

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release No. 34-103980]

Amendments to the Commission's Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is amending its Rules of Practice relating to procedures governing Commission review of staff actions made pursuant to delegated authority in connection with the determination of the effective dates of registration statements and post-effective amendments and the determination of the dates and times of qualification of an offering statement and post-qualification amendments under Regulation A.

DATES: *Effective Date:* The final rules are effective [INSERT DATE OF *FEDERAL REGISTER* PUBLICATION].

FOR FURTHER INFORMATION CONTACT: John Fieldsend, Special Counsel, Division of Corporation Finance at 202-551-3430, or Anna Sandor, Senior Counsel, or Jaea F. Hahn, Senior Counsel, Division of Investment Management, at 202-551-6787, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to 17 CFR 201.431 (“Rule 431”).

I. Background

Rule 431 of the Commission’s Rules of Practice governs Commission review of actions made pursuant to delegated authority.¹ Rule 431(e)² provides that an action made pursuant to delegated authority shall have immediate effect and be deemed the action of the Commission. The rule also provides that, upon filing with the Commission of a notice of intention to petition for Commission review by an aggrieved person, or upon the vote of one member of the Commission that a matter be reviewed, an action made pursuant to delegated authority is automatically stayed until the Commission orders otherwise. The automatic stay does not apply to certain delegated actions specified in Rule 431(e). The Commission is now amending Rule 431(e) to add determinations of the effectiveness of a registration statement and post-effective amendments to a registration statement and determinations of the date and time of qualification of an offering statement and post-qualification amendments to an offering statement under Regulation A³ to the list of actions for which there shall be no automatic stay of delegated action when the Commission reviews an action taken by delegated authority.

Section 5 of the Securities Act of 1933 (“Securities Act”)⁴ requires that a registration statement be in effect as to a security before an issuer may sell it.⁵ Under section 8(a) of the Securities Act (“section 8(a)”)⁶ a registration statement becomes effective automatically, without Commission or staff action, on the twentieth day after the registration statement is filed.

¹ Congress granted the Commission explicit authority to delegate certain functions to an individual commissioner, division directors and others in 1962. Pub. L. No. 87-592, 76 Stat. 394. This authority appears in sections 4A and 4B of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. 78d-1 and 78d-2.

² 17 CFR 201.431(e).

³ 17 CFR 230.251 *et seq.*

⁴ 15 U.S.C. 77a *et seq.*

⁵ 15 U.S.C. 77e(a).

⁶ 15 U.S.C. 77h(a).

Securities Act Rule 461⁷ and Rule 473,⁸ implementing section 8(a), provide for an alternative process that allows an issuer to delay automatic effectiveness of a Securities Act registration statement by including a “delaying amendment.”⁹

If an issuer includes a delaying amendment, effectiveness of the registration statement is delayed until: (i) the issuer files an amendment specifically stating that the registration statement shall become automatically effective in accordance with section 8(a) of the Securities Act, or (ii) such date as the Commission, acting pursuant to section 8(a), may determine (the “acceleration process”).¹⁰ To use the acceleration process, the issuer submits a request that the Commission accelerate the effective date of a registration statement pursuant to Securities Act Rule 461. Following the issuer’s request for acceleration of effectiveness, the staff, acting pursuant to its delegated authority, will accelerate the effective date of the registration statement if it meets the criteria under section 8(a) and Securities Act Rule 461.¹¹

Regulation A provides an exemption from the Securities Act registration requirements for certain offers and sales of securities.¹² Any issuer relying on this exemption must file an offering

⁷ 17 CFR 230.461.

⁸ 17 CFR 230.473.

⁹ Certain Securities Act registration statements become effective automatically upon filing with the Commission. *See, e.g.*, 17 CFR 230.462.

¹⁰ 17 CFR 230.473.

¹¹ *See* 17 CFR 200.30-1(a)(5). In addition, the Director of the Division of Corporation Finance has delegated authority to determine to be effective applications for registration of securities on a national securities exchange prior to 30 days after receipt of a certification pursuant to section 12(d) of the Exchange Act (15 U.S.C. 78l(d)), and to accelerate at the request of the issuer the effective date of registration statements filed pursuant to section 12(g) of the Exchange Act (15 U.S.C. 78l(g)). *See* 17 CFR 200.30-1(f)(1) and (f)(6). The Director of the Division of Investment Management possesses similar delegated authority to accelerate effectiveness of a registration statement under the Securities Act and the Exchange Act. *See* 17 CFR 200.30-5.

¹² *See* Conditional Small Issues Exemption under the Securities Act of 1933 (Regulation A), Release No. 33-10591 (Dec. 19, 2018) [84 FR 520 (Jan. 31, 2019)].

statement,¹³ and the Commission must qualify the offering statement before the issuer may sell securities.¹⁴ As with a registration statement, the Commission has delegated its authority to qualify an offering statement to the Division of Corporation Finance.¹⁵

The ability to use the acceleration and qualification processes provides issuers flexibility to time their securities offerings based on prevailing market conditions and other transactional considerations. Once a registration statement is effective, market participants such as issuers, underwriters, and the exchange on which the securities will be listed, if any, can immediately engage in market activities related to sales in reliance on the effective registration statement, and often do. Similar considerations apply to sales made in reliance on Regulation A.

We believe that when the acceleration and qualification processes are used, having a stay of the staff's determination go into effect automatically upon the filing of a notice of intent or petition for review, or upon the vote of one member of the Commission that a matter be reviewed, would be unnecessary and disruptive to the registration and qualification processes.¹⁶ Once the registration statement is effective, or the offering statement is qualified, the issuer, underwriters, if any, and other market participants may commence sales of the securities. As a result, an automatic stay of the staff's determination to accelerate effectiveness or to qualify an offering statement after sales have commenced would disrupt the sales process, and market participants could experience costs and uncertainty as a result.

¹³ See 17 CFR 230.252.

¹⁴ See 17 CFR 230.251(D)(2)(i)(A).

¹⁵ See 17 CFR 200.30-1(b)(2).

¹⁶ In adopting Rule 431(e), the Commission recognized that, in the context of a staff action pursuant to delegated authority to authorize a subpoena enforcement proceeding, an automatic stay would "disrupt judicial proceedings commenced on the basis of [the staff action]" and was unnecessary due to the presence of a federal judge overseeing the subpoena enforcement proceeding. *Rules of Practice*, Release No. 34-5833 (June 9, 1995) [60 FR 32738, 32778 (June 23, 1995)].

For example, an offering delay or interruption due to an automatic stay could adversely impact the issuer's or selling securityholder's access to capital by delaying the ability to raise the necessary financing, as well as subjecting the issuer or selling securityholder to the risk of adverse changes in financing conditions during the automatic stay, which could result in a decrease in the amount of financing or a worsening of financing terms, or even jeopardize offering completion. An automatic stay implemented after an offering has commenced could similarly negatively affect the issuer or any selling securityholders and also create uncertainty for underwriters that have sold securities and investors that have purchased securities in the affected offering.

Because of the potential disruptive consequences of an automatic stay in this scenario, we are amending Rule 431(e). Rather than automatically stay delegated actions to accelerate the effectiveness of registration statements or to determine the qualification of offering statements, we believe that it is appropriate that the Commission consider on a case-by-case basis whether to impose a stay when, in the context of an effectiveness or qualification decision, (1) a person aggrieved by an action taken pursuant to delegated authority files a notice of intention to petition for Commission review of a staff delegated action pursuant to Rule 430¹⁷ or (2) a single member of the Commission votes to bring a staff delegated action before the full Commission for review pursuant to Rule 431. This will allow the full Commission, on a case-by-case basis, to assess, among other appropriate considerations, whether: (1) there is a likelihood of inadequate disclosure in the registration or offering statement; and (2) the balance of harms from the potential inadequate disclosures are sufficient to justify the imposition of a stay given the potential disruptive consequences that a stay would cause.

¹⁷ 17 CFR 201.430.

Furthermore, we are extending this approach to include post-effective amendments to a registration statement and post-qualification amendments to an offering statement. Under section 8(c) of the Securities Act, a post-effective amendment to a registration statement becomes effective on a date determined by the Commission so long as the amendment does not, “upon its face, appear[] ... to be incomplete or inaccurate in any material respect.” The Commission similarly determines the date and time to qualify post-qualification amendments to an offering statement.¹⁸ Staff has, and exercises, delegated authority to take effective post-effective amendments and qualify post-qualification amendments.¹⁹ Just as an automatic stay would be disruptive and create unnecessary uncertainty in the context of a staff determination to take a registration statement effective or to qualify an offering statement, similar consequences could flow from an automatic stay when the staff takes effective a post-effective amendment or qualifies a post-qualification amendment.

Although we are eliminating the automatic stay for determinations of the effectiveness of a registration statement and post-effective amendments and determinations of the qualification of an offering statement and post-qualification amendments under Regulation A, there are still important safeguards to help ensure robust investor protection. For example, Securities Act section 8(b) allows the Commission to issue an order preventing a registration statement from becoming effective,²⁰ and section 8(d) permits the Commission to issue a stop order to suspend

¹⁸ See 17 CFR 230.252(e).

¹⁹ The Director of the Division of Corporation Finance has delegated authority to determine the effective dates of post-effective amendments to registration statements filed pursuant to section 8(c) of the Securities Act and to determine the dates and times of qualification of post-qualification amendments. See 17 CFR 200.30-1(a)(1) and 17 CFR 200.30-1(b)(2). The Director of the Division of Investment Management possesses similar delegated authority to determine effective dates of post-effective amendments under the Securities Act. See 17 CFR 30-5(c).

²⁰ 15 U.S.C. 77h(b).

the effectiveness of a registration statement.²¹ Similarly, Securities Act Rule 258 allows the Commission to enter an order suspending a Regulation A exemption at any time.²² We therefore believe that this amendment to Rule 431(e) will provide issuers, investors, and other market participants with greater predictability and certainty in the registration and qualification processes while also maintaining investor protection and appropriate regulatory safeguards.²³

II. Administrative Law Matters

The Commission finds, in accordance with section 553(b)(A) of the Administrative Procedure Act (“APA”), that these revisions relate solely to agency organization, procedures, or practice and do not constitute a substantive rule. They are therefore not subject to the APA provisions regarding notice of rulemaking, opportunity for public comment, and advance publication of the amendments. For the same reason, and because these amendments do not affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act are not applicable. Additionally, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA, are not applicable. These amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995.

III. Economic Analysis

We are adopting amendments relating to procedures governing Commission review of staff actions made pursuant to delegated authority. These amendments expand the list of actions for which there will be no automatic stay when a delegated action is reviewed by the

²¹ 15 U.S.C. 77h(d).

²² 17 CFR 230.258.

²³ We also are making a technical correction to Rule 431(e)(1) (17 CFR 201.431(e)(1)) to amend an erroneous cross reference. The correct reference is to 17 CFR 200.30-14(h)(5) through (6).

Commission; they do not impose any substantive regulatory obligations on any person or otherwise. Staff already reviews certain registration statements and post-effective amendments for compliance with the Securities Act and Exchange Act and regulations thereunder before declaring a registration statement effective pursuant to delegated authority. Staff similarly reviews certain offering statements and post-qualification amendments to those offering statements filed under Regulation A before qualifying them.

The amendments are likely to benefit an affected issuer (as well as underwriters, investors, and any selling securityholders) by avoiding the costs and uncertainty resulting from an automatic stay in the event that a petition for review is filed pursuant to Rule 430 by a person aggrieved by an action taken pursuant to delegated authority, or the Commission reviews the action on its own initiative under Rule 431. The amendments do not preclude an aggrieved party from filing a petition for Commission review of an action taken by delegated authority, or a member of the Commission from bringing such an action before the full Commission.

In light of this, we do not believe the amendments will have a substantial economic impact, including an effect on efficiency, competition, or capital formation. Further, we do not believe that the amendments would impose substantial new burdens on private parties or have significant impacts on competition for purposes of section 23(a)(2) of the Exchange Act.

Statutory Authority

These technical amendments are being adopted pursuant to statutory authority granted to the Commission under sections 4A and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Part 201

Administrative practice and procedure.

Text of Amendments

For the reasons stated in the preamble, the Commission is amending title 17, Chapter II of the Code of Federal Regulations as follows:

PART 201—RULES OF PRACTICE

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, 77sss, 78c(b), 78d-1, 78d-2, 78l, 78m, 78n, 78o(d), 78o-3, 78o-10(b)(6), 78s, 78u-2, 78u-3, 78v, 78w, 80a-8, 80a-9, 80a-37, 80a-38, 80a-39, 80a-40, 80a-41, 80a-44, 80b-3, 80b-9, 80b-11, 80b-12, 7202, 7215, and 7217.

2. Amend § 201.431 by:

a. Revising paragraphs (e)(1) and (e)(2); and

b. Adding paragraph (e)(3) to read as follows:

§ 201.431 Commission consideration of actions made pursuant to delegated authority.

* * * * *

(e) * * *

(1) To grant a stay of action by the Commission or a self-regulatory organization as authorized by 17 CFR 200.30-14(h) (5) through (6);

(2) To commence a subpoena enforcement proceeding as authorized by 17 CFR 200.30-4(a)(10); or

(3) To determine the effectiveness of a registration statement, or a post-effective amendment thereto, or the qualification of an offering statement, or a post-qualification amendment thereto, as authorized by 17 CFR 200.30-1(a)(1), 200.30-1(a)(5), 200.30-1(b)(2),

200.30-1(f)(1) and 200.30-1(f)(6), or 17 CFR 200.30-5(b), 200.30-5(c)(3), 200.30-5(c)(4), and 200.30-5(c)(6).

By the Commission.

Dated: September 17, 2025.

Vanessa A. Countryman,

Secretary.