

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION  
August 16, 2016

SECURITIES ACT OF 1933  
Release No. 10123 / August 16, 2016

ADMINISTRATIVE PROCEEDING  
File No. 3-16594

In the Matter of  
EQUITY TRUST COMPANY

ORDER GRANTING PETITIONS FOR  
REVIEW AND SCHEDULING BRIEFS

On July 18, 2016, the Division of Enforcement (“Enforcement”) filed a petition for review of an administrative law judge’s initial decision dismissing this proceeding against respondent Equity Trust Company (“Equity Trust”).<sup>1</sup> The order instituting proceedings (“OIP”) alleged that Equity Trust, a custodian of “self-directed” individual retirement accounts, was liable for causing violations of Section 17(a)(2) and 17(a)(3) of the Securities Act of 1933 by two individuals who referred customers to Equity Trust.<sup>2</sup> The initial decision found that the two individuals committed primary violations of Section 17(a)(2) and 17(a)(3) and that Equity Trust engaged in acts or omissions that were a cause of the violations but that the requirement that Equity Trust knew or should have known that its conduct would contribute to the violations was unproven.<sup>3</sup> In its petition for review, the Division argues that the initial decision “was wrong and should be reversed.” Specifically, the Division contends that unless it is reversed the initial decision “will stand for the proposition that the conduct of Equity Trust, which was at least negligent and which endangered investor funds, is without consequences.”

On July 28, 2016, Equity Trust filed a cross-petition for review. Equity Trust “urges the Commission to deny the Division’s petition.” But if the Commission grants the Division’s petition Equity Trust asks that the Commission also grant its cross-petition. Despite prevailing below, Equity Trust states that it takes exception to certain specific findings and conclusions of the initial decision. Specifically, Equity Trust argues that the initial decision erred in finding that there were primary violations of Section 17(a)(2) and 17(a)(3), that Equity Trust’s conduct was a cause of the violations, and that the Division did not have to prove that Equity Trust acted with scienter.

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<sup>1</sup> *Equity Trust Co.*, Initial Decision Release No. 1030, 2016 WL 4035556 (June 27, 2016).

<sup>2</sup> *Equity Trust Co.*, Securities Act Release No. 9807, 2015 WL 3746036 (June 16, 2015).

<sup>3</sup> *Equity Trust*, 2016 WL 4035556, at \*28-29.

Rule of Practice 410(a) provides that, “[i]n any proceeding in which an initial decision is made by a hearing officer, any party, and any other person who would have been entitled to judicial review of the decision entered therein if the Commission itself had made the decision, may file a petition for review of the decision with the Commission.”<sup>4</sup> Rule of Practice 410(b) provides that “[i]n the event a petition for review is filed, any other party to the proceeding may file a cross-petition for review . . . .”<sup>5</sup> And Rule of Practice 411(b)(2) provides that, in “determining whether to grant review, the Commission shall consider whether the petition for review makes a reasonable showing” of at least one of the following things:

- (i) a prejudicial error was committed in the in the conduct of the proceeding; or
- (ii) the decision embodies:
  - (A) a finding or conclusion or material fact that is clearly erroneous; or
  - (B) a conclusion of law that is erroneous; or
  - (C) an exercise of discretion or decision of law or policy that is important and that the Commission should review.<sup>6</sup>

Based on the standards set forth in Rule 411(b)(2), it appears, under the particular facts of this case, appropriate to grant both petitions for review.<sup>7</sup>

Pursuant to Commission Rule of Practice 411, the Division’s petition for review and Equity Trust’s cross-petition for review are GRANTED. Pursuant to Rule of Practice 411(d), the Commission will determine what sanctions, if any, are appropriate in this matter.<sup>8</sup>

Accordingly, IT IS ORDERED, pursuant to Rule of Practice 450(a),<sup>9</sup> that briefs be filed as follows:

Division’s opening brief: The Division shall file a brief, not to exceed 16,000 words, by September 15, 2016.

Respondent’s principal and response brief: Respondent shall file a brief, not to exceed 16,000 words, by October 17, 2016. This brief

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<sup>4</sup> 17 C.F.R. § 201.410(a).

<sup>5</sup> 17 C.F.R. § 201.410(b).

<sup>6</sup> 17 C.F.R. § 201.411(b)(2).

<sup>7</sup> Cf. *Michael J. Marrie*, Exchange Act Release No. 48246, 2003 WL 21741785, at \*1 n.3 (Jul. 29, 2003) (stating that generally when proceedings against a party are dismissed the party is “not entitled to Commission review of that decision”), *rev’d on other grounds*, 374 F.3d 1196 (D.C. Cir. 2004).

<sup>8</sup> 17 C.F.R. § 201.411(d).

<sup>9</sup> 17 C.F.R. § 201.450(a).

must address the issues presented by the Respondent's cross-petition for review and respond to the Division's opening brief.

Division's response and reply brief: The Division shall file a brief, not to exceed 10,000 words, by October 31, 2016.

Respondent's reply brief: Respondent may file a reply brief, not to exceed 2,000 words, by November 14, 2016. This brief must be limited to the issues presented by Respondent's cross-petition for review.

Pursuant to Rule of Practice 180(c),<sup>10</sup> failure to file a brief in support of the petition or cross-petition may result in dismissal of this review proceeding as to that party.<sup>11</sup>

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Brent J. Fields  
Secretary

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<sup>10</sup> 17 C.F.R. § 201.180(c).

<sup>11</sup> As provided by Rule of Practice 450(a), no briefs in addition to those specified in this schedule may be filed without leave of the Commission. Attention is called to Rules of Practice 150-153, 17 C.F.R. §§ 201.150-153, with respect to form and service, and Rules of Practice 450(b) and (c), 17 C.F.R. § 201.450(b), 201.450(c), with respect to content and length limitations (except as modified in this order). Requests for extensions of time to file briefs are disfavored.