

From: [apfilings](#)
To: [Administrative Proceedings Fax](#)
Subject: FW: Administrative Proceeding File No 3-19986
Date: Monday, October 5, 2020 7:55:09 PM
Attachments: [SEC Administrative document.pdf](#)
[ATT00001.htm](#)
[Reach Genetics response to SEC.pdf](#)
[ATT00002.htm](#)

From: Cindy Boerum
Sent: Monday, October 5, 2020 7:53:32 PM (UTC-05:00) Eastern Time (US & Canada)
To: apfilings
Subject: Administrative Proceeding File No 3-19986

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mr Tabek
Attached as a pdf file is my response to the SEC Administrative Proceeding File 3-19986
Please feel free to contact me with any questions.
Thank you
Cynthia Boerum
Reach Genetics Inc



October 5, 2020

BY PRIORITY MAIL EXPRESS

Victor Tabak, Esq.

Division of Enforcement

Securities and Exchange Commission

100 F Street, NE

Washington, DC 20549-5020

tabakv@sec.gov

Administrative Proceeding File No. 3-19986

In the Matter of REACH Genetics Inc.

REACH Genetics, Inc.

Cynthia Boerum – President/CEO | cindyb@reachgenetics.com
4800 Baseline Road | E104-#345 | Boulder, CO 80303 | (855) 369-3687
www.reachgenetics.com



REACH Genetics, a Nevada corporation, located in Boulder Colorado is delinquent in its periodic filings with the Commission. The last periodic filings with the Commission was filed as a Form 10-K for the period ended December 31, 2017 and we reported a net loss of \$ 686,829 for the prior year.

I did receive a delinquency letter sent by the Division of Corporation Finance requesting compliance in July of 2019. As I understood the letter directions, in order to terminate the filings, REACH needed to file a Form 15 and we were still obligated to submit all reports up to the date of the termination.

Timeline of financial events affecting the ability of REACH Genetics to submit any documentation to update the filings were as follows:

November 3, 2017- Corporate Management was changed

December 27, 2017- Previous CEO, Geoffrey Thompson sues REACH and settles in May 2018.

June 1, 2018- Cynthia Boerum, CEO and Jeffrey Hranicka, COO personally begin funding REACH, all attorneys and accounting and licensing was a priority.

July 2019- All available personal funds have been depleted.

This was and currently is the financial situation of REACH Genetics and the management.

REACH Genetics, Inc.

Cynthia Boerum – President/CEO | cindyb@reachgenetics.com
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Cynthia Boerum

Cynthia Boerum

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REACH Genetics, Inc.

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OFFICE OF
THE SECRETARY

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

100 F Street, N.E.
Washington, D.C. 20549

Re: In the Matter of REACH Genetics, Inc.

Please find enclosed the Order issued by the Securities and Exchange Commission in the above-referenced matter.

Your attention is directed to Section III of the Order, which requires, among other things, that an answer be filed pursuant to Rule 220 of the Commission's Rules of Practice. The Commission's Rules of Practice include requirements for filing answers, notice of appearance, and other actions. The Rules of Practice can be found at <http://www.sec.gov/about/rulesofpractice.shtml>.

If you have any questions or wish to discuss any aspect of the proceedings, you may communicate with the Division of Enforcement attorney appearing on the service list attached to the enclosed Order.

A handwritten signature in cursive script that reads "Vanessa A. Countryman".

Vanessa A. Countryman
Secretary

Enclosure



**DIVISION OF
ENFORCEMENT**

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
100 F Street, N.E.
Washington, D.C. 20549-5020

Victor Tabak
Senior Counsel

Direct Dial: 202-551-4433
Facsimile: 202-772-9286
E-mail: tabakv@sec.gov

BY PRIORITY MAIL EXPRESS

REACH Genetics, Inc.
4800 Baseline Road
Unit E104-#345
Boulder, CO 80303

Re: In the Matter of REACH Genetics, Inc.

Dear Sir or Madam:

Pursuant to SEC Rule of Practice § 201.230, documents related to this matter are available for inspection and copying at the Securities and Exchange Commission's headquarters in Washington, D.C. Please note, however, that pursuant to SEC Rule of Practice § 201.230(f), a respondent in an SEC proceeding is responsible for bearing the cost of copying. If you wish to make arrangements for such inspection and copying, please call me at (202) 551-4433.

Sincerely,

A handwritten signature in black ink, appearing to read "V. Tabak".

Victor Tabak
Senior Counsel

Enclosures

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 89840 / September 11, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19986

In the Matter of

REACH Genetics, Inc.

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
AND NOTICE OF HEARING
PURSUANT TO SECTION 12(j) OF
THE SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission (“Commission”) deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 (“Exchange Act”) against the Respondent named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. REACH Genetics, Inc. (“REACH”) (CIK No. 0001657737) is a Nevada corporation located in Boulder, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). REACH is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2017, which reported a net loss of \$686,829 for the prior year. As of August 14, 2020, the common stock of REACH was not publicly quoted or traded.

B. DELINQUENT PERIODIC FILINGS

2. As discussed in more detail above, Respondent is delinquent in its periodic filings with the Commission, has repeatedly failed to meet its obligations to file timely periodic reports, and failed to heed a delinquency letter sent to it by the Division of Corporation Finance requesting compliance with its periodic filing obligations or, through its failure to maintain a

valid address on file with the Commission as required by Commission rules, did not receive such letter.

3. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

4. As a result of the foregoing, Respondent failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondent an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondent identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate name of the Respondent.

IV.

IT IS ORDERED that a public hearing before the Commission for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed by further order of the Commission, pursuant to Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.220(b).

IT IS FURTHER ORDERED that the Division of Enforcement and Respondent shall conduct a prehearing conference pursuant to Rule 221 of the Commission's Rules of Practice, 17 C.F.R. § 201.221, within fourteen (14) days of service of the Answer. The parties may meet in person or participate by telephone or other remote means; following the conference, they shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference. If a prehearing conference was not held, a statement shall be filed with the

Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer.

If Respondent fails to file the directed Answer, or fails to appear at a hearing or conference after being duly notified, the Respondent, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate name of the Respondent, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondent by any means permitted by the Commission's Rules of Practice.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to service of paper copies, service to the Division of Enforcement of all opinions, orders, and decisions described in Rule 141, 17 C.F.R. § 201.141, and all papers described in Rule 150(a), 17 C.F.R. § 201.150(a), in these proceedings shall be by email to the attorneys who enter an appearance on behalf of the Division, and not by paper service.

Attention is called to Rule 151(b) and (c) of the Commission's Rules of Practice, 17 C.F.R. § 201.151(b) and (c), providing that when, as here, a proceeding is set before the Commission, all papers (including those listed in the following paragraph) shall be filed with the Office of the Secretary and all motions, objections, or applications will be decided by the Commission. The Commission requests that an electronic courtesy copy of each filing should be emailed to APFilings@sec.gov in PDF text-searchable format. Any exhibits should be sent as separate attachments, not a combined PDF.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to filing with or disposition by a hearing officer, all filings, including those under Rules 210, 221, 222, 230, 231, 232, 233, and 250 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, and 250, shall be directed to and, as appropriate, decided by the Commission. This proceeding shall be deemed to be one under the 30-day timeframe specified in Rule of Practice 360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i), for the purposes of applying Rules of Practice 233 and 250, 17 C.F.R. §§ 201.233 and 250.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that the Commission shall issue a decision on the basis of the record in this proceeding, which shall consist of the items listed at Rule 350(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.350(a), and any other document or item filed with the Office of the Secretary and accepted into the record by the Commission. The provisions of Rule 351 of the

Commission's Rules of Practice, 17 C.F.R. § 201.351, relating to preparation and certification of a record index by the Office of the Secretary or the hearing officer are not applicable to this proceeding.

The Commission will issue a final order resolving the proceeding after one of the following: (A) the completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) the completion of briefing on a motion for a ruling on the pleadings or a motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, where the Commission has determined that no public hearing is necessary; or (C) the determination that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155, and no public hearing is necessary.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Vanessa A. Countryman
Secretary


By: Jill M. Peterson
Assistant Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative Proceedings and Notice of Hearing ("Order"), on the Respondent and its legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Victor Tabak, Esq.
Division of Enforcement
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-5020
202.551.4433
tabakv@sec.gov

PRIORITY MAIL EXPRESS

REACH Genetics, Inc.
4800 Baseline Road
Unit E104-#345
Boulder, CO 80303

ADMINISTRATIVE PROCEEDINGS SET BEFORE THE SECURITIES AND EXCHANGE COMMISSION

Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street NE, Mail Stop 1090
Washington, DC 20549
Phone: 202-551-5410 – Fax: 703-813-9793
Email (for electronic courtesy copies): APFilings@sec.gov

General information for respondents:

The Securities and Exchange Commission (“Commission”) initiates an administrative proceeding by issuing an Order Instituting Proceedings, which contains the Division of Enforcement’s allegations against one or more respondents. In certain matters, the Order Instituting Proceedings will direct that a hearing be held before the Commission itself, instead of an administrative law judge or other hearing officer, for the purpose of taking evidence, determining whether the allegations are true, and issuing a decision of the Commission.

Administrative proceedings are governed by the Commission’s Rules of Practice, which may be found at <https://www.sec.gov/about/rulesofpractice.shtml> and at 17 C.F.R. Part 201, Subpart D. All parties, including *pro se* respondents, are expected to be familiar with and abide by these rules, as well as any orders issued by the Commission. A party who needs a copy of the Rules of Practice may contact the Office of the Secretary for assistance.

Respondents in an administrative proceeding are entitled to be represented by an attorney of their choice. However, the Commission cannot appoint or pay for a respondent’s legal counsel or recommend any individual lawyer. The Commission and its staff cannot act as counsel for a respondent.

Parties may contact the Office of the Secretary at 202-551-5410 for general inquiries regarding procedures and the status of a proceeding, but the Office of the Secretary cannot provide legal advice; interpret any laws, regulations, orders, or legal documents; or otherwise assist with the preparation of forms or filings. Likewise, the Office of the Secretary cannot discuss the merits or substance of a proceeding or the meaning of any order or opinion issued by the Commission. Nor can the Office of the Secretary answer questions that seek suggestions about what a party should do.

What follows is a brief discussion of procedural issues that may arise in administrative proceedings set before the Commission. It is not a substitute for carefully reviewing the Rules of Practice or obtaining legal advice from an experienced attorney. Nothing in this document overrides or supplants a party’s obligations under the Rules of Practice or any order issued by the Commission in a proceeding. In the event of a conflict between, on the one hand, this document or other information provided by the Office of the Secretary and, on the other hand, the Rules of

Practice or an order issued by the Commission, the Rules of Practice and the Commission's orders shall govern.¹

Filing and service

Filing: Parties are required to file an original and three copies of each document they desire the Commission to consider with the **Office of the Secretary, 100 F Street NE, Mail Stop 1090, Washington, DC 20549**. Parties often find it helpful to retain a copy of every document they file for their own records. The Commission also requests that an **electronic** copy of each filing be emailed to **apfilings@sec.gov** in PDF text-searchable format. Any exhibits should be sent as separate attachments, not a combined PDF. This email address should *not* be used for procedural inquiries; instead, such questions should be directed to 202-551-5410.

Service: Additionally, parties must serve one copy of each document they file on every other party in the proceeding, as provided in Rule of Practice 150. All documents filed with the Commission must be accompanied by a certificate of service stating the name of the person or persons served, the date of service, the method of service and the mailing address or facsimile number to which service was made, if not made in person. *See* Rule of Practice 151(d).

If a party is unsure who else must be served, the Office of Secretary should be contacted. Each party has a continuing responsibility for ensuring that the Office of the Secretary has on file current contact information, including a mailing address at which written communications may be sent and a telephone number where he or she may be reached during business hours. *See* Rule of Practice 102(d). **If a party's mailing address or phone number changes at any time before the proceeding is concluded, he or she must promptly inform the Office of the Secretary and the other parties of the new address or number in writing.** Failure to do this may result in the party missing important communications or orders.

How a filing is served may affect how much time the other party has to respond to it. Rule of Practice 160(a) governs the computation of any deadline based on a designated period of time (*i.e.*, a number of days after service); in some situations, additional time may be added if a filing is served by mail. But when the Rules of Practice or an order issued by the Commission specify a date certain for filing (*i.e.*, a fixed calendar date), filing and service must actually occur on or before that date. *See* Rule of Practice 160(b). Requests for extensions of time, postponements, or adjournments are generally governed by Rule of Practice 161. Filing a request for an extension does not, however, automatically toll or extend an existing deadline.

Non-compliant filings

All filings must comply with the requirements of Rule of Practice 152 governing the form and appearance of papers. They must be on 8½" by 11" white paper and be typewritten or

¹ This document is not a rule, regulation, or statement of the Commission, and the Commission has neither approved nor disapproved its content. This document is not intended to, does not, and may not be relied upon to create any substantive or procedural rights enforceable by any party in any matter, administrative, civil, or criminal. It is not binding on the Commission and not authoritative.

legibly printed. Except for footnotes and quotations, the text must be double spaced. The first page of each filing must have the name of the Securities and Exchange Commission, the names of the parties, the file number assigned to the proceeding, and a title that identifies what the filing is about, such as “Answer to Order Instituting Proceedings,” “Motion for Extension of Time,” or “Response to Motion for Summary Disposition.” Filings must be dated and signed as provided in Rule of Practice 153.

The Commission may strike or reject, in whole or in part, any filing that fails to comply with any requirement of the Rules of Practice (including the filing and service requirements) or any order issued in the particular proceeding in which the filing was made. *See* Rules of Practice 152(f), 153(b)(2), 180(b). When this happens, the Commission will not consider the filing. The Commission may also direct a party to cure any deficiencies in a filing and resubmit it by a certain date. If a party fails to make a required filing or to cure a deficient filing on time, the Commission may enter a default, dismiss one or more claims, decide the particular claim or claims at issue against that party, or prohibit the introduction of evidence or exclude testimony concerning that claim. *See* Rule of Practice 180(c).

Ex parte communications

The Rules of Practice do not allow parties to make *ex parte* requests or communications. *See* Rule of Practice 120. An *ex parte* communication is a communication from one side only, without the presence or knowledge of the other parties. *Ex parte* communications will not be considered by the Commission. That is why all filings must be accompanied by a certificate of service showing that every other party in the proceeding was served with a copy. *See* Rule of Practice 151(d).

Motions

Because *ex parte* communications are not allowed, requests for a ruling on any issue relating to a proceeding—such as a request for an extension or for additional time to respond—generally must be made by written motion directed to the Commission, filed with the Office of the Secretary, and served on the other parties. A motion must state the basis for the motion and the specific relief sought. In other words, it must explain exactly what action the party filing the motion (the “movant”) wants the Commission to take and state any facts or law that the movant thinks supports its position. If necessary, copies of documents may be attached to a motion. The motion must comply with Rule of Practice 154, be served in accordance with Rule 150, be filed in accordance with Rule 151, meet the requirements of Rule 152, and be signed in accordance with Rule 153.

If the other side files a motion, the party opposing it has five days after service of the motion to file a response in opposition. *See* Rule of Practice 154(b). The movant then has three days after service of the opposition to file a reply. Generally, the movant must make all of its arguments in the motion itself, and may not save them from the reply; any argument raised for the first time in a reply brief may be deemed to have been waived or forfeited. Once an argument is waived or forfeited, the Commission is not required to consider it, and the respondent may not be able to raise it again. A motion, opposition, or a reply must be less than

7,000 words in length; if it is shorter than 15 pages, the number of words does not need to be counted.

If a response is not filed on time, the motion may be treated as conceded by the opposing party and the relief sought by the movant may be granted. The Commission may rule on motions without holding an oral argument; it may also decide to delay ruling on a motion until its final decision. The Office of the Secretary does not know when the Commission will issue a ruling on a motion.

Phases of an administrative proceeding

Administrative proceedings set before the Commission will typically have a prehearing, summary disposition and/or hearing, and post-decision phase.

Prehearing

Unless otherwise ordered, the Division of Enforcement is required to make certain documents that it gathered leading up to the administrative proceeding available to the respondent for inspection and copying. This process should begin seven days after the respondent is served with the Order Instituting Proceedings. *See* Rule of Practice 230. This is typically done by the Division of Enforcement sending a copy of the documents to the respondent, which the respondent may retain.

A respondent must file an answer within twenty days after being served with the Order Instituting Proceedings, unless a different time period is provided by rule or order; in proceedings to revoke the registration of a security, the OIP often specifies that the answer must be filed within 10 days of service. The answer must specifically admit, deny, or state that the party does not have, and is unable to obtain, sufficient information to admit or deny each allegation in the Order Instituting Proceedings. Any allegation not denied shall be deemed admitted. A respondent must affirmatively state in the answer any avoidance or affirmative defense, including but not limited to *res judicata*, statute of limitations, and reliance on the advice of counsel or other professionals. *See* Rule of Practice 220(c). Failure to do so may be deemed a waiver, which means that the respondent will not be able to rely on those arguments.

If the respondent fails to file an answer to the Order Instituting Proceedings by the deadline, appear at a conference or hearing, respond to a dispositive motion, or otherwise defend the proceeding, the Commission may find the respondent in default. In the event of a default, the Commission, without holding an in-person hearing, may deem admitted the allegations in the Order Instituting Proceedings and, upon consideration of the record, determine the proceeding against the respondent and impose sanctions. *See* Rules of Practice 155(a), 220(f). **In other words, once a default is entered against a respondent, the Commission is allowed to assume that the Division of Enforcement's allegations are true, and the respondent will not be able to contest them or to put on his or her own evidence.** A party may file a motion to set aside a default pursuant to Rule of Practice 155(b), but under only very limited circumstances. **Therefore, respondents must make every effort to file an answer on time, respond to dispositive motions by the Division of Enforcement on time, meet all other deadlines, and comply with the Rules of Practice.**

In many proceedings, the parties will be directed to hold a prehearing conference within fourteen days after the respondent serves an answer. The parties are encouraged to be flexible in scheduling the prehearing conference for a mutually convenient time. They may meet in person or participate by telephone or other remote means. Subjects to be discussed in a prehearing conference include those listed in Rule of Practice 221(c). The parties should advise the Commission in writing of any agreements reached at such a conference. *See* Rule of Practice 221(d). If the parties are unable to meet, or agree that a prehearing conference is unnecessary, the Commission should be advised accordingly.

The prehearing phase of an administrative proceeding is often when motions are filed. It is also when the parties may employ the procedures described at Rules of Practice 231 through 234, if applicable in a particular proceeding, to learn more about the facts. The Office of the Secretary cannot provide legal advice about what motions or other requests a party should file.

Summary disposition and/or in-person hearing

A motion for summary disposition is a special kind of motion called a “dispositive motion” governed by Rule of Practice 250. If a dispositive motion is granted, the Commission will resolve the proceeding on the basis of written filings instead of oral testimony. When a party moves for summary disposition, this means the movant has asked the Commission to issue a decision in the administrative proceeding without holding an in-person hearing with witnesses testifying. The movant is telling the Commission that there is no real disagreement about the important (that is, “material”) facts of the proceeding and that the movant should win based on its written arguments about what the facts and law are.

Generally, the Commission will grant summary disposition if it determines that the undisputed pleaded allegations in the Order Instituting Proceedings; the written materials (including declarations, affidavits, or documentary evidence) submitted in connection with the motion for summary disposition; and facts officially noted pursuant to Rule of Practice 323 show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law.

Therefore, the party opposing summary disposition generally has to try to show either (1) that there is a substantial dispute about important facts and that a hearing at which witnesses testify is needed for the Commission to decide what those facts actually are or (2) that the movant is wrong about what the law is. If the opposing party disputes what the movant says about the facts, it needs to either explain why it disagrees and to identify specific evidence that shows the movant is wrong or explain why the fact does not matter for the outcome of the proceeding. If the opposing party disputes what the movant says about the law, it similarly needs to explain why it disagrees and to identify the legal authorities (including laws, regulations, rules, and opinions by a court or by the Commission) that show the movant is wrong. Finally, the opposing party can try to show that there is a good reason it cannot at the present time put forward facts that are essential to justify its opposition to summary disposition.

The time for responding to a motion for summary disposition is set forth at Rules of Practice 154(b) and 250(f), unless the Commission issues an order setting a different deadline. If a respondent fails to oppose a motion for summary disposition filed by the Division of

Enforcement by the deadline, the Commission may deem admitted the facts asserted in the motion. **It is also important to understand that the proceeding may be determined against the respondent—which may include findings by the Commission that the respondent violated the securities laws and that sanctions will be imposed—without an in-person hearing if the respondent does not file declarations, affidavits, and other documentary evidence showing that there is a genuine issue of material fact.** The respondent generally cannot rely on only the denials in its answer to the Order Instituting Proceedings to successfully oppose a motion for summary disposition.

If the Commission does not determine the proceeding via summary disposition or other dispositive motion (such as a motion for a ruling on the pleadings under Rule of Practice 250(a)), it generally moves to the in-person hearing phase. The hearing process is similar in some ways to a trial in state or federal court. The parties might be allowed to make opening statements. The Division of Enforcement presents witnesses and offers exhibits first and last because it has the burden of proof. Each respondent also has the right to present witnesses and offer exhibits. A party may object to testimony or documentary evidence on the grounds that it is irrelevant, immaterial, or unduly repetitious, and can cross-examine any adverse witness. *See* Rules of Practice 320-321. A respondent may exercise his or her constitutional right to refuse to testify as to any matter he or she believes would tend to be incriminating or subject him or her to a penalty, fine, or forfeiture. However, in an administrative proceeding, an adverse inference may be drawn from a respondent's failure to testify or explain facts and circumstances, particularly if the matters are within the respondent's knowledge. Shortly before or soon after the conclusion of the hearing, additional instructions will be provided about the submission of exhibits, proposed findings, and post-hearing briefs.

Post-decision

Typically, the Commission will issue a final order disposing of the allegations in the Order Instituting Proceedings after one of the following: (A) the completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) the completion of briefing on a motion for a ruling on the pleadings or a motion for summary disposition pursuant to Rule of Practice 250, where the Commission has determined that no public hearing is necessary; or (C) the determination that a party is deemed to be in default under Rule of Practice 155 and no public hearing is necessary. The Commission's decision will be based on only the official record of the proceeding—that is, the papers that have been properly filed with the Office of the Secretary and any testimony or exhibits accepted into evidence at the hearing.

Depending on the statutory basis for the proceeding, the Commission may order sanctions if it finds that the respondent violated the securities laws. Such sanctions include cease-and-desist orders; investment company and officer-and-director bars; censures, suspensions, limitations on activities, or bars from the securities industry or participation in an offering of penny stock; censures or denials of the privilege of appearing or practicing before the Commission; disgorgement of ill-gotten gains; civil money penalties; and suspension or revocation of an issuer's registered securities, as well as the registration of a broker, dealer, investment company, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. The Commission may also order

that a fund be established to return recovered funds to the persons harmed by a respondent's violations.

The Office of the Secretary will mail Commission orders and opinions to all parties in a proceeding. *See* Rule of Practice 141. These documents are also posted on the Commission's web site, <https://www.sec.gov/litigation/opinions.shtml>, shortly after they are issued. As a reminder, parties are responsible for notifying the Office of the Secretary of any changes to their mailing address or telephone number and for regularly monitoring the status of a proceeding.

A party aggrieved by a final order issued by the Commission may file a motion for reconsideration within 10 days after service of the order pursuant to Rule of Practice 470. Judicial review of a final order issued by the Commission may be sought in the appropriate United States Court of Appeals by filing a petition for review within the statutorily provided deadline, which is typically 60 days after entry of the order.

* * *

This document was prepared by staff of the Commission. The Commission has expressed no view regarding the information contained herein.

FORMATTING, FILING, AND SERVICE COMPLIANCE CHECKLIST¹

Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street NE, Mail Stop 1090
Washington, DC 20549
Phone: 202-551-5410 – Fax: 703-813-9793
Email (for electronic courtesy copies): APFilings@sec.gov

The purpose of this document is to provide a checklist for parties in administrative proceedings set before the Securities and Exchange Commission to assist them in reviewing their documents for compliance with the Commission’s Rules of Practice. Nothing contained in this checklist overrides or supplants a party’s obligations under the Rules of Practice or any order issued by the Commission in a proceeding. Parties may contact the Office of the Secretary at 202-551-5410 for general inquiries regarding procedures and the status of a proceeding, but the Office of the Secretary cannot provide legal advice; interpret any laws, regulations, orders, or legal documents; or otherwise assist with the preparation of forms or filings.

FORMAT (RULE OF PRACTICE 152)	
On white paper measuring 8.5 × 11 inches, except that, to the extent that the reduction of larger documents would render them illegible, such documents may be filed on larger paper	
Typewritten or printed in 12-point or larger typeface	
Margins of at least 1 inch	
Double-spaced, with single-spaced footnotes and single-spaced indented quotations	
Stapled, clipped, or otherwise fastened in the upper left corner	
Front page must contain: <ul style="list-style-type: none">• The name of the Securities and Exchange Commission• The title of the proceeding (<i>i.e.</i>, the names of the parties)• The administrative proceeding file number• The subject of the particular paper or pleading	
Signed and dated; a printed name, address, and telephone number should appear under the signature (<i>see also</i> Rule of Practice 153)	
Certificate of service stating the name of the parties served, the date of service, the method of service and the mailing address or facsimile number to which service was made, if not made in person (<i>see also</i> Rule of Practice 151(d))	
(<i>If longer than 10 pages</i>) Include a table of contents and an alphabetized table of cases, statutes, and other authorities cited, with references to the pages of the brief wherein they are cited	
(<i>If longer than 15 pages</i>) Include a certificate of word count compliance (<i>see also</i> Rule of Practice 154(c))	

¹ This document is not a rule, regulation, or statement of the Commission, and the Commission has neither approved nor disapproved its content. This document is not intended to, does not, and may not be relied upon to create any substantive or procedural rights enforceable by any party in any matter, administrative, civil, or criminal. It is not binding on the Commission and not authoritative.

FILING WITH THE COMMISSION (RULE OF PRACTICE 151)	
<p>Original and three copies mailed or otherwise delivered to:</p> <p style="padding-left: 40px;">Office of the Secretary U.S. Securities and Exchange Commission 100 F Street NE, Mail Stop 1090 Washington, DC 20549</p> <p><i>(If filing by facsimile, see Rule of Practice 151(a), 152(d))</i></p>	
<p>Electronic courtesy copy emailed to apfilings@sec.gov in PDF text-searchable format, with any exhibits sent as separate attachments, not a combined PDF</p>	
<p><i>Reminder: Papers required to be filed with the Commission must be actually received within the time limit, if any, for such filing</i></p>	

SERVICE (RULE OF PRACTICE 150)	
<p>At the same time the document is filed with the Commission, serve a copy on every other party in the proceeding by one of the methods listed at Rule of Practice 150(c) (e.g., personal delivery; mailing the document through the U.S. Postal Service by first class, registered, or certified mail or Express Mail delivery; sending the papers through a commercial courier service or express delivery service such as UPS or FedEx)</p>	
<p>If the method of service is different from the method for filing with the Commission, the certificate of service shall state why a different means of service was used (<i>see also</i> Rule of Practice 151(d))</p>	

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This checklist was prepared by staff of the Commission. The Commission has expressed no view regarding the information contained herein.