

the Commission may prescribe upon motion for extension of time filed by the person seeking reconsideration, if the motion is made within the foregoing 10-day period. The motion for reconsideration shall briefly and specifically state the matters of record alleged to have been erroneously decided, the grounds relied upon, and the relief sought. A motion for reconsideration shall conform to the requirements, including page length, provided in § 201.154. No response to a motion for reconsideration shall be filed unless requested by the Commission. Any response so requested shall comply with § 201.154.

39. Section 201.601 is amended by adding paragraph (c) to read as follows:

**§ 201.601 Prompt payment of disgorgement, interest and penalties.**

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(c) *Method of making payment.* Payment shall be made by United States postal money order, wire transfer, certified check, bank cashier's check, or bank money order made payable to the Securities and Exchange Commission. The payment shall be mailed or delivered to the Office of Financial Management of the Commission. Payment shall be accompanied by a letter that identifies the name and number of the case and the name of the respondent making payment. A copy of the letter and the instrument of payment shall be sent to counsel for the Division of Enforcement.

40. Sections 201.610 through 201.614 and § 201.620 are removed and reserved.

41. Sections 201.1100 through 201.1106, Subpart F—Fair Fund and Disgorgement Plans—are added to read as follows:

**Subpart F—Fair Fund and Disgorgement Plans**

- Sec.  
 201.1100 Creation of Fair Fund.  
 201.1101 Submission of plan of distribution; contents of plan.  
 201.1102 Provisions for payment.  
 201.1103 Notice of proposed plan and opportunity for comment by non-parties.  
 201.1104 Order approving, modifying, or disapproving proposed plan.  
 201.1105 Administration of plan.  
 201.1106 Right to challenge.

**Authority:** 15 U.S.C. 77h–1, 77s, 77u, 78c(b), 78d–1, 78d–2, 78u–2, 78u–3, 78v, 78w, 80a–9, 80a–37, 80a–39, 80a–40, 80b–3, 80b–11, 80b–12, and 7246.

**§ 201.1100 Creation of Fair Fund.**

In any agency process initiated by an order instituting proceedings in which the Commission issues an order requiring the payment of disgorgement

by a respondent and also assessing a civil money penalty against that respondent, the Commission may order that the amount of the disgorgement and of the civil money penalty, together with any funds received by the Commission pursuant to 15 U.S.C. 7246(b), be used to create a fund for the benefit of investors who were harmed by the violation.

**§ 201.1101 Submission of plan of distribution; contents of plan.**

(a) *Submission.* The Commission or the hearing officer may, at any time, order any party to submit a plan for the administration and distribution of funds in a Fair Fund or disgorgement funds. Unless ordered otherwise, the Division of Enforcement shall submit a proposed plan no later than 60 days after the respondent has turned over the funds or other assets pursuant to the Commission's order imposing disgorgement and, if applicable, a civil money penalty and any appeals of the Commission's order have been waived or completed, or appeal is no longer available.

(b) *Contents of plan.* Unless otherwise ordered, a plan for the administration of a Fair Fund or a disgorgement fund shall include the following elements:

(1) Procedures for the receipt of additional funds, including the specification of any account where funds will be held, the instruments in which the funds may be invested; and, in the case of a Fair Fund, the receipt of any funds pursuant to 15 U.S.C. 7246(b), if applicable;

(2) Specification of categories of persons potentially eligible to receive proceeds from the fund;

(3) Procedures for providing notice to such persons of the existence of the fund and their potential eligibility to receive proceeds of the fund;

(4) Procedures for making and approving claims, procedures for handling disputed claims, and a cut-off date for the making of claims;

(5) A proposed date for the termination of the fund, including provision for the disposition of any funds not otherwise distributed;

(6) Procedures for the administration of the fund, including selection, compensation, and, as necessary, indemnification of a fund administrator to oversee the fund, process claims, prepare accountings, file tax returns, and, subject to the approval of the Commission, make distributions from the fund to investors who were harmed by the violation; and

(7) Such other provisions as the Commission or the hearing officer may require.

**§ 201.1102 Provisions for payment.**

(a) *Payment to registry of the court or court-appointed receiver.* Subject to such conditions as the Commission or the hearing officer shall deem appropriate, a plan for the administration of a Fair Fund or a disgorgement fund may provide for payment of funds into a court registry or to a court-appointed receiver in any case pending in federal or state court against a respondent or any other person based upon a complaint alleging violations arising from the same or substantially similar facts as those alleged in the Commission's order instituting proceedings.

(b) *Payment to the United States Treasury under certain circumstances.* When, in the opinion of the Commission or the hearing officer, the cost of administering a plan of disgorgement relative to the value of the available disgorgement funds and the number of potential claimants would not justify distribution of the disgorgement funds to injured investors, the plan may provide that the disgorgement funds and any civil penalty shall be paid directly to the general fund of the United States Treasury.

**§ 201.1103 Notice of proposed plan and opportunity for comment by non-parties.**

Notice of a proposed plan of disgorgement or a proposed Fair Fund plan shall be published in the *SEC News Digest* and the *SEC Docket*, on the SEC website, and in such other publications as the Commission or the hearing officer may require. The notice shall specify how copies of the proposed plan may be obtained and shall state that persons desiring to comment on the proposed plan may submit their views, in writing, to the Commission.

**§ 201.1104 Order approving, modifying, or disapproving proposed plan.**

At any time after 30 days following publication of notice of a proposed plan of disgorgement or of a proposed Fair Fund plan, the Commission shall, by order, approve, approve with modifications, or disapprove the proposed plan. In the discretion of the Commission, a proposed plan that is substantially modified prior to adoption may be republished for an additional comment period pursuant to § 201.1103. The order approving or disapproving the plan should be entered within 30 days after the end of the final period allowed for comments on the proposed plan unless the Commission or the hearing officer, by written order, allows a longer period for good cause shown.