

APPEAL TO THE COMMISSION AND
COMMISSION REVIEW**§ 201.400 Interlocutory review.**

(a) *Availability.* The Commission will not review a hearing officer's ruling prior to its consideration of the entire proceeding in the absence of extraordinary circumstances. The Commission may decline to consider a ruling certified by a hearing officer pursuant to paragraph (c) of this section if it determines that interlocutory review is not warranted or appropriate under the circumstances. The Commission may, at any time, on its own motion, direct that any matter be submitted to it for review.

(b) *Expedited consideration.* Interlocutory review of a hearing officer's ruling shall be expedited in every way, consistent with the Commission's other responsibilities.

(c) *Certification process.* A ruling submitted to the Commission for interlocutory review must be certified in writing by the hearing officer and shall specify the material relevant to the ruling involved. The hearing officer shall not certify a ruling unless:

(1) His or her ruling would compel testimony of Commission members, officers or employees or the production of documentary evidence in their custody; or

(2) Upon application by a party, within five days of the hearing officer's ruling, the hearing officer is of the opinion that:

(i) The ruling involves a controlling question of law as to which there is substantial ground for difference of opinion; and

(ii) An immediate review of the order may materially advance the completion of the proceeding.

(d) *Proceedings not stayed.* The filing of an application for review or the grant of review shall not stay proceedings before the hearing officer unless he or she, or the Commission, shall so order. The Commission will not consider the motion for a stay unless the motion shall have first been made to the hearing officer.

§ 201.401 Issuance of stays.

(a) *Procedure.* A request for a stay shall be made by written motion, filed

pursuant to § 201.154, and served on all parties pursuant to § 201.150. The motion shall state the reasons for the relief requested and the facts relied upon, and, if the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements or copies thereof. Portions of the record relevant to the relief sought, if available to the movant, shall be filed with the motion. The Commission may issue a stay based on such motion or on its own motion.

(b) *Scope of relief.* The Commission may grant a stay in whole or in part, and may condition relief under this section upon such terms, or upon the implementation of such procedures, as it deems appropriate.

(c) *Stay of a Commission order.* A motion for a stay of a Commission order may be made by any person aggrieved thereby who would be entitled to review in a federal court of appeals. A motion seeking to stay the effectiveness of a Commission order pending judicial review may be made to the Commission at any time during which the Commission retains jurisdiction over the proceeding.

(d) *Stay of an action by a self-regulatory organization—(1) Availability.* A motion for a stay of an action by a self-regulatory organization for which the Commission is the appropriate regulatory agency, for which action review may be sought pursuant to § 201.420, may be made by any person aggrieved thereby.

(2) *Summary entry.* A stay may be entered summarily, without notice and opportunity for hearing.

(3) *Expedited consideration.* Where the action complained of has already taken effect and the motion for stay is filed within 10 days of the effectiveness of the action, or where the action complained of, will, by its terms, take effect within five days of the filing of the motion for stay, the consideration of and decision on the motion for a stay shall be expedited in every way, consistent with the Commission's other responsibilities. Where consideration will be expedited, persons opposing the motion for a stay may file a statement in opposition within two days of service of the motion unless the Commission,

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by written order, shall specify a different period.

§ 201.410 Appeal of initial decisions by hearing officers.

(a) *Petition for review; when available.* In any proceeding in which an initial decision is made by a hearing officer, any party, and any other person who would have been entitled to judicial review of the decision entered therein if the Commission itself had made the decision, may file a petition for review of the decision with the Commission.

(b) *Procedure.* The petition for review of an initial decision shall be filed with the Commission within such time after service of the initial decision as prescribed by the hearing officer pursuant to § 201.360(b). The petition shall set forth the specific findings and conclusions of the initial decision as to which exception is taken, together with supporting reasons for each exception. Supporting reasons may be stated in summary form. Any exception to an initial decision not stated in the petition for review, or in a previously filed proposed finding made pursuant to § 201.340, may, at the discretion of the Commission, be deemed to have been waived by the petitioner.

(c) *Financial disclosure statement requirement.* Any person who files a petition for review of an initial decision that asserts that person's inability to pay either disgorgement, interest or a penalty shall file with the opening brief a sworn financial disclosure statement containing the information specified in § 201.630(b).

(d) *Opposition to review.* A party may seek leave to file a brief in opposition to a petition for review within five days of the filing of the petition. The Commission will grant leave, or order the filing of an opposition on its own motion, only if it determines that briefing will significantly aid the decisional process. A brief in opposition shall identify those issues which do not warrant consideration by the Commission and shall state succinctly the reasons therefore.

(e) *Prerequisite to judicial review.* Pursuant to Section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition to the Commission for review of an initial decision is a prerequisite to

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the seeking of judicial review of a final order entered pursuant to such decision.

§ 201.411 Commission consideration of initial decisions by hearing officers.

(a) *Scope of review.* The Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, an initial decision by a hearing officer and may make any findings or conclusions that in its judgment are proper and on the basis of the record.

(b) *Standards for granting review pursuant to a petition for review—(1) Mandatory review.* After a petition for review has been filed, the Commission shall review any initial decision that:

(i) Denies any request for action pursuant to Section 8(a) or Section 8(c) of the Securities Act of 1933, 15 U.S.C. 77h(a), (c), or the first sentence of Section 12(d) of the Exchange Act, 15 U.S.C. 78l(d);

(ii) Suspends trading in a security pursuant to Section 12(k) of the Exchange Act, 15 U.S.C. 78l(k); or

(iii) Is in a case of adjudication (as defined in 5 U.S.C. 551) not required to be determined on the record after notice and opportunity for hearing (except to the extent there is involved a matter described in 5 U.S.C. 554(a) (1) through (6)).

(2) *Discretionary review.* The Commission may decline to review any other decision. In determining whether to grant review, the Commission shall consider whether the petition for review makes a reasonable showing that:

(i) A prejudicial error was committed in the conduct of the proceeding; or

(ii) The decision embodies:

(A) A finding or conclusion of material fact that is clearly erroneous; or

(B) A conclusion of law that is erroneous; or

(C) An exercise of discretion or decision of law or policy that is important and that the Commission should review.

(c) *Commission review other than pursuant to a petition for review.* The Commission may, on its own initiative, order review of any initial decision, or a portion of any initial decision, within