

Securities and Exchange Commission

§ 209.0-1

(c) A supervisory attorney is responsible for complying with the reporting requirements in §205.3 when a subordinate attorney has reported to the supervisory attorney evidence of a material violation.

(d) A supervisory attorney who has received a report of evidence of a material violation from a subordinate attorney under §205.3 may report such evidence to the issuer's qualified legal compliance committee if the issuer has duly formed such a committee.

§205.5 Responsibilities of a subordinate attorney.

(a) An attorney who appears and practices before the Commission in the representation of an issuer on a matter under the supervision or direction of another attorney (other than under the direct supervision or direction of the issuer's chief legal officer (or the equivalent thereof)) is a subordinate attorney.

(b) A subordinate attorney shall comply with this part notwithstanding that the subordinate attorney acted at the direction of or under the supervision of another person.

(c) A subordinate attorney complies with §205.3 if the subordinate attorney reports to his or her supervising attorney under §205.3(b) evidence of a material violation of which the subordinate attorney has become aware in appearing and practicing before the Commission.

(d) A subordinate attorney may take the steps permitted or required by §205.3(b) or (c) if the subordinate attorney reasonably believes that a supervisory attorney to whom he or she has reported evidence of a material violation under §205.3(b) has failed to comply with §205.3.

§205.6 Sanctions and discipline.

(a) A violation of this part by any attorney appearing and practicing before the Commission in the representation of an issuer shall subject such attorney to the civil penalties and remedies for a violation of the federal securities laws available to the Commission in an action brought by the Commission thereunder.

(b) An attorney appearing and practicing before the Commission who vio-

lates any provision of this part is subject to the disciplinary authority of the Commission, regardless of whether the attorney may also be subject to discipline for the same conduct in a jurisdiction where the attorney is admitted or practices. An administrative disciplinary proceeding initiated by the Commission for violation of this part may result in an attorney being censured, or being temporarily or permanently denied the privilege of appearing or practicing before the Commission.

(c) An attorney who complies in good faith with the provisions of this part shall not be subject to discipline or otherwise liable under inconsistent standards imposed by any state or other United States jurisdiction where the attorney is admitted or practices.

(d) An attorney practicing outside the United States shall not be required to comply with the requirements of this part to the extent that such compliance is prohibited by applicable foreign law.

§205.7 No private right of action.

(a) Nothing in this part is intended to, or does, create a private right of action against any attorney, law firm, or issuer based upon compliance or non-compliance with its provisions.

(b) Authority to enforce compliance with this part is vested exclusively in the Commission.

PART 209—FORMS PRESCRIBED UNDER THE COMMISSION'S RULES OF PRACTICE

Sec.

209.0-1 Availability of forms.

209.1 Form D-A: Disclosure of assets and financial information.

AUTHORITY: 15 U.S.C. 77h-1, 77u, 78u-2, 78u-3, 78v, 78w, 80a-9, 80a-37, 80a-38, 80a-39, 80a-40, 80a-41, 80a-44, 80b-3, 80b-9, 80b-11, and 80b-12, unless otherwise noted.

SOURCE: 60 FR 32823, June 23, 1995, unless otherwise noted.

§209.0-1 Availability of forms.

(a) This part identifies and describes the forms for use under the Securities and Exchange Commission's Rules of Practice, part 201 of this chapter.

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(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 100 F Street, NE., Washington, D.C. 20549. Any person may inspect the forms at this address and at the Commission's regional offices. (See §200.11 of this chapter for the addresses of the SEC regional offices.)

[60 FR 32823, June 23, 1995, as amended at 73 FR 32227, June 5, 2008]

§ 209.1 Form D-A: Disclosure of assets and financial information.

(a) Rules 410 and 630 of the Rules of Practice (17 CFR 201.410 and 201.630) provide that under certain circumstances a respondent who asserts or intends to assert an inability to pay disgorgement, interest or penalties may be required to disclose certain financial information. Unless otherwise ordered, this form may be used by individuals required to supply such information.

(b) The respondent filing Form D-A is required promptly to notify the Commission of any material change in the answer to any question on this form.

(c) Form D-A may not be withheld from the interested division. A respondent making financial information disclosures on this form after the institution of proceedings may make a motion, pursuant to Rule 322 of the Commission's Rules of Practice (17 CFR 201.322), for the issuance of a protective order to limit disclosure to the public or parties other than the interested division of the information submitted on Form D-A. A request for a protective order allows the requester an opportunity to justify the need for confidentiality. The making of a motion for a protective order, however, does not guarantee that disclosure will be limited.

(d) No party receiving information for which a motion for a protective order has been made may transfer or convey the information to any other person prior to a ruling on the motion without the prior permission of the Commission or a hearing officer.

(e) A person making financial information disclosures on Form D-A prior to the institution of proceedings, in connection with an offer of settlement

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or otherwise, may request confidential treatment of the information pursuant to the Freedom of Information Act. See the Commission's Freedom of Information Act ("FOIA") regulations, 17 CFR 200.83. A request for confidential treatment allows the requester an opportunity to substantiate the need for confidentiality. No determination as to the validity of any request for confidential treatment will be made until a request for disclosure of the information under FOIA is received.

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

APPLICATION OF REGULATION S-X (17 CFR PART 210)

- Sec.
- 210.1-01 Application of Regulation S-X (17 CFR part 210).
- 210.1-02 Definitions of terms used in Regulation S-X (17 CFR part 210).

QUALIFICATIONS AND REPORTS OF ACCOUNTANTS

- 210.2-01 Qualifications of accountants.
- 210.2-02 Accountants' reports and attestation reports.
- 210.2-03 Examination of financial statements by foreign government auditors.
- 210.2-04 Examination of financial statements of persons other than the registrant.
- 210.2-05 Examination of financial statements by more than one accountant.
- 210.2-06 Retention of audit and review records.
- 210.2-07 Communication with audit committees.

GENERAL INSTRUCTIONS AS TO FINANCIAL STATEMENTS

- 210.3-01 Consolidated balance sheets.
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- 210.3-03 Instructions to statement of comprehensive income requirements.
- 210.3-04 Changes in stockholders' equity and noncontrolling interests.
- 210.3-05 Financial statements of businesses acquired or to be acquired.