

§ 201.430

pursuant to § 201.420(a) within 40 days after notice thereof was filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1).

(b) *Supplemental briefing.* The Commission may at any time prior to issuance of its decision raise or consider any matter that it deems material, whether or not raised by the parties. Notice to the parties and an opportunity for supplemental briefing with respect to issues not briefed by the parties shall be given where the Commission believes that such briefing would significantly aid the decisional process.

§ 201.430 Appeal of actions made pursuant to delegated authority.

(a) *Scope of rule.* Any person aggrieved by an action made by authority delegated in §§ 200.30-1 through 200.30-18 of this chapter may seek review of the action pursuant to paragraph (b) of this section.

(b) *Procedure—(1) Notice of intention to petition for review.* A party or any person aggrieved by an action made pursuant to delegated authority may seek Commission review of the action by filing a written notice of intention to petition for review within five days after actual notice to the party of the action or service of notice of the action pursuant to § 201.141(b), whichever is earlier. The notice shall identify the petitioner and the action complained of, and shall be accompanied by a notice of appearance pursuant to § 201.102(d).

(2) *Petition for review.* Within five days after the filing of a notice of intention to petition for review pursuant to paragraph (b)(1) of this section, the person seeking review shall file a petition for review containing a clear and concise statement of the issues to be reviewed and the reasons why review is appropriate. The petition shall include exceptions to any findings of fact or conclusions of law made, together with supporting reasons for such exceptions based on appropriate citations to such record as may exist. These reasons may be stated in summary form.

(c) *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

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an action made by authority delegated in §§ 200.30-1 through 200.30-18 of this chapter is a prerequisite to the seeking of judicial review of a final order entered pursuant to such an action.

[60 FR 32796, June 23, 1995; 60 FR 46500, Sept. 7, 1995]

§ 201.431 Commission consideration of actions made pursuant to delegated authority.

(a) *Scope of review.* The Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, any action made pursuant to authority delegated in §§ 200.30-1 through 200.30-18 of this chapter.

(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 action that it would be required to review pursuant to § 201.411(b)(1) if the action was made as the initial decision of a hearing officer.

(2) *Discretionary review.* The Commission may decline to review any other action. In determining whether to grant review, the Commission shall consider the factors set forth in § 201.411(b)(2).

(c) *Commission review other than pursuant to a petition for review.* The Commission may, on its own initiative, order review of any action made pursuant to delegated authority at any time, provided, however, that where there are one or more parties to the matter, such review shall not be ordered more than ten days after the action. The vote of one member of the Commission, conveyed to the Secretary, shall be sufficient to bring a matter before the Commission for review.

(d) *Required items in an order for review.* In an order granting a petition for review or directing review on the Commission's own initiative, the Commission shall set forth the time within which any party or other person may file a statement in support of or in opposition to the action made by delegated authority and shall state whether a stay shall be granted, if none is in effect, or shall be continued, if in effect pursuant to paragraph (e) of this section.

(e) *Automatic stay of delegated action.* An action made pursuant to delegated authority shall have immediate effect and be deemed the action of the Commission. Upon filing with the Commission of a notice of intention to petition for review, or upon notice to the Secretary of the vote of a Commissioner that a matter be reviewed, an action made pursuant to delegated authority shall be stayed until the Commission orders otherwise, provided, however, there shall be no automatic stay of an action:

(1) To grant a stay of action by the Commission or a self-regulatory organization as authorized by 17 CFR 200.30-14(g) (5)-(6); or

(2) To commence a subpoena enforcement proceeding as authorized by 17 CFR 200.30-4(a)(10).

(f) *Effectiveness of stay or of Commission decision to modify or reverse a delegated action.* As against any person who shall have acted in reliance upon any action at a delegated level, any stay or any modification or reversal by the Commission of such action shall be effective only from the time such person receives actual notice of such stay, modification or reversal.

[60 FR 32796, June 23, 1995; 60 FR 46500, Sept. 7, 1995]

§ 201.450 Briefs filed with the Commission.

(a) *Briefing schedule order.* Other than review ordered pursuant to § 201.431, if review of a determination is mandated by statute, rule, or judicial order or the Commission determines to grant review as a matter of discretion, the Commission shall issue a briefing schedule order directing the party or parties to file opening briefs and specifying particular issues, if any, as to which briefing should be limited or directed. Unless otherwise provided, opening briefs shall be filed within 40 days of the date of the briefing schedule order. Opposition briefs shall be filed within 30 days after the date opening briefs are due. Reply briefs shall be filed within 14 days after the date opposition briefs are due. No briefs in addition to those specified in the briefing schedule order may be filed except with leave of the Commission. The briefing schedule order shall be issued:

(1) At the time the Commission orders review on its own initiative pursuant to §§ 201.411 or 201.421, or orders interlocutory review on its own motion pursuant to § 201.400(a); or

(2) Within 21 days, or such longer time as provided by the Commission, after:

(i) The last day permitted for filing a petition for review pursuant to § 201.410(b) or a brief in opposition to a petition for review pursuant to § 201.410(d);

(ii) Receipt by the Commission of an index to the record of a determination of a self-regulatory organization filed pursuant to § 201.420(d);

(iii) Receipt by the Commission of the mandate of a court of appeals with respect to a judicial remand; or

(iv) Certification of a ruling for interlocutory review pursuant to § 201.400(c).

(b) *Contents of briefs.* Briefs shall be confined to the particular matters at issue. Each exception to the findings or conclusions being reviewed shall be stated succinctly. Exceptions shall be supported by citation to the relevant portions of the record, including references to the specific pages relied upon, and by concise argument including citation of such statutes, decisions and other authorities as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, in an appendix thereto, or by citation to the record. Reply briefs shall be confined to matters in opposition briefs of other parties.

(c) *Length limitation.* Opening and opposition briefs shall not exceed 50 pages and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, table of authorities, and any addendum, except with leave of the Commission.

§ 201.451 Oral argument before the Commission.

(a) *Availability.* The Commission, on its own motion or the motion of a party or any other aggrieved person entitled to Commission review, may order oral argument with respect to any matter. Motions for oral argument with respect to whether to affirm all or