

corrections to the record index shall be made. The Secretary shall make such corrections, if any, and issue a revised record index. If an initial decision is to be issued, the initial decision shall include a certification that the record consists of the items set forth in the record index or revised record index issued by the Secretary.

(c) *Final Transmittal of Record Items to the Secretary.* After the close of the hearing, the hearing officer shall transmit to the Secretary originals of any motions, exhibits or any other documents filed with, or accepted into evidence by, the hearing officer, or any other portions of the record that have not already been transmitted to the Secretary. Prior to service of the initial decision by the Secretary, or if no initial decision is to be issued, within 60 days of the close of the hearing, the Secretary shall inform the hearing officer if any portions of the record are not in the Secretary's custody.

*Comment:* The Office of the Secretary is responsible for custody and safekeeping of administrative proceedings records. Hearings, however, are often held away from the Commission's Headquarters in Washington. Exhibits introduced at such hearings or filings made directly with the hearing officer (see Rule 151) may be voluminous. Rule 350 establishes procedures to facilitate and safeguard the transfer to the Secretary of motions, exhibits or other record items filed with the hearing officer. Parties and other persons are afforded a specific opportunity to object if they believe that the certified record is incomplete.

#### Rule 360. Initial Decision of Hearing Officer

(a) *When Required.* Unless the Commission directs otherwise, the hearing officer shall prepare an initial decision in any proceeding in which the Commission directs a hearing officer to preside at a hearing, provided, however, that an initial decision may be waived by the parties with the consent of the hearing officer pursuant to Rule 202.

(b) *Content.* An initial decision shall include: findings and conclusions, and the reasons or basis therefor, as to all the material issues of fact, law or discretion presented on the record and the appropriate order, sanction, relief, or denial thereof. The initial decision shall also state the time period, not to exceed 21 days after service of the decision, except for good cause shown, within which a petition for review of the initial decision may be filed. The reasons for any extension of time shall be stated in the initial decision. The initial decision

shall also include a statement that, as provided in paragraph (d) of this rule:

(1) the initial decision shall become the final decision of the Commission as to each party unless a party files a petition for review of the initial decision or the Commission determines on its own initiative to review the initial decision as to a party; and

(2) if a party timely files a petition for review or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.

(c) *Filing, Service and Publication.* The hearing officer shall file the initial decision with the Secretary. The Secretary shall promptly serve the initial decision upon the parties and shall promptly publish notice of the filing thereof in the *SEC News Digest*. Thereafter, the Secretary shall publish the initial decision in the *SEC Docket*; provided, however, that in nonpublic proceedings no notice shall be published unless the Commission otherwise directs.

(d) *When Final.* (1) Unless a party or an aggrieved person entitled to review files a petition for review in accordance with the time limit specified in the initial decision, or unless the Commission on its own initiative orders review pursuant to Rule 411, an initial decision shall become the final decision of the Commission.

(2) If a petition for review is timely filed by a party or an aggrieved person entitled to review, or if the Commission upon its own initiative has ordered review of a decision with respect to a party or a person aggrieved who would be entitled to review, the initial decision shall not become final as to that party or person.

(e) *Order of Finality.* In the event that the initial decision becomes the final decision of the Commission with respect to a party, the Commission shall issue an order that the decision has become final as to that party. The order of finality shall state the date on which sanctions, if any, take effect. Notice of the order shall be published in the *SEC News Digest* and the *SEC Docket*.

*Comment (a):* Paragraph (a) is based on Section 557(b) of the Administrative Procedure Act (APA), 5 U.S.C. § 557(b).

*Comment (b):* The first sentence of paragraph (b), is based on Section 557(c)(3) of the APA, 5 U.S.C. § 557(c)(3).

*Comment (d):* Paragraph (d) is based on Sections 557(b) and 704 of the APA, 5 U.S.C. §§ 557(b) and 704. In certain limited circumstances, a non-party may be aggrieved by a decision and entitled to seek review. See, e.g., Exchange Act § 25(a)(1), 15 U.S.C. § 78y(a)(1).

*Comment (e):* The order of finality provides formal notice that the initial decision will not be reviewed. An initial decision automatically becomes final, however, with the passage of time even if the order of finality is not issued. Formal notice to a respondent that an initial decision has become final is not required for the decision to take effect. A respondent is able to ascertain when the period for filing a petition for review pursuant to Rule 410, or for initiation of review on the Commission's initiative pursuant to Rule 411, has expired. When an initial decision becomes final, any collateral consequences from entry of a final order take effect immediately. Sanctions pursuant to the decision may not be immediately effective, however. Rule 601 specifies when amounts owing pursuant to a disgorgement or penalty order become due. In addition, some period of time may be necessary or appropriate after an initial decision becomes final before sanctions should take effect, for example, to allow a respondent to provide for an orderly termination of a business upon effectiveness of a suspension or bar. Ordinarily, the initial decision will specify when sanctions will take effect if the initial decision becomes final. If the initial decision or applicable rule does not specify when sanctions are to become final, the Commission will enter an appropriate order. The Secretary has delegated authority to fix the date when sanctions become effective. See 17 CFR 200.30-7.

#### Appeal to the Commission and Commission Review

##### Rule 400. Interlocutory Review

(a) *Availability.* The Commission will not review a hearing officer's ruling prior to its consideration of the entire proceeding in the absence of extraordinary circumstances. The Commission may decline to consider a ruling certified by a hearing officer pursuant to paragraph (c) of this rule if it determines that interlocutory review is not warranted or appropriate under the circumstances. The Commission may, at any time, on its own motion, direct that any matter be submitted to it for review.

(b) *Expedited Consideration.* Interlocutory review of a hearing officer's ruling shall be expedited in every way, consistent with the Commission's other responsibilities.

(c) *Certification Process.* A ruling submitted to the Commission for interlocutory review must be certified in writing by the hearing officer and shall specify the material relevant to the