

approved budget and budget justification, such as to create programs to perform functions that are not, or to perform functions in a way that is not, fairly implied from the Commission-approved budget and budget justification, or

(ii) Eliminate programs described in the Commission-approved budget and budget justification.

(3) In the event that the Commission has not approved a budget for a PCAOB fiscal year before the beginning of that fiscal year, the PCAOB may spend funds from the reserve and continue to incur obligations as if the PCAOB budget or supplemental budget most recently approved by the Commission were continuing in effect for that fiscal year.

(f) *Supplemental budget.* (1) The PCAOB may submit to the Commission a request for approval of a supplemental budget subsequent to Commission approval of the budget for the budget year in order to spend any amounts in excess of, or contrary to, the limitations described in paragraphs (e)(1) and (e)(2) of this section.

(2) To facilitate Commission review and approval, a supplemental budget shall include:

(i) Detailed information regarding the impact of the supplemental budget on each affected program area, including costs by cost category, project or activity;

(ii) A statement regarding how the supplemental budget facilitates the strategic and policy goals of the PCAOB;

(iii) Information indicating why the amount was not included in the budget for the current year, including a description of any subsequent and unforeseen events or circumstances necessitating the supplemental budget request;

(iv) Information indicating why the request should not or cannot be postponed until the next regular annual budget process; and

(v) The proposed source for the funds, including any offsets to be made elsewhere in the PCAOB's programs and activities.

(g) *Maintenance of records; reports.* (1) The PCAOB shall maintain, and make available to the Commission or Com-

mission staff upon request, a strategic plan and records in reasonable detail that support each preliminary budget, budget, budget justification, supplemental budget and other report or communication in compliance with this section, including past and projected receipts, outlays, obligations, and employment levels.

(2) The PCAOB is required to maintain and, within 30 business days after the end of each fiscal quarter, to furnish to the Commission a report of its spending and staffing levels for the quarter just ended, comparing those levels to the levels in the Commission approved budget.

(h) *Publication of budget.* (1) Following submission of the PCAOB-approved budget to the Commission, such budget and budget justification, subject to any applicable exemption under the Freedom of Information Act, shall be made available to the public. Neither the Commission nor the PCAOB shall publish a preliminary budget, budget, budget justification, or any underlying materials in connection therewith, until such time as the budget is approved by the PCAOB and submitted to the Commission for its approval.

(2) Supplemental budgets shall be made public, following approval by the PCAOB and submission to the Commission, in the same manner as described in paragraph (h)(1) of this section.

(3) The Commission-approved budget shall be made available to the public at the time of such approval.

(i) *Waivers of rule provisions.* The Commission, in its discretion, may waive compliance with any provision of this §202.11.

[71 FR 42001, July 24, 2006. Redesignated at 75 FR 47451, Aug. 6, 2010]

PART 203—RULES RELATING TO INVESTIGATIONS

Subpart A—In General

Sec.

203.1 Application of the rules of this part.

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Subpart B—Formal Investigative Proceedings

- 203.4 Applicability of §§ 203.4 through 203.8.
- 203.5 Non-public formal investigative proceedings.
- 203.6 Transcripts.
- 203.7 Rights of witnesses.
- 203.8 Service of subpoenas.

AUTHORITY: 15 U.S.C. 77s, 77sss, 78w, 80a-37, and 80b-11, unless otherwise noted.

SOURCE: 29 FR 3620, Mar. 21, 1964, unless otherwise noted.

Subpart A—In General

§ 203.1 Application of the rules of this part.

The rules of this part apply only to investigations conducted by the Commission. They do not apply to adjudicative or rulemaking proceedings.

§ 203.2 Information obtained in investigations and examinations.

Information or documents obtained by the Commission in the course of any investigation or examination, unless made a matter of public record, shall be deemed non-public, but the Commission approves the practice whereby officials of the Divisions of Enforcement, Corporation Finance, Market Regulation and Investment Management and the Office of International Affairs at the level of Assistant Director or higher, and officials in Regional Offices at the level of Assistant Regional Director or higher, may engage in and may authorize members of the Commission's staff to engage in discussions with persons identified in § 240.24c-1(b) of this chapter concerning information obtained in individual investigations or examinations, including formal investigations conducted pursuant to Commission order.

[58 FR 52419, Oct. 8, 1993, as amended at 59 FR 5945, Feb. 9, 1994; 73 FR 32227, June 5, 2008]

§ 203.3 Suspension and disbarment.

The provisions of § 201.102(e) of this chapter (Rule 102(e) of the Commission's rules of practice) are hereby made specifically applicable to all investigations.

[29 FR 3620, Mar. 21, 1964, as amended at 60 FR 32823, June 23, 1995]

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Subpart B—Formal Investigative Proceedings

§ 203.4 Applicability of §§ 203.4 through 203.8.

(a) Sections 203.4 through 203.8 shall be applicable to a witness who is sworn in a proceeding pursuant to a Commission order for investigation or examination, such proceeding being hereinafter referred to as a *formal investigative proceeding*.

(b) Formal investigative proceedings may be held before the Commission, before one or more of its members, or before any officer designated by it for the purpose of taking testimony of witnesses and received other evidence. The term *officer conducting the investigation* shall mean any of the foregoing.

§ 203.5 Non-public formal investigative proceedings.

Unless otherwise ordered by the Commission, all formal investigative proceedings shall be non-public.

§ 203.6 Transcripts.

Transcripts, if any, of formal investigative proceedings shall be recorded solely by the official reporter, or by any other person or means designated by the officer conducting the investigation. A person who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his documentary evidence or a transcript of his testimony on payment of the appropriate fees: *Provided, however,* That in a nonpublic formal investigative proceeding the Commission may for good cause deny such request. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony.

(15 U.S.C. 78d-1)

[37 FR 25166, Nov. 28, 1972]

§ 203.7 Rights of witnesses.

(a) Any person who is compelled or requested to furnish documentary evidence or testimony at a formal investigative proceeding shall, upon request, be shown the Commission's order of investigation. Copies of formal orders of

investigation shall not be furnished, for their retention, to such persons requesting the same except with the express approval of officials in the Regional Offices at the level of Assistant Regional Director or higher, or officials in the Division or Divisions conducting or supervising the investigation at the level of Assistant Director or higher. Such approval shall not be given unless the person granting such approval, in his or her discretion, is satisfied that there exist reasons consistent both with the protection of privacy of persons involved in the investigation and with the unimpeded conduct of the investigation.

(b) Any person compelled to appear, or who appears by request or permission of the Commission, in person at a formal investigative proceeding may be accompanied, represented and advised by counsel, as defined in §201.101(a) of this chapter (Rule 101(a) of the Commission's rules of practice): *Provided*, however, That all witnesses shall be sequestered, and unless permitted in the discretion of the officer conducting the investigation no witness or the counsel accompanying any such witness shall be permitted to be present during the examination of any other witness called in such proceeding.

(c) The right to be accompanied, represented and advised by counsel shall mean the right of a person testifying to have an attorney present with him during any formal investigative proceeding and to have this attorney (1) advise such person before, during and after the conclusion of such examination, (2) question such person briefly at the conclusion of the examination to clarify any of the answers such person has given, and (3) make summary notes during such examination solely for the use of such person.

(d) Unless otherwise ordered by the Commission, in any public formal investigative proceeding, if the record shall contain implications of wrongdoing by any person, such person shall have the right to appear on the record; and in addition to the rights afforded other witnesses hereby, he shall have a reasonable opportunity of cross-examination and production of rebuttal testimony or documentary evidence. *Reasonable* shall mean permitting persons

as full an opportunity to assert their position as may be granted consistent with administrative efficiency and with avoidance of undue delay. The determination of reasonableness in each instance shall be made in the discretion of the officer conducting the investigation.

(e) The officer conducting the investigation may report to the Commission any instances where any witness or counsel has been guilty of dilatory, obstructionist or contumacious conduct during the course of an investigation or any other instance of violation of these rules. The Commission will thereupon take such further action as the circumstances may warrant, including suspension or disbarment of counsel from further appearance or practice before it, in accordance with §201.102(e) of this chapter (Rule 102(e) of the Commission's rules of practice), or exclusion from further participation in the particular investigation.

[29 FR 3620, Mar. 21, 1964, as amended at 52 FR 12148, Apr. 15, 1987; 59 FR 5945, Feb. 9, 1994; 60 FR 32823, June 23, 1995; 73 FR 32227, June 5, 2008]

§203.8 Service of subpoenas.

Service of subpoenas issued in formal investigative proceedings shall be effected in the manner prescribed by Rule 232(c) of the Commission's Rules of Practice, §201.232(c) of this chapter.

[29 FR 3620, Mar. 21, 1964, as amended at 60 FR 32823, June 23, 1995]

PART 204—RULES RELATING TO DEBT COLLECTION

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