

§ 201.520

desist order shall be available as provided in Section 8A(d)(2) of the Securities Act, 15 U.S.C. 77h-1(d)(2), Section 21C(d)(2) of the Exchange Act, 15 U.S.C. 78u-3(d)(2), Section 9(f)(4)(B) of the Investment Company Act, 15 U.S.C. 80a-9(f)(4)(B), or Section 203(k)(4)(B) of the Investment Advisers Act, 15 U.S.C. 80b-3(k)(4)(B).

(b) *Duration.* Unless set aside, limited, or suspended, either by order of the Commission, a court of competent jurisdiction, or a hearing officer acting pursuant to § 201.531, or by operation of § 201.513, a temporary cease-and-desist order shall remain effective and enforceable until the earlier of:

(1) The completion of the proceedings whether a permanent order shall be entered; or

(2) 180 days, or such longer time as consented to by the respondent, after issuance of a briefing schedule order pursuant to § 201.540(b), if an initial decision whether a permanent order should be entered is appealed.

§ 201.520 Suspension of registration of brokers, dealers, or other Exchange Act-registered entities: Application.

(a) *Procedure.* A request for suspension of a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or transfer agent pending a final determination whether the registration shall be revoked shall be made by application filed by the Division of Enforcement. The application shall set forth the statutory provision or rule that each respondent is alleged to have violated and the temporary suspension sought as to each respondent.

(b) *Accompanying documents.* The application shall be accompanied by a declaration of facts signed by a person with knowledge of the facts contained therein, a memorandum of points and authorities, a proposed order imposing the temporary suspension of registration sought, and a proposed notice of hearing and order to show cause whether the temporary suspension of registration should be imposed. If a proceeding to determine whether to revoke the registration permanently has not already been commenced, a proposed order instituting proceedings to

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determine whether a permanent sanction should be imposed shall also be filed with the application.

(c) *With whom filed.* The application shall be filed with the Secretary or, if the Secretary is unavailable, with the duty officer. In no event shall an application be filed with an administrative law judge.

(d) *Record of hearings.* All hearings shall be recorded or transcribed pursuant to § 201.302.

§ 201.521 Suspension of registration of brokers, dealers, or other Exchange Act-registered entities: Notice and opportunity for hearing on application.

(a) *How given.* Notice of an application to suspend a registration pursuant to § 201.520 shall be made by serving a notice of hearing and order to show cause pursuant to § 201.141(b) or, where timely service of a notice of hearing pursuant to § 201.141(b) is not practicable, by any other means reasonably calculated to give actual notice that a hearing will be held, including telephonic notification of the general subject matter, time, and place of the hearing.

(b) *Hearing: before whom held.* Except as provided in paragraph (d) of this section, hearings on an application to suspend a registration pursuant to § 201.520 shall be held before the Commission.

(c) *Presiding officer: designation.* The Chairman shall preside or designate a Commissioner to preside at the hearing. If the Chairman is absent or unavailable at the time of hearing and no other Commissioner has been designated to preside, the duty officer on the day the hearing begins shall preside or designate another Commissioner to preside.

(d) *Procedure at hearing.* (1) The presiding officer shall have all those powers of a hearing officer set forth in § 201.111 and shall rule on the admissibility of evidence and other procedural matters, including, but not limited to whether oral testimony will be heard; the time allowed each party for the submission of evidence or argument; and whether post-hearing submission of briefs, proposed findings of fact and conclusions of law will be permitted

and if so, the procedures for submission; provided, however, that the person presiding may consult with other Commissioners participating in the hearing on these or any other question of procedure.

(2) Each Commissioner present at the hearing shall be afforded a reasonable opportunity to ask questions of witnesses, if any, or counsel.

(3) A party or witness may participate by telephone. Alternative means of remote access, including a video link, shall be permitted in the Commission's discretion. Factors the Commission may consider in determining whether to permit alternative means of remote access include, but are not limited to, whether allowing an alternative means of access will delay the hearing, whether the alternative means is reliable, and whether the party proposing its use has made arrangements to pay for its cost.

(4) After a hearing has begun, the Commission may, on its own motion or the motion of a party, assign a hearing officer to preside at the taking of oral testimony or other evidence and to certify the record of such testimony or other evidence to the Commission within a fixed period of time. No recommended or initial decision shall be made.

§ 201.522 Suspension of registration of brokers, dealers, or other Exchange Act-registered entities: Issuance and review of order.

(a) *Basis for issuance.* An order suspending a registration, pending final determination as to whether the registration shall be revoked shall be issued only if the Commission finds that the suspension is necessary or appropriate in the public interest or for the protection of investors.

(b) *Content, scope and form of order.* Each order suspending a registration shall:

(1) Describe the basis for its issuance, including the alleged or threatened violations and the harm that is likely to result without the issuance of an order;

(2) Describe in reasonable detail, and not by reference to the order instituting proceedings or any other docu-

ment, the act or acts the respondent is to take or refrain from taking; and

(3) Be indorsed with the date and hour of issuance.

(c) *Effective upon service.* An order suspending a registration is effective upon service upon the respondent.

(d) *Service: how made.* Service of an order suspending a registration shall be made pursuant to §201.141(a). The person who serves the order shall promptly file a declaration of service identifying the person served, the method of service, the date of service, the address to which service was made and the person who made service; provided, however, failure to file such a declaration shall have no effect on the validity of the service.

(e) *Commission review.* At any time after the respondent has been served with an order suspending a registration, the respondent may apply to the Commission or the hearing officer to have the order set aside, limited, or suspended. The application shall set forth with specificity the facts that support the request.

§ 201.523 [Reserved]

§ 201.524 Suspension of registrations: Duration.

Unless set aside, limited or suspended by order of the Commission, a court of competent jurisdiction, or a hearing officer acting pursuant to §201.531, an order suspending a registration shall remain effective and enforceable until the earlier of:

(a) The completion of the proceedings whether the registration shall be permanently revoked; or

(b) 180 days, or such longer time as consented to by the respondent, after issuance of a briefing schedule order pursuant to §201.540(b), if an initial decision whether the registration shall be permanently revoked is appealed.

§ 201.530 Initial decision on permanent order: Timing for submitting proposed findings and preparation of decision.

Unless otherwise ordered by the Commission or hearing officer, if a temporary cease-and-desist order or suspension of registration order is in effect, the following time limits shall