

Securities and Exchange Commission

§ 201.160

(ii) to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(iii) the filing is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication.

(2) If a filing is not signed, the hearing officer or the Commission shall strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

§ 201.154 Motions.

(a) *Generally.* Unless made during a hearing or conference, a motion shall be in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied upon. All written motions shall be served in accordance with § 201.150, be filed in accordance with § 201.151, meet the requirements of § 201.152, and be signed in accordance with § 201.153. The Commission or the hearing officer may order that an oral motion be submitted in writing. Unless otherwise ordered by the Commission or the hearing officer, if a motion is properly made to the Commission concerning a proceeding to which a hearing officer is assigned, the proceeding before the hearing officer shall continue pending the determination of the motion by the Commission. No oral argument shall be heard on any motion unless the Commission or the hearing officer otherwise directs.

(b) *Opposing and reply briefs.* Except as provided in § 201.401, briefs in opposition to a motion shall be filed within five days after service of the motion. Reply briefs shall be filed within three days after service of the opposition.

(c) *Length limitation.* A brief in support of or opposition to a motion shall not exceed 10 pages, exclusive of pages containing any table of contents, table of authorities, and/or addendum. Requests for leave to file briefs in excess of 10 pages are disfavored.

§ 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

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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,