officer may prescribe the use of the Disclosure of Assets and Financial Information Form (see Form D-A at § 209.1 of this chapter) or any other form, may specify other time periods for which disclosure is required, and may require such other information as deemed necessary to evaluate a claim of inability to pay.

(c) *Confidentiality.* Any respondent submitting financial information pursuant to this section or § 201.410(c) may make a motion, pursuant to § 201.322, for the issuance of a protective order against disclosure of the information submitted to the public or to any parties other than the Division of Enforcement. Prior to a ruling on the motion, no party receiving information as to which a motion for a protective order has been made may transfer or convey the information to any other person without the prior permission of the Commission or the hearing officer.

(d) *Service required.* Notwithstanding any provision of § 201.322, a copy of the financial disclosure statement shall be served on the Division of Enforcement.

(e) *Failure to file required financial information: sanction.* Any respondent who, after making a claim of inability to pay either disgorgement, interest or a penalty, fails to file a financial disclosure statement when such a filing has been ordered or is required by rule may, in the discretion of the Commission or the hearing officer, be deemed to have waived the claim of inability to pay. No sanction pursuant to §§ 201.155 or 201.180 shall be imposed for a failure to file such a statement.

### § 201.700 Initiation of proceedings for SRO proposed rule changes.

(a) *Rules of Practice.* For purposes of these Rules of Practice contained at 17 CFR 201.700 through 201.701, the following Rules of Practice apply:

(1) Rule 103, 17 CFR 201.103 (Construction of Rules);

(2) Rule 104, 17 CFR 201.104 (Business Hours); and

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(3) Rule 160, 17 CFR 201.160 (Time Computation).

(b) *Institution of proceedings; notice and opportunity to submit written views—*

(1) *Generally.* If the Commission determines to initiate proceedings to determine whether a self-regulatory organization's proposed rule change should be disapproved, it shall provide notice thereof to the self-regulatory organization that filed the proposed rule change, as well as all interested parties and the public, by publication in the FEDERAL REGISTER of the grounds for disapproval under consideration.

(i) *Prior to notice.* If the Commission determines to institute proceedings prior to initial publication by the Commission of the notice of the self-regulatory organization's proposed rule change in the FEDERAL REGISTER, then the Commission shall publish notice of the proposed rule change simultaneously with a brief summary of the grounds for disapproval under consideration.

(ii) *Subsequent to notice.* If the Commission determines to institute proceedings subsequent to initial publication by the Commission of the notice of the self-regulatory organization's proposed rule change in the FEDERAL REGISTER, then the Commission shall publish separately in the FEDERAL REGISTER a brief summary of the grounds for disapproval under consideration.

(iii) *Service of an order instituting proceedings.* In addition to publication in the FEDERAL REGISTER of the grounds for disapproval under consideration, the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the grounds for disapproval under consideration to the self-regulatory organization that filed the proposed rule change by serving notice to the person listed as the contact person on the cover page of the Form 19b-4 filing. Notice shall be made by delivering a copy of the order to such contact person either by any method specified in 17 CFR 201.141(a) or by electronic means including e-mail.

(2) *Notice of the grounds for disapproval under consideration.* The grounds for disapproval under consideration shall