

## § 200.308

## 17 CFR Ch. II (4-1-03 Edition)

(1) Promptly advise the individual making the request in writing of the extent to which the request has been denied;

(2) State the reasons for the denial of the request;

(3) Describe the procedures established by the Commission to obtain further review within the Commission of the request to amend or correct, including the name and address of the person to whom the appeal is to be addressed; and

(4) Inform the individual that the Privacy Act Officer will provide information and assistance to the individual in perfecting an appeal of the initial decision.

(5 U.S.C. 552a(f); sec. 19, Securities Act of 1933, 48 Stat. 85, as amended; sec. 23, Securities Exchange Act of 1934, 48 Stat. 901, as amended; sec. 20, Public Utility Holding Company Act of 1935, 49 Stat. 833; sec. 319, Trust Indenture Act of 1939, 53 Stat. 1173; sec. 38, Investment Company Act of 1940, 54 Stat. 841; sec. 211, Investment Advisers Act of 1940, 54 Stat. 855 (15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11))

[40 FR 44068, Sept. 24, 1975, as amended at 49 FR 13866, Apr. 9, 1984]

### **§ 200.308 Appeal of initial adverse agency determination as to access or as to amendment or correction.**

(a) *Administrative review.* Any person who has been notified pursuant to § 200.304(c) that his request for access to records pertaining to him has been denied, or pursuant to Section 307(e) of this subpart that his request for amendment or correction has been denied in whole or in part, or who has received no response to a request for access or to amend within 30 days (excluding Saturdays, Sundays and legal holidays) after his request was received by the Office of Information and Privacy Act Operations (or within such extended period as may be permitted in accordance with §§ 200.304(d) and 200.307(c) of this subpart), may appeal the adverse determination or failure to respond to the General Counsel.

(1) The appeal shall be in writing and shall describe the record in issue and set forth the proposed amendment or correction and the reasons therefor.

(2) The appeal shall be delivered or sent by mail to the Office of Information and Privacy Act Operations, SEC,

Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413, or by facsimile (703-914-1149).

(3) The applicant, if he wishes, may state such facts and cite such legal or other authorities as he may consider appropriate in support of his application.

(4) The General Counsel will make a determination with respect to any appeal within 30 days after the receipt of such appeal (excluding Saturdays, Sundays and legal holidays), unless for good cause shown, the General Counsel shall extend that period. If such an extension is made, the individual who is appealing shall be advised in writing of the extension, the reasons therefor, and the anticipated date when the appeal will be decided.

(5) In considering an appeal from a denial of a request to amend or correct a record, the General Counsel shall apply the same standards as set forth in § 200.307(b).

(6) If the General Counsel shall conclude that access should be granted, he or she shall issue an order granting access and instructing the Privacy Act Officer to comply with § 200.304(b).

(7) If the General Counsel shall conclude that the request to amend or correct the record should be granted in whole or in part, he or she shall issue an order granting the requested amendment or correction in whole or in part and instructing the Privacy Act Officer to comply with the requirements of § 200.307(d) of this subpart, to the extent applicable.

(8) If the General Counsel affirms the initial decision denying access, he or she shall issue an order denying access and advising the individual seeking access of (i) The order; (ii) the reasons for denying access; and (iii) the individual's right to obtain judicial review of the decision pursuant to 5 U.S.C. 552a(g)(1)(B).

(9) If the General Counsel determines that the decision of the Privacy Act Officer denying a request to amend or correct a record should be upheld, he or she shall issue an order denying the request and the individual shall be advised of

(i) The order refusing to amend or correct the record and the reasons therefor;

(ii) His or her right to file a concise statement setting forth his or her disagreement with the General Counsel's decision not to amend or correct the record;

(iii) The procedures for filing such a statement of disagreement with the General Counsel;

(iv) The fact that any such statement of disagreement will be made available to anyone to whom the record is disclosed, together with, if the General Counsel deems it appropriate, a brief statement setting forth the General Counsel's reasons for refusing to amend or correct;

(v) The fact that prior recipients of the record in issue will be provided with the statement of disagreement and the General Counsel's statement, if any, to the extent that an accounting of such disclosures has been maintained pursuant to 5 U.S.C. 552a(c); and

(vi) The individual's right to seek judicial review of the General Counsel's refusal to amend or correct, pursuant to 5 U.S.C. 552a(g)(1)(A).

(10) In appropriate cases the General Counsel may, in his or her sole and unfettered discretion, refer matters requiring administrative review of initial decisions to the Commission for determination and the issuance, where indicated, of orders.

(b) *Statement of disagreement.* As noted in paragraph (a)(9)(ii) of this section, an individual may file with the General Counsel a statement setting forth his disagreement with the General Counsel's denial of his request to amend or correct a record.

(1) Such statement of disagreement shall be delivered or sent by mail to the Office of Freedom of Information and Privacy Act Operations, SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413, or by facsimile (703-914-1149), within 30 days after receipt by the individual of the General Counsel's order denying the amendment or correction. For good cause shown this period can be extended for a reasonable time.

(2) Such statement of disagreement shall concisely state the basis for the individual's agreement. Generally a statement should be no more than two pages in length, except an individual may submit a slightly longer state-

ment if it is necessary to set forth his disagreement effectively. Unduly lengthy or irrelevant materials will be returned to the individual by the General Counsel for appropriate revisions before they become a permanent part of the individual's record.

(3) The record about which a statement of disagreement has been filed will clearly note which part of the record is disputed and the General Counsel will provide copies of the statement of disagreement and, if the General Counsel deems it appropriate, provide a concise statement of his or her reasons for refusing to amend or correct the record, to persons or other agencies to whom the record has been or will be disclosed.

(4) In appropriate cases, the General Counsel may, in his or her sole and unfettered discretion, refer matters concerning statements of disagreement to the Commission for disposition.

(5 U.S.C. 552a(f); sec. 19, Securities Act of 1933, 48 Stat. 85, as amended; sec. 23, Securities Exchange Act of 1934, 48 Stat. 901, as amended; sec. 20, Public Utility Holding Company Act of 1935, 49 Stat. 833; sec. 319, Trust Indenture Act of 1939, 53 Stat. 1173; sec. 38, Investment Company Act of 1940, 54 Stat. 841; sec. 211, Investment Advisers Act of 1940, 54 Stat. 855 (15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11))

[40 FR 44068, Sept. 24, 1975, as amended at 42 FR 40190, Aug. 9, 1977; 47 FR 26819, June 22, 1982; 49 FR 13866, Apr. 9, 1984; 65 FR 55186, Sept. 13, 2000]

#### § 200.309 General provisions.

(a) *Extensions of time.* Pursuant to §§ 200.303(b), 200.304(d), 200.307(c) and 200.308(a)(4) of this subpart, the time within which a request for information, access or amendment by an individual with respect to records maintained by the Commission that pertain to him normally would be processed may be extended for good cause shown or because of unusual circumstances. As used in these rules, *good cause* and *unusual circumstances* shall include, but only to the extent reasonably necessary to the proper processing of a particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Office processing the