

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-45848]

Delegation of Authority to the Secretary of the Commission

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending its rules to delegate authority to the Secretary of the Commission to enter orders instituting previously authorized administrative proceedings based on the entry of an injunction or a criminal conviction, and to issue findings and orders in such cases where a respondent consents to a bar from association. This delegation is intended to conserve Commission resources as well as expedite the institution of proceedings in which the Commission considers whether to impose remedial measures on certain persons who are subject to injunctions or who have been criminally convicted.

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT:

Deborah Levine, Office of the General Counsel, at (202) 942-0890, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0606.

SUPPLEMENTARY INFORMATION: The Commission today is amending its rules governing delegation of authority to the Office of the Secretary.¹

The Securities Exchange Act of 1934² ("Exchange Act") and the Investment Advisers Act of 1940³ ("Advisers Act") authorize the Commission to institute administrative proceedings against certain persons⁴ based upon, among

¹ 17 CFR 200.30-7.

² 15 U.S.C. 78a *et seq.*

³ U.S.C. 80b-1 *et seq.*

⁴ The Commission is authorized to bring administrative proceedings based on the entry of an injunction or a criminal conviction against the following persons: brokers or dealers pursuant to Section 15(b)(4) of the Exchange Act; persons associated with brokers or dealers, or persons participating in an offering of a penny stock pursuant to Section 15(b)(6) of the Exchange Act; municipal securities dealers and persons associated with municipal securities dealers pursuant to Section 15B(c) of the Exchange Act; government securities brokers or dealers and persons associated with government securities brokers or dealers pursuant to Section 15C(c) of the Exchange Act; transfer agents and persons associated with transfer agents pursuant to Section 17A(c) of the Exchange Act; and investment advisers and persons associated with investment advisers pursuant to Section 203(e) or (f) of the Advisers Act.

Other provisions of the securities laws, such as Section 19(h) of the Exchange Act, authorize

other things, a court's entry of an injunction against certain conduct or violations of the federal securities laws, or convictions for certain crimes.⁵ Frequently, when the Commission authorizes the filing of an injunctive action in district court against a regulated person, it also authorizes the future institution of an administrative proceeding against that person based on the anticipated entry of an injunction at the conclusion of the district court litigation or based on an anticipated criminal conviction. The Commission is amending its rules to delegate to the Secretary the authority to issue orders instituting such administrative proceedings where the Commission has previously authorized the proceeding based on the anticipated entry of an injunction or on a criminal conviction. The delegation also includes the authority to issue settled orders making findings and imposing sanctions where the respondent consents to a bar from association "i.e., the maximum relief available in such a case. Nevertheless, the staff may submit matters to the Commission for consideration as it deems appropriate.

Administrative Law Matters

The Commission finds, in accordance with Section 553(b)(A) of the Administrative Procedure Act, 5 U.S.C. 553(b)(A), that this amendment relates solely to agency organization, procedure, or practice. Accordingly, notice and opportunity for public comment, as well as publication 30 days before its effective date, are unnecessary. Because notice and comment are not required for this final rule, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act.⁶

The rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended.⁷ The rule will not impose any costs on the public.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

administrative proceedings against other categories of persons; however, these other provisions do not permit administrative proceedings to be based on the entry of an injunction or a criminal conviction.

⁵ In this context, a criminal conviction "includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of *nolo contendere*, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed." Section 202(a)(6) of the Advisers Act.

⁶ See 5 U.S.C. 603.

⁷ 44 U.S.C. 3501 *et seq.*

Text of the Amendment

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows.

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200, Subpart A, continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

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2. The authority citation following § 200.30-7 is removed.

3. Section 200.30-7 is amended by adding paragraph (a)(12) to read as follows:

§ 200.30-7 Delegation of authority to Secretary of the Commission.

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(a) * * *

(12) To issue orders instituting previously authorized administrative proceedings pursuant to sections 15(b)(4) or (6), 15B, 15C, or 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4) or (6), 78o-4, 78o-5, or 78q-1), and section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(e) or (f)), based on the entry of an injunction or a criminal conviction, and to issue findings and orders in such cases where a respondent consents to a bar from association.

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Dated: April 30, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Nicarbazin, Narasin, and Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug