

**Instructions for Parties**  
*including guidelines regarding*  
*protected, confidential, or sensitive information*

**Office of Administrative Law Judges**  
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This information is primarily for parties<sup>1</sup> appearing in Securities and Exchange Commission (SEC or the Commission) administrative proceedings before an administrative law judge.

If you have questions regarding the record of a case, documents posted on the SEC's website, or electronic filing through the SEC's Electronic Filings in Administrative Proceedings (eFAP) system, please contact the [Office of the Secretary](#) at (202) 551-5400.

For eFAP system access or technical issues, contact (202) 551-EFAP (3327).

*This document is not a rule or regulation and does not create any substantive or procedural rights. It is merely a guide, and its information is not a substitute for reviewing the Rules of Practice or obtaining advice from a qualified attorney. This document does not supersede any rule or order of the Commission. In your case, an order of the Commission or the presiding administrative law judge takes precedence over anything expressed in this document.*

**Part I:**  
**General Instructions**

Administrative proceedings are governed by the SEC's rules of practice found at 17 C.F.R. § 201.100 *et seq.* The rules are available online [here](#). All parties, including pro se respondents,<sup>2</sup> are expected to be familiar with and abide by

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<sup>1</sup> As used in this document, the term party or parties usually means Respondents and the Division of Enforcement. Non-party case participants should follow these instructions to the extent applicable.

<sup>2</sup> A respondent is the person or entity charged in an administrative proceeding instituted by the Commission. In this context, pro se means a respondent who is not represented by an attorney but instead appears on his or her own behalf.

these rules. Parties must also familiarize themselves with the Office of the Secretary's [eFAP instructions](#) and [user manual](#) governing electronic filing.

## **Legal Representation**

Respondents may retain their own legal counsel to represent them<sup>3</sup> and are encouraged to do so. The SEC cannot, however, appoint or pay for a respondent's legal counsel. The judges and staff in the Office of Administrative Law Judges cannot provide legal advice to you.

## **Communications with the Office of Administrative Law Judges**

If your case has been assigned to an administrative law judge and you have a procedural question, you may send your question to [alj@sec.gov](mailto:alj@sec.gov) (copying all other parties) or call our office at (202) 551-6030. **You may not engage in prohibited ex parte communications, which are communications with the judge or attorneys in the Office of Administrative Law Judges—outside the presence of all parties—about the merits of a case or about factual or legal issues.**<sup>4</sup> For this reason, you must copy all other parties on your emails to our office, and you may call our office only with procedural questions.

If you wish to express anything about the merits of a case or factual or legal issues (for example, if you wish to challenge or support the allegations in an order instituting proceedings), you must do so by either (1) filing a written submission (such as a pleading, brief, or motion) in accordance with the rules of practice and any schedule set by the judge, or (2) raising the issue during a conference or hearing in the presence of both the judge and other parties.

## **How to File Your Written Submissions and Other Documents**

Every party's written submissions (such as any notice of appearance, pleading, brief, motion, or other document) must be filed electronically through the eFAP system, unless the party submits a certification of inability to file

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<sup>3</sup> 17 C.F.R. § 201.102.

<sup>4</sup> 17 C.F.R. §§ 201.111(d), .120, .322; *see also* 17 C.F.R. § 200.111.

electronically.<sup>5</sup> Please refer to Office of the Secretary’s [eFAP instructions](#) for detailed filing requirements, including required redactions.<sup>6</sup>

### **Serving Other Parties**

The party filing a written submission or any other document is responsible for serving that document on all other parties. You cannot fulfill this service requirement by filing your document through eFAP. You can comply with this requirement by emailing a copy of your document to the other parties, in accordance with the rules of practice and the Office of the Secretary’s instructions.<sup>7</sup> You must include a certificate of service with each filing, per Rule 151(d).<sup>8</sup> Please see the example certificate of service posted on the [ALJ website](#) under Resources for Parties in Administrative Proceedings.

If you are unable to serve the other parties electronically, you must file a certification explaining your inability to do so with the Office of the Secretary and serve copies of your written submissions or documents on the other parties by one of the additional methods of service listed in Rule 150(d).<sup>9</sup>

### **Service of ALJ Orders and Initial Decisions**

When the judge issues an order or initial decision in your case, eFAP will send a notice to the email address you provided in the eFAP system, and you can log into eFAP to download the document.<sup>10</sup> If you cannot be served electronically, documents will be sent to your mailing address of record, which you must keep current on file with the Office of the Secretary.<sup>11</sup>

Orders and initial decisions issued by the administrative law judges are posted on the SEC’s website shortly after they are issued:

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<sup>5</sup> 17 C.F.R. § 201.152(a).

<sup>6</sup> *See also* 17 C.F.R. § 201.151(e) and Part II of this document. Redaction means removing or obscuring protected, confidential, or sensitive information in a document. Please see [Adobe’s guidance](#) on how to redact PDFs.

<sup>7</sup> 17 C.F.R. § 201.150(c); [eFAP instructions](#), items 3.4 and 3.6.

<sup>8</sup> 17 C.F.R. § 201.151(d).

<sup>9</sup> 17 C.F.R. § 201.150(d).

<sup>10</sup> *See* [eFAP instructions](#), item 3.7.

<sup>11</sup> 17 C.F.R. §§ 201.102(d), .141(b), .150(c), (d).

[Webpage for ALJ Orders](#)

[Webpage for ALJ Initial Decisions](#)

## **Official Record and Online Posting of Documents**

All filings are included in each proceeding's official record maintained by the [Office of the Secretary](#). In eFAP, you may view the record of your case. The Office of the Secretary posts certain filings online under [open](#) and [closed](#) proceedings on the SEC's website. This online posting of filings is not the official record. To comply with the Privacy Act and other laws, SEC staff reviews documents before publicly posting them online and redacts information to protect personal privacy or to comply with a confidentiality order.<sup>12</sup>

## **Phases of Your Case**

### ***Prehearing***

Respondents must file an answer within 20 days after being served with the order instituting proceedings (OIP), unless a different period is provided by rule or order.<sup>13</sup> Unless otherwise ordered, the Division of Enforcement is required to make its investigative file available to a respondent for inspection and copying no later than seven days after the respondent is served with the OIP.<sup>14</sup>

When a prehearing conference is scheduled with the presiding judge, it is usually held by telephone or video conference. Parties should be prepared to discuss the topics listed under Rule 221(c).<sup>15</sup>

Discovery and prehearing disclosures are available in certain cases, in accordance with the rules of practice and any procedural schedule set by the presiding judge.<sup>16</sup> It is necessary to file a request for issuance of subpoenas for the production of documents or requiring the testimony of witnesses at a hearing or at a deposition.<sup>17</sup> You must provide a copy of your request and

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<sup>12</sup> See [Administrative Proceeding Documents](#).

<sup>13</sup> 17 C.F.R. §§ 201.160, .220.

<sup>14</sup> 17 C.F.R. § 201.230.

<sup>15</sup> 17 C.F.R. § 201.221(c).

<sup>16</sup> 17 C.F.R. §§ 201.222, .231 to .234.

<sup>17</sup> 17 C.F.R. § 201.232.

subpoena forms to the Office of Administrative Law Judges, and serve a copy of the request on all other parties. All parties should use the subpoena forms available on the [ALJ website](#) under Resources for Parties in Administrative Proceedings. If the judge issues the subpoena, our office will return the signed subpoena to the requesting party, who is responsible for serving the subpoena.

In certain cases, one or more issues may be resolved based on the parties' written submissions and documents, such as through a procedure called summary disposition.<sup>18</sup> When a party moves for summary disposition, the party is asking the judge to decide the proceeding or specific issues based on written evidentiary materials, without a live hearing. To oppose summary disposition, you may not simply rely on bare allegations or denials.<sup>19</sup> Rather, you must submit evidence—such as declarations, your own affidavit and/or the affidavits of others, prior testimony, documentary evidence, or facts that can be officially noticed under Rule 323—countering the facts asserted by the moving party and raising specific facts showing that the matter requires a hearing.

If a respondent does not file a timely answer, respond to a dispositive motion, appear at a prehearing conference or hearing, or otherwise defend the proceeding, the judge may find the respondent in default, deem true the OIP's allegations, and order relief.<sup>20</sup>

If a live hearing is ordered, the parties may be required to exchange copies of exhibits and the names of their witnesses in advance of the hearing and to file prehearing briefs.<sup>21</sup> **Do not use eFAP to file exhibits that are being exchanged between the parties before the hearing; the filing of exhibits occurs after the hearing, as explained below.**

### ***Hearing***

The hearing process is similar to a federal bench trial. Hearings are presumptively public.<sup>22</sup> Hearing transcripts may be purchased at prescribed

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<sup>18</sup> 17 C.F.R. § 201.250.

<sup>19</sup> See *James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 SEC LEXIS 481, at \*26 (Feb. 15, 2017).

<sup>20</sup> 17 C.F.R. §§ 201.155(a), .220(f), .221(f), .310.

<sup>21</sup> 17 C.F.R. § 201.222(a).

<sup>22</sup> 17 C.F.R. § 201.301.

rates.<sup>23</sup> Our office cannot provide transcripts to parties or to the public. If a respondent is unable to afford a copy of the transcript, the respondent must file a motion and evidence demonstrating such inability to pay, and the judge will decide whether to direct the court reporter to furnish a copy of the transcript to the respondent.

Before the hearing, parties should confer and, to the extent possible, coordinate the presentation of witness testimony and other evidence so that the hearing will run efficiently.

At the hearing, the parties may make opening statements if permitted by the judge. Even if the judge allows opening statements, parties may waive this option and instead just file prehearing briefs. The Division of Enforcement usually will present witnesses and offer exhibits first since it has the burden of proof, but the judge has the discretion to allow the parties to present evidence out of order. Subject to the judge's procedures and time limits, a respondent has the right to present witnesses, offer exhibits, and cross-examine witnesses presented by the Division. In turn, the Division may cross-examine witnesses presented by a respondent.

A party may object to testimony (including questions posed to a witness) or documentary evidence on the grounds that it is irrelevant, immaterial, unduly repetitious, or unreliable.<sup>24</sup> A pro se respondent called to testify may object to questions posed to him or her on these same grounds.

An adverse inference may be drawn from a respondent's refusal to testify or answer questions about matters within the respondent's knowledge, even if such refusal is based on the Fifth Amendment privilege against self-incrimination.<sup>25</sup>

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<sup>23</sup> 17 C.F.R. § 201.302(b).

<sup>24</sup> 17 C.F.R. § 201.320. A party may object to hearsay evidence on these same grounds. Federal court rules on the exclusion of hearsay evidence do not govern SEC administrative proceedings. Amendments to the Commission's Rules of Practice, 81 Fed. Reg. 50,212, 50,226–27 & nn.141, 142 (July 29, 2016).

<sup>25</sup> See *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976); *Guy P. Riordan*, Exchange Act Release No. 61153, 2009 SEC LEXIS 4166, at \*65–66 (Dec. 11, 2009), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010); *Strathmore Secs., Inc.*, Exchange Act Release No. 8207, 1967 SEC LEXIS 563, at \*35–36 (Dec. 13, 1967), *pet. denied*, 407 F.2d 722 (D.C. Cir. 1969).

### ***Post-hearing***

At the conclusion of a hearing, the judge sets the schedule for the parties to file proposed findings and conclusions and supporting briefs.<sup>26</sup>

At the conclusion of the hearing or shortly thereafter, the parties file their hearing exhibits at the direction of the presiding judge.<sup>27</sup> Hearing exhibits should be segregated and labeled in two categories—(1) admitted exhibits, or (2) exhibits offered but not admitted (excluded). Do not file exhibits that were not offered at the hearing unless you seek and obtain permission from the judge. Along with your hearing exhibits, you must include the required certification under Rule 351(c)(3).<sup>28</sup> You must seek approval before filing hearing exhibits on a disc or thumb drive.<sup>29</sup>

The parties also should jointly email to [alj@sec.gov](mailto:alj@sec.gov) a list of exhibits admitted into evidence and exhibits offered but not admitted (excluded). The joint exhibit list should contain columns with the following information: the exhibit number; a description of the exhibit; the Bates-stamp numbers, if any; and page(s) in the hearing transcript in which the exhibit was offered and admitted or not admitted. Ideally, the list should be in MS Excel or Word format; please check with our office if you plan to use a different format.

The joint exhibit list does not take the place of the required filing of hearing exhibits. After the hearing and filing of briefs and exhibits in your case, the Office of the Secretary will issue a record index listing all materials in the official record. The parties will have the opportunity to review the record index and propose corrections within three days of service of the record index.<sup>30</sup>

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<sup>26</sup> 17 C.F.R. § 201.340.

<sup>27</sup> For details on how to filing hearing exhibits, see [eFAP instructions](#), items 5.4, 6.1.

<sup>28</sup> 17 C.F.R. § 201.351(c)(3).

<sup>29</sup> [eFAP instructions](#), items 4.3, 4.4.

<sup>30</sup> 17 C.F.R. § 201.351(b).

**Part II:**  
**Guidelines regarding**  
**protected, confidential, or sensitive information**

Parties are directed to follow this guide so that their filings and conduct at hearings do not result in public disclosure of protected, confidential, or sensitive information.

**Covered information**

The following is a non-exhaustive list of categories of protected, confidential, or sensitive information. **You generally must omit this information from your filings and take measures to ensure that such information is not disclosed during a public hearing.** If information in one of the following categories is necessary for the judge to decide a matter, you must seek and obtain permission from the judge to include it in the record under seal in accordance with Rule 322,<sup>31</sup> as further explained in the instructions regarding party filings.

- (1) Any information that could reasonably be expected to reveal the identity of a whistleblower.<sup>32</sup>
- (2) Information concerning suspicious activity reports (SARs) and other reports under the Bank Secrecy Act, including any information that would reveal the existence of a SAR.<sup>33</sup>
- (3) Sensitive personal information, such as:
  - a. An individual's social security number, taxpayer identification number, financial account numbers (including bank account, brokerage account, and investment account numbers), credit card or debit card numbers, passport number, driver's license number, or state-issued identification number.
  - b. An individual's home address (other than city and state) and telephone number.
  - c. An individual's date of birth (other than year).
  - d. Names and initials of minor children.

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<sup>31</sup> 17 C.F.R. § 201.322.

<sup>32</sup> 15 U.S.C. § 78u-6(h)(2)(A).

<sup>33</sup> 31 U.S.C. § 5318(g)(2)(A)(ii); 31 C.F.R. § 1023.320(e)(2).

- e. Unnecessary health information identifiable by individual, such as an individual’s medical records.<sup>34</sup>

- (4) Any other information protected by law.<sup>35</sup>

**However, the following information may be included and is not required to be redacted from filings:**

- (1) The last four digits of a financial account number, credit card or debit card number, passport number, driver’s license number, and state-issued identification number.
- (2) Home addresses and telephone numbers of parties and persons filing documents with the SEC.
- (3) Business telephone numbers.
- (4) Copies of unredacted filings by regulated entities or registrants that are available on the SEC’s public website.<sup>36</sup>

In addition to these categories, parties may move to protect other types of information as well, such as sensitive information about an individual’s financial condition.

### **Instructions regarding party filings**

You generally must omit from your filings as much protected, confidential, or sensitive information as possible; if not omitted, you generally must redact such information. Specifically, when filing a document in eFAP, you will be required to confirm compliance with the rules concerning the redaction or omission of sensitive personal information, in accordance with Rule 151(e) and the Office of the Secretary’s [eFAP instructions](#), item 4.1.

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<sup>34</sup> 17 C.F.R. § 201.151(e); *see also* 42 U.S.C. § 290dd-2(a), (c) (protecting “[r]ecords of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance use disorder education, prevention, training, treatment, rehabilitation, or research . . .”).

<sup>35</sup> *See, e.g.*, 12 C.F.R §§ 261.2(b)(1), (c), .20(a) (protecting confidential supervisory information within the meaning of the rules of the Board of Governors of the Federal Reserve System).

<sup>36</sup> 17 C.F.R. § 201.151(e)(1); *see also* Amendments to the Commission’s Rules of Practice, 85 Fed. Reg. 86,464, 86,466–68 (Dec. 20, 2020).

If your filing contains protected, confidential, or sensitive information that you believe is necessary for the judge to decide a matter, you must move for the unredacted filing to be maintained under seal in accordance with Rule 322. When moving for a protective order under Rule 322, you generally should submit two versions of the document that is the subject of your request—an unredacted copy (referred to as a “sealed” copy) and a redacted copy—in accordance with the Office of the Secretary’s [eFAP instructions](#), item 5.2. You may be excused from the need to file a redacted copy if you seek and obtain permission from the judge to file a document under seal in its entirety without redactions.

### **Instructions regarding Form D-A**

A respondent who claims an inability to pay monetary sanctions should file a Form D-A, pursuant to Rule of Practice 630.<sup>37</sup> The form and accompanying instructions are available online [here](#). In adopting Rule 630, the Commission observed:

Early submission of a financial disclosure form to support a planned claim of inability to pay will allow the hearing officer and parties to better prepare for hearing and to assess the time needed for the hearing. Part I of Form D-A requires only summary information as to which confidentiality interests are limited. Part II requires detailed back-up information that is more likely to call for personal, confidential data, such as bank account numbers and information about regular medical payments.<sup>38</sup>

### **Instructions regarding hearing exhibits**

In its prehearing exhibit list, a party must identify exhibits that contain protected, confidential, or sensitive information. At the hearing, the party who anticipates seeking admission of an exhibit under seal must promptly alert the judge and briefly explain whether any testimony or discussion related to the exhibit may involve protected, confidential, or sensitive information. In their joint post-hearing exhibit list, the parties must identify any exhibits offered or admitted under seal.

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<sup>37</sup> 17 C.F.R. § 201.630.

<sup>38</sup> Rules of Practice, 60 Fed. Reg. 32,738, 32,792–93 (June 23, 1995) (comment to adoption of 17 C.F.R. § 201.630(c)).

**Instructions regarding hearing testimony**

A party must alert the presiding judge if it anticipates that a portion of any hearing testimony may involve protected, confidential, or sensitive information. As administrative proceedings are presumptively public, parties should avoid situations that require closing the hearing room unless testimony involving protected, confidential, or sensitive information is necessary for the judge to decide a matter.

**Instructions regarding investigative files**

The Division of Enforcement may move for entry of an order to protect confidential information in its investigative file before it produces a copy to the respondents.

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