

limiting or suspending the temporary sanction then in effect in accordance with the terms of the initial decision. The hearing officer shall decline to suspend a term or condition of a temporary cease-and-desist order if it is found that the continued effectiveness of such term or condition is necessary to effectuate any term of the relief ordered in the initial decision, including the payment of disgorgement, interest or penalties. An order modifying temporary sanctions shall be effective 14 days after service. Within one week of service of the order modifying temporary sanctions any party may seek a stay or modification of the order from the Commission pursuant to Rule 401.

Comment: If, after hearing all the evidence as to whether a permanent cease-and-desist order or permanent suspension of registration should be issued, a hearing officer issues an initial decision denying a permanent order, consideration must be given to the necessity for continuation of the temporary order.

Rule 531 requires that the hearing officer modify the temporary sanction order in accordance with the 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). In order to allow time for each party to seek Commission review of any modification to the temporary sanction, the hearing officer's order will not become effective for 14 days.

The initial decision of the hearing officer to deny a permanent order in whole or in part is reached after all evidence has been heard and briefs have been submitted. By contrast, the decision to enter a temporary sanction, and in the case of a temporary cease-and-desist order, any judicial review, is more limited in scope. Nonetheless, the hearing officer's judgment that continuation of a temporary order is not necessary must be balanced against the fact that the initial decision may be reversed. The Commission's decision whether to stay or modify the hearing officer's order is an interim procedural ruling that is not subject to judicial review.

Rule 540. Appeal and Commission Review of Initial Decision Making a Temporary Order Permanent

(a) *Petition for Review.* Any person who seeks Commission review of an initial decision as to whether a temporary sanction shall be made permanent shall file a petition for review pursuant to Rule 410, provided,

however, that the petition must be filed within 10 days after service of the initial decision.

(b) *Review Procedure.* If the Commission determines to grant or order review, it shall issue a briefing schedule order pursuant to Rule 450. Unless otherwise ordered by the Commission, opening briefs shall be filed within 21 days of the order granting or ordering review, and opposition briefs shall be filed within 14 days after opening briefs are filed. Reply briefs shall be filed within seven days after opposition briefs are filed. Oral argument, if granted by the Commission, shall be held within 90 days of the issuance of the briefing schedule order.

Rule 550. Summary Suspensions Pursuant to Exchange Act Section 12(k)(1)(A)

(a) *Petition for Termination of Suspension.* Any person adversely affected by a suspension pursuant to Section 12(k)(1)(A) of the Exchange Act, 15 U.S.C. 78l(k)(1)(A), who desires to show that such suspension is not necessary in the public interest or for the protection of investors may file a sworn petition with the Secretary, requesting that the suspension be terminated. The petition shall set forth the reasons why the petitioner believes that the suspension of trading should not continue and state with particularity the facts upon which the petitioner relies.

(b) *Commission Consideration of a Petition.* The Commission, in its discretion, may schedule a hearing on the matter, request additional written submissions, or decide the matter on the facts presented in the petition and any other relevant facts known to the Commission. If the petitioner fails to cooperate with, obstructs, or refuses to permit the making of an examination by the Commission, such conduct shall be grounds to deny the petition.

Comment: Exchange Act Section 12(k) authorizes the Commission summarily to suspend trading in securities for 10-day periods, if in its opinion the public interest or the protection of investors so requires. See 15 U.S.C. 78l(k). Orders suspending trading in particular securities pursuant to Section 12(k)(1)(A) are directed towards a security; they do not name a person or entity as a respondent. Accordingly, Rule 550 establishes a special mechanism to allow persons adversely affected by a suspension to petition for relief.

The usual purpose of a suspension is to alert the investing public that there is insufficient public information about

the issuer upon which an informed investment judgment can be made or that the market for the securities may be reacting to manipulative forces or deceptive practices. Consequently, the primary issues normally to be considered by the Commission in determining whether or not a 10-day suspension should be instituted are whether or not there is sufficient public information upon which to base an informed investment decision or whether the market for the security appears to reflect manipulative or deceptive activities.

Rules Regarding Disgorgement and Penalty Payments

Rule 600. Interest on Sums Disgorged

(a) *Interest Required.* Prejudgment interest shall be due on any sum required to be paid pursuant to an order of disgorgement. The disgorgement order shall specify each violation that forms the basis for the disgorgement ordered; the date which, for purposes of calculating disgorgement, each such violation was deemed to have occurred; the amount to be disgorged for each such violation; and the total sum to be disgorged. Prejudgment interest shall be due from the first day of the month following each such violation through the last day of the month preceding the month in which payment of disgorgement is made. The order shall state the amount of prejudgment interest owed as of the date of the disgorgement order and that interest shall continue to accrue on all funds owed until they are paid.

(b) *Rate of Interest.* Interest on the sum to be disgorged shall be computed at the underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), and shall be compounded quarterly. The Commission or the hearing officer may, by order, specify a lower rate of prejudgment interest as to any funds which the respondent has placed in an escrow or otherwise guaranteed for payment of disgorgement upon a final determination of the respondent's liability. Escrow and other guarantee arrangements must be approved by the Commission or the hearing officer prior to entry of the disgorgement order.

Comment: The Commission is authorized to order disgorgement, "including reasonable interest," in any administrative proceeding in which a cease-and-desist order is sought or a civil monetary penalty could be imposed. See, e.g., Exchange Act § 21B(e), 15 U.S.C. 78u-2(e) (monetary penalty proceedings); Exchange Act