

February 27, 2020

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 102. COMPLAINT PROCESS

7 TAC §§102.1 - 102.6

The Texas State Securities Board adopts new Chapter 102, §§102.1 - 102.6, concerning the Agency's Complaint Process, without changes to the proposed text as published in the November 15, 2019, issue of the *Texas Register* (44 TexReg 6987). The rules will not be republished.

The new chapter implements House Bill (HB) 1535 amendments to §2-6 of the Texas Securities Act, during the 86th legislative session, which became effective September 1, 2019. Specifically, §2-6 of the Act was amended to require the Agency to maintain a system to promptly and efficiently act on complaints; to maintain information about the parties to the complaint, subject matter of the complaints, a summary of the results of the review or investigation of the complaint, and its disposition; to make information available describing the Agency's complaint procedures; and to periodically notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize a law enforcement investigation.

The new provisions also implement a recommendation made by the Texas Sunset Advisory Commission to lay out and describe all phases of the Agency's complaint process, including the steps that precede contested cases at the State Office of Administrative Hearings, so that they are available to the public. The new rules summarize the Agency's existing procedures for handling complaints as part of the Agency's rules and provide transparency to members of the public and to those who are under investigation.

Complainants and the subjects of the complaints will be apprised of the process the Agency follows for complaint receipt, investigation, and resolution, and the Agency's process for handling complaints will be both fair and timely.

No comments were received regarding adoption of the new chapter.

The new chapter is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The new rules affect Texas Civil Statutes, Articles 581-1, et seq.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Travis J. Iles

Securities Commissioner

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CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.23

The Texas State Securities Board adopts new rule §115.23, concerning Notice of Cybersecurity Incident, without changes to the proposed text as published in the November 15, 2019, issue of the *Texas Register* (44 TexReg 6989). The rule will not be republished.

The new rule requires a registered dealer ("registrant") to notify the Securities Commissioner promptly if it experiences a material cybersecurity incident in its information system when a notice is otherwise provided to a state or federal agency, law enforcement, or a self-regulatory body, or a data breach notification is provided to customers of the registrant.

The rule enhances regulatory oversight over the ability of registrants to protect sensitive customer information, which will result in stronger and more secure protection of sensitive customer information and other confidential information.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted new rule affects: none applicable.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §116.23

The Texas State Securities Board adopts new rule §116.23, concerning Notice of Cybersecurity Incident, without changes to the proposed text as published in the November 15, 2019, issue of the *Texas Register* (44 TexReg 6990). The rule will not be republished.

The new rule requires a registered investment adviser ("registrant") to notify the Securities Commissioner promptly if it experiences a material cybersecurity incident in its information system when a notice is otherwise provided to a state or federal agency, law enforcement, or a self-regulatory body, or a data breach notification is provided to customers of the registrant.

The rule enhances regulatory oversight over the ability of registrants to protect sensitive customer information, which will result in stronger and more secure protection of sensitive customer information and other confidential information.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The new rule affects: none applicable.

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CHAPTER 127. MISCELLANEOUS

7 TAC §127.2

The Texas State Securities Board adopts new rule §127.2, concerning Alternative Dispute Resolution, with changes to the proposed text due to an omission of a word as published in the November 15, 2019, issue of the *Texas Register* (44 TexReg 6992). The rule will be republished.

The new rule implements new §2-8 of the Texas Securities Act, which was added to the Act by House Bill 1535, passed during the 86th legislative session, which became effective September 1, 2019. The new rule establishes the Agency's policies and procedures for the use of alternative dispute resolution (ADR) to resolve disputes as required by this new section of the Act, which requires the Board to establish a policy on the use of ADR procedures under Chapter 2009, Texas Government Code, to assist in the resolution of internal and external disputes under the Board's jurisdiction.

The rule provides a clear and consistent process for resolving disputes through ADR.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Articles 581-2-8 and 581-28-1; Chapter 2009 of the Government Code; and Chapter 154 of the Civil Practice and Remedies Code. Section 2-8 authorizes the Board to develop a policy to encourage the use of appropriate ADR procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the Board's jurisdiction. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and

applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Chapter 2009 of the Government Code authorizes governmental bodies to develop and use ADR procedures which are consistent with Chapter 154 of the Civil Practice and Remedies Code and the administrative procedure law, Chapter 2001 of the Government Code. Chapter 154 of the Civil Practice and Remedies Code sets forth ADR procedures for Texas trial and appellate courts.

The new rule affects Texas Civil Statutes, Article 581-2-8.

§127.2.Alternative Dispute Resolution.

(a) Policy. It is the Board's policy to encourage the fair and expeditious resolution of disputed matters, internal and external, through voluntary and informal settlement negotiations. This section sets out the Agency's alternative dispute resolution (ADR) procedures to be used when proceeding under Chapter 2009 of the Government Code. However, the ADR procedures in this section are intended to supplement and do not limit the use of any other informal dispute resolution or negotiated settlement procedures available to the Agency.

(b) Resolution and costs. Any resolution reached as a result of ADR procedures is intended to be through the voluntary agreement of the parties. The allocation of the costs of ADR are subject to negotiation and agreement between the parties. The party who requests ADR may be liable for the cost of any third-party mediator, moderator, arbitrator, or ombudsman and shall otherwise bear his or her own costs arising from the use of ADR.

(c) Coordinator. The Securities Commissioner shall designate at least one employee of the Agency to serve as the Agency's ADR coordinator to:

- (1) coordinate the implementation of the Agency's ADR policies;
- (2) serve as a resource for any training needed to implement the procedures for ADR; and
- (3) collect data concerning the effectiveness of the ADR procedures as implemented by the Agency.

(d) Statutory requirements. ADR must be consistent with the Government Code, Chapter 2009; Civil Practice and Remedies Code, Chapter 154; and the Administrative Procedure Act, Government Code, Chapter 2001. Confidentiality of records and communications related to the subject matter of an ADR proceeding shall be governed by Civil Practices and Remedies Code, §154.073.

(e) State Office of Administrative Hearings (SOAH).

(1) SOAH mediators may be assigned to disputed matters or contested cases as needed. If the mediator is a SOAH Administrative Law Judge (ALJ), that person will not also sit as the ALJ for the case if the disputed matter or contested case goes to public hearing.

(2) When ADR procedures do not result in the full settlement of a contested matter, the participants, in conjunction with the mediator, shall limit the contested issues which will be tried at SOAH through the entry of written stipulations. Such stipulations shall be forwarded or formally presented to the ALJ assigned to conduct the hearing and shall be included in the hearing record.

(f) Contract claims.

(1) In addition to the requirements of Government Code, Chapter 2009, ADR for contracting claims must also be consistent with the Government Code, Chapter 2260; and the Office of the Attorney General's rules for negotiation and mediation of certain contract disputes (1 TAC Chapter 68).

(2) Upon receipt of notice of a contract claim under Government Code Chapter 2260, the Securities Commissioner, in consultation with the ADR coordinator and the Director of Staff Services, or their designees, shall determine whether use of an ADR procedure is a required or appropriate method for resolving the contract dispute.

(3) If ADR procedures are determined to be the appropriate method for resolving a contract claim, the Securities Commissioner, or the Commissioner's designee, shall recommend to the claimant that the parties use ADR to resolve the dispute.

(4) The ADR coordinator and Director of Staff Services will collaborate with the claimant to select an appropriate procedure for ADR, and implement the agreed upon procedure consistent with the applicable statutory requirements and the guidelines established by the Office of the Attorney General and SOAH.

(g) Contested cases.

(1) A contested case pending before SOAH may be submitted for ADR if both the respondent and the Director of the Division signing the notice of hearing agree that ADR would be an appropriate means to attempt to reach a negotiated settlement of the matter.

(2) ADR will be conducted before SOAH. The parties to the contested case shall collaborate to select an appropriate procedure for ADR and implement the agreed upon procedure consistent with SOAH's model guidelines.

(3) The full resolution of a contested case reached as a result of ADR must be in writing and signed by all of the parties and submitted to the Securities Commissioner for review and approval.

(4) "Party" as used in this subsection shall have the same meaning as set forth in the Administrative Procedure Act, Government Code, Chapter 2001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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7 TAC §127.4

The Texas State Securities Board adopts new rule §127.4, concerning Prosecutorial Assistance to County or District Attorneys, without changes to the proposed text as published in the November 15, 2019, issue of the *Texas Register* (44 TexReg 6993). The rule will not be republished.

The new rule implements §3 of the Texas Securities Act, which was amended by House Bill 1535, passed during the 86th legislative session, which became effective September 1, 2019. Section 3 of the Act, as amended, requires the Board to adopt rules to establish a process to determine staff resources available to support prosecutions of referred cases. New §127.4 requires the Securities Commissioner to make certain determinations and consider certain factors before Agency resources are provided to county or district attorneys to support the prosecution of referred cases.

The rule ensures that the Agency continues to use its appropriated resources in a responsible manner that supports the prosecution of securities crimes while being mindful of its other statutory responsibilities.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, 581-3. Section 3 requires the Board to adopt rules to establish a process to enable the Securities Commissioner to determine whether to provide any requested assistance to the appropriate prosecuting attorney following referral of a case, and if so, the appropriate amount of such assistance.

The new rule affects Texas Civil Statutes, Article 581-3.

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