

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR PART 200**

**[RELEASE NO. 34-62520]**

**TECHNICAL AMENDMENT TO RULES OF ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is making technical amendments to the rule by which authority is delegated to the Director of the Division of Enforcement. The amendments update references to the provision in the Securities Act of 1933 (“Securities Act”) which authorizes the Commission to issue subpoenas in investigations under the Securities Act, and delete references to the Public Utility Holding Company Act of 1935 (“PUHCA”).

**EFFECTIVE DATE:** July 22, 2010.

**FOR FURTHER INFORMATION CONTACT:** Kenneth H. Hall, Assistant Chief Counsel, 202-551-4936, Office of Chief Counsel, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-6553.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Commission is authorized to conduct investigations of possible violations of the Securities Act. Specifically, Section 19(c) of the Securities Act<sup>1</sup> provides that,

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<sup>1</sup> 15 U.S.C. 77s(c).

For the purpose of any investigations which, in the opinion of the Commission, are necessary and proper for the enforcement of this title, any member of the Commission or any officer or officers designated by it are empowered to administer oaths and affirmations, subpoena [sic] witnesses, take evidence, and require the production of any books, papers, or other documents which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States or any Territory at any designated place of hearing.

Section 21(b) of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>2</sup> section 42(b) of the Investment Company Act of 1940<sup>3</sup> and section 209(b) of the Investment Advisers Act of 1940<sup>4</sup> also include provisions authorizing investigations. The Sarbanes-Oxley Act of 2002<sup>5</sup> amended Section 19 of the Securities Act by inserting a new section (b), and by redesignating prior sections (b) and (c) as sections (c) and (d), respectively.<sup>6</sup> As a result of the statutory amendment, section 19(b) of the Securities Act, which pertained to investigations of possible Securities Act violations, was redesignated as Section 19(c). To reflect this change, the Commission is adopting technical amendments to Rule 30-4, which delegates authority to the Director of its Division of Enforcement to take certain actions during investigations, including investigations under the Securities Act. Specifically, paragraphs (a)(1), (a)(4), (a)(10), (a)(11), and (a)(13) of

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<sup>2</sup> 15 U.S.C. 78u(b).

<sup>3</sup> 15 U.S.C. 80a-41(b).

<sup>4</sup> 15 U.S.C. 80b-9(b).

<sup>5</sup> Public Law 107-204, 116 Stat. 745 (2002).

<sup>6</sup> Section 108(a)(1) and (2).

Rule 30-4<sup>7</sup> are each being amended to refer to “section 19(c) of the Securities Act of 1933 (15 U.S.C. 77s(c)).”

PUHCA was repealed by the Energy Policy Act of 2005.<sup>8</sup> To reflect this change, the Commission is also adopting technical amendments to Rule 30-4 to remove references to investigations brought under PUHCA. Specifically, paragraphs (a)(1), (a)(3), (a)(4), (a)(10), and (a)(11) of Rule 30-4 are each being amended to remove references to “section 18(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79r(c)).”

## **II. Administrative Law Matters**

Under the Administrative Procedure Act (“APA”), notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.”<sup>9</sup> The amendments are technical changes, adopted solely to update references to a statutory provision that remains unchanged except for its designation. For this reason, the Commission finds that it is unnecessary to publish notice of these amendments. Similarly, the amendments do not require analysis under the Regulatory Flexibility Act or analysis of major rule status under the Small Business Regulatory Fairness Act. See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analysis, the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking); and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term “rule” does not include any rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties).

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<sup>7</sup> 17 CFR 200.30-4(a)(1), (4), (10), (11), and (13).

<sup>8</sup> Public Law 109-58, 119 Stat. 624 (2005).

<sup>9</sup> 5 U.S.C. 553(b).

Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules.<sup>10</sup> Because this amendment merely makes technical changes to update statutory references, no competitive advantages or disadvantages would be created.

### **III. Statutory Authority and Text of Amendments**

We are adopting these technical amendments under the authority set forth in Section 23(a) of the Exchange Act.<sup>11</sup>

#### **List of Subjects**

#### **17 CFR Part 200**

Rules of Organization; Conduct and Ethics; and Information and Requests.

#### **TEXT OF AMENDMENTS**

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

#### **PART 200—RULES OF 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. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37, 80b-11, and 7202, unless otherwise noted.

2. Section 200.30-4 is amended by revising paragraphs (a)(1), (a)(3), (a)(4), (a)(10), (a)(11) and (13) to read as follows:

#### **§ 200.30-4 Delegation of authority to Director of Division of Enforcement.**

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<sup>10</sup> 15 U.S.C. 78w(a)(2).

<sup>11</sup> 15 U.S.C. 782w(a).

(a)(1) To designate officers empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records in the course of investigations instituted by the Commission pursuant to section 19(c) of the Securities Act of 1933 (15 U.S.C. 77s(c)), section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(b)) and section 209(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(b)).

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(3) To terminate and close all investigations authorized by the Commission pursuant to section 20 of the Securities Act of 1933 (15 U.S.C. 77t), section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u), section 42 of the Investment Company Act of 1940 (15 U.S.C. 80a-41) and section 209 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9).

(4) To terminate the authority to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records in the course of investigations instituted by the Commission pursuant to section 19(c) of the Securities Act of 1933 (15 U.S.C. 77s(c)), section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(b)) and section 209(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(b)).

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(10) To institute subpoena enforcement proceedings in federal court to seek an order compelling the production of documents or an individual's appearance for testimony pursuant to subpoenas issued pursuant to paragraph (a)(1) of this section in connection with investigations

pursuant to section 19(c) of the Securities Act of 1933 (15 U.S.C. 77s(c)), section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(b)) and section 209(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(b)).

(11) To authorize staff to appear in federal bankruptcy court to preserve Commission claims in connection with investigations pursuant to section 19(c) of the Securities Act of 1933 (15 U.S.C. 77s(c)), section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(b)) and section 209(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(b)).

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(13) For the period from August 11, 2009 through August 11, 2010, to order the making of private investigations pursuant to section 19(c) of the Securities Act of 1933 (15 U.S.C. 77s(c)), section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(b)) and section 209(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(b)). Orders issued pursuant to this delegation during this period will continue to have effect after August 11, 2010.

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Florence E. Harmon  
Deputy Secretary

Date: July 16, 2010