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inspection and copying at the Commission office where they are ordinarily maintained, or at such other place as the parties, in writing, may agree. A respondent shall not be given custody of the documents or leave to remove the documents from the Commission's offices pursuant to the requirements of this section other than by written agreement of the Division of Enforcement. Such agreement shall specify the documents subject to the agreement, the date they shall be returned and such other terms or conditions as are appropriate to provide for the safe-keeping of the documents.

(f) *Copying costs and procedures.* The respondent may obtain a photocopy of any documents made available for inspection. The respondent shall be responsible for the cost of photocopying. Unless otherwise ordered, charges for copies made by the Division of Enforcement at the request of the respondent will be at the rate charged pursuant to the fee schedule identified on the Freedom of Information Act ("FOIA") web page of the Commission's website at <http://www.sec.gov> for copies. The respondent shall be given access to the documents at the Commission's offices or such other place as the parties may agree during normal business hours for copying of documents at the respondent's expense.

(g) *Issuance of investigatory subpoenas after institution of proceedings.* The Division of Enforcement shall promptly inform the hearing officer and each party if investigatory subpoenas are issued under the same investigation file number or pursuant to the same order directing private investigation ("formal order") under which the investigation leading to the institution of proceedings was conducted. The hearing officer shall order such steps as necessary and appropriate to assure that the issuance of investigatory subpoenas after the institution of proceedings is not for the purpose of obtaining evidence relevant to the proceedings and that any relevant documents that may be obtained through the use of investigatory subpoenas in a continuing investigation are made available to each respondent for inspection and copying on a timely basis.

(h) *Failure to make documents available—harmless error.* In the event that a document required to be made available to a respondent pursuant to this section is not made available by the Division of Enforcement, no rehearing or rededecision of a proceeding already heard or decided shall be required, unless the respondent shall establish that the failure to make the document available was not harmless error.

[60 FR 32796, June 23, 1995; 60 FR 46499, Sept. 7, 1995, as amended at 68 FR 35789, June 17, 2003; 69 FR 13177, Mar. 19, 2004; 81 FR 50235, July 29, 2016; 84 FR 50738, Sept. 26, 2019]

§ 201.231 Enforcement and disciplinary proceedings: Production of witness statements.

(a) *Availability.* Any respondent in an enforcement or disciplinary proceeding may move that the Division of Enforcement produce for inspection and copying any statement of any person called or to be called as a witness by the Division of Enforcement that pertains, or is expected to pertain, to his or her direct testimony and that would be required to be produced pursuant to the Jencks Act, 18 U.S.C. 3500. For purposes of this section, *statement* shall have the meaning set forth in 18 U.S.C. 3500(e). Such production shall be made at a time and place fixed by the hearing officer and shall be made available to any party, provided, however, that the production shall be made under conditions intended to preserve the items to be inspected or copied.

(b) *Failure to produce—harmless error.* In the event that a statement required to be made available for inspection and copying by a respondent is not turned over by the Division of Enforcement, no rehearing or rededecision of a proceeding already heard or decided shall be required unless the respondent establishes that the failure to turn over the statement was not harmless error.

[60 FR 32796, June 23, 1995, as amended at 69 FR 13177, Mar. 19, 2004]

§ 201.232 Subpoenas.

(a) *Availability; procedure.* In connection with any hearing ordered by the Commission or any deposition permitted under § 201.233, a party may request the issuance of subpoenas requiring the attendance and testimony of

witnesses at such depositions or at the designated time and place of hearing, and subpoenas requiring the production of documentary or other tangible evidence returnable at any designated time or place. Unless made on the record at a hearing, requests for issuance of a subpoena shall be made in writing and served on each party pursuant to §201.150. A person whose request for a subpoena has been denied or modified may not request that any other person issue the subpoena.

(1) *Unavailability of hearing officer.* In the event that the hearing officer assigned to a proceeding is unavailable, the party seeking issuance of the subpoena may seek its issuance from the first available of the following persons: The Chief Administrative Law Judge, the law judge most senior in service as a law judge, the duty officer, any other member of the Commission, or any other person designated by the Commission to issue subpoenas. Requests for issuance of a subpoena made to the Commission, or any member thereof, must be submitted to the Secretary, not to an individual Commissioner.

(2) *Signing may be delegated.* A hearing officer may authorize issuance of a subpoena, and may delegate the manual signing of the subpoena to any other person authorized to issue subpoenas.

(b) *Standards for issuance.* Where it appears to the person asked to issue the subpoena that the subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may, in his or her discretion, as a condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. If after consideration of all the circumstances, the person requested to issue the subpoena determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena, or issue it only upon such conditions as fairness requires. In making the foregoing determination, the person issuing the subpoena may inquire of the other participants whether they will stipulate to the facts sought to be proved.

(c) *Service.* Service shall be made pursuant to the provisions of §201.150(b) through (d). The provisions of this paragraph (c) shall apply to the issuance of subpoenas for purposes of investigations, as required by 17 CFR 203.8, as well as depositions and hearings.

(d) *Tender of fees required.* When a subpoena ordering the attendance of a person at a hearing or deposition is issued at the instance of anyone other than an officer or agency of the United States, service is valid only if the subpoena is accompanied by a tender to the subpoenaed person of the fees for one day's attendance and mileage specified by paragraph (f) of this section.

(e) *Application to quash or modify—(1) Procedure.* Any person to whom a subpoena or notice of deposition is directed, or who is an owner, creator or the subject of the documents that are to be produced pursuant to a subpoena, or any party may, prior to the time specified therein for compliance, but in no event more than 15 days after the date of service of such subpoena or notice, request that the subpoena or notice be quashed or modified. Such request shall be made by application filed with the Secretary and served on all parties pursuant to §201.150. The party on whose behalf the subpoena or notice was issued may, within five days of service of the application, file an opposition to the application. If a hearing officer has been assigned to the proceeding, the application to quash shall be directed to that hearing officer for consideration, even if the subpoena or notice was issued by another person.

(2) *Standards governing application to quash or modify.* If compliance with the subpoena or notice of deposition would be unreasonable, oppressive, unduly burdensome or would unduly delay the hearing, the hearing officer or the Commission shall quash or modify the subpoena or notice, or may order a response to the subpoena, or appearance at a deposition, only upon specified conditions. These conditions may include but are not limited to a requirement that the party on whose behalf the subpoena was issued shall make reasonable compensation to the person to whom the subpoena was addressed for the cost of copying or transporting

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evidence to the place for return of the subpoena.

(3) *Additional standards governing application to quash deposition notices or subpoenas filed pursuant to § 201.233(a).* The hearing officer or the Commission shall quash or modify a deposition notice or subpoena filed or issued pursuant to § 201.233(a) unless the requesting party demonstrates that the deposition notice or subpoena satisfies the requirements of § 201.233(a), and:

(i) The proposed deponent was a witness of or participant in any event, transaction, occurrence, act, or omission that forms the basis for any claim asserted by the Division of Enforcement, any defense, or anything else required to be included in an answer pursuant to § 201.220(c) by any respondent in the proceeding (this excludes a proposed deponent whose only knowledge of these matters arises from the Division of Enforcement's investigation or the proceeding);

(ii) The proposed deponent is a designated as an "expert witness" under § 201.222(b); provided, however, that the deposition of an expert who is required to submit a written report under § 201.222(b) may only occur after such report is served; or

(iii) The proposed deponent has custody of documents or electronic data relevant to the claims or defenses of any party (this excludes Division of Enforcement or other Commission officers or personnel who have custody of documents or data that was produced by the Division to the respondent).

(f) *Witness fees and mileage.* Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear. Except for such witness fees and mileage, each party is responsible for paying any fees and expenses of the expert witnesses whom that party designates under

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§ 201.222(b), for appearance at any deposition or hearing.

[60 FR 32796, June 23, 1995, as amended at 69 FR 13177, Mar. 19, 2004; 81 FR 50235, July 29, 2016]

§ 201.233 Depositions upon oral examination.

(a) *Depositions upon written notice.* In any proceeding under the 120-day time-frame designated pursuant to § 201.360(a)(2), depositions upon written notice may be taken as set forth in this paragraph. No other depositions shall be permitted except as provided in paragraph (b) of this section.

(1) If the proceeding involves a single respondent, the respondent may file written notices to depose no more than three persons, and the Division of Enforcement may file written notices to depose no more than three persons.

(2) If the proceeding involves multiple respondents, the respondents collectively may file joint written notices to depose no more than five persons, and the Division of Enforcement may file written notices to depose no more than five persons. The depositions taken under this paragraph (a)(2) shall not exceed a total of five depositions for the Division of Enforcement, and five depositions for all respondents collectively.

(3) *Additional depositions upon motion.* Any side may file a motion with the hearing officer seeking leave to notice up to two additional depositions beyond those permitted pursuant to paragraphs (a)(1) and (2) of this section.

(i) *Procedure.* (A) A motion for additional depositions must be filed no later than 90 days prior to the hearing date. Any party opposing the motion may submit an opposition within five days after service of the motion. No reply shall be permitted. The motion and any oppositions each shall not exceed seven pages in length. These limitations exclusively govern motions under this section; notwithstanding § 201.154(a), any points and authorities shall be included in the motion or opposition, with no separate statement of points and authorities permitted, and none of the requirements in § 201.154(b) or (c) shall apply.

(B) Upon consideration of the motion and any opposing papers, the hearing