

(ii) Modify any dimmer control, P/N 263-1, and reinstall the modified and reidentified dimmer control in the flight compartment. Or

(iii) Remove any dimmer control, P/N 263-1; return it for modification and reidentification to Olin Aerospace Company, 11441 Willows Road NE, Redmond, Washington, 98073-9745; and reinstall the modified and reidentified dimmer control in the flight compartment.

(b) As of the effective date of this AD, no person shall install on any McDonnell Douglas Model MD-11 series airplane, a dimmer control, P/N 263-1, unless that dimmer control has been modified and reidentified to P/N 263-2 in accordance with McDonnell Douglas Service Bulletin MD11-33-045, dated June 14, 1995.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) Except as provided by paragraph (a) of this AD, the actions shall be done in accordance with McDonnell Douglas Service Bulletin MD11-33-045, dated June 14, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 30, 1998.

Issued in Renton, Washington, on November 9, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-30531 Filed 11-12-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release No. 34-40636; File No. S7-23-98]

Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission is adopting amendments to its Rules of Practice, Rules 210 and 221. The Commission is amending Rule 210 to permit, for representatives of any federal, state, or local criminal prosecutorial authority, limited participation for the purpose of requesting a stay in an enforcement or disciplinary proceeding, in order to support efforts to bring criminal prosecutions arising out of securities violations. The Commission is amending Rule 221 to require only one prehearing conference, instead of two, as previously required, in order to streamline the administrative process and conserve the parties' and the Commission's resources.

EFFECTIVE DATE: December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Joan L. Loizeaux, Principal Assistant General Counsel, or Kathleen O'Mara, Senior Counsel, Office of General Counsel, (202) 942-0950, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6-6, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Discussion

The Commission adopted, after notice and comment, comprehensive revisions to its Rules of Practice that became effective on July 24, 1995.¹ These revisions were the result of an approximately two-and-a-half year study by the Commission's Task Force on Administrative Proceedings that culminated in a comprehensive report.² The Task Force found that the fundamental structure of the Commission's administrative process was sound and successfully protected the essential interests of respondents, investors, and the public, but that some changes were necessary. The Task Force recommended changes to the Rules of Practice in an effort to set forth applicable procedural requirements

more completely, in a format easier to use, and to streamline procedures that had become burdensome.

In November 1997, the Commission's Inspector General issued a report evaluating the Commission's Administrative Proceedings Process in an attempt to assess the impact of the new Rules of Practice. The Inspector General recommended, among other things, that the Commission review Rules 210 and 221. The Commission reviewed these rules and proposed that the rules be changed as discussed below (and reflected in the text of the rules). The proposed rules were published for notice and comment on September 2, 1998 in the **Federal Register**.³ No comments were received. The Commission is adopting these rules as proposed.

Rule 210 previously prohibited intervention or limited participation in Commission enforcement proceedings and in disciplinary proceedings to review self-regulatory organization determinations.⁴ Prohibiting intervention or participation in these cases served the purpose of preventing extraneous issues from diverting administrative proceedings before the Commission and promoted timely and efficient resolution of all matters before the Commission.

In recent years, however, the Commission has received requests from representatives of various federal and local criminal prosecutors to participate in enforcement proceedings in order to request a stay of the Commission's proceedings during the pendency of a criminal investigation or prosecution based on the same or related underlying conduct. These authorities typically assert that substantial prejudice could result to a criminal prosecution if an administrative proceeding is not postponed.

The Commission supports efforts to bring criminal prosecutions arising out of securities violations. Accordingly, the Commission is adopting amendments to Rule 210 to allow authorized representatives of the United States Department of Justice, including any United States Attorney's Office, and of state and local prosecutors to seek leave to participate in a Commission enforcement or disciplinary proceeding for the limited purpose of requesting a

³ Rules of Practice—Rules 210 and 221, Exchange Act Release No. 40364 (August 26, 1998), 63 FR 46716.

⁴ Rule 210(f), however, allowed the Commission or a hearing officer to modify the provisions of Rule 210 to impose such terms and conditions on participation of any person in any proceeding as it may deem necessary or appropriate in the public interest.

¹ Final Rules of Practice, Exchange Act Release No. 35833, 60 FR 32738 (June 23, 1995).

² Task Force on Administrative Proceedings, Securities and Exchange Commission, Fair and Efficient Administrative Proceedings: Report of the Task Force (February 1993).

stay in that proceeding. We have determined that the process of considering such requests for postponements will be facilitated if those seeking them are permitted to present their views to the hearing officer. The hearing officer can then evaluate that request in light of the hearing's status. Any postponement of an enforcement or disciplinary proceeding, however, should be based on a showing of good cause and be limited to a reasonable period of time, balancing the need for delay against the need to bring the proceeding to a timely resolution, consistent with the public interest.

The Commission is also adopting amendments to Rule 221 to require a single prehearing conference, instead of the two prehearing conferences previously required. The Commission's experience with this Rule has indicated that, as a routine practice, two conferences are not always necessary. Therefore, in order to streamline the administrative process, conserving the parties', as well as the Commission's, resources, the Commission is amending the rule to require only one prehearing conference. Rule 221 would continue to permit the hearing officer in his or her discretion to order additional prehearing conferences on his or her own motion or at the request of a party.

II. Administrative Procedure Act and Regulatory Flexibility Act

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), that this revision relates solely to agency organization, procedures, or practice. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, also does not apply. Nonetheless, the Commission previously published these rule changes for notice and comment.

III. Statutory Basis and Text of Proposed Amendment

The proposed Rule amendments would be promulgated pursuant to section 19 of the Securities Act, 15 U.S.C. 77s; section 23 of the Exchange Act, 15 U.S.C. 78w; section 20 of the Public Utility Holding Company Act, 15 U.S.C. 79t; section 319 of the Trust Indenture Act, 15 U.S.C. 77sss; sections 38 and 40 of the Investment Company Act, 15 U.S.C. 80a-37 and 80a-39; and section 211 of the Investment Advisers Act, 15 U.S.C. 80b-11.

List of Subjects in 17 CFR Part 201

Administrative practice and procedure.

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

PART 201—SUBPART D—RULES OF PRACTICE

1. The authority citation for Part 201, Subpart D, continues to read as follows:

Authority: 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 unless otherwise noted.

2. Section 201.210 is amended by revising paragraph (a)(1) and the introductory text of paragraph (c) and adding paragraph (c)(3) to read as follows:

§ 201.210 Parties, limited participants and amici curiae.

(a) *Parties in an enforcement or disciplinary proceeding or a proceeding to review a self-regulatory organization determination*—(1) *Generally.* No person shall be granted leave to become a party or non-party participant on a limited basis in an enforcement or disciplinary proceeding or a proceeding to review a determination by a self-regulatory organization pursuant to §§ 201.420 and 201.421, except as authorized by paragraph (c) of this section.

* * * * *

(c) *Leave to participate on a limited basis.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding or a proceeding to review a self-regulatory organization determination, any person may seek leave to participate on a limited basis as a non-party participant as to any matter affecting the person's interests. In any enforcement proceeding or disciplinary proceeding, an authorized representative of the United States Department of Justice, an authorized representative of a United States Attorney, or an authorized representative of any criminal prosecutorial authority of any State or any other political subdivision of a State may seek leave to participate on a limited basis as a non-party participant as provided in paragraph (c)(3) of this section.

* * * * *

(3) *Leave to participate in certain Commission proceedings by a representative of the United States Department of Justice, a United States Attorney's Office, or a criminal prosecutorial authority of any State or any other political subdivision of a State.* The Commission or the hearing officer may grant leave to participate on a limited basis to an authorized representative of the United States Department of Justice, an authorized representative of a United States Attorney, or an authorized representative of any criminal prosecutorial authority of any State or any other political subdivision of a State for the purpose of requesting a stay during the pendency of a criminal investigation or prosecution arising out of the same or similar facts that are at issue in the pending Commission enforcement or disciplinary proceeding. Upon a showing that such a stay is in the public interest or for the protection of investors, the motion for stay shall be favored. A stay granted under this paragraph (c)(3) may be granted for such a period and upon such conditions as the Commission or the hearing officer deems appropriate.

* * * * *

3. Section 201.221 is amended by revising the section heading and paragraphs (a) and (d) to read as follows:

§ 201.221 Prehearing conference.

(a) *Purposes of conference.* The purposes of a prehearing conference include, but are not limited to:

(1) Expediting the disposition of the proceeding;

(2) Establishing early and continuing control of the proceeding by the hearing officer; and

(3) Improving the quality of the hearing through more thorough preparation.

* * * * *

(d) *Required prehearing conference.* Except where the emergency nature of a proceeding would make a prehearing conference clearly inappropriate, at least one prehearing conference should be held.

* * * * *

Dated: November 4, 1998.

By the Commission.

Jonathan G. Katz,
Secretary.

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