

§ 3.57

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set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any appeal brought under paragraph (e)(2) of this section.

(f) Any order of suspension or modification issued under this section shall remain in effect until such information, indictment, or complaint is disposed of or until terminated by the Commission.

(g) On disposition of such information, indictment, or complaint, the Commission may issue and serve on such registrant a notice under § 3.55 or § 3.60 to suspend, restrict, or revoke the registration of such person.

(h) A finding of not guilty or other disposition of the charge shall not preclude the Commission from thereafter instituting any other proceedings under the Act or its rules.

(i) A person aggrieved by an order issued under this section may obtain review of such order in the same manner and on the same terms and conditions as are provided in section 6(c) of the Act.

[58 FR 19595, Apr. 15, 1993, as amended at 60 FR 54801, Oct. 26, 1995; 67 FR 62351, Oct. 7, 2002]

§ 3.57 Proceedings under section 8a(2)(E) of the Act.

The Commission will not initiate a proceeding under section 8a(2)(E) of the Act, if *respondeat superior* is the sole basis upon which the registrant may be found subject to a statutory disqualification.

§ 3.60 Procedure to deny, condition, suspend, revoke or place restrictions upon registration pursuant to sections 8a(2), 8a(3) and 8a(4) of the Act.

(a) *Notice.* On the basis of information obtained by the Commission, the Commission may at any time give written notice to any applicant for registration or any registrant in any capacity under the Act that:

(1) The Commission alleges and is prepared to prove that the registrant or applicant is subject to one or more of the statutory disqualifications set forth in section 8a(2), 8a(3) or 8a(4) of the Act;

(2) The allegations set forth in the notice, if true, constitute a basis upon

which registration may be denied, granted upon conditions, suspended, revoked or restricted;

(3) The applicant or registrant is entitled to file a response within thirty days of the date of service of the notice to challenge the evidentiary basis of the statutory disqualification set forth in the notice or show cause why, notwithstanding the accuracy of those allegations, registration should nevertheless be granted, or granted upon condition, or should not be conditioned, suspended, revoked or restricted; and

(4) If the applicant or registrant does not file a timely response to the notice:

(i) The applicant or registrant will be deemed to have waived his right to a hearing on all issues and the facts stated in the notice shall be deemed to be true and conclusive for the purpose of finding that the applicant or registrant is subject to a statutory disqualification under sections 8a(2), 8a(3) or 8a(4) of the Act; and

(ii) A presiding officer may thereafter decide whether to issue an order of default in accordance with paragraph (g) of this section to deny, condition, suspend, revoke, or place restrictions upon registration based solely upon the facts set forth in the notice.

(b) *Response.* Within thirty days after service upon the applicant or registrant of a notice issued in accordance with the provisions of paragraph (a) of this section, the applicant or registrant shall file a response with the Proceedings Clerk and serve a copy of the response on the Division of Enforcement.

(1) In the response, the applicant or registrant shall state whether he challenges the evidentiary basis of the statutory disqualification set forth in the notice. The grounds for such a challenge shall include evidence as to:

(i) The applicant's or registrant's identity,

(ii) The existence of a clerical error in any record documenting the statutory disqualification,

(iii) The nature or date of the statutory disqualification,

(iv) The post-conviction modification of any record of conviction, or

(v) The favorable disposition of any appeal.