

interests are limited. Part II requires detailed back-up information that is more likely to call for personal, confidential data, such as bank account numbers and information about regular medical payments. The earlier in a proceeding the respondent is required to submit financial information, however, the more compelling the case for the confidentiality of personal financial information such as that called for in Part II of Form D-A. Providing for confidential treatment of personal financial information at the early stages of a proceeding or prior to the respondent's own introduction of evidence of inability to pay protects a respondent's privacy interests to the maximum extent in the event that the Division fails in its case in chief or that the case settles prior to completion of the hearing.

Comment (d): A copy of the financial disclosure statement must be served on the Division of Enforcement notwithstanding any motion for a protective order. The Division of Enforcement must have the respondent's financial information in order to determine whether to challenge a claim of inability to pay. Notice that a disclosure statement has been filed must also be provided to other respondents, who may seek all or part of the information submitted unless a protective order has been sought or granted pursuant to Rule 322.

Form

209.1. Form D-A: Disclosure of Assets and Financial Information

(a) Rules 410 and 630 of the Rules of Practice (17 CFR 201.410 and 630 of this chapter) provide that under certain circumstances a respondent who asserts or intends to assert an inability to pay disgorgement, interest or penalties may be required to disclose certain financial information. Unless otherwise ordered, this form may be used by individuals required to supply such information.

(b) The respondent filing Form D-A is required promptly to notify the Commission of any material change in the answer to any question on this form.

(c) Form D-A may not be withheld from the Division of Enforcement. A respondent making financial information disclosures on this form after the institution of proceedings may make a motion, pursuant to Rule 322 of the Commission's Rules of Practice (17 CFR 201.322 of this chapter), for the issuance of a protective order to limit disclosure of the information submitted on Form D-A to the public or parties other than the Division of Enforcement. A request for a protective order allows

the requester an opportunity to justify the need for confidentiality. The making of a motion for a protective order does not, however, guarantee that disclosure will be limited.

(d) No party receiving information for which a motion for a protective order has been made may transfer or convey the information to any other person prior to a ruling on the motion without the prior permission of the Commission or a hearing officer.

(e) A person making financial information disclosures on Form D-A prior to the institution of proceedings, in connection with an offer of settlement or otherwise, may request confidential treatment of the information pursuant to the Freedom of Information Act. See the Commission's Freedom of Information Act ("FOIA") regulations, 17 CFR 200.83. A request for confidential treatment allows the requester an opportunity to substantiate the need for confidentiality. No determination as to the validity of any request for confidential treatment will be made until a request for disclosure of the information under FOIA is received.

Note: Form D-A appears in the appendix to this document.

V. Regulatory Flexibility Analysis

The initial Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 603 and published in the Proposing Release. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis, a copy of which may be obtained by writing to Andrew Glickman, Esq., Office of the General Counsel, Mail Stop 6-6, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

VI. Statutory Basis For Rules

These amendments to the Rules of Practice and related rules are being adopted pursuant to: 15 U.S.C. 77f, 77g, 77h, 77h-1, 77j, 77s, 77u, 78c(b), 78d-1, 78d-2, 78l, 78m, 78n, 78o(d), 78o-3, 78s, 78u-2, 78u-3, 78v, 78w, 79c, 79s, 79t, 79z-5a, 77sss, 77ttt, 80a-8, 80a-9, 80a-37, 80a-38, 80a-39, 80a-40, 80a-41, 80a-44, 80b-3, 80b-9, 80b-11, and 80b-12.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies), Securities.

17 CFR Part 201

Accountants, Administrative practice and procedure, Brokers, Claims, Confidential business information, Equal access to justice, Fraud, Lawyers, Penalties, Securities.

17 CFR Part 202

Administrative practice and procedure.

17 CFR Part 203

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

17 CFR Part 209

Administrative practice and procedure—financial disclosure form.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities.

17 CFR Part 229

Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

17 CFR Part 232

Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Accountants, Administrative practice and procedure, Brokers, Lawyers, Penalties, Reporting and recordkeeping requirements, Securities.

17 CFR Part 250

Reporting and recordkeeping requirements, Securities.

17 CFR Part 260

Reporting and recordkeeping requirements, Securities.

17 CFR Part 270

Reporting and recordkeeping requirements, Securities.

17 CFR Part 275

Reporting and recordkeeping requirements, Securities.

Text of Adopted Rules

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows: