

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-70049]

Delegation of Authority to Director of the Division of Enforcement

Agency: Securities and Exchange Commission.

Action: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is amending its rules to delegate to the Director of the Division of Enforcement the authority to appoint distribution fund administrators in enforcement administrative proceedings from a Commission-approved pool of administrators, and to set the amount of, or waive for good cause shown, the administrator’s bond required by Rule 1105(c) of the Commission’s rules on Fair Fund and Disgorgement Plans.

EFFECTIVE DATE: August 1, 2013.

FOR FURTHER INFORMATION CONTACT: Nancy Chase Burton, 202-551-4425, Office of Distributions, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-6553.

SUPPLEMENTAL INFORMATION: In administrative proceedings instituted by the Commission to enforce the federal securities laws, the Commission, in the exercise of its discretion, seeks to distribute amounts collected as disgorgement, prejudgment interest, and penalties to investor victims. The federal securities laws authorize the Commission in administrative proceedings to establish disgorgement and other funds to accomplish this goal. *See, e.g.*, Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7261; Sections 21B(e) and 21C(e) of the Securities Exchange Act (“Exchange Act”), 15 U.S.C. 78u-2(e) and 78u-3(e).

According to the Commission’s regulations, the “Commission or [a] hearing officer shall have discretion to appoint any person, including a Commission employee, as administrator of a plan of disgorgement or a Fair Fund plan and to delegate to that person responsibility for administering the plan.” Rule 1105(a), 17 CFR 201.1105(a). To improve the efficiency of the Commission’s distribution processes, and to centralize certain distribution-related functions within the Division of Enforcement, the Commission is formally delegating to the Director of the Division of Enforcement the authority to appoint certain persons as plan administrators if the person to be appointed is included in the Commission’s approved pool of qualified administrators.¹ The Commission is also delegating to the Director, when the Director appoints an administrator pursuant to this delegation, the authority to set the amount of, or waive for good cause shown, the administrator’s bond required by Rule 1105(c), 17 CFR 201.1105(c), of the Commission’s rules on Fair Fund and Disgorgement Plans.

If the Division Director deems it appropriate, a recommendation to appoint an administrator from the qualified pool or to set the amount of, or waive for good cause shown, any administrator’s bond may be submitted to the Commission for review.

¹ On July 15, 2013, the Commission approved a pool of nine firms from which future fund administrators will be appointed to administer the distribution of disgorgement or fair funds. Each administrator in the pool will be evaluated annually by the Office of Distributions and, if performance is deemed in compliance with the requirements for selection, will be continued in the pool for another year, up to a total of five years, at which time a selection process for a new pool will take place. Beginning six months after approval of the delegation and every six months thereafter, the Office of Distributions must provide the Commission with a memorandum discussing the implementation of the delegation and issues relevant to the Commission’s evaluation of the distribution processes. In particular, each memorandum must include (i) a list of all distributions assigned to pool participants at that time; (ii) the stage of each such distribution; and (iii) the Office of Distributions’ evaluation of each administrator responsible for the distributions. Each memorandum must also discuss, as data becomes available, the following: (i) whether the delegation has resulted in lower cost of distributions; (ii) whether the delegation has resulted in a greater percentage of funds from the distribution funds being returned to harmed investors; and (iii) whether the delegation has resulted in more timely and efficient distributions. The Office of Distributions must follow these procedures in connection with the delegation authority.

Administrative Law Matters:

The Commission finds, in accordance with the Administrative Procedure Act (“APA”) 5 U.S.C. 553(b)(3)(A), that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, the provisions of the APA regarding notice of rulemaking, opportunity for public comment, and publication of the amendment prior to its effective date are not applicable. For the same reason, and because this amendment does not substantively affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(3)(C), are not applicable. Additionally, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other law, 5 U.S.C. 603, are not applicable. Further, because this amendment imposes no new burdens on private persons, the Commission does not believe that the amendment will have any anti-competitive effects for purposes of Section 23(a)(2) of the Exchange Act, 15 U.S.C. 78w(a)(2). Finally, this amendment does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Accordingly, the amendment is effective August 1, 2013.

List of Subjects in 17 CFR Part 200

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

Text of 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. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37, 80b-11, 7202, and 7211 *et seq.*, unless otherwise noted.

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2. Section 200.30-4 is amended by adding paragraph (a)(17) to read as follows:

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

* * * * *

(a) * * *

(17) With respect to disgorgement and Fair Fund plans established in administrative proceedings instituted by the Commission pursuant to the federal securities laws, to appoint a person as a plan administrator, if that person is included in the Commission’s approved pool of administrators, and, for an administrator appointed pursuant to this delegation, to set the amount of or waive for good cause shown, the administrator’s bond required by § 201.1105(c) of this chapter.

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By the Commission

Elizabeth M. Murphy
Secretary

Dated: July 26, 2013