



PREPARED BY THE OFFICE OF THE SECRETARY

# Information for Respondents in Administrative Proceedings

Last updated August 2024

Please read the following guidance carefully. Questions may be directed to staff in the U.S. Securities and Exchange Commission's Office of the Secretary at the telephone number and address provided on page 4.<sup>1</sup>



## GENERAL

1. The Commission initiates an administrative proceeding by issuing an Order Instituting Proceedings, which contains the Division of Enforcement's allegations against one or more respondents (i.e., parties to the administrative proceeding other than the Division of Enforcement). In certain matters, the Order Instituting Proceedings will direct that a hearing be held before the Commission itself, instead of before 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.
2. Administrative proceedings are governed by the Commission's Rules of Practice ("Rules"), which may be found at <https://www.sec.gov/enforcement-litigation/rulesofpracticeshtml> and 17 C.F.R. Part 201, Subpart D, available at <https://www.ecfr.gov/current/title-17/chapter-II/part-201>. 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 paper copy of the Rules of Practice may contact the Office of the Secretary at the telephone number and address below for assistance.
3. A respondent in an administrative proceeding may be represented by an attorney of their choice. However, the Commission cannot appoint or pay for a respondent's legal counsel or recommend any particular lawyer or firm. The Commission and its staff cannot act as counsel for a respondent.
4. Each party has a continuing responsibility to ensure that the Office of the Secretary has on file current contact information, including a mailing address and email address at which written communications may be sent and a telephone number where he or she may be reached during business hours. See Rule 102(d), 17 C.F.R. § 201.102(d).
5. Parties are responsible for notifying the Office of the Secretary through a notice, ideally filed in eFAP (see #18 below), of any changes to their email address, mailing address, or telephone number and for regularly monitoring the status of a proceeding.
6. The Office of the Secretary will distribute Commission orders and opinions to all parties to the proceeding. See Rule 141, 17 C.F.R. § 201.141. These documents are also posted on SEC.gov at <https://www.sec.gov/enforcement-litigation/opinions-adjudicatory-orders>, and on matter-specific pages found at <https://www.sec.gov/enforcement-litigation/administrative-proceedings/open-litigated-administrative-proceedings>.

<sup>1</sup> 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 neither binding on the Commission nor authoritative. Guidance in this document is not a substitute for reviewing the Rules of Practice or obtaining legal advice from an experienced attorney. Nothing in this document overrides 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.



## STRUCTURE AND EVENTS IN ADMINISTRATIVE PROCEEDINGS

7. Administrative proceedings set before the Commission typically will have a prehearing, summary disposition and/or hearing, and post-decision phase.
8. The Division of Enforcement generally is required to make certain documents that it gathered leading up to an Enforcement-originating administrative proceeding available to the respondent for inspection and copying. See Rule 230, 17 C.F.R. § 201.230.
9. A respondent generally must file an answer within the deadline specified by the Order Instituting Proceedings, or, if no deadline is specified, within twenty days after being served with the Order Instituting Proceedings.
10. The Commission may deem a respondent who fails to file a timely answer or who otherwise fails to participate in the proceeding to be in default. See Rules 155, 220(f), 17 C.F.R. §§ 201.155, 201.220(f).
11. A motion for summary disposition is a type of dispositive motion. 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 that the party, called the movant, has asked the Commission to issue a decision in the administrative proceeding without holding an in-person hearing where witnesses testify before a factfinder. See Rule 250, 17 C.F.R. § 201.250.
12. The time for responding to a motion for summary disposition is set forth in Rules of Practice 154(b) and 250(f), unless the Commission issues an order setting a different deadline. See 17 C.F.R. §§ 201.154(b), 201.250(f).
13. If a proceeding is not resolved by a dispositive motion, a hearing may be held. At a hearing, the parties may be allowed to make opening statements, call witnesses to testify, and enter documents into evidence. See Rules 300 through 360, 17 C.F.R. §§ 201.300–.360. A respondent may invoke their constitutional right to refuse to testify under appropriate circumstances. 360. 360.
14. When a hearing concludes, the parties are provided with instructions regarding post-hearing briefs, among other post-hearing matters. See Rule 340, 17 C.F.R. § 201.340.
15. If a hearing officer issues an initial decision, the initial decision may be appealed to the Commission. See Rules 360, 410–411, 17 C.F.R. §§ 201.360, 201.410–.411.
16. 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, suspensions or bars from participating in the securities industry, disgorgement of ill-gotten gains, and suspension or revocation of an issuer's registered securities.
17. A party may seek reconsideration of a final order of the Commission within ten days after service of the order. See Rule 470, 17 C.F.R. § 201.470.



## FILINGS AND SERVICE OF FILINGS

18. Parties generally are required to file each document they desire the Commission to consider by submitting the filing to the Commission electronically using the Commission's Electronic Filings in Administrative Proceedings ("eFAP") system accessed through the Commission's website at <https://www.sec.gov/enforcement-litigation/efap-electronic-filings-administrative-proceedings>. Parties should review the Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications, available at <https://www.SEC.gov/efapdocs/instructions.pdf>, prior to submitting filings through eFAP.
19. If a party cannot file or serve documents electronically, the party must file a certification with the Commission stating as much. See Rule 152(a)(1), 17 C.F.R. § 201.152(a)(1). The certification should explain why electronic filing is not possible and be dated and signed. Such certification will allow a party to file and serve documents by mail or other methods specified in Rules of Practice 152(a)(2), 17 C.F.R. § 201.152(a)(2), for filing; and 150(d), 17 C.F.R. § 201.150(d), for service.

20. Parties also must serve, *generally by email*, each document they file on every other party in the proceeding, as provided in Rule 150, 17 C.F.R. § 201.150. Filing a document using the eFAP system or mailing a document to the Office of the Secretary for filing *does not* achieve service of the document on the other parties.
21. Each document a party files with the Commission in an administrative proceeding 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 service address (email address or mailing address). See Rule 151(d), 17 C.F.R. § 201.151(d).
22. Generally, the Order Instituting Proceedings will attach a service list, which is a list of individuals who must be served with filings. Filings also must be served on every additional person who files a notice of appearance in the proceeding. A party who is unsure who must be served may contact the Office of Secretary at the telephone number above.
23. How a filing is served may affect how much time the other party has to respond to it.
- a. Rule 160(a), 17 C.F.R. § 201.160(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. See Rule 160(b), 17 C.F.R. § 201.160(b).
  - b. When the Rules of Practice or an order issued by the Commission specify a specific deadline for filing (i.e., a specific calendar date), then filing and service must occur no later than the articulated deadline, regardless of whether the filing is served by mail or otherwise. See Rule 160(b), 17 C.F.R. § 201.160(b).
24. Requests for extensions of time, postponements, or adjournments generally are governed by Rule 161, 17 C.F.R. § 201.161. Filing a request for an extension does not automatically toll or extend an existing deadline.



## FORMATTING OF FILINGS

25. Rule 152, 17 C.F.R. § 201.152, governs the form and appearance of documents filed with the Commission in administrative proceedings.
26. The first page of each filing must prominently feature the file number assigned to the proceeding, which generally begins with “3-,” e.g., “3-98761.” Each filing should also feature a title of the document, e.g., “Answer to Order Instituting Proceedings,” “Motion for Extension of Time,” or “Response to Motion for Summary Disposition.”
27. Filings must be dated and signed as provided in Rule 153, 17 C.F.R. § 201.153. If a filing is submitted through eFAP with an electronic “/s/” signature, it must be submitted by the person named in the signature block. If a paralegal is using eFAP on an attorney’s behalf, the paralegal should submit an electronic filing featuring *the attorney’s* actual signature (i.e., “wet signature”).



## PROBLEMATIC FILINGS

28. 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). See Rules of Practice 152(f), 153(b)(2), 180(b), 17 C.F.R. §§ 201.152(f), 201.153(b)(2), 201.180(b). When this happens, the Commission will not consider the filing. The Commission may also direct a party to cure 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 deem the party to be in 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 Rules 155(a), 180(c), 17 C.F.R. §§ 201.155(a), 201.180(c). If the Commission deems a respondent to be in default, it may deem the allegations of the Order Instituting Proceedings to be true and determine the proceeding against the respondent, upon consideration of the record.

29. Parties cannot make *ex parte* requests or communications to the Commission, except in limited circumstances. See Rule 120, 17 C.F.R. § 201.120. An *ex parte* communication to the Commission is a communication from one side only, without the presence or knowledge of the other parties. Except as authorized in the Rules of Practice, *ex parte* communications will not be considered by the Commission.



## MOTIONS

30. Because *ex parte* communications generally 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 submitting in eFAP a motion directed to the Commission and serving the motion on the other parties.
31. A motion must state the basis for the motion and the specific relief sought. See Rule 154(a), 17 C.F.R. § 201.154(a). 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 (i.e., “exhibits”) may be attached to a motion.



## EX PARTE COMMUNICATIONS

32. Any motion must comply with the requirements articulated in Rule 154, 17 C.F.R. § 201.154; be filed in accordance with Rule 151, 17 C.F.R. § 201.151; be served on the other parties in accordance with Rule 150, 17 C.F.R. § 201.150; meet the form requirements of Rule 152, 17 C.F.R. § 201.152; and be signed in accordance with Rule 153, 17 C.F.R. § 201.153.
33. A party generally has five days after service of the motion to file a response in opposition to the motion. The party that made the motion then has three days after service of the opposition to file a reply. Because each of these deadline periods is fewer than seven days, do not include weekends or federal holidays when calculating the due date. See Rules 154, 160, 17 C.F.R. §§ 201.154, 201.160.
34. Generally, a motion (together with the brief in support of the motion), opposition to a motion, or reply in support of a motion may not exceed 7,000 words in length, exclusive of any table of contents or table of authorities. Please see Rule 154, 17 C.F.R. § 201.154, for additional guidance. The word limit is higher for a dispositive motion or opposition to a dispositive motion, which may not exceed 9,800 words in length. Please see Rule 250(e)-(f), 17 C.F.R. § 201.250(e)-(f), for additional guidance.

### SEND QUESTIONS TO

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Tel. (202) 551-5410