

(e) *Determination by Administrative Law Judge.* (1) A determination by the Administrative Law Judge as to whether the Division of Enforcement has shown by a preponderance of the evidence that the registrant is charged with the commission of or participation in a crime as set forth in the notice and that the continued registration of the registrant may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission must be based upon the evidence of service, the response, if any, filed by the registrant, any written reply submitted by the Division of Enforcement and such other papers as the Administrative Law Judge may require or permit, and the oral hearing, if any. If the Division of Enforcement has made the required showings, the Administrative Law Judge, within thirty days after the last written submission or the oral hearing, shall issue an order suspending or modifying the registration of the registrant. If the Division of Enforcement has not made the required showings, the Administrative Law Judge, within thirty days after the last written submission or the oral hearing, shall issue an order to that effect. The Administrative Law Judge's order shall include a written determination setting forth the basis for his ruling.

(2) The Proceedings Clerk shall promptly serve a copy of such order on the registrant, the Division of Clearing and Intermediary Oversight and the Division of Enforcement. Such Order shall be effective as a final order of the Commission fifteen days after the date it is served upon the registrant in accordance with the provisions of § 3.50(a) unless a timely application for review is filed in accordance with § 10.102 of this chapter. The appellate procedures 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