

§ 201.420

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order review on its own initiative to be made in a shorter time, may make a motion for an expedited decision, accompanied by a written statement that the party waives its right to file a petition for review. The vote of one member of the Commission, conveyed to the Secretary, shall be sufficient to bring a matter before the Commission for review.

(d) *Limitations on matters reviewed.* Review by the Commission of an initial decision shall be limited to the issues specified in the petition for review or the issues, if any, specified in the briefing schedule order issued pursuant to § 201.450(a). On notice to all parties, however, the Commission may, at any time prior to issuance of its decision, raise and determine any other matters that it deems material, with opportunity for oral or written argument thereon by the parties.

(e) *Summary affirmance.* (1) At any time within 21 days after the filing of a petition for review pursuant to § 201.410(b), any party may file a motion in accordance with § 201.154 asking that the Commission summarily affirm an initial decision. Any party may file an opposition and reply to such motion in accordance with § 201.154. Pending determination of the motion for summary affirmance, the Commission, in its discretion, may delay issuance of a briefing schedule order pursuant to § 201.450.

(2) Upon consideration of the motion and any opposition or upon its own initiative, the Commission may summarily affirm an initial decision. The Commission may grant summary affirmance if it finds that no issue raised in the initial decision warrants consideration by the Commission of further oral or written argument. The Commission will decline to grant summary affirmance upon a reasonable showing that a prejudicial error was committed in the conduct of the proceeding or that the decision embodies an exercise of discretion or decision of law or policy that is important and that the Commission should review.

(f) *Failure to obtain a majority.* In the event a majority of participating Commissioners do not agree to a disposition on the merits, the initial decision shall be of no effect, and an order will

be issued in accordance with this result.

[60 FR 32796, June 23, 1995, as amended at 69 FR 13179, Mar. 19, 2004; 70 FR 72570, Dec. 5, 2005]

§ 201.420 Appeal of determinations by self-regulatory organizations.

(a) *Application for review; when available.* An application for review by the Commission may be filed by any person who is aggrieved by a self-regulatory organization determination as to which a notice is required to be filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1). Such determinations include any:

- (1) Final disciplinary sanction;
- (2) Denial or conditioning of membership or participation;
- (3) Prohibition or limitation in respect to access to services offered by that self-regulatory organization or a member thereof; or
- (4) Bar from association.

(b) *Procedure.* As required by section 19(d)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(d)(1), an applicant must file an application for review with the Commission within 30 days after the notice of the determination is filed with the Commission and received by the aggrieved person applying for review. The Commission will not extend this 30-day period, absent a showing of extraordinary circumstances. This section is the exclusive remedy for seeking an extension of the 30-day period.

(c) *Application.* The application shall be filed with the Commission pursuant to § 201.151. The applicant shall serve the application on the self-regulatory organization. The application shall identify the determination complained of and set forth in summary form a brief statement of the alleged errors in the determination and supporting reasons therefor. The application shall state an address where the applicant can be served. The application should not exceed two pages in length. If the applicant will be represented by a representative, the application shall be accompanied by the notice of appearance required by § 201.102(d).

(d) *Determination not stayed.* Filing an application for review with the Commission pursuant to paragraph (b) of this section shall not operate as a stay of the complained of determination made by the self-regulatory organization unless the Commission otherwise orders either pursuant to a motion filed in accordance with § 201.401 or on its own motion.

(e) *Certification of the record; service of the index.* Fourteen days after receipt of an application for review or a Commission order for review, the self-regulatory organization shall certify and file with the Commission one copy of the record upon which the action complained of was taken, and shall file with the Commission three copies of an index to such record, and shall serve upon each party one copy of the index.

[60 FR 32796, June 23, 1995, as amended at 69 FR 13179, Mar. 19, 2004]

§ 201.421 Commission consideration of determinations by self-regulatory organizations.

(a) *Commission review other than pursuant to a petition for review.* The Commission may, on its own initiative, order review of any determination by a self-regulatory organization that could be subject to an application for review pursuant to § 201.420(a) within 40 days after notice thereof was filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1).

(b) *Supplemental briefing.* The Commission may at any time prior to issuance of its decision raise or consider any matter that it deems material, whether or not raised by the parties. Notice to the parties and an opportunity for supplemental briefing with respect to issues not briefed by the parties shall be given where the Commission believes that such briefing would significantly aid the decisional process.

§ 201.430 Appeal of actions made pursuant to delegated authority.

(a) *Scope of rule.* Any person aggrieved by an action made by authority delegated in §§ 200.30-1 through 200.30-8 or §§ 200.30-11 through 200.30-18 of this chapter may seek review of the action

pursuant to paragraph (b) of this section.

(b) *Procedure—(1) Notice of intention to petition for review.* A party to an action made pursuant to delegated authority, or a person aggrieved by such action, may seek Commission review of the action by filing a written notice of intention to petition for review within five days after actual notice of the action to that party or aggrieved person, or 15 days after publication of the notice of action in the FEDERAL REGISTER, or five days after service of notice of the action on that party or aggrieved person pursuant to § 201.141(b), whichever is the earliest.

(2) *Petition for review.* Within five days after the filing of a notice of intention to petition for review pursuant to paragraph (b)(1) of this section, the person seeking review shall file a petition for review containing a clear and concise statement of the issues to be reviewed and the reasons why review is appropriate. The petition shall include exceptions to any findings of fact or conclusions of law made, together with supporting reasons for such exceptions based on appropriate citations to such record as may exist. These reasons may be stated in summary form.

(c) *Prerequisite to judicial review.* Pursuant to Section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition to the Commission for review of an action made by authority delegated in §§ 200.30-1 through 200.30-18 of this chapter is a prerequisite to the seeking of judicial review of a final order entered pursuant to such an action. Pursuant to 15 U.S.C. 7214(h)(2), any decision by the Commission pursuant to 200.30-11 shall not be reviewable under 15 U.S.C. 78y and shall not be deemed 'final agency action' for purposes of 5 U.S.C. 704.

[60 FR 32796, June 23, 1995; 60 FR 46500, Sept. 7, 1995, as amended at 69 FR 13179, Mar. 19, 2004; 70 FR 72570, Dec. 5, 2005; 75 FR 47449, Aug. 6, 2010]

§ 201.431 Commission consideration of actions made pursuant to delegated authority.

(a) *Scope of review.* The Commission may affirm, reverse, modify, set aside or remand for further proceedings, in