

§ 201.31

- 201.452 Additional evidence.
- 201.460 Record before the Commission.
- 201.470 Reconsideration.
- 201.490 Receipt of petitions for judicial review pursuant to 28 U.S.C. 2112(a)(1).

RULES RELATING TO TEMPORARY ORDERS AND SUSPENSIONS

- 201.500 Expedited consideration of proceedings.
- 201.510 Temporary cease-and-desist orders: Application process.
- 201.511 Temporary cease-and-desist orders: Notice; procedures for hearing.
- 201.512 Temporary cease-and-desist orders: Issuance after notice and opportunity for hearing.
- 201.513 Temporary cease-and-desist orders: Issuance without prior notice and opportunity for hearing.
- 201.514 Temporary cease-and-desist orders: Judicial review; duration.
- 201.520 Suspension of registration of brokers, dealers, or other Exchange Act-registered entities: Application.
- 201.521 Suspension of registration of brokers, dealers, or other Exchange Act-registered entities: Notice and opportunity for hearing on application.
- 201.522 Suspension of registration of brokers, dealers, or other Exchange Act-registered entities: Issuance and review of order.
- 201.523 [Reserved]
- 201.524 Suspension of registrations: Duration.
- 201.530 Initial decision on permanent order: Timing for submitting proposed findings and preparation of decision.
- 201.531 Initial decision on permanent order: Effect on temporary order.
- 201.540 Appeal and Commission review of initial decision making a temporary order permanent.
- 201.550 Summary suspensions pursuant to Exchange Act Section 12(k)(1)(A).

RULES REGARDING DISGORGEMENT AND PENALTY PAYMENTS

- 201.600 Interest on sums disgorged.
- 201.601 Prompt payment of disgorgement, interest and penalties.
- 201.610 Submission of proposed plan of disgorgement.
- 201.611 Contents of plan of disgorgement; provisions for payment.
- 201.612 Notice of proposed plan of disgorgement and opportunity for comment by non-parties.
- 201.613 Order approving, modifying or disapproving proposed plan of disgorgement.
- 201.614 Administration of plan of disgorgement.
- 201.620 Right to challenge order of disgorgement.
- 201.630 Inability to pay disgorgement, interest or penalties.

17 CFR Ch. II (4–1–03 Edition)

INFORMAL PROCEDURES AND SUPPLEMENTARY INFORMATION CONCERNING ADJUDICATORY PROCEEDINGS

- 201.900 Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings.

TABLE I TO SUBPART D—ADVERSARY ADJUDICATIONS CONDUCTED BY THE COMMISSION UNDER 5 U.S.C. 554

TABLE II TO SUBPART D—CROSS-REFERENCE TABLE SHOWING LOCATION OF RULES OF PRACTICE ADOPTED IN 1995 WITH FORMER RULES OF PRACTICE, RELATED RULES AND STATUTORY PROVISIONS

TABLE III TO SUBPART D—CROSS-REFERENCE TABLE SHOWING LOCATION OF FORMER RULES OF PRACTICE AND RELATED RULES WITH RULES OF PRACTICE ADOPTED IN 1995

Subpart E—Adjustment of Civil Monetary Penalties

- 201.1001 Adjustment of civil monetary penalties—1996.

TABLE 1 TO SUBPART E—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

- 201.1002 Adjustment of civil monetary penalties—2001.

TABLE II TO SUBPART E—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

AUTHORITY: 15 U.S.C. 77s, 78w, 78x, 79t, 77sss, 80a-37 and 80b-11; 5 U.S.C. 504(c)(1).

SOURCE: 47 FR 610, Jan. 6, 1982, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Regulations Pertaining to the Equal Access to Justice Act

§ 201.31 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called *the Act* in this subpart B), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called *adversary adjudications*) before the Commission. An eligible party may receive an award when it prevails over the Commission, unless the Commission's position was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the

Securities and Exchange Commission

§ 201.34

Commission will use in ruling on those applications.

[54 FR 53051, Dec. 27, 1989]

§ 201.32 When the Act applies.

The Act applies to adversary adjudications described in § 201.33 pending or commenced before the Commission on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in these rules, has been filed with the Commission within 30 days after August 5, 1985. Proceedings which have been substantially concluded are not deemed pending under these rules although officially pending for purposes such as concluding remedial actions found in Commission orders or private undertakings.

[54 FR 53051, Dec. 27, 1989]

§ 201.33 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Commission. These are on the record adjudications under 5 U.S.C. 554 in which the position of an Office or Division of the Commission as a party, not including *amicus* participation, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. See appendix, 17 CFR 201.60.

(b) The fact that the Commission has not identified a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

[47 FR 610, Jan. 6, 1982, as amended at 54 FR 53051, Dec. 27, 1989]

§ 201.34 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which

it seeks an award. The term *party* is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than \$2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than \$7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or public or private organization with a net worth of not more than \$7 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an *individual* rather than a *sole owner of an unincorporated business* if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other