

§ 201.201

17 CFR Ch. II (4–1–10 Edition)

§ 201.201 Consolidation and severance of proceedings.

(a) *Consolidation.* By order of the Commission or a hearing officer, proceedings involving a common question of law or fact may be consolidated for hearing of any or all the matters at issue in such proceedings. The Commission or the hearing officer may make such orders concerning the conduct of such proceedings as it deems appropriate to avoid unnecessary cost or delay. Consolidation shall not prejudice any rights under these Rules of Practice and shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred. For purposes of this section, no distinction is made between joinder and consolidation of proceedings.

(b) *Severance.* By order of the Commission, any proceeding may be severed with respect to one or more parties. Any motion to sever must be made solely to the Commission and must include a representation that a settlement offer is pending before the Commission or otherwise show good cause.

[60 FR 32796, June 23, 1995, as amended at 69 FR 13177, Mar. 19, 2004; 70 FR 72570, Dec. 5, 2005]

§ 201.202 Specification of procedures by parties in certain proceedings.

(a) *Motion to specify procedures.* In any proceeding other than an enforcement or disciplinary proceeding, a proceeding to review a determination by a self-regulatory organization pursuant to §§ 201.420 and 201.421, or a proceeding to review a determination of the Board pursuant to §§ 201.440 and 201.441, a party may, at any time up to 20 days prior to the start of a hearing, make a motion to specify the procedures necessary or appropriate for the proceeding with particular reference to:

(1) Whether there should be an initial decision by a hearing officer;

(2) Whether any interested division of the Commission may assist in the preparation of the Commission's decision; and

(3) Whether there should be a 30-day waiting period between the issuance of the Commission's order and the date it is to become effective.

(b) *Objections; effect of failure to object.* Any other party may object to the procedures so specified, and such party may specify such additional procedures as it considers necessary or appropriate. In the absence of such objection or such specification of additional procedures, such other party may be deemed to have waived objection to the specified procedures.

(c) *Approval required.* Any proposal pursuant to paragraph (a) of this section, even if not objected to by any party, shall be subject to the written approval of the hearing officer.

(d) *Procedure upon agreement to waive an initial decision.* If an initial decision is waived pursuant to paragraph (a) of this section, the hearing officer shall notify the Secretary and, unless the Commission directs otherwise within 14 days, no initial decision shall be issued.

[60 FR 32796, June 23, 1995, as amended at 69 FR 13177, Mar. 19, 2004]

§ 201.210 Parties, limited participants and amici curiae.

(a) *Parties in an enforcement or disciplinary proceeding, a proceeding to review a self-regulatory organization determination, or a proceeding to review a Board determination—(1) Generally.* No person shall be granted leave to become a party or a non-party participant on a limited basis in an enforcement or disciplinary proceeding, a proceeding to review a determination by a self-regulatory organization pursuant to §§ 201.420 and 201.421, or a proceeding to review a determination by the Board pursuant to §§ 201.440 and 201.441, except as authorized by paragraph (c) of this section.

(2) *Disgorgement proceedings.* In an enforcement proceeding, a person may state his or her views with respect to a proposed plan of disgorgement or file a proof of claim pursuant to § 201.1103.

(b) *Intervention as a party—(1) Generally.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding, a proceeding to review a self-regulatory determination, or a proceeding to review a Board determination, any person may seek leave to intervene as a party by filing a motion setting forth the person's interest in the proceeding. No person, however,

shall be admitted as a party to a proceeding by intervention unless it is determined that leave to participate pursuant to paragraph (c) of this section would be inadequate for the protection of the person's interests.

(i) In a proceeding under the Public Utility Holding Company Act of 1935, any representative of interested consumers or security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors or consumers, may be admitted as a party upon the filing of a written motion setting forth the person's interest in the proceeding.

(ii) In a proceeding under the Investment Company Act of 1940, any representative of interested security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors, may be admitted as a party upon the filing of a written motion setting forth the person's interest in the proceeding.

(2) *Intervention as of right.* (i) In proceedings under the Public Utility Holding Company Act of 1935, any interested representative, agency, authority or instrumentality of the United States or any interested State, State commission, municipality or other political subdivision of a state shall be admitted as a party to any proceeding upon the filing of a written motion requesting leave to be admitted.

(ii) In proceedings under the Investment Company Act of 1940, any interested State or State agency shall be admitted as a party to any proceeding upon the filing of a written motion requesting leave to be admitted.

(c) *Leave to participate on a limited basis.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding, a proceeding to review a self-regulatory determination, or a proceeding to review a Board determination, any person may seek leave to participate on a limited basis as a non-party participant as to any matter affecting the person's interests:

(1) *Procedure.* Motions for leave to participate shall be in writing, shall set forth the nature and extent of the movant's interest in the proceeding, and, except where good cause for late

filing is shown, shall be filed not later than 20 days prior to the date fixed for the commencement of the hearing. Leave to participate pursuant to this paragraph (c) may include such rights of a party as the hearing officer may deem appropriate. Persons granted leave to participate shall be served in accordance with §201.150; provided, however, that a party to the proceeding may move that the extent of notice of filings or other papers to be provided to persons granted leave to participate be limited, or may move that the persons granted leave to participate bear the cost of being provided copies of any or all filings or other papers. Persons granted leave to participate shall be bound, except as may be otherwise determined by the hearing officer, by any stipulation between the parties to the proceeding with respect to procedure, including submission of evidence, substitution of exhibits, corrections of the record, the time within which briefs or exceptions may be filed or proposed findings and conclusions may be submitted, the filing of initial decisions, the procedure to be followed in the preparation of decisions and the effective date of the Commission's order in the case. Where the filing of briefs or exceptions or the submission of proposed findings and conclusions are waived by the parties to the proceedings, a person granted leave to participate pursuant to this paragraph (c) shall not be permitted to file a brief or exceptions or submit proposed findings and conclusions except by leave of the Commission or of the hearing officer.

(2) *Certain persons entitled to leave to participate.* The hearing officer is directed to grant leave to participate under this paragraph (c) to any person to whom it is proposed to issue any security in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the Commission is authorized to approve the terms and conditions of such issuance and exchange after a hearing upon the fairness of such terms and conditions.

(3) *Leave to participate in certain Commission proceedings by a representative of the United States Department of Justice, a United States Attorney's Office, or a*

§ 201.220

criminal prosecutorial authority of any State or any other political subdivision of a State. The Commission or the hearing officer may grant leave to participate on a limited basis to an authorized representative of the United States Department of Justice, an authorized representative of a United States Attorney, or an authorized representative of any criminal prosecutorial authority of any State or any other political subdivision of a State for the purpose of requesting a stay during the pendency of a criminal investigation or prosecution arising out of the same or similar facts that are at issue in the pending Commission enforcement or disciplinary proceeding. Upon a showing that such a stay is in the public interest or for the protection of investors, the motion for stay shall be favored. A stay granted under this paragraph (c)(3) may be granted for such a period and upon such conditions as the Commission or the hearing officer deems appropriate.

(d) *Amicus participation*—(1) *Availability.* An amicus brief may be filed only if:

(i) A motion for leave to file the brief has been granted;

(ii) The brief is accompanied by written consent of all parties;

(iii) The brief is filed at the request of the Commission or the hearing officer; or

(iv) The brief is presented by the United States or an officer or agency thereof, or by a State, Territory or Commonwealth.

(2) *Procedure.* An amicus brief may be filed conditionally with the motion for leave. The motion for leave shall identify the interest of the movant and shall state the reasons why a brief of an amicus curiae is desirable. Except as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position the amicus will support, unless the Commission or hearing officer, for cause shown, grants leave for a later filing. In the event that a later filing is allowed, the order granting leave to file shall specify when an opposing party may reply to the brief. A motion of an amicus curiae to participate in oral argument will be granted only for extraordinary reasons.

17 CFR Ch. II (4–1–10 Edition)

(e) *Permission to state views.* Any person may make a motion seeking leave to file a memorandum or make an oral statement of his or her views. Any such communication may be included in the record; provided, however, that unless offered and admitted as evidence of the truth of the statements therein made, any assertions of fact submitted pursuant to the provisions of this paragraph (e) will be considered only to the extent that the statements therein made are otherwise supported by the record.

(f) *Modification of participation provisions.* The Commission or the hearing officer may, by order, modify the provisions of this section which would otherwise be applicable, and may impose such terms and conditions on the participation of any person in any proceeding as it may deem necessary or appropriate in the public interest.

[60 FR 32796, June 23, 1995, as amended at 63 FR 63405, Nov. 13, 1998; 69 FR 13177, Mar. 19, 2004; 70 FR 72570, Dec. 5, 2005]

§ 201.220 Answer to allegations.

(a) *When required.* In its order instituting proceedings, the Commission may require any party to file an answer to each of the allegations contained therein. Even if not so ordered, any party in any proceeding may elect to file an answer. Any other person granted leave by the Commission or the hearing officer to participate on a limited basis in such proceedings pursuant to § 201.210(c) may be required to file an answer.

(b) *When to file.* Except where a different period is provided by rule or by order, a party required to file an answer as provided in paragraph (a) of this section shall do so within 20 days after service upon the party of the order instituting proceedings. Persons granted leave to participate on a limited basis in the proceeding pursuant to § 201.210(c) may file an answer within a reasonable time, as determined by the Commission or the hearing officer. If the order instituting proceedings is amended, the Commission or the hearing officer may require that an amended answer be filed and, if such an answer is required, shall specify a date for the filing thereof.