

Securities and Exchange Commission

§ 201.161

§ 201.155 Default; motion to set aside default.

(a) A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails:

(1) To appear, in person or through a representative, at a hearing or conference of which that party has been notified;

(2) To answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding; or

(3) To cure a deficient filing within the time specified by the commission or the hearing officer pursuant to § 201.180(b).

(b) A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. In order to prevent injustice and on such conditions as may be appropriate, the hearing officer, at any time prior to the filing of the initial decision, or the Commission, at any time, may for good cause shown set aside a default.

§ 201.160 Time computation.

(a) *Computation.* In computing any period of time prescribed in or allowed by these Rules of Practice or by order of the Commission, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal legal holiday (as defined in § 201.104), in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal legal holiday. Intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation when the period of time prescribed or allowed is seven days or less, not including any additional time allowed for service by mail in paragraph (b) of this section. If on the day a filing is to be made, weather or other conditions have

caused the Secretary's office or other designated filing location to close, the filing deadline shall be extended to the end of the next day that is neither a Saturday, a Sunday, nor a Federal legal holiday.

(b) *Additional time for service by mail.* If service is made by mail, three days shall be added to the prescribed period for response.

§ 201.161 Extensions of time, postponements and adjournments.

(a) *Availability.* Except as otherwise provided by law, the Commission, at any time, or the hearing officer, at any time prior to the filing of his or her initial decision or, if no initial decision is to be filed, at any time prior to the closing of the record, may, for good cause shown, extend or shorten any time limits prescribed by these Rules of Practice for the filing of any papers and may, consistent with paragraph (b) of this section, postpone or adjourn any hearing.

(b) *Limitations on postponements, adjournments and extensions.* A hearing shall begin at the time and place ordered, provided that, within the limits provided by statute, the Commission or the hearing officer may for good cause shown postpone the commencement of the hearing or adjourn a convened hearing for a reasonable period of time or change the place of hearing.

(1) *Additional considerations.* In considering a motion for postponement of the start of a hearing, adjournment once a hearing has begun, or extensions of time for filing papers, the hearing officer or the Commission shall consider, in addition to any other factors:

(i) The length of the proceeding to date;

(ii) The number of postponements, adjournments or extensions already granted;

(iii) The stage of the proceedings at the time of the request; and

(iv) Any other such matters as justice may require.

(2) *Time limit.* Postponements, adjournments or extensions of time for filing papers shall not exceed 21 days unless the Commission or the hearing officer states on the record or sets forth in a written order the reasons

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why a longer period of time is necessary.

§ 201.180 Sanctions.

(a) *Contemptuous conduct*—(1) *Subject to exclusion or suspension.* Contemptuous conduct by any person before the Commission or a hearing officer during any proceeding, including any conference, shall be grounds for the Commission or the hearing officer to:

(i) Exclude that person from such hearing or conference, or any portion thereof; and/or

(ii) Summarily suspend that person from representing others in the proceeding in which such conduct occurred for the duration, or any portion, of the proceeding.

(2) *Review procedure.* A person excluded from a hearing or conference, or a counsel summarily suspended from practice for the duration or any portion of a proceeding, may seek review of the exclusion or suspension by filing with the Commission, within three days of the exclusion or suspension order, a motion to vacate the order. The Commission shall consider such motion on an expedited basis as provided in § 201.500.

(3) *Adjournment.* Upon motion by a party represented by counsel subject to an order of exclusion or suspension, an adjournment shall be granted to allow the retention of new counsel. In determining the length of an adjournment, the Commission or hearing officer shall consider, in addition to the factors set forth in § 201.161, the availability of co-counsel for the party or of other members of a suspended counsel's firm.

(b) *Deficient filings; leave to cure deficiencies.* The Commission or the hearing officer may reject, in whole or in part, any filing that fails to comply with any requirements of these Rules of Practice or of any order issued in the proceeding in which the filing was made. Any such filings shall not be part of the record. The Commission or the hearing officer may direct a party to cure any deficiencies and to resubmit the filing within a fixed time period.

(c) *Failure to make required filing or to cure deficient filing.* The Commission or the hearing officer may enter a default pursuant to § 201.155, dismiss the case,

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decide the particular matter at issue against that person, or prohibit the introduction of evidence or exclude testimony concerning that matter if a person fails:

(1) To make a filing required under these Rules of Practice; or

(2) To cure a deficient filing within the time specified by the Commission or the hearing officer pursuant to paragraph (b) of this section.

§ 201.190 Confidential treatment of information in certain filings.

(a) *Application.* An application for confidential treatment pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933, 15 U.S.C. 77aa(30), and Rule 406 thereunder, 17 CFR 230.406; Section 24(b)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78x(b)(2), and Rule 24b-2 thereunder, 17 CFR 240.24b-2; Section 22(b) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79v(b), and Rule 104 thereunder, 17 CFR 250.104; Section 45(a) of the Investment Company Act of 1940, 15 U.S.C. 80a-44(a), and Rule 45a-1 thereunder, 17 CFR 270.45a-1; or Section 210(a) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-10(a), shall be filed with the Secretary. The application shall be accompanied by a sealed copy of the materials as to which confidential treatment is sought.

(b) *Procedure for supplying additional information.* The applicant may be required to furnish in writing additional information with respect to the grounds for objection to public disclosure. Failure to supply the information so requested within 14 days from the date of receipt by the applicant of a notice of the information required shall be deemed a waiver of the objection to public disclosure of that portion of the information to which the additional information relates, unless the Commission or the hearing officer shall otherwise order for good cause shown at or before the expiration of such 14-day period.

(c) *Confidentiality of materials pending final decision.* Pending the determination of the application for confidential treatment, transcripts, non-final orders including an initial decision, if any, and other materials in connection with the application shall be placed