

monies earned or received and all monies spent in connection with the administration of the plan of disgorgement. A final accounting shall be submitted for approval of the Commission or hearing officer prior to discharge of the administrator and cancellation of the administrator's bond, if any.

(f) *Amendment.* A plan may be amended upon motion by any party or the plan administrator or upon the Commission's or hearing officer's own motion.

§ 201.620 Right to challenge order of disgorgement.

Other than in connection with the opportunity to submit comments as provided in § 201.612, no person shall be granted leave to intervene or to participate in a proceeding or otherwise to appear to challenge an order of disgorgement; or an order approving, approving with modifications, or disapproving a plan of disgorgement; or any determination relating to a plan of disgorgement based solely upon that person's eligibility or potential eligibility to participate in a disgorgement fund or based upon any private right of action such person may have against any person who is also a respondent in an enforcement proceeding.

§ 201.630 Inability to pay disgorgement, interest or penalties.

(a) *Generally.* In any proceeding in which an order requiring payment of disgorgement, interest or penalties may be entered, a respondent may present evidence of an inability to pay disgorgement, interest or a penalty. The Commission may, in its discretion, or the hearing officer may, in his or her discretion, consider evidence concerning ability to pay in determining whether disgorgement, interest or a penalty is in the public interest.

(b) *Financial disclosure statement.* Any respondent who asserts an inability to pay disgorgement, interest or penalties may be required to file a sworn financial disclosure statement and to keep the statement current. The financial statement shall show the respondent's assets, liabilities, income or other funds received and expenses or other payments, from the date of the first violation alleged against that respondent

in the order instituting proceedings, or such later date as specified by the Commission or a hearing officer, to the date of the order requiring the disclosure statement to be filed. By order, the Commission or the hearing officer may prescribe the use of the Disclosure of Assets and Financial Information Form (see Form D-A at § 209.1 of this chapter) or any other form, may specify other time periods for which disclosure is required, and may require such other information as deemed necessary to evaluate a claim of inability to pay.

(c) *Confidentiality.* Any respondent submitting financial information pursuant to this section or § 201.410(c) may make a motion, pursuant to § 201.322, for the issuance of a protective order against disclosure of the information submitted to the public or to any parties other than the Division of Enforcement. Prior to a ruling on the motion, no party receiving information as to which a motion for a protective order has been made may transfer or convey the information to any other person without the prior permission of the Commission or the hearing officer.

(d) *Service required.* Notwithstanding any provision of § 201.322, a copy of the financial disclosure statement shall be served on the Division of Enforcement.

(e) *Failure to file required financial information: sanction.* Any respondent who, after making a claim of inability to pay either disgorgement, interest or a penalty, fails to file a financial disclosure statement when such a filing has been ordered or is required by rule may, in the discretion of the Commission or the hearing officer, be deemed to have waived the claim of inability to pay. No sanction pursuant to §§ 201.155 or 201.180 shall be imposed for a failure to file such a statement.

INFORMAL PROCEDURES AND SUPPLEMENTARY INFORMATION CONCERNING ADJUDICATORY PROCEEDINGS

§ 201.900 Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings.

(a) *Guidelines for the timely completion of proceedings.*(1) Timely resolution of adjudicatory proceedings is one factor