

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 205, 240 and 249

[Release Nos. 33-8186; 34-47282; IC-25920; File No. S7-45-02]

RIN 3235-A172

Implementation of Standards of Professional Conduct for Attorneys

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is soliciting comments on proposed rules setting standards of professional conduct for attorneys who appear and practice before the Commission on behalf of issuers. Section 307 of the Sarbanes-Oxley Act of 2002 requires the Commission to prescribe minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers. The Commission in a companion release has adopted rules under Section 307. The Commission also is extending the comment period for certain other rules under Section 307. In particular, the Commission is extending the comment period for the provisions regarding an attorney's notification to the Commission (more commonly referred to as "noisy withdrawal") when an attorney, after reporting evidence of a material violation up-the-ladder of the issuer's governance structure, reasonably believes an issuer's directors have either made no response (within a reasonable time) or have not made an appropriate response. This release solicits additional comments on the "noisy withdrawal" provisions previously proposed and proposes an alternative approach. This release also solicits additional comments on the rules that the Commission adopted under Section 307.

DATES: Comments should be received on or before April 7, 2003.

ADDRESSES: To help us process and review your comments efficiently, comments should be sent by hard copy or by e-mail, but not by both methods.

Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Alternatively, comments may be submitted electronically to the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-45-02; this

file number should be included on the subject line if e-mail is used. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room at the same address. Electronically submitted comments will be posted on the Commission's Internet Web site (<http://www.sec.gov>).¹

FOR FURTHER INFORMATION CONTACT: Laura Walker, Office of the General Counsel, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Phone: (202) 942-0835.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Rule 205.3² of Title 17, Chapter II, of the Code of Federal Regulations, establishing standards of professional conduct for attorneys who appear and practice before the Commission in the representation of issuers, under the Securities Act of 1933,³ the Securities Exchange Act of 1934,⁴ the Investment Company Act of 1940,⁵ the Investment Advisers Act of 1940,⁶ and the Sarbanes-Oxley Act of 2002.⁷ The Commission also is proposing new Rules 13a-17⁸ and 15d-17⁹ and amendments to Rules 13a-11¹⁰ and 15d-11¹¹ and Forms 20-F¹², 40-F¹³, and 8-K¹⁴ under the Exchange Act.

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¹ The Commission does not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. Interested person submitting comments should only submit information that they wish to make publicly available.

² 17 CFR 205.3.

³ 15 U.S.C. 77a *et seq.*

⁴ 15 U.S.C. 78a *et seq.*

⁵ 15 U.S.C. 80a-1 *et seq.*

⁶ 15 U.S.C. 80b-1 *et seq.*

⁷ 15 U.S.C. 7201 *et seq.*

⁸ 17 CFR 240.13a-17.

⁹ 17 CFR 240.15d-17.

¹⁰ 17 CFR 240.13a-11.

¹¹ 17 CFR 240.15d-11.

¹² 17 CFR 249.220f.

¹³ 17 CFR 249.240f.

¹⁴ 17 CFR 249.308.

IX. Small Business Regulatory Enforcement Fairness Act

X. Statutory Basis and Text of Proposed Amendments to Parts 205, 240 and 249

I. Background

Section 307 of the Sarbanes-Oxley Act of 2002 (the "Act") mandates that the Commission:

shall issue rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers, including a rule—

(1) Requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof, to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof); and

(2) If the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors of the issuer or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors.

On November 21, 2002, the Commission proposed rules under Section 307 to implement those provisions, including an up-the-ladder reporting system mandated by the Act.¹⁵ On January 23, 2003, the Commission voted to approve the up-the-ladder reporting system.¹⁶ In addition to the up-the-ladder reporting requirement, the Proposing Release proposed several corollary provisions in 205.3(d) that are not explicitly required by Section 307, but that the Commission considered potentially important minimum standards for attorneys appearing and practicing before the Commission in the representation of issuers. Under certain circumstances, these provisions would have permitted or required attorneys to withdraw from representation of an issuer, to notify the Commission that they have done so, and to disaffirm documents filed or submitted to the Commission on behalf of the issuer.

The Commission received numerous comment letters concerning these "noisy withdrawal" provisions. A number of commenters supported the proposal. They were of the view that the "noisy withdrawal" proposal is

¹⁵ Release No. 33-8150 (December 2, 2002) [67 FR 71670] (the "Proposing Release").

¹⁶ Release No. 33-8185 (Jan. 29, 2003) (the "Adopting Release"). The effective date of the rule is 180 days following publication in the **Federal Register**. Until the effective date, those wishing to see the text of the rule should refer to the Adopting Release.