



This document is scheduled to be published in the Federal Register on 11/02/2011 and available online at <http://federalregister.gov/a/2011-28313>.

8011-01p

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 200

[RELEASE NO. 34-65628]

TECHNICAL AMENDMENT TO DELEGATION OF AUTHORITY TO THE DIRECTOR OF THE DIVISION OF TRADING AND MARKETS

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendment.

SUMMARY: The Securities and Exchange Commission (“Commission”) is making a technical amendment to the rule that delegates authority to the Director of the Division of Trading and Markets to grant exemptions upon specified terms, conditions, and periods to persons subject to Rule 17f-2 under the Securities Exchange Act of 1934 (“Exchange Act”).

EFFECTIVE DATE: [insert date of publication in the Federal Register]

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or David Karasik, Special Counsel, at (202) 551-5710, Securities and Exchange Commission, Division of Trading and Markets, Room 7321 SP1, 100 F Street, NE, Washington, DC 20549-7010.

SUPPLEMENTARY INFORMATION:

I. Background

Section 17(f)(2) of the Exchange Act requires every member of a national securities exchange, broker, dealer, registered transfer agent, and registered clearing agency to require that each of its partners, directors, officers, and employees be fingerprinted and to submit such

fingerprints to the U.S. Attorney General for identification and processing.¹ In order to permit some flexibility in the administration of the fingerprinting requirement, Section 17(f)(2) also provides “The Commission, by rule, may exempt from the provisions of this paragraph [Section 17(f)(2)] upon specified terms, conditions, and periods, any class of partners, directors, officers, or employees of any such member, broker, dealer, transfer agent, or clearing agency, if the Commission finds that such action is not inconsistent with the public interest or the protection of investors.”²

Pursuant to this statutory authority, the Commission adopted Rule 17f-2 in 1976 to provide for certain exemptions from the fingerprinting requirement of Section 17(f)(2) of the Exchange Act.³ As adopted by the Commission in 1976, exemptions from the fingerprinting requirements of Section 17(f)(2) could also be requested by persons that did not meet certain conditions specified in Rule 17f-2 by applying to the Commission for exemptive relief pursuant to a prior paragraph (g) of Rule 17f-2.⁴

After adopting Rule 17f-2, the Commission delegated its authority, pursuant to Rule 30-3(a)(17) of the Commission’s Rules of Organization and Program Management, to grant

¹ 15 U.S.C. 78q(f)(2).

² Id.

³ 17 CFR 240.17f-2. Securities Exchange Act Release No. 12214 (Mar. 16, 1976), 41 FR 13594 (Mar. 31, 1976).

⁴ Prior Rule 17f-2(g) (as reflected in 1976 at the time of adoption of the rule) provided:

The Commission, upon specified terms, conditions and periods, may grant exemptions to any class of partners, directors, officers, or employees of any member of a national securities exchange, broker, dealer, registered transfer agent, or registered clearing agency, if the Commission finds that such action is not inconsistent with the public interest or the protection of investors.

exemptions under Rule 17f-2(g) to the Director of the Division of Market Regulation (now known as the Division of Trading and Markets) (“Division Director”).⁵ In 1982, the Commission amended Rule 17f-2 in order to simplify the process of claiming exemptions from the fingerprinting requirements.⁶ Part of this simplification effort involved a change consisting of moving the entire text of paragraph (g) of Rule 17f-2, without any modifications, to a new subparagraph (a)(2). However, the Commission did not update references to Rule 17f-2(g) contained in Rule 30-3(a)(17) to reflect this change. In order to correct this oversight, the Commission is making a technical amendment to Rule 30-3(a)(17) to reflect the authority of the Division Director to grant exemptions upon specified terms, conditions, and periods to persons subject to Rule 17f-2 pursuant to Rule 17f-2(a)(2).

II. Administrative Law Matters

The Administrative Procedure Act (“APA”)⁷ generally requires an agency to publish, before adopting a rule, notice of a proposed rulemaking in the Federal Register.⁸ This requirement does not apply, however, to, “interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice.”⁹

This amendment consisting of replacing an outdated reference to “Rule 17f-2(g)” with a reference to “Rule 17f-2(a)(2)” within Rule 30-3 of the Commission’s Rules of Organization and Program Management is a technical change, being adopted solely to interpret references to a

⁵ Rule 30-3 of the Commission’s Rules of Organization and Program Management has been updated to reflect the name of the division is now the Division of the Trading and Markets. See 17 CFR 200.30-3.

⁶ Securities Exchange Act Release No. 19268 (Nov. 18, 1982), 47 FR 54060 (Dec. 1, 1982).

⁷ 5 U.S.C. 551 et seq.

⁸ See 5 U.S.C. 553(b).

⁹ Id.

statutory provision that has been moved but otherwise remains unchanged and which relates solely to the delegation of authority or duties within the Commission. Accordingly, the Commission finds that because the amendments relate solely to interpretive rules and rules of agency organization, procedure, or practice, that publishing the changes for comment is unnecessary.¹⁰ In addition, the APA generally requires that an agency publish a rule in the Federal Register 30 days before the rule becomes effective.¹¹ This requirement, however, does not apply to “interpretative rules and statements of policy.”¹² Because this amendment functions as an interpretative rule that would merely interpret references to an outdated “Rule 17f-2(g)” (that presently does not exist) as applying to “Rule 17f-2(a)(2)” this amendment may take effect immediately. Similarly, the amendment does not require analysis under the Regulatory Flexibility Act or analysis of major rule status under the Small Business Regulatory Fairness Act.¹³

III. Consideration of the Competitive Effects of Amendment

Section 3(f) of the Exchange Act,¹⁴ provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2)

¹⁰ Id.

¹¹ See 5 U.S.C. 553(d).

¹² Id.

¹³ See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analysis, the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking); and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term “rule” does not include any rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties).

¹⁴ 15 U.S.C. 78c(f).

of the Exchange Act requires the Commission in adopting rules under the Exchange Act to consider the competitive effects of such rules.¹⁵ Because this amendment merely makes a technical change to update a statutory reference, the Commission does not anticipate that the amendment would have an effect on efficiency, competition, or capital formation, and the Commission does not anticipate any competitive advantages or disadvantages would be created.

IV. Statutory Authority and Text of Amendments

We are adopting this technical amendment under the authority set forth in Section 23(a) of the Exchange Act.¹⁶

List of Subjects 17 CFR Part 200

Administrative practice and procedure, Conflict of interests, and Freedom of information.

TEXT OF AMENDMENT

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200, subpart A, continues to read in part as follows:

Authority: 15 U.S.C. 77o,77s,77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37, 80b-11, and 7202 unless otherwise noted.

* * * * *

2. Section 200.30-3 is amended by revising paragraph (a)(17)(ii) to read as follows:

§ 200.30-3 Delegation of authority to Director of Division of Trading and Markets.

¹⁵ 15 U.S.C. 78w(a)(2).

¹⁶ 15 U.S.C. 782w(a).

* * * * *

(a) * * *

(17) * * *

(ii) To grant exemptions upon specified terms, conditions, and periods, for classes of persons subject to Rule 17f-2 pursuant to Rule 17f-2(a)(2) (§ 240.17f-2(a)(2) of this chapter).

* * * * *

Elizabeth M. Murphy
Secretary

Dated: October 26, 2011

[FR Doc. 2011-28313 Filed 11/01/2011 at 8:45 am; Publication Date: 11/02/2011]