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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-10537; 34-83911; IA-4994; IC-33212]

Delegation of Authority to General Counsel of the Commission

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is revising regulations with respect to the delegations of authority to the Commission’s General Counsel. The revisions are a result of the Commission’s experience with its existing rules and increase the efficiency of the adjudicatory process.

DATES: This rule is effective August 31, 2018.

FOR FURTHER INFORMATION CONTACT: Brian J. Wong, Senior Counsel, and Benjamin L. Schiffrin, Associate General Counsel, Office of the General Counsel, (202) 551-5150, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is revising the delegations of authority to its General Counsel as a result of the Commission’s experience with its existing rules and to increase the efficiency of the adjudicatory process. The changes make available to that process the resources of the Office of the General Counsel in timely disposing of procedural and other prehearing matters that are typically of a routine or non-controversial nature. Congress has authorized such delegation by Public Law No. 87-592, 76 Stat. 394, 15 U.S.C. 78d–1(a), which provides that the Commission

“shall have the authority to delegate, by published rule or order, any of its functions to . . . an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business or matter.”

Accordingly, the Commission is amending its rules to delegate authority to the General Counsel to determine procedural requests and other non-dispositive, prehearing matters with respect to administrative proceedings conducted pursuant to the Securities Act of 1933, 15 U.S.C. 77a *et seq.*, the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*; the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*; the Investment Advisers Act of 1940, 15 U.S.C. 80b–1 *et seq.*; and the provisions of Rule 102(e) of the Commission’s Rules of Practice, 17 CFR 201.102(e), that have been set for hearing before the Commission. Under this delegation, the General Counsel (or, under his or her direction, such persons as might be designated from time to time by the Chairman of the Commission) would perform functions such as fixing times and places for hearings after a proceeding has been authorized; adjusting or cancelling hearing dates; setting or modifying briefing schedules; staying the proceeding pending a related criminal proceeding or the Commission’s consideration of an offer of settlement; reducing or extending the time within which to file papers; modifying length limitations; denying or granting leave to file motions and other papers; resolving applications for confidential treatment or to maintain materials under seal; making rulings regarding the manner or timing of service or of the Division of Enforcement’s production of its investigative file; directing that the parties meet for a prehearing conference and scheduling or cancelling such a conference; issuing an order to show cause if a party fails to answer, respond to a dispositive motion, or otherwise defend the proceeding within the time provided; striking procedurally deficient filings; and other similarly routine matters that arise in administrative proceedings.

The Commission does not delegate to the General Counsel functions with respect to issuing subpoenas, authorizing depositions, ruling upon the admissibility of evidence or upon motions to quash or to compel, presiding over a hearing or the taking of testimony, sanctioning a party, acting upon a dispositive motion, declaring a default, disposing of a claim or defense, or otherwise resolving or terminating the proceeding on the merits. This rule also does not affect the delegation of functions with respect to administrative proceedings conducted before an administrative law judge or other hearing officer, proceedings in which an initial or recommended decision has been issued, or proceedings in which a final order of the Commission has been issued.

With respect to any proceeding in which the Chairman or the General Counsel has determined that separation of functions requirements or other circumstances would make inappropriate the General Counsel's exercise of such functions, those functions are delegated to the Secretary of the Commission. Notwithstanding this delegation, the General Counsel may submit any matter he or she believes appropriate to the Commission. Furthermore, any action made by the General Counsel pursuant to delegated authority would be subject to Commission review as provided by Rules 430 and 431 of the Commission's Rules of Practice, 17 CFR 201.430-201.431 and 15 U.S.C. 78d-1(b). Additionally, being of an inherently preliminary and interlocutory nature, any such action may be revisited by the Commission, on its own initiative or on request of a party, at any time before the Commission's issuance of a final order resolving the proceeding.

II. Administrative Law Matters

The Commission finds, in accordance with the Administrative Procedure Act ("APA"), 5 U.S.C. 553(b)(3)(A), that these revisions relate solely to agency organization, procedures, or

practice and do not constitute a substantive rule. Accordingly, the APA's provisions regarding notice of rulemaking, opportunity for public comment, and advance publication of the amendments prior to their effective date are not applicable. These changes are therefore effective on August 31, 2018. For the same reason, and because these amendments do not 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, 5 U.S.C. 601 *et seq.*, which apply only when notice and comment are required by the APA or other law, are not applicable. These amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, and in any event, agency information collections during the conduct of administrative proceedings are exempt from that Act. *See* 44 U.S.C. 3518(c)(1)(B)(ii); 5 CFR 1320.4. Further, because the amendments impose no new burdens on private parties, the Commission does not believe that the amendments will have any impact on competition for purposes of Section 23(a)(2) of the Exchange Act.

III. Statutory Authority

This rule is adopted pursuant to statutory authority granted to the Commission, including Section 19 of the Securities Act, 15 U.S.C. 77s; Sections 4A, 4B, and 23 of the Exchange Act, 15 U.S.C. 78d-1, 78d-2, and 78w; Section 38 of the Investment Company Act, 15 U.S.C. 80a-37; Section 211 of the Investment Advisers Act, 15 U.S.C. 80b-11; and Section 3 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7202.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies)

TEXT OF AMENDMENTS

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

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

Subpart A—Organization and Program Management

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

Authority: 15 U.S.C. 77c, 77o, 77s, 77z-3, 77sss, 78d, 78d-1, 78d-2, 78o-4, 78w, 78ll(d), 78mm, 80a-37, 80b-11, 7202, and 7211 *et seq.*, unless otherwise noted.

* * * * *

2. Section 200.30-7 is amended by:

- a. Redesignating paragraph (d) as paragraph (e); and
- b. Adding new paragraph (d) to read as follows:

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

* * * * *

(d) The functions otherwise delegated to the General Counsel under § 200.30-14(i), with respect to any proceeding in which the Chairman or the General Counsel has determined, pursuant to § 200.30-14(j), that separation of functions requirements or other circumstances would make inappropriate the General Counsel’s exercise of such delegated functions.

* * * * *

3. Section 200.30-14 is amended by:

- a. Redesignating paragraphs (i) through (m) as paragraphs (k) through (o);

- b. Adding new paragraphs (i) and (j); and
- c. Revising newly redesignated paragraph (k).

The addition and revisions read as follows.

§200.30-14 Delegation of authority to the General Counsel.

* * *

(i)(1) With respect to a proceeding conducted pursuant to the Securities Act of 1933, 15 U.S.C. 77a *et seq.*, the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*; the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*; the Investment Advisers Act of 1940, 15 U.S.C. 80b–1 *et seq.*; and the provisions of Rule 102(e) of the Commission’s Rules of Practice, 17 CFR 201.102(e), that has been set for hearing before the Commission pursuant to Rule 110 of the Commission’s Rules of Practice, 17 CFR 201.110:

- (i) To determine procedural requests or similar prehearing matters; and
- (ii) To rule upon non-dispositive, prehearing motions.

(2) Provided, however, that the General Counsel may not issue subpoenas, authorize depositions, rule upon the admissibility of evidence or upon motions to quash or to compel, preside over a hearing or the taking of testimony, sanction a party, act upon a dispositive motion, declare a default, dispose of a claim or defense, or otherwise resolve or terminate the proceeding on the merits.

(j) Notwithstanding anything in paragraph (i) of this section, the functions described in paragraph (i) of this section are not delegated to the General Counsel with respect to proceedings in which the Chairman or the General Counsel determines that separation of functions requirements or other circumstances would make inappropriate the General Counsel’s exercise

of such delegated functions. With respect to such proceedings, such functions are delegated to the Secretary of the Commission pursuant to § 200.30-7.

(k) Notwithstanding anything in paragraphs (g) or (i) of this section, in any case described in paragraphs (g) or (i) of this section in which the General Counsel believes it appropriate, he or she may submit the matter to the Commission.

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By the Commission.

Dated: August 22, 2018

Brent J. Fields
Secretary