

application to set aside, limit or suspend the order. The proposed rules established no time limit for the Commission to act or, in the alternative, for the effectiveness of the order. As adopted, the rule includes standards for the start of the hearing on a respondent's application for review of an *ex parte* order and limits the effectiveness of an *ex parte* order to 10 days after the respondent files an application for review of the order.

Rule 514. Temporary Cease-and-Desist Orders: Judicial Review; Duration

(a) *Availability of Judicial Review.* Judicial review of a temporary cease-and-desist order shall be available as provided in Section 8A(d)(2) of the Securities Act, 15 U.S.C. 77h-1(d)(2), Section 21C(d)(2) of the Exchange Act, 15 U.S.C. 78u-3(d)(2), Section 9(f)(4)(B) of the Investment Company Act, 15 U.S.C. 80a-9(f)(4)(B), or Section 203(k)(4)(B) of the Investment Advisers Act, 15 U.S.C. 80b-3(k)(4)(B).

(b) *Duration.* Unless set aside, limited, or suspended, either by order of the Commission, a court of competent jurisdiction, or a hearing officer acting pursuant to Rule 531, or by operation of Rule 513, a temporary cease-and-desist order shall remain effective and enforceable until the earlier of:

(1) the completion of proceedings to determine whether a permanent order shall be entered; or

(2) 180 days, or such longer time as consented to by the respondent, after issuance of a briefing schedule order pursuant to Rule 540(b), if an initial decision whether a permanent order should be entered is appealed.

Comment: Rule 514(b) sets forth provisions governing the duration of a temporary cease-and-desist order. After entry of a temporary cease-and-desist order, proceedings to determine whether a permanent order is warranted will be assigned to an administrative law judge. The case will follow the same procedural steps as any other proceeding assigned to an administrative law judge for hearing. Depending upon the pace of judicial review of the temporary order, the filing of the respondent's answer, prehearing preparation or the hearing on issuance of the permanent order may take place prior to the completion of judicial review of the temporary order.

Unless set aside, limited, or suspended, either by order of the Commission, a court of competent jurisdiction, or a hearing officer acting pursuant to Rule 531, or pursuant to the operation of Rule 513(c), a temporary cease-and-desist order remains effective and enforceable pending issuance of the

administrative law judge's initial decision as to whether a permanent order will be issued. See, e.g., Exchange Act § 21C(c)(1), 15 U.S.C. § 78u-3(c)(1).

Rule 500 requires that during the pendency of the temporary order every hearing be held and every decision be rendered at the earliest possible time, consistent with the Commission's or the hearing officer's other responsibilities. The number of respondents, the complexity of the allegations, the number and location of witnesses and other such factors, however, will affect, to a substantial degree, the length of the hearing before the administrative law judge. Rule 530 provides for expedited preparation of an initial decision once the hearing is concluded. When the initial decision is issued, Rule 531 requires that if the original terms of a temporary order are not to be made permanent, the administrative law judge shall set aside, limit or suspend the terms of the order in accordance with their initial decision. See 17 CFR 200.30-9 (authority delegated to the administrative law judges to set aside, limit or suspend temporary orders in accord with an initial decision). Hence, if the initial decision denies a permanent cease-and-desist order, the temporary order may be suspended pending any appeal of the initial decision.

If an initial decision would make a pending temporary order permanent the temporary order will not be suspended. If the initial decision is appealed, the Commission may take as long as needed to reach a decision on the need for a permanent order. Rule 514(b) provides, however, that the temporary order shall be suspended after 180 days from issuance of the briefing schedule order pursuant to Rule 540 in connection with the appeal, or such longer time as consented to by the respondent, if the Commission has not issued its decision by that time.

Rule 520. Suspension of Registration of Brokers, Dealers, or other Exchange Act-Registered Entities: Application

(a) *Procedure.* A request for suspension of a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or transfer agent pending a final determination whether the registration shall be revoked shall be made by application filed by the Division of Enforcement. The application shall set forth the statutory provision or rule that each respondent is alleged to have violated and the temporary suspension sought as to each respondent.

(b) *Accompanying Documents.* The application shall be accompanied by a declaration of facts signed by a person with knowledge of the facts contained therein, a memorandum of points and authorities, a proposed order imposing the temporary suspension of registration sought, and a proposed notice of hearing and order to show cause whether the temporary suspension of registration should be imposed. If a proceeding to determine whether to revoke the registration permanently has not already been commenced, a proposed order instituting proceedings to determine whether a permanent sanction should be imposed shall also be filed with the application.

(c) *With Whom Filed.* The application shall be filed with the Secretary or, if the Secretary is unavailable, with the duty officer. In no event shall an application be filed with an administrative law judge.

(d) *Record of Hearings.* All hearings shall be recorded or transcribed pursuant to Rule 302.

Comment: The Exchange Act provides for the Commission's authority to suspend certain entities registered under the Act. See Exchange Act §§ 15(b)(5), 15B(c)(3), 15C(c)(1)(B), 17A(c)(4)(A), 15 U.S.C. §§ 78o(b)(5), 78o-4(c)(3), 78o-5(c)(1)(B), 78q-1(c)(4)(A). The procedures for the suspension of Exchange Act-registered entities are based upon the applicable statutory standards and modeled upon provisions applicable to temporary cease-and-desist order proceedings. From 1936 through 1981, the Commission brought over 30 proceedings to suspend temporarily the registration of a broker or dealer pending final determination whether the registration would be permanently revoked. In contrast to practice before 1981, the Rules provide that the Commission, without prior assignment to a hearing officer for initial decision, will decide applications to suspend a registration pending final determination whether the registration should be permanently revoked.

Rule 521. Suspension of Registration of Brokers, Dealers, or Other Exchange Act-Registered Entities: Notice and Opportunity for Hearing on Application

(a) *How Given.* Notice of an application to suspend a registration pursuant to Rule 520 shall be made by serving a notice of hearing and order to show cause pursuant to Rule 141(b) or, where timely service of a notice of hearing pursuant to Rule 141(b) is not practicable, by any other means reasonably calculated to give actual notice that a hearing will be held,