

§ 2.32

16 CFR Ch. I (1-1-10 Edition)

§ 2.32 Agreement.

Every agreement in settlement of a Commission complaint shall contain, in addition to an appropriate proposed order, either an admission of the proposed findings of fact and conclusions of law submitted simultaneously by the Commission's staff or an admission of all jurisdictional facts and an express waiver of the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law. Every agreement also shall waive further procedural steps and all rights to seek judicial review or otherwise to challenge or contest the validity of the order. In addition, where appropriate, every agreement in settlement of a Commission complaint challenging the lawfulness of a proposed merger or acquisition shall also contain a hold-separate or asset-maintenance order. The agreement may state that the signing thereof is for settlement purposes only and does not constitute an admission by any party that the law has been violated as alleged in the complaint. Every agreement shall provide that:

- (a) The complaint may be used in construing the terms of the order;
- (b) No agreement, understanding, representation, or interpretation not contained in the order or the aforementioned agreement may be used to vary or to contradict the terms of the order;
- (c) The order will have the same force and effect and may be altered, modified or set aside in the same manner provided by statute for Commission orders issued on a litigated or stipulated record;
- (d) Except as provided by order of the Commission, any order issued pursuant to the agreement will become final upon service;
- (e) The agreement will not become a part of the public record unless and until it is accepted by the Commission; and
- (f) If the Commission accepts the agreement, further proceedings will be governed by § 2.34.

[64 FR 46268, Aug. 25, 1999]

§ 2.33 Compliance procedure.

The Commission may in its discretion require that a proposed agreement

containing an order to cease and desist be accompanied by an initial report signed by the respondent setting forth in precise detail the manner in which the respondent will comply with the order when and if entered. Such report will not become part of the public record unless and until the accompanying agreement and order are accepted by the Commission. At the time any such report is submitted a respondent may request confidentiality for any portion thereof with a precise showing of justification therefor as set out in § 4.9(c) and the General Counsel or the General Counsel's designee will dispose of such requests in accordance with that section.

[63 FR 32977, June 17, 1998]

§ 2.34 Disposition.

(a) *Acceptance of proposed consent agreement.* The Commission may accept or refuse to accept a proposed consent agreement. Except as otherwise provided in paragraph (c) of this section, acceptance does not constitute final approval, but it serves as the basis for further actions leading to final disposition of the matter.

(b) *Effectiveness of hold-separate or asset-maintenance order.* Following acceptance of a consent agreement, the Commission will, if it deems a hold-separate or asset-maintenance order appropriate, issue a complaint and such an order as agreed to by the parties. Such order will be final upon service. The issuance of a complaint under this paragraph will neither commence an adjudicatory proceeding subject to part 3 of this chapter nor subject the consent agreement proceeding to the prohibitions specified in § 4.7 of this chapter.

(c) *Public comment.* Promptly after its acceptance of the consent agreement, the Commission will place the order contained in the consent agreement, the complaint, and the consent agreement on the public record for a period of 30 days, or such other period as the Commission may specify, for the receipt of comments or views from any interested person. At the same time, the Commission will place on the public record an explanation of the provisions of the order and the relief to be