

DEPARTMENT OF JUSTICE
DIVISION OF SECURITIES

Statutory Authority: 6 Delaware Code, Section 7325 (6 **Del.C.** §7325)

FINAL

PUBLIC NOTICE

ORDER

On September 1, 2009, the Registrar of Regulations for the State of Delaware published a Notice of Proposed Revision to the Rules and Regulations Pursuant to the Delaware Securities Act (Rules and Regulations) which set forth a proposal to make numerous changes to the rules and regulations governing administrative proceedings before the Securities Commissioner for the State of Delaware and to add a new Rule 800 to the Rules and Regulations. The new Rule 800 will govern the use of senior specific designations and certifications by persons (1) offering, selling or purchasing securities; or (2) providing advice as to the value of or the advisability of investing in, purchasing, or selling securities. The Securities Commissioner for the State of Delaware, James B. Ropp, held open a comment period on the proposed regulation for a period of thirty days from the date of the publication of the notice in the *Delaware Register of Regulations*. The Commissioner received no comments regarding the proposed regulation.

Findings of Fact

The Commissioner hereby finds that the promulgation of the proposed regulation is in the public interest.

Decision Adopting the Proposed Regulation

Pursuant to 29 Del. C. §10118(b)(3), and based upon the finding that the proposed regulation is in the public interest, the Commissioner hereby adopts the proposed regulation in the form attached hereto as Exhibit A. The proposed regulation is adopted pursuant to the authority granted in 6 Del. C. §7325 and shall be effective December 1, 2009.

SO ORDERED this 2nd day of October, 2009.

James B. Ropp
Securities Commissioner

Delaware Securities Act

Part A. Organization and Functions of the Securities Division

§ 100 General statement and statutory authority.

The Securities Division was created in 1973 with the passage of the Delaware Securities Act, which is found at Chapter 73 of Title 6 of the Delaware Code. The Securities Act is administered by the Attorney General through a Deputy Attorney General designated to act as Securities Commissioner. The Securities Commissioner is the principal executive officer of the Securities Division and acts for the Attorney General in administering that statute. The purpose of the Delaware Securities Act is to prevent the public from being victimized by unscrupulous or over-reaching broker-dealers, investment advisers or agents in the context of selling securities or giving investment advice, as well as to remedy any harm caused by securities law violations. The Act provides for the following:

- (a) Public disclosure of pertinent facts concerning public offerings of securities to Delaware investors, and protection of the interests of those investors in connection with the offer and sale of securities.
- (b) Investigation of securities frauds, manipulations and other violations, and the imposition and enforcement of legal sanctions therefor.

(c) Registration and the regulation of certain activities of broker-dealers, broker-dealer agents and issuer agents.

(d) Registration and the regulation of certain activities of state-registered investment advisers and investment adviser representatives.

(e) Administrative sanctions, injunctive and other equitable remedies, and criminal prosecution. There are also private rights of action for investors injured by violations of the Act.

§ 101. Regulatory functions.

Following is a brief description of the Securities Division's regulatory functions under the Delaware Securities Act:

(a) *Securities Registration and Notice Filings.*

(1) It is unlawful for any person to sell a security in Delaware unless that security is registered; or the security or transaction is exempt under Section 7309 of the Act; or the security is a federal covered security for which a notice filing has been made pursuant to Section 7309A of the Act. Securities for which a federal registration statement has been filed under the Securities Act of 1933 may be registered by coordination under Section 7305. Any security may be registered by qualification under Section 7306. To the extent permitted by federal law, notice filings are required for federal covered securities offered or sold to Delaware investors. A stop order prohibiting the offering of a security, or suspending or revoking the effectiveness of a registration statement, may be issued where the offeror has made a material misstatement or omission in connection with that offer, or otherwise where the public interest so dictates and the statutory criteria of Section 7308 are met. Any registrant or offeror subject to such an order is entitled to a hearing under the Act. Registration or the filing of a notice filing is not a finding by the Commissioner as to the accuracy of the facts disclosed; and it is unlawful to so represent. Moreover, registration of securities or the filing of a notice filing does not imply approval of the issue by the Commissioner or insure investors against loss in their investment, but serves rather to provide information upon which investors may make an informed and realistic evaluation of the features and worth of the securities.

(2) Persons responsible for filing false information with the Commissioner or otherwise disseminating false and misleading information in connection with the purchase or sale of securities subject themselves to the risk of fine or imprisonment or both; and the issuing company, its directors, officers, and the underwriters and dealers and others may be liable in damages to purchasers of registered securities if disclosures are materially defective. In addition, the statute contains antifraud provisions which apply generally to the offer and sale of securities, whether or not registered.

(b) *Registration and Licensing of Broker-Dealers, Broker-Dealer Agents and Issuer Agents.* The Act provides for registration with, and regulation by, the Commissioner of broker-dealers, broker-dealer agents and issuer agents. Registrations must be renewed annually. The activities of broker-dealers, broker-dealer agents and issuer agents in the conduct of their business are subject to the standards of the Act, which include a prohibition on dishonest or unethical practices, and which make unlawful those practices which would constitute fraud or deceit. Applications for registration may be denied, and registration may be suspended or revoked, where the public interest so dictates and the statutory criteria of Section 7316 are met. Any registrant subject to such an order is entitled to a hearing under the Act. Respondents in disciplinary hearings under Section 7316 may also be subject to fines, costs, orders requiring restitution and/or disgorgement, and other orders in the public interest, as well as criminal prosecution under Section 7322.

(c) *Registration and Licensing of Investment Advisers and Investment Adviser Representatives; Notice Filings for Federal Covered Advisers.* The Act provides that persons who, for compensation, engage in the business of advising others with respect to securities transactions must register with the Commissioner unless they are registered with the Securities and Exchange Commission ("SEC") or otherwise exempted from registration under the Act. Federal covered advisers (those registered with the SEC) who have a place of business in Delaware or who had more than five Delaware residents as clients in the past 12 months must file a notice filing and filing fee with the Commissioner as provided by Section 7314 of the Act. All investment adviser representatives of a state-registered adviser who have a place of business in Delaware must register with the Commissioner. In addition, any investment adviser representative of a federal covered adviser must register with the Commissioner if the representative has a place of business in Delaware. As used in the Act and these rules, the terms "investment adviser representative" and "place of business" as used with respect to a representative of a federal covered adviser shall have the same meaning as found in SEC Rule 203A-3 under the Investment Advisers Act of 1940.

Registrations must be renewed annually. The activities of investment advisers and investment adviser representatives in the conduct of their business are subject to the standards of the Act, which include a prohibition on dishonest or unethical practices, and which make unlawful those practices which would constitute a fraud or deceit. Applications for registration may be denied, and registration may be suspended or revoked, where the public interest so dictates and the statutory criteria of Section 7316 are met. Any registrant subject to such an order is entitled to a hearing under the Act. Respondents in disciplinary hearings under Section 7316 may also be subject to fines, costs, orders requiring restitution and/or disgorgement, and other orders in the public interest, as well as criminal prosecution under Section 7322.

§ 102. General organization.

(a) The Securities Division is a unit within the Fraud Division of the State Department of Justice. In addition to the Securities Commissioner, the Securities Division has a staff which includes lawyers, a securities analyst, investigators and examiners, as well as administrative and clerical employees. The Securities Commissioner and other staff members shall perform, in addition to their duties under the Securities Act, such additional duties as the Attorney General may assign from time to time.

(b) The Securities Division is a statewide office with authority over all three counties in Delaware. The Securities Commissioner is located at 820 North French Street, Wilmington, Delaware, 19801. The telephone number is (302) 577-8424. The Securities Division's Kent County mailing address is 45 The Green, Dover, Delaware, 19901.

(c) Enforcement activities are conducted and supervised by Deputy Attorneys General assigned to the Division with the assistance of staff securities investigators. Administrative and injunctive actions may be instituted and prosecuted by a Deputy Attorney General after review and determination that there exists sufficient evidence to support the allegations in any proposed complaint. Criminal charges may be presented to the Grand Jury for indictment after review by the Director of the Fraud Division and/or the State Prosecutor.

(d) Registration and renewal of securities filings are reviewed by the Securities Division for adherence to standards of reporting and financial disclosure under the Securities Act, as well as substantive business requirements of the Act. The staff also reviews exempt securities filings for compliance with the exemptive provisions of Section 7309 and the disclosure requirements of the Act.

(e) Registration of broker-dealers, broker-dealer agents, issuer agents, investment advisers and investment adviser representatives is conducted by staff members in the Division's Firm/Agent Registration Section, with review and oversight by the Securities Commissioner and other Deputy Attorneys General.

(f) Compliance audits and examinations of state-registered investment advisers are undertaken by the Division's investment adviser examiners on a periodic basis. Special examinations of both broker-dealers and investment advisers may also be undertaken by the staff. Access to all books and records is required in any examination pursuant to Section 7315 of the Act. The Securities Division may cooperate, by joint examination or otherwise, with the securities administrators of other states, the SEC, and any other national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

(g) The Securities Division is also responsible for the Attorney General's investor education program. The Program includes, but is not limited to:

(1) Presenting seminars and instructional programs to educate investors about the securities markets and their rights as investors; preparing and distributing to the public materials describing the operations of the securities markets, prudent investor behavior, and the rights of investors in disputes they may have with individuals and entities regulated by the Commissioner; and increasing public knowledge of the functions of the Securities Division.

(2) Providing information to investors who inquire about individuals and entities regulated by the Commissioner, the operation of the securities markets, or the functions of the Securities Division.

(h) The Securities Division provides written interpretative opinions under the Act in response to written requests. Requests for interpretative opinions should be addressed to the Commissioner and accompanied by a fee of \$75.00 payable to the State of Delaware. Interpretations may be requested regarding any section of the Act or any rule or regulation adopted thereunder.

§ 103. Administrative hearing officers.

(a) Pursuant to Section 7325(b) of the Act, the Securities Commissioner hereby delegates to an administrative

~~hearing officer the authority to preside in administrative proceeding brought under the Securities Act. The administrative hearing officer shall have, with respect to any such proceeding, all powers and duties as are possessed by the Securities Commissioner when presiding over a proceeding under the Delaware Securities Act, and any order issued by the administrative hearing officer shall constitute an order of the Commissioner for purposes of judicial review under Section 7324 of the Act.~~

~~(b) The administrative hearing officer shall be designated by the Attorney General or Chief Deputy Attorney General. The administrative hearing officer may be a Deputy Attorney General (other than a Deputy Attorney General assigned to the Securities Division) or any other attorney admitted to practice law in the State of Delaware.~~

~~(c) The Rules of Practice and Procedure in Administrative Hearings (Sections 200-272) shall govern all proceedings by and before the administrative hearing officer~~

Part B. Practice and Procedure in Administrative Hearings

General Rules

§ 200. Construction of rules of practice and procedure.

(a) Unless otherwise provided, these Rules of Practice govern proceedings before administrative hearing officers under the Delaware Securities Act. These rules do not apply to investigations by the Securities Division, which are governed by Part C of the Rules and Regulations.

(b) The Rules of Practice shall be construed and administered to secure the just, speedy, and inexpensive determination of every proceeding.

(c) In any particular proceeding, to the extent that there is a conflict between these rules and a procedural requirement contained in any statute, the latter shall control.

(d) For purposes of these rules: (1) any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate; (2) any use of a masculine, feminine, or neuter gender encompasses such other genders as would be appropriate; and (3) unless the context requires otherwise, counsel for a party may take any action required or permitted to be taken by such party.

§ 201. Appearance and practice in administrative proceedings.

A person shall not be represented before a hearing officer except as stated in paragraphs (a) and (b) of this section or as otherwise permitted by the hearing officer:

(a) *Representing oneself.* In any proceeding, an individual may appear on his or her own behalf.

(b) *Representing others.* In any proceeding, a person may be represented by an attorney at law admitted to practice before the Supreme Court of the State of Delaware. Attorneys who are not members of the Delaware Bar may be admitted pro hac vice pursuant to Rule 72 of the Rules of the Supreme Court of the State of Delaware.

(c) *Requirement of Delaware Counsel.* Pursuant to Rule 72(a) of the Delaware Supreme Court Rules, attorneys who are not members of the Delaware Bar may be admitted pro hac vice in a proceeding in the discretion of the administrative hearing officer upon written motion by a member of the Delaware Bar who maintains an office in this State for the practice of law (□Delaware Counsel□). Pursuant to Delaware Supreme Court Rule 72(c), Delaware Counsel for any party shall appear in the matter for which admission pro hac vice is filed and shall sign or receive service of all notices, orders, pleadings or other papers filed in the matter and shall attend all proceedings before the administrative hearing officer, unless excused by that hearing officer.

(d) *Designation of address for service; notice of appearance; power of attorney; withdrawal.*

(1) *Representing oneself.* When an individual first makes any filing or otherwise appears on his or her own behalf before a hearing officer in a proceeding, he or she shall file with the Commissioner or otherwise state on the record, and keep current, an address at which any notice or other written communication required to be served upon him or her or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.

(2) *Representing others.* When a person first makes any filing or otherwise appears in a representative capacity before a hearing officer in a proceeding, that person shall file with the Commissioner, and keep current, a written notice stating the name of the proceeding; the representative's name, business address and telephone number; and the name and address of the person or persons represented.

(3) *Power of attorney.* Any individual appearing or practicing before a hearing officer in a representative

capacity may be required to file a power of attorney with the Commissioner showing his or her authority to act in such capacity.

(4) *Withdrawal.* Withdrawal by any individual appearing in a representative capacity shall be permitted only by written order of the hearing officer. A motion seeking leave to withdraw shall state with specificity the reasons for such withdrawal.

(e) *Public Hearings.* All hearings shall be public unless otherwise ordered by the hearing officer on his own motion or after considering the motion of a party.

§ 202. Business hours.

The office of the Securities Division, at 820 North French Street, Wilmington, Delaware, 19801, is open each day, except Saturdays, Sundays, and State legal holidays, from 8:30 a.m. to 5:00 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect in Wilmington, Delaware. State legal holidays consist of New Years Day; Birthday of Martin Luther King, Jr.; Presidents Day; Good Friday; Memorial Day; Independence Day; Labor Day; Columbus Day; Veterans Day; Thanksgiving Day; Christmas Day; and any other day appointed as a holiday by the Governor or the State Legislature.

~~§ 203. Delegated authority of administrative hearing officer.~~

~~The administrative hearing officer, as designated by the Attorney General or Chief Deputy Attorney General under § 103 of these Rules, holds delegated authority to preside in any administrative proceeding brought under the Securities Act and shall have in any such proceeding all powers and duties as are possessed by the Securities Commissioner when presiding over a proceeding under the Delaware Securities Act, and any order issued by the administrative hearing officer shall constitute an order of the Commissioner for purposes of judicial review under Section 7324 of the Act. Repealed.~~

§ 204. Disqualification and recusal of administrative hearing officer.

(a) *Notice of disqualification.* At any time a hearing officer believes himself or herself to be disqualified from considering a matter, the hearing officer shall issue a notice stating that he or she is withdrawing from the matter and setting forth the reasons therefor.

(b) *Motion for Withdrawal.* Any party who has a reasonable, good faith basis to believe that a hearing officer has a personal bias, or is otherwise disqualified from hearing a case, may make a motion to the hearing officer that the hearing officer withdraw. The motion shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification. If the hearing officer finds himself or herself not disqualified, he or she shall so rule and shall continue to preside over the proceeding.

§ 205. Ex parte communications.

Unless on notice and opportunity for all parties to participate, or to the extent required for the disposition of ex parte matters as authorized by Sections 7308(c), 7309(c), 7316(c) and/or 7325(c) of the Act:

(a) No party, or counsel to or representative of a party, shall make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding to the administrative hearing officer with respect to that proceeding, nor, subsequent to the filing of an administrative complaint, shall any party, or counsel to or representative of a party, make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to the Commissioner.

(b) No administrative hearing officer with respect to a proceeding shall make or knowingly cause to be made to a party, or counsel to or representative of a party, an ex parte communication relevant to the merits of that proceeding, nor, subsequent to the filing of an administrative complaint, shall the Commissioner make or knowingly cause to be made to a party, or counsel to or representative of a party, an ex parte communication relevant to the merits of the proceeding.

§ 206. Orders and decisions of administrative hearing officer.

(a) *Availability for inspection.* Each ~~order and decision~~ order, decision, and proposed decision of a hearing officer shall be available for inspection by the public from the date of entry, unless the order or decision is

nonpublic. A nonpublic order or decision shall be available for inspection by any person entitled to inspect it from the date of entry.

(b) *Date of entry of orders.* The date of entry of an order shall be the date the order is signed. Such date shall be reflected in the order.

§ 207. Motions.

(a) *Generally.* Unless made during a hearing or conference, a motion shall be in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied upon. All written motions shall be served in accordance with Rule 210, be filed in accordance with Rule 211, meet the requirements of Rule 212, and be signed in accordance with Rule 213. The Commissioner (or hearing officer, if the proceeding has been delegated to one) may order that an oral motion be submitted in writing. Unless otherwise ordered by the Commissioner (or designated hearing officer), if a motion is properly made, the proceeding shall continue pending the determination of the motion. No oral argument shall be heard on any motion unless the Commissioner (or designated hearing officer) otherwise directs.

(b) *Opposing and reply briefs.* Briefs in opposition to a motion shall be served and filed within ten days after service of the motion. Reply briefs shall be served and filed within three days after service of the opposition.

(c) *Length limitation.* A brief in support of or opposition to a motion shall not exceed ten pages, exclusive of pages containing any table of contents, table of authorities, and/or addendum. Requests for leave to file briefs in excess of ten pages are disfavored.

Service and Filing of Papers

§ 210. Service of papers by parties.

(a) *When required.* In every administrative proceeding, each paper, including each notice of appearance, written motion, brief, or other written communication, shall be served upon each party in the proceeding in accordance with the provisions of this section; provided, however, that absent an order to the contrary, no service shall be required for motions which may be heard ex parte.

(b) *Upon a person represented by counsel.* Whenever service is required to be made upon a person represented by counsel who has filed a notice of appearance pursuant to §201, service shall be made pursuant to paragraph (c) of this section upon counsel, unless service upon the person represented is ordered by the hearing officer.

(c) *How made.* Service shall be made by delivering a copy of the filing. Delivery means:

(1) Personal service by handing a copy to the person required to be served; or leaving a copy at the person's office with a clerk or other person in charge thereof, or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed, or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein;

(2) Mailing the papers through the U.S. Postal Service by first class, registered, or certified mail or Express Mail delivery addressed to the person;

(3) Sending the papers through a commercial courier service or express delivery service; or

(4) Transmitting the papers by facsimile machine where the following conditions are met:

(i) The persons serving each other by facsimile transmission have agreed to do so in a writing, signed by each party, which specifies such terms as they deem necessary with respect to facsimile machine telephone numbers to be used, hours of facsimile machine operation, the provision of non-facsimile original or copy, and any other such matters; and

(ii) Receipt of each document served by facsimile is confirmed by a manually signed receipt delivered by facsimile machine or other means agreed to by the parties.

(d) *When service is complete.* Personal service, service by U.S. Postal Express Mail or service by commercial courier or express delivery service is complete upon delivery. Service by mail is complete upon mailing. Service by facsimile is complete upon confirmation of transmission by delivery of a manually signed receipt.

§ 211. Filing of papers with the Commissioner: procedures.

(a) *When to file.* All papers required to be served by a party upon any person shall be filed with the Commissioner at the time of service or promptly thereafter. Papers required to be filed with the Commissioner must be received within the time limit, if any, for such filings.

(b) *Where to file.* Filing of papers with the Commissioner shall be made by filing the original papers with the Commissioner and one (1) copy with the hearing officer.

(c) *To whom to direct the filing.* All motions, objections, applications or other filings made during a proceeding shall be directed to and decided by the hearing officer.

(d) *Certificate of Service.* Papers filed with the Commissioner and the hearing officer shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service and the mailing address or facsimile telephone number to which service was made, if not made in person.

§ 212. Filing of papers: form.

(a) *Specifications.* Papers filed in connection with any administrative proceeding shall:

(1) Be on one grade of unglazed white paper measuring 8-1/2 x 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;

(2) Be typewritten or printed in either ten or twelve-point typeface or otherwise reproduced by a process that produces permanent and plainly legible copies;

(3) Include at the head of the paper, or on a title page, the title of the proceeding, the names of the parties, the subject of the particular paper or pleading, and the file number assigned to the proceeding;

(4) Be paginated with left hand margins at least one inch wide, and other margins of at least one inch;

(5) Be double-spaced, with single-spaced footnotes and single-spaced indented quotations; and

(6) Be stapled, clipped or otherwise fastened in the upper left corner.

(b) *Signature required.* All papers must be dated and signed as provided in § 213.

(c) *Suitability for Record Keeping.* Documents which, in the opinion of the Commissioner, are not suitable for computer scanning or microfilming may be rejected.

(d) *Form of briefs.* All briefs containing more than ten pages shall include a table of contents, an alphabetized table of cases, a table of statutes, and a table of other authorities cited, with references to the pages of the brief wherein they are cited.

(e) *Scandalous or impertinent matter.* Any scandalous or impertinent matter contained in any brief or pleading or in connection with any oral presentation in a proceeding may be stricken on order of the hearing officer.

§ 213. Filing of papers: signature requirement and effect.

(a) *General requirements.* Every filing of a party represented by counsel shall be signed by Delaware Counsel of record in his or her name and shall state that counsel's business address and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing.

(b) *Effect of signature.*

(1) The signature of a counsel or party shall constitute a certification that:

(i) the person signing the filing has read the filing;

(ii) to the best of his or her knowledge, information and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(iii) the filing is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication.

(2) If a filing is not signed, the hearing officer shall strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

§ 214. Computation of time.

(a) *Computation.* In computing any period of time prescribed in or allowed by these Rules of Practice or by order of the hearing officer, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or State legal holiday (as defined in §202), in which event the period runs until the end of the next day that is not a Saturday, Sunday or State legal holiday. Intermediate Saturdays, Sundays and State legal holidays shall be

excluded from the computation when the period of time prescribed or allowed is seven days or less, not including any additional time allowed for service by mail in paragraph (b) of this section. If on the day a filing is to be made, weather or other conditions have caused the designated filing location to close, the filing deadline shall be extended to the end of the next day that is neither a Saturday, Sunday nor State legal holiday.

(b) *Additional time for service by mail.* If service is made by mail, three days shall be added to the prescribed period for response.

Pleadings and Prehearing Practice

§ 220. Complaints: general.

If the Securities Division believes that any person is violating or has violated any provision of the Delaware Securities Act or any rule or regulation thereunder, it may issue a complaint as set forth in Rule 221. The complaint shall be served on each party as provided in Rule 210 and filed at the time of service with the Securities Commissioner pursuant to Rule 211. The service and filing of the complaint constitutes the commencement of the administrative proceeding. Upon the filing of a complaint, the Commissioner shall give notice to the Attorney General (or his or her designee) that the complaint has been filed and request that the Attorney General (or his or her designee) appoint a hearing officer to hear the matter.

§ 221. Complaints: form and content.

Each complaint shall be in writing and signed by a Deputy Attorney General. The complaint shall specify in reasonable detail the conduct alleged to constitute the violative activity and the statutory provision, rule or regulation the respondent is alleged to be violating or to have violated. If the complaint consists of several causes of action, each cause shall be stated separately.

§ 222. Complaints: amendment and withdrawal.

(a) At any time prior to the filing of a responsive pleading or the commencement of a hearing (whichever is earlier), the Securities Division may amend a complaint to include new matters of fact or law. After the filing of a responsive pleading or the commencement of a hearing, upon motion by the Securities Division, the hearing officer may permit amendment of a complaint to include new matters of fact or law.

(b) At any time prior to the filing of a responsive pleading or the commencement of a hearing (whichever is earlier), the Securities Division may withdraw its complaint. Such withdrawal shall be without prejudice to refiling, and the Securities Division shall be permitted to file a complaint based on allegations concerning the same facts and circumstances that are set forth in the withdrawn complaint. The Securities Division may withdraw its complaint after the filing of a responsive pleading or commencement of a hearing; however, upon motion of the respondent, the hearing officer, after considering the facts and circumstances of the withdrawal, shall determine whether the withdrawal shall be with prejudice.

§ 223. ~~Order delegating authority to hearing officer. Repealed~~

~~In each case in which a complaint is filed pursuant to Rule 211, the Securities Commissioner shall promptly file and serve on the parties an order delegating authority to an administrative hearing officer pursuant to Rule 103.~~

§ 224. Answers to complaints.

(a) *Form, Service, Notice.* Each respondent named in a complaint shall answer and serve an answer to the complaint on the Securities Division ~~and all other parties, and any designated hearing officer~~ within 25 days after service of the complaint on such respondent pursuant to Rule 210 and at the time of service file such answer with the ~~hearing officer~~ Commissioner pursuant to Rules 211, 212 and 213. The hearing officer (or where no hearing officer has been appointed, the Commissioner) may extend such period for good cause.

(b) *Content, Affirmative Defenses.* Unless otherwise ordered by the hearing officer, an answer shall specifically admit, deny, or state that the respondent does not have and is unable to obtain sufficient information to admit or deny each allegation in the complaint. When a respondent intends to deny only part of an allegation, the respondent shall specify so much of it as is admitted and deny only the remainder. A statement of lack of information shall be deemed a denial. Any allegation not denied shall be deemed admitted. Any affirmative defense

shall be asserted in the answer.

(c) *Amendments to Answer.* Upon motion by a respondent, the hearing officer may permit an answer to be amended.

(d) *Extension of Time to Answer Amended Complaint.* If a complaint is amended pursuant to Rule 222, the time for filing an answer or amended answer shall be extended to 10 days after service of the amended complaint. If any respondent has already filed an answer, such respondent shall have 15 days after service of the amended complaint, unless otherwise ordered by the hearing officer, within which to file an amended answer.

(e) *Failure to Answer, Default.* If the respondent does not file an answer within the time required, the hearing officer shall order the Securities Division to send a second notice to such respondent requiring an answer within 10 days after service of the second notice, or within such longer period as the hearing officer in his or her discretion may order. The second notice shall state that failure of the respondent to reply within the period specified shall allow the hearing officer, in the exercise of his or her discretion, to:

(1) treat as admitted by the respondent the allegations in the complaint; and

(2) enter a default decision against the respondent pursuant to Rule 232(a). If no answer is filed with the hearing officer within the time required by the second notice, the allegations of the complaint may be considered admitted by such respondent and a default decision may be issued by the hearing officer. A respondent may, for good cause shown, move to set aside a default pursuant to Rule 232(b).

(e) *Failure to Answer, Default.*

(1) If the respondent does not file an answer within the time required, the administrative hearing officer shall send a second notice to such respondent requiring an answer within 10 days after service of the second notice, or within such longer period as the hearing officer in his or her discretion may order. The second notice shall state that failure of the respondent to reply within the period specified shall allow the hearing officer, in the exercise of his or her discretion, to:

(A) treat as admitted by the respondent the allegations in the complaint; and

(B) propose to the Commissioner the entry of a default decision against the respondent.

(2) If no answer is filed with the Commissioner within the time required by the second notice, the hearing officer may treat as admitted by the respondent the allegations in the complaint and propose to the Commissioner the entry of a default decision against the respondent.

(3) If no answer is filed with the Commissioner and the Commissioner receives a proposal from the hearing officer pursuant to subsection (e)(2) above, the Commissioner may treat as admitted by the respondent the allegations in the complaint and enter a default decision against the respondent.

§ 225. Request for hearing.

(a) *Securities Division Request for Hearing.* With the filing of its complaint or at any time later, the Securities Division may request a hearing. The Securities Division may request that the hearing be convened within a specified time after the filing of the complaint, but in no event shall that hearing be required to be held earlier than 30 days after service and filing of the complaint other than in summary proceedings under Sections 7308(c), 7309(c), 7316(c) or 7325(c) of the Act.

(b) *Respondent Request for Hearing.* With the filing of respondent's answer such respondent may request a hearing. If a respondent requests a hearing, a hearing shall be granted. A respondent who fails to request a hearing with the filing of his or her answer waives the right to a hearing unless the hearing officer grants, for good cause shown, a later filed motion by such respondent requesting a hearing.

(c) *Hearing Officer Order Requiring Hearing.* Any complaint may be set down for a hearing upon order of the hearing officer. The hearing officer may set a complaint for hearing in the absence of a request for hearing by any party.

(d) *Notice of Hearing.* The hearing officer shall issue a notice stating the date, time and place of the hearing, and shall serve such notice on the parties at least 28 days before the hearing, unless (1) in the discretion of the hearing officer, he or she determines that extraordinary circumstances require a shorter notice period; or (2) the parties waive the notice period.

§ 225A. Appointment of a hearing officer.

(a) The Commissioner shall maintain a Register of Administrative Hearing Officers listing persons who may, upon designation, act as administrative hearing officers in proceedings brought by the Securities Division under the

Delaware Securities Act. Persons eligible for listing on the Register of Administrative Hearing Officers shall include any Deputy Attorney General (other than a Deputy Attorney General assigned to the Securities Division) and any other attorney admitted to practice law in the State of Delaware. Any person's listing on the Register of Administrative Hearing Officers shall be subject to the approval of the Attorney General (or his or her designee).

(b) Upon receipt of a notice from the Commissioner that a complaint has been filed, the Attorney General (or his or her designee) shall issue an Order delegating the responsibility for conducting the hearing to a hearing officer selected by the Attorney General (or his or her designee) from the Register of Administrative Hearing Officers. The Order shall grant to the hearing officer all powers that are reasonably necessary to adjudicate the matter before him or her, provided, however, that the hearing officer's powers shall not include any power that these rules and regulations specifically limit to the Attorney General or the Commissioner.

(c) The Rules of Practice and Procedure in Administrative Hearings (Sections 200-272) shall govern all proceedings by and before the hearing officer.

§ 226. Pre-hearing conferences.

(a) *Purpose of conferences.* The purpose of prehearing conferences include, but are not limited to:

- (1) Expediting the disposition of the proceeding;
- (2) Establishing early and continuing control of the proceeding by the hearing officer; and
- (3) Improving the quality of the hearing through more thorough preparation.

(b) *Procedure.* On his or her own motion or at the request of a party, the hearing officer may, in his or her discretion, direct counsel or any party to meet for an initial, final or other prehearing conference. Such conferences may be held with or without the hearing officer present as the hearing officer deems appropriate. Where such a conference is held outside the presence of the hearing officer, the hearing officer shall be advised promptly by the parties of any agreements reached. Such conferences also may be held with one or more persons participating by telephone or other remote means.

(c) *Subjects to be discussed.* At a prehearing conference consideration may be given and action taken with respect to any and all of the following:

- (1) Simplification and clarification of the issues;
- (2) Exchange of witness and exhibit lists and copies of exhibits;
- (3) Stipulations, admissions of fact, and stipulations concerning the contents, authenticity or admissibility into evidence of documents;
- (4) Matters of which official notice may be taken;
- (5) The schedule for exchanging prehearing motions or briefs, if any;
- (6) The method of service for papers;
- (7) Summary disposition of any or all issues;
- (8) Settlement of any or all issues;
- (9) Determination of hearing dates;
- (10) Amendments to the complaint or answers thereto;
- (11) Disclosure of evidence by the parties as set forth in Rule 228 and production of witness statements as set forth in Rule 229; and
- (12) Such other matters as may aid in the orderly and expeditious disposition of the proceeding.

(d) *Prehearing orders.* At or following the conclusion of any conference held pursuant to this section, the hearing officer shall enter a ruling or order which recites the agreements reached and any procedural determinations made by the hearing officer.

(e) *Failure to appear: default.* Any person who is named as a respondent in a complaint and who fails to appear, in person or through a representative, at a prehearing conference of which he or she has been duly notified may be deemed in default pursuant to Rule 232(a). A party may make a motion to set aside a default pursuant to Rule 232(b).

§ 227. Pre-hearing submissions.

(a) *Submissions generally.* The hearing officer, on his or her own motion, or at the request of a party or other participant, may order any party, including the Securities Division, to furnish such information as deemed appropriate, including any or all of the following:

- (1) An outline or narrative summary of its case or defense;

- (2) The legal theories upon which it will rely;
- (3) Copies and a list of documents that it intends to introduce at the hearing; and
- (4) A list of witnesses who will testify on its behalf, including the witnesses' names, occupations, addresses and a brief summary of their expected testimony.

(b) *Expert witnesses.* Each party who intends to call an expert witness shall submit, in addition to the information required by paragraph (a)(4) of this section, a statement of the expert's qualifications, a listing of other proceedings in which the expert has given expert testimony, and a list of publications authored or co-authored by the expert.

§ 228. Disclosure of evidence by the parties.

(a) *Disclosure of Evidence by the Securities Division.* Upon request of a respondent, the Securities Division shall disclose to respondent and make available for inspection, copying or photographing:

(1) Any relevant written or recorded statements made by the respondent or co-respondent, or copies thereof, within the possession, custody or control of the Securities Division, the existence of which is known, or by the exercise of due diligence may become known, to the Securities Division; and that portion of any written record containing the substance of any relevant oral statement made by the respondent in response to interrogation by any person then known to the respondent to be a state agent. Where the respondent is a corporation, partnership or association, the Securities Division shall disclose any written or recorded statements of any witness who (i) was, at the time of that testimony, so situated as an officer or employee as to have been able legally to bind the respondent in respect to conduct constituting the offense, or (ii) was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as an officer or employee as to have been able legally to bind the respondent in respect to that alleged conduct in which the witness was involved.

(2) Documents and tangible objects. Upon request of the respondent the Securities Division shall permit the respondent to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the Securities Division, and which are intended for use by the Securities Division as evidence in chief at the hearing, or were obtained from or belong to the respondent.

(3) Reports of examinations and tests. Upon request of a respondent, the Securities Division shall permit respondent to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the Securities Division, the existence of which is known, or by the exercise of due diligence may become known, to the Securities Division, and which are intended for use by the Securities Division as evidence in chief at the hearing.

(4) Expert witnesses. Upon request of a respondent, the Securities Division shall disclose to the respondent any evidence which the Division may present at the hearing, which if presented at a court proceeding would be submitted pursuant to Rules 702, 703, or 705 of the Delaware Uniform Rules of Evidence. This disclosure shall be in the form of a written response that includes the identity of the witness and the substance of the opinions to be expressed.

(5) Information not subject to disclosure. Except as provided in Rule 228(a)(1), (2) and (3), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal documents made by the Securities Division or its agents in connection with the investigation or prosecution of the case, or of statements by Division witnesses or prospective Division witnesses.

(b) *Disclosure of evidence by the respondent.*

(1) Documents and tangible objects. Upon request of the Securities Division, the respondent shall permit the Division to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the respondent and which the respondent intends to introduce as evidence in chief at the hearing.

(2) Reports of examination and tests. The respondent, on request of the Securities Division, shall permit the Division to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the respondent, which the respondent intends to introduce as evidence in chief at the hearing or which were prepared by a witness whom the respondent intends to call at the hearing when the results or reports relate to that witness' testimony.

(3) Expert witnesses. The respondent, on request of the Securities Division, shall disclose to the Division

any evidence the respondent may present at the hearing, which if presented at a court proceeding would be submitted pursuant to Rules 702, 703 or 705 of the Delaware Uniform Rules of Evidence. This disclosure shall be in the form of a written response that includes the identity of the witnesses and the substance of the opinions to be expressed.

(4) Information not subject to disclosure. Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the respondent or the respondent's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the respondent, or by Division or respondent witnesses, or by prospective Division or respondent witnesses, to the respondent, the respondent's agents or attorneys.

(c) *Procedure.* Any party may serve a request for ~~discovery~~ disclosure after filing of respondent's answer or, if no answer has been filed, after expiration of the period for filing an answer. The request shall set forth the items sought with reasonable particularity and shall specify a reasonable time, place and manner of compliance with the request. The party upon whom the request is served shall serve a response within 20 days after service of the request or at such other time as ordered by the hearing officer. The response shall comply with the request or specify any objection to it. The response may specify a reasonable alternative time, place and manner of compliance.

(d) *Continuing duty to disclose.* If, prior to or during an administrative hearing, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, such party shall promptly notify the other party or that other party's attorney or the hearing officer of the existence of the additional evidence or material.

(e) *Regulation of disclosure.*

(1) Protective and modifying orders. Upon a sufficient showing the hearing officer may at any time order that the disclosure or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by a party, the hearing officer may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the hearing officer alone. If the hearing officer enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the ~~hearing officer~~ proceeding to be made available to the Court of Chancery in the event of an appeal.

(2) Failure to comply with a request. If at any time during the course of the proceedings it is brought to the attention of the hearing officer that a party has failed to comply with this rule, the hearing officer may order such party to permit the disclosure or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or he may enter such other order as he deems just under the circumstances. The hearing officer may specify the time, place and manner of making the disclosure and inspection and may prescribe such terms and conditions as are just.

§ 229. Production of witness statements.

Any party may file a motion requesting that any other party produce for inspection and copying a statement in its possession, custody or control of any person called or to be called as a witness that pertain, or is expected to pertain, to his or her direct testimony, including statements that would be required to be produced pursuant to Rule 26.2 of the Delaware Superior Court Criminal Rules. The production shall be made at a time and place fixed by the hearing officer and shall be made available to all parties.

§ 230. Motions- Repealed.

~~(a) *Generally.* Unless made during a hearing or conference, a motion shall be in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied upon. All written motions shall be served in accordance with Rule 210, be filed in accordance with Rule 211, meet the requirements of Rule 212, and be signed in accordance with Rule 213. The hearing officer may order that an oral motion be submitted in writing. Unless otherwise ordered by the hearing officer, if a motion is properly made, the proceeding before the hearing officer shall continue pending the determination of the motion. No oral argument shall be heard on any motion unless the hearing officer otherwise directs.~~

~~(b) *Opposing and reply briefs.* Briefs in opposition to a motion shall be filed within ten days after service of the motion. Reply briefs shall be filed within three days after service of the opposition.~~

~~(c) *Length limitation.* A brief in support of or opposition to a motion shall not exceed ten pages, exclusive of~~

~~pages containing any table of contents, table of authorities, and/or addendum. Requests for leave to file briefs in excess of ten pages are disfavored.~~

§ 231. Motion for summary disposition.

~~(a) After a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying pursuant to Rule 228, the respondent or the Division may make a motion for summary disposition on the pleadings of any or all allegations of the complaint with respect to that respondent. Any motion for summary disposition on the pleadings shall be filed within 30 days after the filing of the respondent's answer unless otherwise ordered by the hearing officer. Notwithstanding the provisions of Rule 230 207, any opposition or response to a motion for summary disposition on the pleadings shall be filed within 14 days after service of the motion. Reply briefs shall be filed within five days after service of the opposition or response.~~

~~(b) A motion for summary disposition on the pleadings pursuant to paragraph (a) shall be accompanied by a supporting memorandum of points and authorities. The motion for summary disposition and supporting memorandum of points and authorities shall not exceed 25 pages in length. Matters outside the pleadings shall not be presented or considered on a motion for summary disposition on the pleadings.~~

~~(c) The hearing officer shall promptly grant or deny the motion for summary disposition on the pleadings or shall defer decision on the motion. The hearing officer may grant the motion for summary disposition if the party making the motion is entitled to a summary disposition as a matter of law. Otherwise, the hearing officer shall deny or defer the motion.~~

~~(d) Unless the hearing officer decides to defer decision on the motion, he or she shall promptly file with the Commissioner and serve on the parties a proposed opinion and order (with supporting rationale) regarding the motion for summary disposition. Upon receipt of the hearing officer's proposed opinion and order, the Commissioner may grant the motion for summary disposition if, considering the facts in a light most favorable to the nonmoving party, there is no material issue of fact and the moving party is entitled to a summary disposition as a matter of law. Otherwise, the Commissioner shall deny or defer the motion.~~

~~§ 232. Default; motion to set aside default.~~

~~(a) A party to a proceeding may be deemed to be in default and the hearing officer may determine the proceeding against that party upon consideration of the record, including the complaint, the allegations of which may be deemed to be true, if that party fails:~~

~~(1) To appear, in person or through a representative, at a hearing or conference of which that party has been notified;~~

~~(2) To answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding; or~~

~~(3) To cure a deficient filing within the time specified by the hearing officer.~~

~~(b) A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. In order to prevent injustice and on such conditions as may be appropriate, the hearing officer may for good cause shown set aside a default.~~

Administrative Hearings

§ 240. Hearings.

Hearings for the purpose of taking evidence shall be held upon order of the hearing officer. All hearings shall be conducted in a fair, impartial, expeditious and orderly manner.

§ 241. Hearings to be public.

All hearings, except hearings on ex parte applications for a summary order under Sections 7308(c), 7309(c), 7316(c) or 7325(c) of the Act, shall be public unless otherwise ordered by the hearing officer on his or her own motion or the motion of a party. No hearing shall be nonpublic where all respondents request that the hearing be made public.

§ 242. Continuance of hearing.

Any motion for a continuance of the hearing date shall be filed as far in advance of the hearing date as practicable. Motions should state with specificity the reason for the continuance request.

§ 243. Procedure.

(a) Unless otherwise ordered by the hearing officer, no later than three days prior to the hearing each party shall submit to all other parties and to the hearing officer copies of all documentary evidence and the names of the witnesses each party intends to present in its case-in-chief at the hearing.

(b) In the administrative hearing, each party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the hearing officer, may be required for a full and true disclosure of the facts.

§ 244. Testimony.

Witnesses shall testify under oath or affirmation. The oath or affirmation may be administered by a Deputy Attorney General, notary public or any other officer authorized to administer oaths and affirmations under Delaware law.

§ 245. Evidence: admissibility.

The hearing officer shall receive relevant evidence and may exclude all evidence that is irrelevant, immaterial or unduly repetitious.

§ 246. Evidence: objections and offers of proof.

(a) *Objections.* Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds relied upon. Exceptions to any ruling thereon by the hearing officer need not be noted at the time of the ruling. Such exceptions will be deemed waived on appeal to the Court of Chancery, however, unless raised in a proposed finding or conclusion filed pursuant to Rule 248.

(b) *Offers of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record. Excluded material shall be retained pursuant to Rule 249.

§ 247. Evidence: reference to Delaware Uniform Rules of Evidence

The hearing officer may make reference to and be guided by the Delaware Uniform Rules of Evidence in receiving relevant evidence under Rule 245 and ruling on objections under Rule 246. Notwithstanding those rules, the hearing officer may admit any evidence that reasonable and prudent individuals would commonly accept in the conduct of their affairs, and give probative effect to that evidence. Evidence may not be excluded solely on the ground that it is hearsay.

§ 248. Proposed findings of fact, conclusions of law, and post-hearing briefs.

(a) At the discretion of the hearing officer, the parties may be ordered to file proposed findings of fact and conclusions of law, or post-hearing briefs, or both. The hearing officer may order that such proposed findings and conclusions be filed together with, or as part of, post-hearing briefs.

(b) Proposed findings of fact or other statements of fact in briefs shall be supported by specific references to the record.

(c) In any case in which the hearing officer has ordered the filing of proposed findings of fact and conclusions of law, or post-hearing briefs, the hearing officer shall, after consultation with the parties, prescribe the period within which proposed findings of fact and conclusions of law or post-hearing briefs are to be filed. Such period shall be reasonable under all the circumstances but the total period allowed for the filing of post-hearing submissions shall not exceed 60 days after the conclusion of the hearing unless the hearing officer, for good cause shown, permits a different period and sets forth in an order the reasons why a longer period is necessary.

(d) Unless the hearing officer orders otherwise, each post-hearing submission shall not exceed 25 pages, exclusive of cover sheets, tables of contents and tables of authorities.

§ 249. Record of hearings.

- (a) *Contents of the record.* The record shall consist of:
- (1) The complaint and answers thereto; the notice of hearing; and any amendments to those documents;
 - (2) Each application, motion, submission or other paper, and any amendments, motions, objections, and exceptions to or regarding them;
 - (3) Each stipulation, transcript of testimony and document or other item admitted into evidence;
 - (4) With respect to a request to disqualify a hearing officer or to allow the hearing officer's withdrawal under Rule 204, each affidavit or transcript of testimony taken and the decision made in connection with the request;
 - (5) All proposed findings and conclusions;
 - (6) Each written order issued by the hearing officer; and
 - (7) Any other document or item accepted into the record by the hearing officer.
- (b) *Retention of documents not admitted.* Any document offered in evidence but excluded, and any document marked for identification but not offered as an exhibit, shall not be considered a part of the record but shall be retained until the later of the date upon which an order ending the proceeding becomes final, or the conclusion of any judicial review of the ~~hearing officer's order~~ Commissioner's order.
- (c) *Substitution of copies.* A true copy of a document may be substituted for any document in the record or any document retained pursuant to paragraph (b) of this section.

§ 250. Supplementation of record.

Upon motion filed within ten days of the conclusion of the hearing, any party may seek leave from the hearing officer to supplement the record with additional relevant material evidence. Where the party shows to the satisfaction of the hearing officer that there were reasonable grounds for failure to adduce the evidence in the hearing, the hearing officer may allow the evidence to be heard in such manner and upon such conditions as the hearing officer considers proper.

§ 251. Decision of administrative hearing officer. Final Decision After a Hearing.

~~In any administrative proceeding in which a hearing is held, the hearing officer shall issue a decision. The decision shall include: (i) findings of fact and conclusions of law, and the reasons or basis therefor, as to all material issues of fact, law or discretion presented on the record; (ii) the appropriate order, sanction or relief, or denial thereof; (iii) a statement that the decision constitutes a final order for purposes of judicial review under Section 7324 of the Act; and (iv) the date on which sanctions, if any, take effect.~~

(a) In any administrative proceeding in which a hearing is held, the hearing officer shall file with the Commissioner and serve upon the parties a proposed decision containing the following matter arranged in the following order:

- (1) A summary of the evidence;
- (2) Proposed findings of fact and the evidentiary bases therefor;
- (3) Proposed conclusions of law and the legal bases therefor; and
- (4) Proposed sanctions or relief, if any.

(b) Upon the filing of his or her proposed decision, the hearing officer shall certify the administrative record and submit the record to the Commissioner, who shall, at that time, have exclusive jurisdiction over the proceeding.

(c) Upon receipt of the record and the hearing officer's proposed decision, the Commissioner shall give notice to the parties of receipt of the record and proposed decision and afford the parties, including the Securities Division, the opportunity to submit, within thirty (30) days of the Commissioner's receipt of the record and proposed decision, exceptions to the proposed decision.

(d) After review of the record, the hearing officer's proposed decision, and the parties' exceptions (if any), the Commissioner shall issue a final decision in the matter.

§ 252. Failure to appear at hearing: default. Final decision upon default; motion to set aside default.

~~Any respondent who fails to appear at a hearing of which he or she has been duly notified may be deemed to be in default pursuant to Rule 232(a). A party may make a motion to set aside a default pursuant to Rule 232(b).~~

(a) The hearing officer may file with the Commissioner a proposed decision (and the Commissioner, upon the receipt of such a filing, may issue an order) deeming a party to be in default and determining the proceeding

against that party upon consideration of the record, including the complaint, the allegations of which may be deemed to be true, if that party fails:

(1) To appear, in person or through a representative, at a hearing or conference of which that party has been notified;

(2) To answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding; or

(3) To cure a deficient filing within the time specified by the hearing officer.

(b) A motion to set aside a default may be filed with the Commissioner within a reasonable time and shall state the reasons for the failure to appear or defend, and shall specify the nature of the proposed defense in the proceeding. In order to prevent injustice and on such conditions as may be appropriate, the Commissioner may for good cause shown set aside a default.

§ 253. Contemptuous conduct.

If a party, counsel to a party or witness engages in conduct in violation of an order of the hearing officer, or other contemptuous conduct during an administrative proceeding, the hearing officer may impose sanctions therefor, including the issuance of an order: (i) excluding the party and/or his or her counsel from any further participation in the proceeding; (ii) striking pleadings or evidence from the record; (iii) providing that certain facts shall be taken to be established for purposes of the proceeding; or (iv) providing for such other relief as is just and equitable under the circumstances.

Practice and Procedure Regarding Summary Orders Issued Pursuant to Sections 7308(c), 7309(c), 7316(c) and 7325(c) of the Act

§ 260. Basis for issuance of summary order postponing or suspending the effectiveness of a registration statement pursuant to section 7308(c).

Except as provided in subsection (i) of this Rule, the Securities Division may make application for, and ~~an Administrative Hearing Officer~~ the Commissioner may issue, a summary order postponing or suspending the effectiveness of any registration statement, if such an order is in the public interest and any of the following criteria are met:

(a) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment or report is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) Any provision of the Act or any rule, order, or condition lawfully imposed under the Act has been violated, in connection with the offering, by (i) the person filing the registration statement, (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (iii) any underwriter;

(c) The security registered or sought to be registered is the subject of an administrative stop order or similar order or permanent or temporary injunction of any court of competent jurisdiction entered under any federal or state act applicable to the offering;

(d) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(e) The offering has worked or tended to work a fraud upon purchasers or would so operate;

(f) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

(g) The applicant or registrant has failed to pay the proper filing fee; but the hearing officer shall vacate any such order when the deficiency has been corrected;

(h) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by Section 7305(b)(4) of the Act.

(i) A summary order may be issued suspending the offer or sale of a covered security under Section 18(b)(2) of the Securities Act of 1933 only if the order is in the public interest and the issuer has failed to comply with the

requirements of Section 7309A.

261 Basis for issuance of summary order denying or revoking exemption pursuant to section 7309(c).

The Securities Division may make application for, and ~~an Administrative Hearing Officer~~ the Commissioner may issue, a summary order denying or revoking any exemption claimed under Sections 7309(a)(9), (a)(11), or (b)(1)-(13) of the Act, whenever it appears that such exemption is inapplicable, either generally or with respect to a specific security or transaction.

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262 Basis for issuance of summary order postponing or suspending the registration of a broker-dealer, broker-dealer agent, investment adviser or investment adviser representative pursuant to section 7316(c).

The Securities Division may make application for, and ~~an Administrative Hearing Officer~~ the Commissioner may issue, a summary order postponing or suspending the registration of a broker-dealer, broker-dealer agent, investment adviser or investment adviser representative if such an order is in the public interest and the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, director, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

- (a) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; or
- (b) Has wilfully violated or wilfully failed to comply with any provision of the Act; or
- (c) Has been convicted of a felony, infamous crime, or other crime involving moral turpitude; or
- (d) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business; or
- (e) Is the subject of a cease and desist order or of an order denying, suspending, or revoking registration as a broker-dealer, broker-dealer agent, investment adviser or investment adviser representative; or
- (f) Is the subject of an order entered within the past ten years by the securities administrator of any other state or by the Securities and Exchange Commission either ordering the person to cease and desist from engaging in or continuing any conduct or practice involving any aspect of the securities business, or suspending, denying or revoking registration as a broker-dealer, broker-dealer agent, investment adviser or investment adviser representative, or the substantial equivalent of those terms as defined in the Act and these rules; or is suspended or expelled from or found to have violated a rule of a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 [15 U.S.C. §78a et seq.] either by action of a national securities exchange or national securities association, the effect of which action has not been stayed by administrative or judicial order or is the subject of a United States post office fraud order; or
- (g) Has engaged in dishonest or unethical practices within or outside this State; or
- (h) Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; or
- (i) Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business; or
- (j) Has failed reasonably to supervise (1) his agents or employees, if he is a broker-dealer or broker-dealer agent with supervisory responsibilities; or (2) his adviser representatives or employees if he is an investment adviser or investment adviser representative with supervisory responsibilities, and such failure may be inferred from an agent's, investment adviser representative's, or employee's violations;
- (k) Has failed to pay the proper filing fee, but the hearing officer shall vacate any denial or suspension order when the deficiency has been corrected; or
- (l) Has violated or failed to comply with any lawful order issued by the Commissioner or by ~~an Administrative Hearing Officer~~ a hearing officer acting pursuant to delegated authority under Rule 403 ~~225A~~; or
- (m) Has within the past ten years been a partner, officer, director, controlling person or any person occupying a similar status or performing similar functions in a broker-dealer or investment adviser whose registration in this State or any state, or with the SEC, has been revoked for disciplinary reasons, or whose membership in a national securities exchange or national securities association has been terminated for disciplinary reasons.

§ 263. Basis for issuance of summary cease and desist order pursuant to section 7325(c).

Whenever it appears that a person has violated the Delaware Securities Act by failing to register or engaging in fraud or other prohibited conduct, ~~an Administrative Hearing Officer~~ the Commissioner may summarily issue a cease and desist order against that person under Section 7325(c) of the Act.

§ 264. Application for issuance of summary order.

(a) *Procedure.* A request for entry of a summary order shall be made by application to the Commissioner in the form of an administrative complaint filed by the Division. ~~The application shall be presented to the Administrative Hearing Officer for disposition.~~

(b) *Information required with application.* The administrative complaint shall set forth a statement of the facts upon which the application is based, together with supporting documentation; cite to the relevant statutory provision or rule that each respondent is alleged to have violated; and state the summary relief sought against each respondent. The application shall include a proposed order imposing the summary relief sought and notifying respondent of his right to a hearing as provided in Rule 265.

(c) *Record of proceedings.* A record from which a verbatim transcript can be prepared shall be made of all hearings, including *ex parte* presentations made by the Division.

§ 265. Procedure after issuance of order.

(a) *Notice.* Any person who is the subject of a summary order shall promptly be given notice of that order and of the reasons therefor. Notice shall be given by means reasonably calculated to give actual notice of issuance of the order, including service of the order pursuant to Rule 210. Such notice shall include notification that the subject of the order may request a hearing and that if such a request is made in writing the hearing shall be scheduled within 15 days from the date the written request is received.

(b) *Request for hearing.* Any person who is the subject of a summary order may request a hearing before an administrative hearing officer on an application to set aside, limit or suspend the summary order. The request for hearing is to be filed with the Commissioner and served on the Division within 25 days of service of the administrative complaint. If a hearing is requested, ~~that hearing shall be scheduled within 15 days from the date the written request is received.~~ the Commissioner shall forthwith provide notice of the request to the Attorney General (or his or her designee). Upon receipt of a notice from the Commissioner that a party has requested a hearing, the Attorney General (or his or her designee) shall issue an Order delegating the responsibility for conducting the hearing to a hearing officer selected by the Attorney General (or his or her designee) from the Register of Administrative Hearing Officers. The Order shall grant to the hearing officer all powers that are reasonably necessary to adjudicate the matter before him or her, provided, however, that the hearing officer's powers shall not include any power that these rules and regulations specifically limit to the Attorney General or the Commissioner.

(c) *Procedure at hearing.* The procedure at a hearing on a summary order shall be determined by the hearing officer, with the understanding that each party shall be entitled to be heard in person or through counsel. The hearing officer shall rule on the admissibility of evidence and other matters, including, but not limited to whether oral testimony will be heard; the time allowed each party for the submission of evidence or argument; and whether post-hearing submission of briefs and/or proposed findings of fact and conclusions of law will be permitted and if so, the procedures for submissions.

~~(d) *Decision of Hearing Officer.* After hearing evidence pursuant to subsection (c) of this Rule, the hearing officer shall, within 30 days of the hearing, issue a decision on respondent's application to set aside, limit or suspend the order, and may grant or deny that application; modify or vacate the order; or extend it until final determination. If no hearing has been requested and none has been ordered by the hearing officer, the summary order shall remain in effect until it is modified or vacated by the hearing officer.~~

(d) *Final Decision After Hearing.*

(1) After hearing evidence pursuant to subsection (c) of this Rule, the hearing officer shall, within fifteen (15) days of the hearing, file with the Commissioner and serve upon the parties a proposed decision containing the following matter arranged in the following order:

- (A) A summary of the evidence;
- (B) Proposed findings of fact and the evidentiary bases therefor;
- (C) Proposed conclusions of law and the legal bases therefor; and
- (D) Proposed relief, if any.

(2) Upon the filing of his or her proposed decision, the hearing officer shall certify the administrative record and submit the record to the Commissioner, who shall, at that time, have exclusive jurisdiction over the proceeding.

(3) Upon receipt of the record and the hearing officer's proposed decision, the Commissioner shall forthwith give notice to the parties of receipt of the record and proposed decision and afford the parties, including the Securities Division, the opportunity to submit, within ten (10) days of the Commissioner's receipt of the record and proposed decision, exceptions to the proposed decision.

(4) After review of the record, the hearing officer's proposed decision, and the parties' exceptions (if any), the Commissioner shall, no later than forty five (45) days from the end of the hearing, issue a final decision in the matter.

(e) *Duration.* Unless set aside, limited or suspended, either by ~~the hearing officer~~ the Commissioner or a court of competent jurisdiction, a summary order shall remain in effect until the completion of the proceedings on whether a permanent order shall be entered or, if no such proceedings occur, until otherwise modified or vacated by ~~the hearing officer~~ the Commissioner.

§ 266. Violation of cease and desist orders.

If any person who is the subject of a cease and desist order, or any agent or employee of such person, subsequent to the issuance of the order engages in the prohibited conduct, the Commissioner may certify the facts and apply for a contempt order to any Judge of the Superior Court, who shall upon such application hear the evidence as to the acts complained of. If the evidence warrants, the Judge shall punish such person, in the same manner and to the same extent as for a contempt committed before the Superior Court, or shall commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of, the Superior Court.

Appeal to the Court of Chancery

§ 270. Right to judicial review.

Any person aggrieved by an order of ~~the administrative hearing officer~~ the Commissioner may obtain a review of the order in the Court of Chancery. Upon review, the Court of Chancery has the authority to determine questions of law de novo. The factual findings of the ~~hearing officer~~ Commissioner, if supported by material and substantial evidence, shall be conclusive on the Court of Chancery. The filing of a complaint seeking review does not operate as a stay of the ~~hearing officer's~~ Commissioner's order unless specifically ordered by the Court.

§ 271. Procedure.

A party seeking review must file a written complaint with the Court of Chancery within 60 days of entry of the ~~hearing officer's~~ Commissioner's order. The complaint shall be forthwith served on the ~~hearing officer~~ Commissioner and the other parties to the administrative proceeding. The party seeking review must pay the costs of transcribing the record. Upon completion of the record transcription, the ~~hearing officer~~ Commissioner shall certify and file with the Court of Chancery a copy of the record transcription; all evidence upon which the order was entered; and any documents or other proffered evidence retained pursuant to Rule 249(b) relevant to the complaint (together, the "Administrative Record"). If the Administrative Record is not filed with the Chancery Court within 20 days of the filing of the complaint, the ~~hearing officer~~ Commissioner shall notify the Court and receive additional time in which to file and certify the record. A continued failure by the party seeking review to pay the costs of transcription shall result in dismissal of the complaint without any need for the ~~administrative hearing officer~~ Commissioner to file the record in Court.

~~§ 272. Application to the court for leave to adduce additional material evidence.~~

~~If, within 20 days of the filing of the record with the Court, either party applies to the Court for leave to adduce additional material evidence, and shows to the satisfaction of the Court that there were reasonable grounds for failure to adduce the evidence in the administrative hearing, the Court may order the additional evidence to be taken before the administrative hearing officer and to be adduced upon the hearing in such manner and upon such conditions as the Court considers proper.~~

(Break in Continuity of Sections)

Part H. Provisions Applicable to Broker-Dealers, Agents, Investment Advisers and Investment Adviser Representatives

§800. Senior Specific Designations.

- (a) The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice within the meaning of section 7316(a)(7) of the Act. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:
- (1) use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;
 - (2) use of a nonexistent or self-conferred certification or professional designation;
 - (3) use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and
 - (4) use of a certification or professional designation that was obtained from a designating or certifying organization that:
 - (A) is primarily engaged in the business of instruction in sales and/or marketing;
 - (B) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
 - (C) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
 - (D) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.
- (b) there is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph (a)(4) above when the organization has been accredited by:
- (1) The American National Standards Institute; or
 - (2) The National Commission for Certifying Agencies; or
 - (3) an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.
- (c) In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:
- (1) use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and
 - (2) the manner in which those words are combined.
- (d) (1) For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:
- (A) indicates seniority or standing within the organization; or
 - (B) specifies an individual's area of specialization within the organization.

- (2) For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.
- (e) Nothing in this rule shall limit the Commissioner's authority to enforce existing provisions of law.

13 DE Reg. 667 (11/01/09) (Final)