

§ 202.4

for more than three years 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 (e). A company must update its account and other addresses using the EDGAR Web site. This method ensures data integrity and the timeliest update. Simply changing an address in the text of the cover page of a filing made on the EDGAR system will not be sufficient to update the Commission's account address records.

[73 FR 6013, Feb. 1, 2008, as amended at 76 FR 28890, May 19, 2011]

§ 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,

17 CFR Ch. II (4–1–12 Edition)

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

Securities and Exchange Commission

§ 202.5

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.

(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 or Regional Director 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

§ 202.6

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; 73 FR 32227, June 5, 2008]

§ 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 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.

17 CFR Ch. II (4–1–12 Edition)

(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.

[25 FR 6736, July 15, 1960, as amended at 44 FR 35208, June 19, 1979; 76 FR 71875, Nov. 21, 2011]

§ 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 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 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; 73 FR 32227, June 5, 2008]

§ 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: