

accordance with organization's rules, and that those rules are, and were applied in a manner, consistent with purposes of Exchange Act); *Sumner B. Cotzin*, 45 S.E.C. 575, 580 (1974) ("[W]e must make our own findings as to the conduct of applicants seeking review of [self-regulatory organization disciplinary action], determine whether such conduct violated the organization's rules, and, if so, determine whether the sanctions imposed are excessive or oppressive having due regard to the public interest.").

Comment (a): Rule 421(a) allows the Commission 40 days to determine whether to order review on its own initiative. The time limit for Commission review is tied to the Commission's receipt of the notice required by Exchange Act Section 19(d)(1), not receipt of the notice by the respondent, since the Commission would have no practical way of knowing when such receipt occurred.

Rule 430. Appeal of Actions Made Pursuant to Delegated Authority

(a) *Scope of Rule.* Any person aggrieved by an action made by authority delegated in §§ 200.30–1 through 200.30–17 of this chapter may seek review of the action pursuant to paragraph (b) of this rule.

(b) *Procedure.* (1) *Notice of Intention to Petition for Review.* A party or any person aggrieved by an action made pursuant to delegated authority may seek Commission review of the action by filing a written notice of intention to petition for review within five days after actual notice to the party of the action or service of notice of the action pursuant to Rule 141(b), whichever is earlier. The notice shall identify the petitioner and the action complained of, and shall be accompanied by a notice of appearance pursuant to Rule 102(d).

(2) *Petition for Review.* Within five days after the filing of a notice of intention to petition for review pursuant to paragraph (b)(1) of this rule, the person seeking review shall file a petition for review containing a clear and concise statement of the issues to be reviewed and the reasons why review is appropriate. The petition shall include exceptions to any findings of fact or conclusions of law made, together with supporting reasons for such exceptions based on appropriate citations to such record as may exist. These reasons may be stated in summary form.

(c) *Prerequisite to Judicial Review.* Pursuant to Section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition to the Commission for review of an action made by authority delegated in §§ 200.30–1 through

200.30–17 of this chapter is a prerequisite to the seeking of judicial review of a final order entered pursuant to such an action.

Comment (a): Congress granted the Commission explicit authority to delegate certain functions to an individual commissioner, division directors and others in 1962. Pub. L. No. 87–592, 76 Stat. 394. This authority appears in Sections 4A and 4B of the Exchange Act, 15 U.S.C. 78d–1 and 78d–2, and was amended most recently in 1987. See Pub. L. No. 100–181, Title III, § 308(a), 101 Stat. 1254. The predecessor rule to Rules 430 and 431, former Rule 26, was adopted in 1963. See Securities Act Release No. 4588 (Mar. 8, 1963) (adopting release).

Due to the different nature of matters delegated to hearing officers, senior staff or the duty officer, the Commission's rules provide different mechanisms for review of such actions. See Rules 410 and 411 (procedures relating to initial decisions by a hearing officer); 17 CFR 200.43 (procedures relating to duty officer). Rule 430 relates to certain delegations made to staff. It applies only to review of actions taken pursuant to authority delegated in 17 CFR 200.30–1 through 200.30–17. Authority delegated by other provisions—for example, the delegation of authority to issue subpoenas pursuant to a private order directing investigation ("formal order")—is not subject to the Rule.

Comment (b): Decisions made by division directors or other senior staff pursuant to delegated authority often relate to registration statements, proxy statements, applications, periodic filings or other matters which are highly time sensitive. Generally, the record in actions made pursuant to delegated authority is not extensive. The rule therefore requires a prompt decision by a party as to whether review will be sought. Under Rule 430, a party or other aggrieved person must file a notice of intent to petition for review within five days after actual notice of the decision, or within five days after service of a written decision pursuant to Rule 141(b), whichever is earlier. Actual notice of a decision pursuant to delegated authority may be conveyed by any means, including a telephone call. The required information in a petition for review is essentially the same as that required for a petition for review of a hearing officer's initial decision. See Rule 410(b).

Rule 431. Commission Consideration of Actions Made Pursuant to Delegated Authority

(a) *Scope of Review.* The Commission may affirm, reverse, modify, set aside or

remand for further proceedings, in whole or in part, any action made pursuant to authority delegated in §§ 200.30–1 through 200.30–17 of this chapter.

(b) *Standards for Granting Review Pursuant to a Petition for Review.*

(1) *Mandatory Review.* After a petition for review has been filed, the Commission shall review any action that it would be required to review pursuant to Rule 411(b)(1) if the action was made as the initial decision of a hearing officer.

(2) *Discretionary Review.* The Commission may decline to review any other action. In determining whether to grant review, the Commission shall consider the factors set forth in Rule 411(b)(2).

(c) *Commission Review Other Than Pursuant to a Petition for Review.* The Commission may, on its own initiative, order review of any action made pursuant to delegated authority at any time, provided, however, that where there are one or more parties to the matter, such review shall not be ordered more than ten days after the action. The vote of one member of the Commission, conveyed to the Secretary, shall be sufficient to bring a matter before the Commission for review.

(d) *Required Items in an Order for Review.* In an order granting a petition for review or directing review on the Commission's own initiative, the Commission shall set forth the time within which any party or other person may file a statement in support of or in opposition to the action made by delegated authority and shall state whether a stay shall be granted, if none is in effect, or shall be continued, if in effect pursuant to paragraph (e) of this rule.

(e) *Automatic Stay of Delegated Action.* An action made pursuant to delegated authority shall have immediate effect and be deemed the action of the Commission. Upon filing with the Commission of a notice of intention to petition for review, or upon notice to the Secretary of the vote of a Commissioner that a matter be reviewed, an action made pursuant to delegated authority shall be stayed until the Commission orders otherwise, provided, however, there shall be no automatic stay of an action:

(1) to grant a stay of action by the Commission or a self-regulatory organization as authorized by 17 CFR 200.30–14(g)(5)–(6); or

(2) to commence a subpoena enforcement proceeding as authorized by 17 CFR 200.30–4(a)(10).

(f) *Effectiveness of Stay or of Commission Decision to Modify or*