



8011-01P

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 200, 201, 229, 230, and 240

[Release No. 34-86982; File No. S7-09-17]

Technical Amendments to Update Cross-References to Commission's FOIA Regulations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission") is adopting technical amendments to update cross-references to reflect amendments to the Commission's Freedom of Information Act ("FOIA") regulations published as a final rule on June 28, 2018.

DATES: Effective [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mark Tallarico, Senior Counsel, (202) 551-5132, Office of the General Counsel, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-9150.

SUPPLEMENTARY INFORMATION:

I. Background

On June 28, 2018, the Commission published a final rule amending its FOIA regulations at 17 CFR 200.80 (Securities and Exchange Commission records and information). Because of the breadth of the amendments, the final rule removed the Commission's prior FOIA regulations in their entirety (§ 200.80 and appendices A through F) and replaced them with new regulations (§ 200.80).

In light of the 2018 amendments of its FOIA regulations, the Commission is now adopting technical amendments to other sections of title 17, chapter II of the Code of Federal

Regulations to update cross-references to the Commission’s FOIA regulations (§ 200.80) that are contained in those sections.

II. Administrative Law Matters

The Administrative Procedure Act (“APA”) generally requires an agency to publish notice of a rulemaking in the *Federal Register* and provide an opportunity for public comment. This requirement does not apply, however, if the agency “for good cause finds . . . that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.”¹ The technical amendments do not impose any new substantive regulatory requirements on any person. The technical amendments merely update cross-references in the Commission’s regulations. These amendments are therefore ministerial in nature. For these reasons, there is good cause for the Commission to find that it is unnecessary to publish notice of these amendments in the *Federal Register* or to solicit public comment thereon.² Although the APA generally requires publication of a rule at least 30 days before its effective date, for similar reasons we further find there is good cause for the amendments to take effect on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Additionally, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other law, are not applicable.³ These amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995.⁴

¹ U.S.C. 553(b)(3)(B).

² This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the amendments to become effective notwithstanding the requirement of 5 U.S.C. 801.

³ 5 U.S.C. 601 *et seq.*

⁴ 44 U.S.C. 3501 *et seq.*

Pursuant to the Congressional Review Act,⁵ the Office of Information and Regulatory Affairs has designated this final rule as not a “major rule,” as defined by 5 U.S.C. 804(2).

III. Economic Analysis

We are adopting technical amendments to update cross-references to Commission rules in light of recent amendments to the Commission’s FOIA regulations. These amendments merely make conforming changes to Commission rules that cross-reference the FOIA regulations and do not impose any substantive regulatory obligations on any person or otherwise. We expect the amendments to help eliminate potential confusion that could result from outdated cross-references. We do not believe they will have any substantial economic effects, including on efficiency, competition, or capital formation. Further, because the amendments impose no new burdens on private parties, the Commission does not believe that the amendments will have any impact on competition for purposes of section 23(a)(2) of the Securities Exchange Act of 1934 (“Exchange Act”).⁶

IV. Statutory Authority

These technical amendments are adopted pursuant to statutory authority granted to the Commission under Section 19(a) of the Securities Act of 1933 and section 23(a) of the Exchange Act.

List of Subjects

17 CFR Part 200

Authority delegations (Government agencies), Freedom of information, Organization and functions (Government agencies), Reporting and recordkeeping requirements

17 CFR Part 201

⁵ 5 U.S.C. 801 *et seq.*

⁶ 15 U.S.C. 78w(a)(2).

Administrative practice and procedure

17 CFR Part 229

Reporting and recordkeeping requirements

17 CFR Part 230

Confidential business information, Reporting and recordkeeping requirements

17 CFR Part 240

Confidential business information, Reporting and recordkeeping requirements

Text of Amendments

For the reasons set out above, the Commission is amending title 17, chapter II, of the Code of Federal Regulations as follows:

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

Subpart A—Organization and Program Management

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

Authority: 15 U.S.C. 77c, 77o, 77s, 77z-3, 77sss, 78d, 78d-1, 78d-2, 78o-4, 78w, 78ll(d), 78mm, 80a-37, 80b-11, 7202, and 7211 *et seq.*, unless otherwise noted.

* * * * *

2. Amend § 200.30-14 by revising paragraph (c) to read as follows:

§ 200.30-14 Delegation of authority to the General Counsel.

* * * * *

(c) Determine the appropriate disposition of all Freedom of Information Act and confidential treatment appeals in accordance with §§ 200.80(f) and (g)(12) and 200.83(e), (f), and (h).

* * * * *

Subpart D—Information and Requests

3. The general authority citation for part 200, subpart D, continues to read as follows:

Authority: 5 U.S.C. 552, as amended, 15 U.S.C. 77f(d), 77s, 77ggg(a), 77sss, 78m(F)(3), 78w, 80a-37, 80a-44(a), 80a-44(b), 80b-10(a), and 80b-11, unless otherwise noted.

* * * * *

4. Amend § 200.83 by revising paragraphs (c)(8), (f), and (g) to read as follows:

§ 200.83 Confidential treatment procedures under the Freedom of Information Act.

* * * * *

(c)* * *

(8) A confidential treatment request shall be nonpublic. If an action is filed in a Federal court, however, by either the Freedom of Information Act requester (under 5 U.S.C. 552(a)(4) and § 200.80(f)) or by the confidential treatment requester (under paragraph (e)(5) of this section), the confidential treatment request may become part of the court record.

* * * * *

(f) *Initial determination that confidential treatment is warranted.* If it is determined by the Commission's Freedom of Information Act Officer that confidential treatment is warranted, the person submitting the information and the person requesting access to the information under the Freedom of Information Act will be so informed by mail. The person requesting access, pursuant to the Freedom of Information Act, will also be informed of the right to appeal the determination to the General Counsel. Any such appeal must be taken in accordance with the provisions of the Freedom of Information Act and Commission rules thereunder. *See* 17 CFR 200.80(f).

(g) *Confidential treatment request and substantiation as nonpublic.* Any confidential treatment request and substantiation of it shall be nonpublic. If an action is filed in a Federal court, however, by the Freedom of Information Act requester (under 5 U.S.C. 552(a)(4) and § 200.80(f)) or by the confidential treatment requester (under paragraph (e)(5) of this section), both the request and substantiation may become part of the public court record.

* * * * *

Subpart I—Regulations Pertaining to Public Observation of Commission Meetings

5. The authority citation for part 200, subpart I, continues to read as follows:

Authority: 5 U.S.C. 552b, unless otherwise noted. Section 200.410 also is issued under 29 U.S.C. 794.

6. Amend § 200.408 by revising paragraph (a) to read as follows:

§ 200.408 Public access to transcripts and minutes of closed Commission meetings; record retention.

(a) *Public access to record.* Within 20 days (excluding Saturdays, Sundays, and legal holidays) of the receipt by the Commission’s Freedom of Information Act (“FOIA”) Officer of a written request, or within such extended period as may be agreeable to the person making the request, the Secretary shall make available for inspection by any person in the Commission’s Public Reference Room, the transcript, electronic recording, or minutes (as required by § 200.407(a) or (b)) of the discussion of any item on the agenda, except for such item or items as the Freedom of Information Act Officer determines to involve matters which may be withheld under § 200.402 or otherwise. Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual

cost of duplication, as identified on the FOIA web page of the Commission's website at <http://www.sec.gov>, and, if a transcript is prepared, the actual cost of such transcription.

* * * * *

PART 201—RULES OF PRACTICE

Subpart D—Rules of Practice

7. The authority citation for part 201, subpart D, continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h-1, 77j, 77s, 77u, 77sss, 77ttt, 78c(b), 78d-1, 78d-2, 78l, 78m, 78n, 78o(d), 78o-3, 78o-10(b)(6), 78s, 78u-2, 78u-3, 78v, 78w, 80a-8, 80a-9, 80a-37, 80a-38, 80a-39, 80a-40, 80a-41, 80a-44, 80b-3, 80b-9, 80b-11, 80b-12, 7202, 7215, and 7217.

8. Amend § 201.230 by revising paragraph (f) to read as follows:

§ 201.230 Enforcement and disciplinary proceedings: Availability of documents for inspection and copying.

* * * * *

(f) *Copying costs and procedures.* The respondent may obtain a photocopy of any documents made available for inspection. The respondent shall be responsible for the cost of photocopying. Unless otherwise ordered, charges for copies made by the Division of Enforcement at the request of the respondent will be at the rate charged pursuant to the fee schedule identified on the Freedom of Information Act ("FOIA") web page of the Commission's website at <http://www.sec.gov> for copies. The respondent shall be given access to the documents at the Commission's offices or such other place as the parties may agree during normal business hours for copying of documents at the respondent's expense.

* * * * *

**PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER
SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY
POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K**

9. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j-3, 78l, 78m, 78n, 78n-1, 78o, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11 and 7201 *et seq.*; 18 U.S.C. 1350; sec. 953(b), Pub. L. 111-203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112-106, 126 Stat. 310 (2012).

Subpart 229.400—Management and Certain Security Holders

10. Amend § 229.402 by revising paragraph 4 in the Instructions to Item 402(b) following paragraph (b)(2)(xv) to read as follows:

§ 229.402 (Item 402) Executive compensation.

* * * * *

(b) * * *

(2) * * *

(xv) * * *

Instructions to Item 402(b).

* * * * *

4. Registrants are not required to disclose target levels with respect to specific quantitative or qualitative performance-related factors considered by the compensation committee or the board of directors, or any other factors or criteria involving confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm

for the registrant. The standard to use when determining whether disclosure would cause competitive harm for the registrant is the same standard that would apply when a registrant requests confidential treatment of confidential trade secrets or confidential commercial or financial information pursuant to Securities Act Rule 406 (17 CFR 230.406) and Exchange Act Rule 24b-2 (17 CFR 240.24b-2), each of which incorporates the criteria for non-disclosure when relying upon Exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)). A registrant is not required to seek confidential treatment under the procedures in Securities Act Rule 406 and Exchange Act Rule 24b-2 if it determines that the disclosure would cause competitive harm in reliance on this instruction; however, in that case, the registrant must discuss how difficult it will be for the executive or how likely it will be for the registrant to achieve the undisclosed target levels or other factors.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

11. In part 230:

- a. The general authority citation for part 230 continues to read as set forth below; and
- b. The specific authority citation for §§ 230.400 to 230.499 is revised; and
- c. A specific authority citation for § 230.457 is added.

The authorities read as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, and Pub. L. 112-106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

Sections 230.400 to 230.499 issued under secs. 6, 8, 10, 19, 48 Stat. 78, 79, 81, and 85, as amended (15 U.S.C. 77f, 77h, 77j, 77s).

Sec. 230.457 also issued under secs. 6 and 7, 15 U.S.C. 77f and 77g.

* * * * *

Regulation C—Registration

12. The authority citation under the undesignated center heading “Regulation C--Registration” is removed.

13. Amend § 230.406 by:

- a. Removing preliminary notes (1) and (2);
- b. Adding introductory text; and
- c. Revising paragraph (b)(2)(ii).

The addition and revision read as follows:

§ 230.406 Confidential treatment of information filed with the Commission.

Confidential treatment of supplemental information or other information not required to be filed under the Act should be requested under 17 CFR 200.83 and not under this rule. All confidential treatment requests shall be submitted in paper format only, whether or not the filer is an electronic filer. *See* Rule 101(c)(1)(i) of Regulation S-T (§232.101(c)(1)(i) of this chapter).

* * * * *

(b) * * *

(2) * * *

(ii) A statement of the grounds of the objection referring to and analyzing the applicable exemption(s) from disclosure under the Freedom of Information Act (5 U.S.C. 552) and a justification of the period of time for which confidential treatment is sought;

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1934

14. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et seq.*; and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111-203, 939A, 124 Stat. 1887 (2010); and secs. 503 and 602, Pub. L. 112-106, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Subpart A—Rules and Regulations Under the Securities Exchange Act of 1934

15. Amend § 240.10A-1 by revising paragraph (c) introductory text to read as follows:

§ 240.10A-1 Notice to the Commission Pursuant to Section 10A of the Act.

* * * * *

(c) A notice or report submitted to the Office of the Chief Accountant in accordance with paragraphs (a) and (b) of this section shall be deemed to be an investigative record and shall be nonpublic and exempt from disclosure pursuant to the Freedom of Information Act to the same extent and for the same periods of time that the Commission's investigative records are nonpublic and exempt from disclosure under, among other applicable provisions, 5 U.S.C. 552(b)(7). Nothing in this paragraph, however, shall relieve, limit, delay, or affect in any way, the obligation of any issuer or any independent accountant to make all public disclosures required by law, by any Commission disclosure item, rule, report, or form, or by any applicable accounting, auditing, or professional standard.

* * * * *

16. Amend § 240.24b-2 by revising paragraph (b)(2) to read as follows:

§ 240.24b-2 Nondisclosure of information filed with the Commission and with any exchange.

* * * * *

(b) * * *

(2) An application making objection to the disclosure of the confidential portion. Such application shall be on a sheet or sheets separate from the confidential portion, and shall contain:

(i) An identification of the portion;

(ii) A statement of the grounds of objection referring to, and containing an analysis of, the applicable exemption(s) from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)), and a justification of the period of time for which confidential treatment is sought;

(iii) A written consent to the furnishing of the confidential portion to other government agencies, offices or bodies and to the Congress; and

(iv) The name of each exchange, if any, with which the material is filed.

* * * * *

By the Commission.

Dated: September 17, 2019.

Vanessa Countryman,

Secretary.

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