

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release No. 34-51595; File No. S7-05-05]

Proposed Amendments to the Rules of Practice and Related Provisions

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing for public comment amendments to its Rules of Practice and related provisions. The Commission is proposing the amendments as a result of its experience with these rules and to correct typographical errors and change certain citations. The proposed amendments are intended to enhance the transparency and facilitate parties' understanding of the rules and to make practice under the rules easier and more efficient.

DATES: Comments should be received on or before May 31, 2005.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-05-05 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number S7-05-05. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You

should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Diane V. White, Office of the General Counsel, (202) 942-0950, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549-0208.

SUPPLEMENTARY INFORMATION: The Commission proposes to amend its Rules of Practice and related provisions as a result of the Commission's experience with its existing rules and in order to correct references and change certain citations.¹ The majority of these proposals are technical and not substantive.

I. Discussion

A. Rule 141(a)(2)(ii) now generally authorizes service on other corporations or entities by delivering a copy of the order instituting proceedings ("OIP") to an officer, managing or general agent, or authorized agent by personal service or by mail.² The Commission has observed that, in proceedings instituted under Section 12(j) of the Securities Exchange Act of 1934, 15 U.S.C. 78l(j), to revoke or suspend the registration of a class of securities for failure to make timely periodic filings, it sometimes has been difficult to serve the issuer of the class of securities. An issuer that is delinquent in its filings often does not keep current with the Commission the name of a valid representative. In certain instances, the Commission's staff has sought to accomplish service on such an issuer by serving multiple copies of the OIP on various persons, such as the issuer's officers or directors.³ The Commission proposes to amend Rule 141(a)(2)(ii) to authorize service on an issuer at the most recent address set forth in its most recent filing

¹ The Commission may determine to delegate certain of its authority under these proposed rules if it subsequently adopts them.

² Rule 141(a)(2)(ii) states that notice to a corporation or other entity of a proceeding "shall be made" by "delivering a copy of the order instituting proceedings to an officer, managing or general agent, or any other agent authorized by appointment or by law to receive such notice, by any method specified in paragraph (a)(2)(i) of this rule."

Rule 141(a)(2)(i) authorizes delivery by "handing a copy of the order to the individual; or leaving a copy at the individual's office with a clerk or other person in charge thereof; or leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or sending a copy of the order addressed to the individual by U.S. Postal Service certified, registered or Express Mail and obtaining confirmation of receipt; or giving confirmed telegraphic notice."

³ See, e.g., *Alcohol Sensors Int'l, Ltd.*, Exchange Act Rel. No. 50150 (Aug. 5, 2004), 83 SEC Docket 1748, 1749 n.1 (stating that more than 430 copies of the OIP were served in order to accomplish service on seventeen respondents in a Section 12(j) proceeding).

with the Commission, together with obtaining confirmation of attempted delivery.

The Commission also proposes to add Rule 141(a)(2)(vi) to authorize service on persons registered with self-regulatory organizations at the most recent address shown in the Central Registration Depository, together with obtaining confirmation of attempted delivery. We request comment as to whether this method will provide adequate notice of a proceeding. We recognize that the Central Registration Depository requires only that addresses be kept current for two years after a person ceases to be associated with a member of a self-regulatory organization, and we request comment as to whether the rule should refer explicitly to such a two-year period.

B. Currently, Rule 430(a) provides that any person aggrieved by an action made by authority delegated in Sections 200.30-1 through 200.30-8 or Sections 200.30-11 through 200.30-18 may seek review of the action pursuant to Rule 430(b). Rule 430(b) provides that Commission review is to be sought by filing a written notice of intention to petition for review within five days "after actual notice to the party of the action or service of notice pursuant to § 201.141(b), whichever is earlier." While the current rule permits appeals by any aggrieved person, an aggrieved person who is not a party may not receive actual notice or learn of service of notice promptly after the action. Nonetheless, it is important that a deadline for the filing of a notice of intention to petition for review be established, so that people may know when an action is beyond challenge. The proposed amendment would therefore provide that both parties and aggrieved persons may seek Commission review of the action by filing a notice of intention to petition for review within five days after actual notice of the action to the party or 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 pursuant to § 201.141(b), whichever is the earliest. The Commission requests comment on whether this form of publication would provide adequate notice, or whether another form of publication should be used to supplement the **Federal Register**. The Commission further seeks comment on whether posting of a notice of action pursuant to delegated authority on the Commission's Web site would aid in giving notice to persons who might be aggrieved by such action. The Commission also seeks comment as to whether 15 days after publication

allows parties and aggrieved persons sufficient time to file a notice.⁴

C. Currently, Rule 55, which governs the conduct of Equal Access to Justice Act ("EAJA") proceedings before an administrative law judge, authorizes the law judge considering an application for an award of fees and expenses under the Equal Access to Justice Act, 5 U.S.C. § 504, to order all proceedings that are otherwise available under Rule 8(d) of the Rules of Practice. Former Rule 8(d) authorized the conduct of prehearing conferences and briefings. When the Commission comprehensively revised and renumbered its Rules of Practice in 1995, former Rule 8(d) was incorporated into Rules 221 and 222(a).⁵ However, the reference to Rule 8(d) contained in EAJA Rule 55 was not changed at that time. The proposed amendment would replace the reference to Rule 8(d) with a reference to Rules 221 and 222(a).

D. Current Rule 102(e)(3)(iii) provides that Commission review of a hearing officer's initial decision on a petition to lift a temporary suspension of a person from appearing and practicing before the Commission will be governed by the time limits set forth in § 201.531. The proposed amendment would correct the reference, by referring to § 201.540, which governs the appeal and Commission review of certain initial decisions.

E. Currently, Rule 111(h) provides no time limit within which a law judge is required to rule upon a motion to correct a manifest error of fact in an initial decision. The proposed amendment would make clear that such a ruling must be made within 20 days of the filing of any brief in opposition. Any brief in opposition must be filed within five days after service of the motion.

F. Current Rule 152(d) provides that an original and three copies of all papers shall be filed. The proposed amendment would make clear that if filing is made by facsimile pursuant to Rule 151, the filer must transmit only one non-facsimile original with a manual signature and does not need to transmit additional non-facsimile copies.

G. Currently, Rule 154(c) and Rule 250(c) provide page limitations for, respectively, motions in general and motions for summary disposition. Rule 450(c), however, now sets word-count

limitations, instead of page limitations, for briefs filed with the Commission. The proposed amendment to Rule 154(c) would substitute a limitation for motions of 7,000 words, exclusive of any table of contents, table of authority, or addendum of applicable cases, legislative provisions, or exhibits. Rule 470(b), which currently requires motions for reconsideration to comply with the page length limitation in Rule 154(c), would be amended to refer to proposed Rule 154(c)'s word limitation.

The proposed amendment to Rule 250(c) would set a limitation of 9,800 words for a motion for summary disposition, supporting memorandum of points and authorities, but not including any declarations, affidavits or attachments. Motions for summary dispositions are often made in cases where a respondent has been criminally convicted or an injunction has been entered and the conviction or injunction provides the basis for an administrative order against the respondent. In such cases, documents establishing the conviction or injunction must be included as exhibits to the motion; these documents alone can total more than the entire word limitation allotted to the motion. The proposed amendment would exclude such attachments from the word-count restriction.

H. Current Rule 201(b) provides that by order of the Commission, any proceeding may be severed with respect to some or all parties. The proposed amendment would allow severance with respect to "one or more" parties, making clear that severance is available as to a single party, under appropriate circumstances.

I. Current Rule 210(a)(2) contains a reference to § 201.612. Section 612 was renumbered as § 201.1103, effective April 19, 2004. The proposed amendment would change the reference accordingly.⁶

J. Current Rule 411(c) refers to "any brief in opposition to a petition for review permitted pursuant to § 201.410(d)." The Rules of Practice no longer provide for briefs in opposition to a petition for review, and Section 410(d) was removed and reserved effective April 19, 2004. The proposed amendment would delete the reference.

K. Currently, Rule 601(a) provides that funds due pursuant to an order by a hearing officer shall be paid on the first day after the order becomes final pursuant to Rule 360. Under Rule 360(d)(2) as revised, effective April 19, 2004, an initial decision no longer

becomes final automatically. That rule now provides that the Commission will issue an order stating that a decision has become final. Rule 360(d)(2) further provides for the order of finality to state the date on which sanctions, if any, take effect. Proposed Rule 601 would clarify that funds due pursuant to an order by a hearing officer are to be paid in accordance with the order of finality.

L. Current Rule 900(b) requires the Chief Administrative Law Judge to apprise the Commission specifically if a proceeding assigned to an administrative law judge has not been concluded "within 30 days of the guidelines established in paragraph (a) of this section." Paragraph (a) no longer contains guidelines relevant to the timely conclusion of proceedings before law judges; these guidelines are now found in § 201.360(a)(2). Rule 360(a)(3) requires the Chief Administrative Law Judge to submit a motion for an extension to the Commission if it is determined that an initial decision cannot be issued within the period specified in the guidelines. The submission of such motions renders the specific appraisal by the Chief Administrative Law Judge under Rule 900(b) unnecessary. The proposed amendment would eliminate that requirement.

M. In proceedings where an order issued by the Commission requires a respondent to pay disgorgement and assesses a civil penalty against that respondent, current Rule 1100 allows the Commission to create a Fair Fund for the benefit of investors who were harmed by the violation found. The proposed amendment would make clear that in such cases, hearing officers also have the authority to create Fair Funds.

N. Tables I, II, and III have been superseded by subsequent amendments to the federal securities laws and these rules, and are of little utility to the public. The proposed amendment would delete these tables.

II. Request for Public Comments

We request and encourage any interested person to submit comments regarding: (1) The proposed changes that are the subject of this release, (2) additional or different changes, or (3) other matters that may have an effect on the proposals contained in this release.

III. Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commission finds, in accordance with Section 533(b)(3)(A) of the

⁴ See 44 U.S.C. 1508 (stating that time between publication of notice in *Federal Register* and date fixed in notice for hearing or termination of opportunity to be heard should generally be not less than fifteen days unless otherwise specifically prescribed by Act of Congress).

⁵ See Exchange Act Rel. No. 35833 (June 23, 1995), 59 SEC Docket 1546, 1631 tbl. III.

⁶ Language was inadvertently deleted from Rule 210(b) in an earlier revision of the Rules of Practice. This language is now being reinstated.

Administrative Procedure Act,⁷ that this revision relates solely to agency organization, procedure, or practice. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act⁸ therefore does not apply. Similarly, because these rules relate to “agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties,” the Commission is not soliciting comment for purposes of the Small Business Regulatory Enforcement Fairness Act.⁹ Nonetheless, the Commission has determined that it would be useful to publish these proposed rules for notice and comment before adoption.¹⁰ These rules do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.¹¹

IV. Costs and Benefits of the Proposed Amendments

Taken as a whole, the Commission’s Rules of Practice create governmental review and remedial processes. That is, they are procedural and administrative in nature. The benefits to the parties are the familiar benefits of due process: notice, opportunity to be heard, efficiency, and fairness. The costs of these processes fall largely on the Commission.

The proposals set forth in this release variously clarify existing practice, relate to internal agency management, increase the efficiency of proceedings, or promote due process. The Commission requests data to quantify the costs and the value of the benefits identified. The Commission also seeks estimates and views regarding these costs and benefits for particular types of market participants, as well as any other costs or benefits that may result from the adoption of the proposed rules.

V. Effect on Efficiency, Competition and Capital Formation

Section 2(b) of the Securities Act of 1933,¹² Section 3(f) of the Exchange Act,¹³ Section 2(c) of the Investment Company Act of 1940,¹⁴ and Section 202(c) of the Investment Advisers Act of 1940¹⁵ require us, when engaging in rulemaking that requires us to consider

or determine whether an act is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act¹⁶ prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rules and amendments are intended to enhance the transparency and facilitate parties’ understanding of the Rules. The proposed amendments are also intended to clarify existing practice and increase the efficiency of Commission enforcement and self-regulatory organization disciplinary review proceedings. The proposed rules and amendments would apply to all persons involved in administrative proceedings before the Commission and therefore the Commission does not expect the proposed rules and amendments to have an anti-competitive effect. To the extent the proposed rules and amendments would foster making whole victims of securities laws violations and would increase the transparency and efficiency of the Commission’s administrative proceedings, there might be an increase in investor confidence in market fairness and efficiency. However, the magnitude of the effect of the proposed amendments in this regard is difficult to quantify. We request comment on the possible effects of our rule proposals on efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VI. Statutory Basis and Text of Proposed Amendments

These amendments to the Rules of Practice and related provisions are being adopted pursuant to statutory authority granted to the Commission, including section 3 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7202; section 19 of the Securities Act, 15 U.S.C. 77s; sections 4A, 19, and 23 of the Exchange Act, 15 U.S.C. 78d–1, 78s, and 78w; section 20 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79t; section 319 of the Trust Indenture Act of 1939, 15 U.S.C. 77sss; sections 38 and 40 of the Investment Company Act, 15 U.S.C. 80a–37 and 80a–39; and section 211 of the Investment Advisers Act, 15 U.S.C. 80b–11.

List of Subjects in 17 CFR Part 201

Administrative practice and procedure.

¹⁶ 15 U.S.C. 78w(a)(2).

Text of the Amendment

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

PART 201—RULES OF PRACTICE

1. The authority citation for part 201 continues to read as follows:

Authority: 15 U.S.C. 77s, 78w, 78x, 79t, 77sss, 80a–37 and 80b–11; 5 U.S.C. 504(c)(1).

2. Section 201.55 is amended by revising the third sentence in paragraph (a) to read as follows:

§ 201.55 Further proceedings.

(a) * * * The administrative law judge may order all proceedings that are otherwise available under Rules 221 and 222(a) of the Commission’s Rules of Practice, §§ 201.211 and 201.222(a).

* * *

* * * * *

3. The authority citation for Part 201, subpart D, continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 78c(b), 78d–1, 78d–2, 78l, 78m, 78n, 78o(d), 78o–3, 78s, 78u–2, 78u–3, 78v, 78w, 79c, 79s, 79t, 79z–5a, 77sss, 77ttt, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, 80b–12, 7202, 7215, and 7217.

§ 201.102 [Amended]

4. Section 201.102 is amended by revising the cite “§ 201.531” to read “§ 201.540” in the last sentence of paragraph (e)(3)(iii).

5. Section 201.111 is amended by revising paragraph (h) to read as follows:

§ 201.111 Hearing officer: Authority.

* * * * *

(h) Subject to any limitations set forth elsewhere in these Rules of Practice, considering and ruling upon all procedural and other motions, including a motion to correct a manifest error of fact in the initial decision. Any motion to correct must be filed within ten days of the initial decision. A brief in opposition may be filed within five days of a motion to correct. The hearing officer shall have 20 days from the date of filing of any brief in opposition filed to rule on a motion to correct;

* * * * *

6. Section 201.141 is amended by:
a. Revising paragraph (a)(2)(ii); and
b. Adding paragraph (a)(2)(vi).

The revision and addition read as follows.

§ 201.141 Orders and decisions: Service of orders instituting proceeding and other orders and decisions.

(a) * * *

⁷ 5 U.S.C. 553(b)(3)(A).

⁸ 5 U.S.C. 601 *et seq.*

⁹ 5 U.S.C. 804(3)(C).

¹⁰ *See* 5 U.S.C. 603.

¹¹ 44 U.S.C. 3501 *et seq.*

¹² 15 U.S.C. 77b(b).

¹³ 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 80a–2(c).

¹⁵ 15 U.S.C. 80b–2(c).

(2) * * *

(ii) *To corporations or entities.* Notice of a proceeding shall be made to a person other than a natural person by delivering a copy of the order instituting proceedings to an officer, managing or general agent, or any other agent authorized by appointment or law to receive such notice, by any method specified in paragraph (a)(2)(i) of this section, or, in the case of an issuer of a class of securities registered with the Commission, by sending a copy of the order addressed to the most recent address shown on the entity's most recent filing with the Commission by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of attempted delivery.

* * * * *

(vi) *To persons registered with self-regulatory organizations.* Notice of a proceeding shall be made to a person registered with a self-regulatory organization by any method specified in paragraph (a)(2)(i) of this section, or by sending a copy of the order addressed to the most recent address for the person shown in the Central Registration Depository by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of attempted delivery.

* * * * *

7. Section 201.152 is amended by revising paragraph (d) to read as follows:

§ 201.152 Filing of papers: Form.

* * * * *

(d) *Number of copies.* An original and three copies of all papers shall be filed, unless filing is made by facsimile in accordance with § 201.151. If filing is made by facsimile, the filer shall also transmit to the Office of the Secretary one non-facsimile original with a manual signature, contemporaneously with the facsimile transmission.

* * * * *

8. Section 201.154 is amended by revising paragraph (c) to read as follows:

§ 201.154 Motions.

* * * * *

(c) *Length limitation.* A motion (together with the brief in support of the motion, the brief in opposition to the motion, or any reply brief) shall not exceed 7,000 words, exclusive of any table of contents or table of authorities. The word limit shall not apply to any addendum that consists solely of copies of applicable cases, pertinent legislative provisions or rules, or relevant exhibits. Requests for leave to file motions and briefs in excess of 7,000 words are disfavored. A motion that does not,

together with any accompanying brief, exceed 15 pages in length, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits, but inclusive of pleadings incorporated by reference, is presumptively considered to contain no more than 7,000 words. Any motion that exceeds these page limits must include a certificate by the attorney, or an unrepresented party, stating that the brief complies with the length limitation set forth in this paragraph and stating the number of words in the motion. The person preparing the certificate may rely on the word count of a word-processing program to prepare the motion.

9. Section 201.201 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 201.201 Consolidation and severance of proceedings.

* * * * *

(b) * * * By order of the Commission, any proceeding may be severed with respect to one or more parties. * * *

10. Section 201.210 is amended by:

- a. Revising the cite “§ 201.612” to read “§ 201.1103” in paragraph (a)(2);
- b. Removing the colon at the end of the introductory text of paragraph (b)(1) and adding a period in its place; and
- c. Adding a sentence at the end of the introductory text of paragraph (b)(1).

The revision and addition read as follows.

§ 201.210 Parties, limited participants and amici curiae.

* * * * *

(b) * * * (1) * * * 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.

* * * * *

11. Section 201.250 is amended by revising paragraph (c) to read as follows:

§ 201.250 Motion for summary disposition.

* * * * *

(c) The motion for summary disposition, supporting memorandum of points and authorities (exclusive of any declarations, affidavits or attachments) shall not exceed 9,800 words. Requests for leave to file motions and accompanying documents in excess of 9,800 words are disfavored. A motion that does not, together with any accompanying memorandum of points and authorities, exceed 35 pages in length, inclusive of pleadings

incorporated by reference (but excluding any declarations, affidavits or attachments) is presumptively considered to contain no more than 9,800 words. Any motion that exceeds these page limits must include a certificate by the attorney, or an unrepresented party, stating that the brief complies with the length limitation set forth in this paragraph and stating the number of words in the motion. The person preparing the certificate may rely on the word count of a word-processing program to prepare the motion.

12. Section 201.411 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 201.411 Commission consideration of initial decisions by hearing officers.

* * * * *

(c) * * * The Commission may, on its own initiative, order review of any initial decision, or any portion of any initial decision, within 21 days after the end of the period established for filing a petition for review pursuant to § 210.410(b). * * *

* * * * *

13. Section 201.430 is amended by revising paragraph (b)(1) to read as follows:

§ 201.430 Appeal of actions made pursuant to delegated authority.

* * * * *

(b) * * * (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 notice of intention to petition for review within five days after actual notice of the action to the party or 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 the party or person pursuant to § 201.141(b), whichever is the earliest.

* * * * *

14. Section 201.470 is amended by revising the third sentence of paragraph (b) to read as follows:

§ 201.470 Reconsideration.

* * * * *

(b) * * * A motion for reconsideration shall conform to the requirements, including the limitation on the numbers of words, provided in § 201.154. * * *

15. Section 201.601 is amended by revising paragraph (a) to read as follows:

§ 201.601 Prompt payment of disgorgement, interest and penalties.

(a) *Timing of payments.* Unless otherwise provided, funds due pursuant

to an order by the Commission requiring the payment of disgorgement, interest or penalties shall be paid no later than 21 days after service of the order, and funds due pursuant to an order by a hearing officer shall be paid in accordance with the order of finality issued pursuant to § 201.360(d)(2).

* * * * *

16. Section 201.900 is amended by revising the last sentence in paragraph (b) to read as follows:

§ 201.900 Informal procedures and supplementary information concerning adjudicatory proceedings.

* * * * *

(b) * * * In connection with these reports, if a proceeding pending before the Commission has not been concluded within 30 days of the guidelines established in paragraph (a) of this section, the General Counsel shall specifically apprise the Commission of that fact, and shall describe the

procedural posture of the case, project an estimated date for conclusion of the proceeding, and provide such other information as is necessary to enable the Commission to determine whether additional steps are necessary to reach a fair and timely resolution of the matter.

* * * * *

17. Part 201, subpart D, is amended by removing Tables I, II, and III at the end of the subpart.

Subpart F—Fair Fund and Disgorgement Plans

18. The authority citation for subpart F continues to read as follows.

Authority: 15 U.S.C. 77h-1, 77s, 77u, 78c(b), 78d-1, 78d-2, 78u-2, 78u-3, 78v, 78w, 80a-9, 80a-37, 80a-39, 80a-40, 80b-3, 80b-11, 80b-12, and 7246.

19. Section 201.1100 is revised to read as follows:

§ 201.1100 Creation of fair fund.

In any agency process initiated by an order instituting proceedings in which the Commission or the hearing officer issues an order requiring the payment of disgorgement by a respondent and also assessing a civil money penalty against that respondent, the Commission or the hearing officer may order that the amount of disgorgement and of the civil penalty, together with any funds received pursuant to 15 U.S.C. 7246(b), be used to create a fund for the benefit of investors who were harmed by the violation.

Dated: April 21, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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