

### **13-604. Procedures for Administrative Hearings before the Securities Commissioner.**

A. This regulation shall apply to Administrative Hearings held pursuant to Sections 35-1-306, 35-1-412, and 35-1-604.

B. To the extent that they do not conflict with the definitions set forth in Section 35-1-102, the terms below have the following meanings:

(1) “Administrative Hearing” means a proceeding before the Hearing Officer under the South Carolina Uniform Securities Act of 2005.

(2) “Administrative Order” means an order issued under Sections 35-1-306, 35-1-412, and 35-1-604 of the South Carolina Uniform Securities Act of 2005 that may lead to an Administrative Hearing.

(3) “Division” means the Securities Division of the South Carolina Attorney General’s Office.

(4) “Hearing Officer” means either the Securities Commissioner or the person designated in accordance with this regulation by the Securities Commissioner to preside over an Administrative Hearing.

(5) “Party” means a Respondent in the proceeding and the Division.

(6) “Respondent” means a person against whom an Administrative Order is issued under the South Carolina Uniform Securities Act of 2005.

#### **C. Time and Place of Filings.**

(1) After the request for a hearing has been filed with the Division, all filings must be made with the Hearing Officer assigned to the case and shall contain the file number assigned to the case by the Division.

(2) After a Hearing Officer has been assigned, a pleading, motion, or other paper, is considered filed when it is received by the Hearing Officer.

(3) Unless otherwise specifically provided by law or this regulation, computation of any time period prescribed by this regulation or by an order of the Securities Commissioner begins with the first day following the act or event that initiates the time period. The last day of the time period so computed is included unless it is a Saturday, Sunday, State holiday, or any other day on which the Division is closed, in which event the period runs until the end of the next business day.

(4) If a notice or other filing is served by mail or e-mail and the Party served is entitled or required to take some action within a prescribed time period after service:

(a) The date of mailing is the date of service; and

(b) Three days are added to the prescribed time period.

#### **D. Content of Documents.**

(1) A pleading or other paper filed by a Party with the Hearing Officer shall contain a caption that sets forth:

- (a) The name of the first listed Respondent;
- (b) The file number assigned to the case by the Division; and
- (c) A brief descriptive title of the pleading.

(2) A pleading or other paper filed with the Hearing Officer shall:

- (a) Be signed by the Party or, if represented, by the Party's attorney; and
- (b) Contain the business address and telephone number of the person by whom it is signed.

(3) The original of any pleading or other paper shall be filed with the Hearing Officer, and a copy shall be served upon each Party or Party's attorney of record. A certificate of service attesting to the date and manner of service shall be filed with the pleading.

#### E. Initiation of Administrative Hearing.

(1) The Division shall promptly serve a copy of an Administrative Order upon each Respondent named in the order. Service may be made by personal service or by registered or certified mail.

(2) In addition to any contents required by statute, an Administrative Order shall advise the Respondent of the

- (a) Respondent's right to a hearing;
- (b) Time period within which the Respondent must request a hearing;
- (c) Respondent's obligation to file an answer; and
- (d) Effect of a failure to file an answer and to request a hearing.

#### F. Answers.

(1) A Respondent shall file with the Division a written answer to an Administrative Order within 30 days of service of the order. The Parties may agree to extend the time for filing the answer.

(2) The answer shall admit or deny each factual allegation in the Administrative Order and shall set forth affirmative defenses, if any. A Respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state.

(3) The answer shall indicate whether the Respondent requests a hearing concerning the Administrative Order.

(4) If a Respondent fails to file a timely answer, the Administrative Order becomes final as to that Respondent by operation of law.

#### G. Delegation of Hearing Authority.

(1) The Securities Commissioner may delegate his or her authority to preside over an Administrative Hearing in accordance with Section 35-1-601(a).

(2) The Securities Commissioner shall indicate in an order delegating his or her authority whether the Hearing Officer is to issue proposed or final findings of fact, proposed or final conclusions of law, and a proposed or final decision. The Securities Commissioner shall serve the order delegating his or her authority on all Parties and the Hearing Officer.

(3) The Securities Commissioner may revoke all or part of a delegation as a Hearing Officer.

(4) Procedures for Revocation.

(a) The Securities Commissioner may revoke a delegation as Hearing Officer at any time before a ruling on a substantive issue by the Hearing Officer or the taking of oral testimony from the first witness, whichever is earlier.

(b) The Securities Commissioner shall issue a written order of revocation that states the reason for the revocation and specifies whether all or part of the delegation has been revoked. If only part of the delegation has been revoked, the Securities Commissioner shall specify the portions of the Administrative Hearing for which the delegation has been revoked.

(c) The Securities Commissioner shall serve the order of revocation on all Parties and the Hearing Officer.

(d) A decision issued by the Securities Commissioner shall reflect the revocation of delegation, and a copy of the revocation order shall be included as part of the record.

(5) The Securities Commissioner may withdraw all or part of a delegation as Hearing Officer over an Administrative Hearing as to a Respondent at any time with the consent of that Respondent and the Division.

#### H. Notice of Hearing.

(1) If a Respondent requests a hearing, or if the Securities Commissioner otherwise determines that a hearing concerning an Administrative Order is appropriate, the Hearing Officer shall give the Parties reasonable advance written notice of the hearing.

(2) The notice of the hearing shall include:

(a) The date, time, place and nature of the hearing;

(b) The legal basis for the hearing;

(c) A brief statement of the issues;

(d) A summary of the rights and restrictions concerning representation set forth in section I below;

(e) A statement that each Respondent may present evidence and may cross-examine witnesses;

(f) A statement that each Respondent may request the issuance of subpoenas in accordance with section L of this regulation;

(g) A copy of the hearing procedures set forth in this regulation;

(h) A statement that failure by a Respondent to appear at the hearing may result in adverse action against that Respondent; and

(i) A statement that the Parties may agree to the evidence and that a Respondent may waive the right to appear at the hearing.

(3) If a Respondent named in an Administrative Order issued pursuant to the South Carolina Uniform Securities Act of 2005 submits a written request for a hearing, the Hearing Officer shall, within 15 days after receipt of the request, set a date for a hearing.

#### I. Representation.

(1) A Party has the right to participate pro se or to be represented by an attorney admitted to practice in this State, either permanently or pro hac vice. No one shall be permitted to represent a Party where such representation would constitute the unauthorized practice of law. A Party proceeding without legal representation shall remain fully responsible for compliance with these rules.

(2) An attorney authorized to represent a Party must file a notice of appearance with the Hearing Officer within ten days of being retained or authorized to represent the Party. The notice shall include the attorney's name, address, email address, and telephone number, and the name of the Party represented.

(3) An attorney must file a written motion to withdraw from representation of a Party.

J. If separate proceedings involve a common question of law or fact, the Hearing Officer may consolidate the proceedings in whole or in part.

#### K. Discovery.

(1) In general, and unless otherwise stated in this rule, discovery shall be conducted according to the procedures in Rules 26 through 37 of the South Carolina Rules of Civil Procedure (SCRCP), except that only the standard interrogatories provided by SCRCP 33(b), as applicable to the pending Administrative Hearing, are permitted; there shall be no more than three depositions per Party under Rule 30, SCRCP; and no more than ten requests to admit per Party, including subparts under Rule 36, SCRCP. Unless otherwise provided by law, all discovery requests shall be completed not later than 10 days before the date set for the hearing.

(2) Upon a motion by a Party or the Hearing Officer, discovery may be expanded or curtailed further for good cause shown.

#### L. Subpoenas.

(1) Upon the request of any Party, the Hearing Officer may issue subpoenas requiring the attendance and testimony of witnesses and the production of documents and tangible items in the possession or under the control of the witness.

(2) An application for issuance of a subpoena shall be made in writing to the Hearing Officer and shall state:

- (a) The name and address of the person to be subpoenaed;
  - (b) If production of documents or tangible items is sought, a particular description of the documents or tangible items sought; and
  - (c) The name, address, and telephone number of the Party requesting the subpoena.
- (3) A subpoena may be served by personal service or by registered or certified mail. The Party requesting the subpoena shall be responsible for, and bear the cost of, service.
- (4) A Party shall promptly file a return of service with the Hearing Officer including an affidavit by the person making personal service or, if the subpoena was served by mail, the return receipt.
- (5) A person who has been served with a subpoena may object to the subpoena by filing a motion to quash with the Hearing Officer within 10 days of service of the subpoena or by the date of the hearing, whichever is earlier. The subpoena may be quashed if it:
- (a) Fails to allow reasonable time to comply;
  - (b) Requires excessive travel by a person who is not a Party;
  - (c) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
  - (d) Subjects a person to undue burden.
- (6) The Hearing Officer may decline to enforce a subpoena that is arbitrary, capricious, or oppressive.
- (7) If a person under subpoena fails to appear as required by the subpoena, or fails to produce the documents or tangible items set forth in the subpoena:
- (a) A Party may apply to the Hearing Officer for enforcement of the subpoena;
  - (b) An application to the Hearing Officer for enforcement of a subpoena shall be made immediately upon the failure to comply with the subpoena or within such other time period as the Hearing Officer may set; and
  - (c) Upon a timely request by a Party for enforcement of a subpoena, the Hearing Officer may apply to the Richland County Court of Common Pleas to enforce the subpoena.

#### M. Prehearing Conferences.

- (1) The Hearing Officer may hold a scheduling conference with the Parties, in person or by telephone, to determine:
- (a) The necessity or desirability of prehearing statements or amendments;
  - (b) The simplification of issues;
  - (c) The possibility of obtaining stipulations of fact and of documents to avoid unnecessary proof;

- (d) Requests for official notice;
- (e) The limitation and exchange of expert testimony;
- (f) The scheduling of discovery and any discovery disputes;
- (g) The possibility of resolving the matter through a settlement;
- (h) Any preliminary motions;
- (i) The admissibility of evidence;
- (j) The order of presentation;
- (k) The limitation of the number of witnesses;
- (l) The exchange of prepared testimony and exhibits between the Parties; and
- (m) Any other matters that will promote the orderly and prompt conduct of the hearing.

(2) The Hearing Officer shall issue an appropriate order containing the action, if any, taken at the scheduling conference, which shall be made a part of the record.

#### N. Failure to Appear.

(1) If a Party, after receiving notice of an Administrative Hearing, fails to appear, the Hearing Officer may proceed to hold the hearing in that Party's absence.

(2) If a Party, after receiving notice of an Administrative Hearing, fails to appear, the Hearing Officer may also hold the absent Party in default and may issue a proposed or final decision and order against the defaulted Party.

#### (3) Request for Reconsideration.

(a) A Party defaulted as a result of a failure to appear at a prehearing conference or hearing may file a written motion requesting reconsideration by the Hearing Officer and stating the grounds for the request.

(b) A motion for reconsideration shall be filed within 15 days after service of a default order, or such lesser time as the Hearing Officer may direct.

#### O. Motions Generally.

(1) Unless otherwise permitted by these regulations or by the Hearing Officer, motions shall:

(a) Be made in writing, unless otherwise permitted by the Hearing Officer during the course of an Administrative Hearing; and

(b) State concisely the question to be determined and be accompanied by any necessary supporting documentation and memoranda.

(2) A Party shall file a motion not later than 15 days before the date of the Administrative Hearing and shall serve a copy of the motion on each Party.

(3) A response to a written motion shall be filed on the earlier of:

(a) 10 days after receipt of the motion; or

(b) The date of the hearing.

(4) The Hearing Officer may allow oral argument if it appears necessary to a fuller understanding of the issues presented.

(5) The filing or pendency of a motion does not alter or extend any time limit.

(6) Motions for Summary Decision.

(a) A Party may move at any time for summary decision as to any substantive issue in the case.

(b) The Hearing Officer may issue a summary decision if the Hearing Officer finds that there is no genuine issue as to any material fact, and that the moving Party is entitled to prevail as a matter of law.

#### P. Conduct of Hearings.

(1) Order of Proceedings.

(a) The Hearing Officer shall call the hearing to order and explain briefly the purpose and nature of the hearing.

(b) The Hearing Officer may allow the Parties to present preliminary matters.

(c) The Parties may make opening statements.

(d) The Hearing Officer shall state the order of presentation of evidence.

(e) Each witness shall be sworn or put under affirmation to tell the truth. In the discretion of the Hearing Officer, witnesses may be sequestered during the hearing.

(f) The Parties may present closing summations and argument.

(2) During the Administrative Hearing, the Hearing Officer:

(a) Shall administer the oath or affirmation to each witness;

(b) Shall rule on the admissibility of evidence;

(c) Shall maintain order and take such action as necessary to avoid delay in the conduct of the hearing; and

(d) May question any witness as to any matter that the Hearing Officer considers relevant and material to the proceeding.

(3) On a genuine issue relevant to the determination of an Administrative Hearing, each Party may:

- (a) Call witnesses;
- (b) Offer evidence;
- (c) Cross-examine any witness called by another Party; and
- (d) Make opening and closing statements.

(4) Waiver of Right to Appear at Administrative Hearing.

- (a) A Party may waive the right to appear personally at the hearing.
- (b) A waiver shall be in writing and filed with the Hearing Officer.

(c) A waiver may be withdrawn by a Party by written notice filed with the Hearing Officer not later than seven days before the scheduled hearing.

(d) A Party who has filed a timely written waiver may not be held in default for failing to appear at the hearing.

Q. Submission of Case on Documentary Record. The Hearing Officer may elect not to hold a hearing if all Parties agree to submit the case on the documentary record and waive their right to appear.

R. Burden of Proof. The Party asserting the affirmative of an issue shall bear the burden of proof.

S. Evidence.

(1) Evidence shall be admitted in accordance with the South Carolina Rules of Evidence.

(2) Parties may, by stipulation, agree on any facts relevant to the proceedings. The facts stipulated shall be considered proven for purposes of the proceedings.

(3) Official Notice.

(a) The Hearing Officer may take official notice of a fact that is judicially noticeable or that is within the specialized knowledge of the Division.

(b) Before taking official notice of a fact, the Hearing Officer shall:

- (1) Notify each Party before or during the hearing; and
- (2) Give each Party an opportunity to contest the fact.

T. Examination of Witnesses.

(1) Witnesses shall testify under oath or affirmation.

(2) A Party may conduct direct examination or cross-examination without strict adherence to formal rules of evidence in order to obtain a full and fair disclosure of facts relevant to matters in issue.



(3) If the Hearing Officer determines that a witness is hostile or unresponsive, the Hearing Officer may authorize the Party calling the witness to proceed as if the witness were under cross-examination.

#### U. Ex Parte Communications.

(1) Except as provided in subsection U(2) below, while an Administrative Hearing is pending, the Hearing Officer may not communicate ex parte regarding the merits of any issue in the case with:

- (a) A Respondent or an attorney for a Respondent;
- (b) Division staff or counsel involved in the investigation or presentation of the case; or
- (c) Any other Hearing Officer who presided at an earlier stage of the case.

(2) The Hearing Officer may communicate regarding the merits of any issue in the case with the Division's staff or counsel who have not otherwise participated in the investigation or presentation of the case.

(3) Ex parte communications received in violation of this regulation shall be disclosed to all Parties.

#### V. Proposed and Final Decisions.

(1) The Securities Commissioner, or Hearing Officer when the authority to issue a final decision has been delegated, shall prepare written findings of fact and conclusions of law, and shall promptly issue a final decision after the conclusion of any hearing held before the Securities Commissioner or Hearing Officer with such authority. The final decision shall include rulings on any proposed findings of fact and conclusions of law submitted by the Parties.

(2) When the Securities Commissioner has delegated authority to hear a case to a member of his or her staff as Hearing Officer, but has reserved the final decision-making authority, the Hearing Officer shall send a proposed decision, including proposed findings of fact and conclusions of law, to the Parties and the Securities Commissioner.

(a) Within 15 days of receipt of the proposed decision, each Party shall file with the Securities Commissioner any exceptions to the proposed decision, any supporting memorandum, and any request to present argument to the Securities Commissioner.

(b) Within 10 days of receipt of exceptions filed by an adverse Party, a Party may file a memorandum in opposition to those exceptions.

(c) The Securities Commissioner shall review the Administrative Hearing record, the proposed decision of the Hearing Officer, and any exceptions and memoranda filed by the Parties, and may permit the Parties to present arguments, if the Securities Commissioner determines it is necessary to do so. Before issuing a final decision, the Securities Commissioner may require the submission of additional information or documentation.

(d) The Securities Commissioner shall issue a final decision that may adopt, modify, or vacate the proposed findings of fact, proposed conclusions of law, or the proposed decision of the Hearing Officer. The final decision shall include rulings on any exceptions filed by the Parties.

(3) A final decision of the Securities Commissioner shall advise each Respondent that any appeal to the Richland County Court of Common Pleas shall be filed within 30 days after the entry of the order, in accordance with Section 35-1-609.

(4) The Securities Commissioner may enter a final decision as to any Respondent who fails to:

- (a) File a timely responsive answer; or
- (b) Appear for a hearing at the scheduled time and date.

(5) A final decision of the Securities Commissioner shall be in writing. A copy of the final decision shall be hand delivered or mailed, by certified or registered mail, to each Party or its attorney.

(6) In the event of fraud, mistake, inadvertence, or excusable neglect, the Securities Commissioner may correct a final decision not more than one year after the entry of the final decision.

#### W. Record of Proceedings.

(1) The Division shall cause all oral proceedings, including testimony, to be recorded by a stenographer or by tape recorder or other device. The recording of the proceedings, which need not be transcribed, shall be maintained in the custody of the Division. In the event of an appeal from a decision of the Securities Commissioner, the appellant shall pay the cost of transcription of the record. Other verbatim reports or recordings may not be made by any other person without the express written consent of the Securities Commissioner.

(2) The record of an Administrative Hearing shall include:

(a) All pleadings, motions, orders, and related papers filed with the Securities Commissioner or the Hearing Officer;

(b) All documentary and tangible evidence;

(c) A statement of matters officially noticed;

(d) Recordings and any transcripts of oral proceedings;

(e) Any findings of fact and conclusions of law proposed by each Party;

(f) Any exceptions filed by the Parties and the Securities Commissioner's rulings on those exceptions;

(g) The findings of fact, conclusions of law, and decision of the Securities Commissioner;

(h) If a case has been delegated to the Hearing Officer for a proposed decision:

(1) The order delegating authority;

(2) Any notice of revocation;

(3) The proposed decision, including proposed findings of fact and proposed conclusions of law, of the Hearing Officer; and

(4) Any additional information or documentation submitted to the Securities Commissioner by the Parties;

(i) The final order, if any, of the Securities Commissioner; and

(j) Other documents or materials placed in the record as required by law or at the discretion of the Securities Commissioner or Hearing Officer.

(3) The Division shall prepare an index of the record of proceedings.

(4) Upon compilation, the record shall be available for public inspection at the Division during normal business hours unless the contents are otherwise protected by law.

(5) The Division, upon request of a Party, shall arrange for a copy of the record to be made, if the requesting Party pays in advance to the Division the Division's estimate of the reasonable costs of making the copy. The copy shall be certified by the Securities Commissioner, if requested.

X. At any time after initiation of an Administrative Hearing, with the approval of the Securities Commissioner, the Parties may resolve an Administrative Hearing without a final decision by stipulation, settlement, or consent order.

Y. Severability Clause. The provisions of this regulation are severable. If any part of this regulation is declared invalid or unconstitutional, that declaration shall not affect the parts which remain. Notwithstanding any invalidation, the remaining parts shall nonetheless continue to provide a workable and predictable procedure for conducting Administrative Hearings held pursuant to Sections 35-1-306, 35-1-412, and 35-1-604.