

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-106537]

Commission Quorum Requirement

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is amending its rules concerning the circumstances under which a quorum of the Commission is present. The amendments are designed to promote flexibility and finality of agency rulemaking.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Natalie E. Shioji, Senior Special Counsel, Office of the General Counsel, at (202) 551-5100.

SUPPLEMENTARY INFORMATION:

I. DISCUSSION

The Commission is modifying 17 CFR 200.41, which establishes the Commission’s quorum requirement. Three commissioners will continue to constitute a quorum of the Commission, with two important exceptions. First, consistent with the current rule, if the number of commissioners in office is two or one, that number is sufficient for a quorum. Second, if the number of commissioners in office minus the number disqualified from consideration with

respect to a matter is two or one, then that number of commissioners constitutes a quorum for purposes of that matter.

The Securities Exchange Act of 1934 (“Exchange Act”), unlike many statutes that establish Federal agencies, does not establish a quorum requirement for the Commission. The Commission historically had a general practice that three members constituted a quorum, and in 1995, the Commission adopted a rule formally establishing that practice as a quorum requirement.¹ That rule provided that if the number of Commissioners in office is less than three, then a quorum would consist of the number of Commissioners in office, and it further provided that on any matter of business as to which the number of Commissioners in office, minus the number of Commissioners who were disqualified from consideration of that matter, is two, then two Commissioners would constitute a quorum.² The Commission stated, however, that it did not believe that it was necessary at that time to provide that one Commissioner may constitute a quorum when disqualifications resulted in only one Commissioner being available to deal with a particular matter.³

The Commission has reconsidered its approach to quorum. In prior years, the Commission has occasionally been in the position of having fewer than three members and believes it prudent to adapt its quorum rule to further accommodate that contingency. Moreover, the Commission has found that situations often arise in which one or more Commissioners have disqualified themselves or are otherwise disqualified from participating in a matter.⁴ When such

¹ See 17 CFR 200.41.

² *Id.*

³ See *Establishment of Commission Quorum Requirement*, Release No. 34-35548 (Mar. 30, 1995) [60 FR 17201 (Apr. 5, 1995)].

⁴ See 17 CFR 200.60.

situations arise, it is important that the Commission be able to continue to conduct business. Accordingly, the Commission is amending the quorum rule to specify that, in a situation in which only one Commissioner is able to participate in a matter because all other Commissioners currently in office are disqualified from participating in that matter, the remaining member would constitute a quorum for that particular matter.

II. OTHER MATTERS

The Commission finds, in accordance with the Administrative Procedure Act (the “APA”), that these amendments relate solely to agency management and organization and do not constitute a substantive rule.⁵ Accordingly, the APA’s provisions regarding notice of proposed rulemaking and opportunity for public comment are not applicable. These amendments do not substantially affect the rights or obligations of non-agency parties and pertain to the management of internal Commission operations. The changes are effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For the same reasons, the provisions of the Small Business Regulatory Enforcement Fairness Act are not applicable.⁶ Additionally, the provisions of the Regulatory Flexibility Act,⁷ which apply only when notice and comment are required by the APA or other law, are not applicable.⁸ These amendments do not contain any collection of information requirements within the meaning of the Paperwork Reduction Act of 1995.⁹ Further, because these amendments impose no new burdens on private parties, the

⁵ See 5 U.S.C. 553.

⁶ See 5 U.S.C. 804(3)(C) (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”).

⁷ 5 U.S.C. 601 *et seq.*

⁸ See 5 U.S.C. 601(2).

⁹ See 44 U.S.C. 3501 *et seq.*; 5 CFR 1320.3.

Commission does not believe that the amendments will have any impact on competition for purposes of section 23(a)(2) of the Exchange Act.¹⁰

Statutory Authority

The amendments are adopted pursuant to statutory authority granted to the Commission, including sections 4(a) and 23(a) of the Exchange Act, 15 U.S.C. 78d(a) and 78w(a).

List of Subjects in 17 CFR Part 200

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

Text of Rule Amendments

For the reasons set out in the preamble, the Commission is amending title 17, chapter II, part 200 of the Code of Federal Regulations as follows:

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

1. The authority citation for part 200 continues to read in part as follows:

Authority: 5 U.S.C. 552b; 15 U.S.C. 78d and 78w.

2. Revise §200.41 to read as follows:

§200.41 Quorum of the Commission.

A quorum of the Commission shall consist of three members; provided, however, that if the number of Commissioners in office is less than three, a quorum shall consist of the number of

¹⁰ 15 U.S.C. 78w(a)(2).

members in office; and provided further that on any matter of business as to which the number of members in office, minus the number of members who either have disqualified themselves from consideration of such matter pursuant to §200.60 or are otherwise disqualified from such consideration, is two or one, that number of members shall constitute a quorum for purposes of such matter.

By the Commission.

Dated: September 30, 2026.

Vanessa A. Countryman,

Secretary.