

*Reverse a Delegated Action.* As against any person who shall have acted in reliance upon any action at a delegated level, any stay or any modification or reversal by the Commission of such action shall be effective only from the time such person receives actual notice of such stay, modification or reversal.

*Comment:* See Comment (a) to Rule 430.

*Comment (b):* Paragraph (b) is based, in part, on requirements of Exchange Act Section 4A, 15 U.S.C. § 78d-1.

*Comment (c):* Paragraph (c) is based, in part, on requirements of Exchange Act Section 4A, 15 U.S.C. § 78d-1. In practice, the authority to review decisions on the Commission's own initiative is used very rarely.

*Revision Comment (c):* Comment was requested as to whether the period in which the Commission could order review on its own initiative should be retained at five days or extended to 15 days. One commenter supported the extension of the period to 10 days. The Commission has adopted a 10-day standard.

*Revision Comment (e):* After publication of the proposed rules, the delegation to the Director of the Division of Enforcement was amended to permit the Director to authorize a subpoena enforcement proceeding in Federal Court. See 17 CFR 200.30-4(a)(10). Under Rule 431, the Director's decision to commence a proceeding is not automatically stayed when notice of intention to file a petition for review is given since a stay would unnecessarily disrupt judicial proceedings commenced on the basis of the Director's decision. The presence of a Federal judge overseeing the subpoena enforcement proceeding makes an automatic stay unnecessary for the limited period before the Commission reviews the Director's decision.

Rule 450. Briefs Filed with the Commission

(a) *Briefing Schedule Order.* Other than review ordered pursuant to Rule 431, if review of a determination is mandated by statute, rule, or judicial order or the Commission determines to grant review as a matter of discretion, the Commission shall issue a briefing schedule order directing the party or parties to file opening briefs and specifying particular issues, if any, as to which briefing should be limited or directed. Unless otherwise provided, opening briefs shall be filed within 40 days of the date of the briefing schedule order. Opposition briefs shall be filed within 30 days after the date opening briefs are due. Reply briefs shall be filed within 14 days after the date opposition

briefs are due. No briefs in addition to those specified in the briefing schedule order may be filed except with leave of the Commission. The briefing schedule order shall be issued:

(1) at the time the Commission orders review on its own initiative pursuant to Rules 411 or 421, or orders interlocutory review on its own motion pursuant to Rule 400(a); or

(2) within 21 days, or such longer time as provided by the Commission, after:

(i) the last day permitted for filing a petition for review pursuant to Rule 410(b) or a brief in opposition to a petition for review pursuant to Rule 410(d);

(ii) receipt by the Commission of an index to the record of a determination of a self-regulatory organization filed pursuant to Rule 420(d);

(iii) receipt by the Commission of the mandate of a court of appeals with respect to a judicial remand; or

(iv) certification of a ruling for interlocutory review pursuant to Rule 400(c).

(b) *Contents of Briefs.* Briefs shall be confined to the particular matters at issue. Each exception to the findings or conclusions being reviewed shall be stated succinctly. Exceptions shall be supported by citation to the relevant portions of the record, including references to the specific pages relied upon, and by concise argument including citation of such statutes, decisions and other authorities as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, in an appendix thereto, or by citation to the record. Reply briefs shall be confined to matters in opposition briefs of other parties.

(c) *Length Limitation.* Opening and opposition briefs shall not exceed 50 pages and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, table of authorities, and any addendum, except with leave of the Commission.

*Comment (a):* When the Commission reviews an action made by delegated authority pursuant to Rules 430 and 431, briefs are generally not submitted and no briefing schedule order is required.

Under Rule 450, the first brief on the merits would usually be due 40 days from the date of the scheduling order. The rules allot substantial time prior to issuance of the scheduling order for filing of a petition for review or, in the case of an appeal from a self-regulatory organization decision, for filing of a notice pursuant to Exchange Act Rule

19d-1, 17 CFR 240.19d-1, an application for review and the record index. See Rule 360 (21-day maximum for filing petition for review of initial decision); Rule 420(b) (30 days for filing application for review of determination by self-regulatory organization); Rule 420(d) (14 days to file record index). The time taken by the Commission to issue the briefing schedule order—up to 21 days in the ordinary case—affords additional time for parties to review the record and begin preparation of a merits brief. Accordingly, requests for extensions of time to file briefs will be disfavored. Failure to file a required brief may be grounds for dismissal. See Rule 180(c).

*Comment (b):* Failure to cite to the record in briefs can result in unnecessary delay, particularly where the record is long. Under Rule 450, the obligation to support claims made in a brief lies with the person submitting the brief. Briefs that fail to include appropriate citations to the record, or to conform to other requirements of the Rules of Practice relating to the form and content of briefs, may be rejected or subject to other sanction. See Rule 180(b).

*Revision Comment (a):* Paragraph (a) requires that if review is granted or ordered, the Commission shall issue a briefing schedule order in all cases except pursuant to Rule 431 for review of an action made pursuant to certain delegated authority. Prior to the submission of merits briefs the Commission will make a formal determination whether to grant petitions for review where review is not mandatory, and in any case may choose to specify particular issues as to which briefing should be limited or directed. Also, where there are cross-petitions for review, there may be particular reasons to designate the side that will file opening briefs. In proceedings arising on review of self-regulatory organization proceedings a scheduling order is useful in assuring that the respondent is on notice of applicable filing deadlines. The briefing schedule order therefore provides an efficient, uniform mechanism for the Commission to address issues raised by a petition for review, to order review on its own initiative if it chooses to do so, and to establish a schedule for the filing of briefs.

As revised, Rule 450 includes a requirement for issuance of a briefing schedule order when the Commission is ordered to conduct further proceedings on remand from a court.

Comment was requested as to whether the time ordinarily allowed for filing of briefs under Rule 450 should be