

November 15, 2019

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 proposes a new Chapter 102, §§102.1-102.6, concerning the Agency's Complaint Process, pursuant to 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 would 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. As recommended by the Sunset Commission, the proposed new rules would 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.

Travis J. Iles, Securities Commissioner; Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; and Joe Rotunda, Director, Enforcement Division, have determined that for the first five-year period the proposed rules are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

Mr. Iles, Mr. Edgar, Mr. Green, and Mr. Rotunda have also determined that for each year of the first five years the proposed rules are in effect, the public benefit expected as a result of adoption of the proposed rules will be that complainants and the subjects of the complaints will be apprised of the process the Agency follows for complaint receipt, investigation, and resolution and to ensure that the Agency's process for handling complaints is both fair and timely.

There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed rules will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. There is no anticipated impact on local employment.

Mr. Iles, Mr. Edgar, Mr. Green, and Mr. Rotunda have determined that for the first five-year period the proposed rules are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or negatively affect the state's economy. Additionally, the proposed new rules do not limit, expand, or repeal an existing regulation. The proposed rules would create new rules to lay out and describe all phases of the Agency's complaint process.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sections in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new rules are proposed 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 proposed rules affect Texas Civil Statutes, Article 581-1, et seq.

§102.1.Policy.

(a) It is the Board's policy for the Agency to:

(1) review, prioritize and investigate all complaints received in a timely manner;

(2) ensure conduct found to be in violation of the Act or a Board rule is brought to a fair, just, and equitable resolution; and

(3) protect confidential, investigatory, and inspection information while maximizing Agency transparency.

(b) The Commissioner shall maintain a system to promptly and efficiently act on complaints received by the Agency. The system shall:

(1) periodically, but at least every six months, notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize a law enforcement investigation;

(2) ensure all periodic notifications of complaint status to complaint parties are made in conformance with the confidentiality provisions of the Act and Board rules; and

(3) make information available on the Agency's website (www.ssb.texas.gov) that describes the Agency's complaint process, including the procedures for complaint investigation and resolution.

(c) Complaint information to be maintained shall include:

(1) information about parties to the complaint;

(2) the subject matter of the complaint;

(3) a summary of the results of the review or investigation of the complaint; and

(4) the disposition of the complaint.

(d) The Commissioner may provide information on the Agency's website (www.ssb.texas.gov) about:

(1) administrative actions taken by the Agency; and

(2) civil and criminal actions in which the Agency was involved whether through investigation, participation, or provision of assistance.

§102.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Complaint--a written communication submitted to the Agency by a person that alleges misconduct by an individual or entity believed to be engaged in an activity that is regulated by the Agency.

(2) Complainant--person filing a complaint with the Securities Commissioner.

(3) Jurisdictional authority--conduct regulated by the Agency as provided for in the Act and Board rules.

§102.3. Filing Complaints.

(a) A complaint against an individual or entity subject to the Agency's jurisdictional authority may be filed by a member of the public or by an individual or entity regulated by the Agency.

(b) A complaint form promulgated by the Agency is available on the Agency website (www.ssb.texas.gov). An electronic or print version of the complaint form may also be obtained by contacting any office of the Agency and requesting one.

(c) A complaint must be made in writing to the Securities Commissioner.

(1) A complaint using the Agency's complaint form must be submitted in person, by mail or facsimile to an Agency office, or electronically to the email address for complaints identified on the Agency's website (www.ssb.texas.gov).

(2) A complaint made by letter or other written format must be submitted electronically through the email address for complaints identified on the Agency's website (www.ssb.texas.gov).

(d) The complaint shall include the following information:

(1) the name and contact information of the complainant, unless the complainant wishes to remain anonymous;

(2) identifies the individual or entity against whom the complaint is filed; and

(3) sufficient facts to enable the Agency to determine the nature of the complaint and the specific facts and circumstances giving rise to the filing of the complaint.

§102.4.Processing of Complaints.

(a) Agency staff shall promptly review complaints to determine if the Agency has jurisdictional authority to investigate the complaint. Agency staff may contact the complainant or other persons for additional information.

(b) When the complaint relates to an individual or entity registered with the Securities Commissioner, the Inspections and Compliance Division, with assistance from the Enforcement Division as appropriate, will review the allegations in the complaint.

(c) When the complaint relates to an individual or entity that is not registered with the Securities Commissioner, the Enforcement Division, with assistance from the Inspections and Compliance Division as appropriate, will review the allegations in the complaint.

(d) Upon determination that the complaint contains the information required by §102.3(d) of this chapter (relating to Filing Complaints), the complaint will be entered in the complaint tracking system of the Agency division leading the review and investigation.

(e) The complainant will be notified of the Agency's receipt of the complaint and be given the name and contact information for an Agency staff member assigned the complaint.

§102.5.Prioritization of Complaint Investigations.

The following factors will be considered by Agency staff in prioritizing complaints for further investigation:

(1) the ongoing nature of the underlying alleged conduct;

(2) the amount and degree of financial harm presented by the alleged conduct;

(3) extent to which the alleged conduct relates to senior or vulnerable victims;

(4) the risk associated with the type of investment product underlying the alleged conduct;

(5) the seriousness, nature, circumstances, extent and persistence of the alleged conduct;

(6) the history of previous misconduct by the individual or entity alleged to be responsible for the underlying alleged conduct;

(7) the availability of Agency resources to pursue investigation of the alleged conduct;

(8) the extent another governmental agency or regulatory body is better positioned to investigate the alleged conduct; and

(9) such other matters as the facts and circumstances may require.

§102.6. Complaint Resolution.

(a) During the investigation of a complaint, Agency staff will make a determination on what further action by the Agency is appropriate under the particular facts and circumstances.

(b) The Division reviewing the complaint shall maintain a record of the summary of the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and the disposition of the complaint.

(c) Agency staff shall consider, on a case-by-case basis, aggravating and mitigating factors, such as the extent and pervasiveness of financial harm, prior violative conduct, cooperation, and past Agency sanctions redressing similar conduct, when determining an appropriate resolution to a complaint.

(d) Formal Agency action taken after investigation of a complaint could include an administrative sanction or penalty, civil action, or criminal prosecution. Formal administrative sanctions available to the Agency include an order to cease and desist; denial of a registration application; suspension, revocation, or probation of a registration; administrative fine; and refund to a client or purchaser of amounts paid for a service or transaction regulated by the Agency.

(e) After review and investigation of the complaint, the resolution could be one or more of the following:

(1) no further action, closed;

(2) informal, non-public action to bring the individual or entity into compliance with applicable securities laws and regulations;

(3) informal, non-public, action to bring the individual or entity into compliance with the Act and Board rules through the imposition of an undertaking and/or placing restrictions on future securities-related activities;

(4) formal, public action by agreement or consent order, which may include administrative sanctions;

(5) formal, public action to initiate an administrative contested case at the State Office of Administrative Hearings (SOAH) which, after notice and opportunity for hearing, could include an order imposing administrative sanctions;

(6) formal, ex parte public action (emergency cease and desist order) to prevent immediate and irreparable public harm;

(7) referral to the Attorney General for a civil action seeking injunction, restitution, and other civil penalties, and/or the imposition of a receivership; or

(8) further development through a law enforcement investigation prior to referral to an appropriate prosecutorial office for criminal prosecution.

(f) The Agency's most current penalty matrix, describing the range of possible sanctions for misconduct by registered persons and the administrative penalties and sanctions that can be levied against a registrant, is posted on the Agency's website (www.ssb.texas.gov).

(g) For contested matters before SOAH, Agency staff shall notify any respondent known by Agency staff to be self-represented of any guide for self-represented litigants disseminated by SOAH.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Travis J. Iles

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303

CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.23

The Texas State Securities Board proposes new §115.23, concerning Notice of Cybersecurity Incident. The new rule is proposed to require a registered dealer ("registrant") to notify the Securities Commissioner promptly if it experiences a material cybersecurity incident in its information system.

Specifically, proposed subsection (a) provides definitions. Subsection (b) would require the registrant to notify the Securities Commissioner when a notice is otherwise provided to a state or federal agency, law enforcement, or self-regulatory body, or a data breach notification is provided to customers of the registrant. Subsection (c) would allow the registrant to comply with the notification requirement by merely adding the Securities Commissioner to the list of persons and entities receiving notice of the cybersecurity incident

under other applicable state or federal law. If available, the number of customers located in Texas affected by the triggering event should be provided.

The Agency has resources available to registrants on its website to assist them in cybersecurity issues, including checklists, guidance, and information about how to prevent and/or respond to cybersecurity incidents.

Clint Edgar, Deputy Securities Commissioner and Tommy Green, Director Inspections and Compliance Division, have determined that for the first five-year period the proposed rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Edgar and Mr. Green have also determined that for each year of the first five years the proposed rule is in effect, the public benefit expected as a result of adoption of the proposed rule will be enhanced regulatory oversight over registrants, particularly regarding the ability to protect sensitive customer information. Regulatory oversight of a registrant's remediation and compliance efforts in response to a material cybersecurity incident can better inform the Agency's inspection process, resulting in stronger and more secure protection of sensitive customer information and other confidential information.

There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. A registrant would merely add the Securities Commissioner to the list of persons and entities receiving notice of the cybersecurity incident under other applicable state or federal law. There is no anticipated impact on local employment.

Mr. Edgar and Mr. Green have determined that for the first five-year period the proposed rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed new rule does not limit, expand, or repeal an existing regulation. The proposed rule would create a new rule to require registrants to provide notice to the Securities commissioner of a cybersecurity incident.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new rule is proposed 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 proposed rule affects: none applicable.

§115.23. Notice of Cybersecurity Incident.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Cybersecurity incident--

(A) the unauthorized acquisition of computerized or electronic data that compromises the security, confidentiality, or integrity of sensitive personal information being maintained;

(B) an occurrence that otherwise jeopardizes the security of the information system or the information the system processes, stores or transmits; or

(C) violates the security policies, security procedures or acceptable use policies of the information system owner to the extent such occurrence results from unauthorized or malicious activity.

(2) Information system--a set of applications, services, information technology assets or other information-handling components organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, which is maintained by the dealer, an affiliate, or a third party service provider at the direction of the dealer.

(3) "Triggering event" means a cybersecurity incident regarding the information system maintained by or on behalf of the dealer, that will require:

(A) submission of a notice to a state or federal agency, law enforcement, or to a self-regulatory body; or

(B) sending a data breach notification to customers of the dealer under applicable state or federal law, including Business and Commerce Code, §521.053, or a similar law of another state.

(b) Notice to the Securities Commissioner. When a triggering event occurs that does or may affect customers or clients of the dealer located in Texas, the registered dealer must provide notice to the Securities Commissioner at the time the notice or notification identified in paragraph (3)(A) or (3)(B) of subsection (a) of this section occurs.

(c) Content of notice. The notice required by subsection (b) of this section is met by the registered dealer forwarding a copy of the notice or notification identified in paragraph (3)(A) or (3)(B) of subsection (a) of this section or other document containing substantially the same information. Additionally, if such information is available to the registered dealer at the time the notice is provided, the dealer should identify the number of customers located in Texas affected by the triggering event.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Travis J. Iles

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303

CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §116.23

The Texas State Securities Board proposes new §116.23, concerning Notice of Cybersecurity Incident. The new rule is proposed to require a registered investment adviser ("registrant") to notify the Securities Commissioner promptly if it experiences a material cybersecurity incident in its information system.

Specifically, proposed subsection (a) provides definitions. Subsection (b) would require the registrant to notify the Securities Commissioner when a notice is otherwise provided to a state or federal agency, law enforcement, or self-regulatory body, or a data breach notification is provided to customers of the registrant. Subsection (c) would allow the registrant to comply with the notification requirement by merely adding the Securities Commissioner to the list of persons and entities receiving notice of the cybersecurity incident under other applicable state or federal law. If available, the number of customers located in Texas affected by the triggering event should be provided.

The Agency has resources available to registrants on its website to assist them in cybersecurity issues, including checklists, guidance, and information about how to prevent and/or respond to cybersecurity incidents.

Clint Edgar, Deputy Securities Commissioner and Tommy Green, Director Inspections and Compliance Division, have determined that for the first five-year period the proposed rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Edgar and Mr. Green have also determined that for each year of the first five years the proposed rule is in effect, the public benefit expected as a result of adoption of the proposed rule will be enhanced regulatory oversight over registrants, particularly regarding the ability to protect sensitive customer information. Regulatory oversight of a registrant's remediation and compliance efforts in response to a material cybersecurity incident can better inform the

Agency's inspection process, resulting in stronger and more secure protection of sensitive customer information and other confidential information.

There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. A registrant would merely add the Securities Commissioner to the list of persons and entities receiving notice of the cybersecurity incident under other applicable state or federal law. There is no anticipated impact on local employment.

Mr. Edgar and Mr. Green have determined that for the first five-year period the proposed rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed new rule does not limit, expand, or repeal an existing regulation. The proposed rule would create a new rule to require registrants to provide notice to the Securities commissioner of a cybersecurity incident.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new rule is proposed 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 proposed rule affects: none applicable.

§116.23. Notice of Cybersecurity Incident.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Cybersecurity incident--

(A) the unauthorized acquisition of computerized or electronic data that compromises the security, confidentiality, or integrity of sensitive personal information being maintained;

(B) an occurrence that otherwise jeopardizes the security of the information system or the information the system processes, stores or transmits; or

(C) violates the security policies, security procedures or acceptable use policies of the information system owner to the extent such occurrence results from unauthorized or malicious activity.

(2) Information system--a set of applications, services, information technology assets or other information-handling components organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, which is maintained by the investment adviser, an affiliate, or a third party service provider at the direction of the investment adviser.

(3) "Triggering event" means a cybersecurity incident regarding the information system maintained by or on behalf of the investment adviser, that will require:

(A) submission of a notice to a state or federal agency, law enforcement, or to a self-regulatory body; or

(B) sending a data breach notification to customers of the investment adviser under applicable state or federal law, including Business and Commerce Code, §521.053, or a similar law of another state.

(b) Notice to the Securities Commissioner. When a triggering event occurs that does or may affect customers or clients of the investment adviser located in Texas, the registered investment adviser must provide notice to the Securities Commissioner at the time the notice or notification identified in paragraph (3)(A) or (3)(B) of subsection (a) of this section occurs.

(c) Content of notice. The notice required by subsection (b) of this section is met by the registered investment adviser forwarding a copy of the notice or notification identified in paragraph (3)(A) or (3)(B) of subsection (a) of this section or other document containing substantially the same information. Additionally, if such information is available to the registered investment adviser at the time the notice is provided, the investment adviser should identify the number of customers located in Texas affected by the triggering event.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Travis J. Iles

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303

CHAPTER 127. MISCELLANEOUS

7 TAC §127.2

The Texas State Securities Board proposes new §127.2, concerning Alternative Dispute Resolution, pursuant to House Bill (HB) 1535 addition of §2-8 of the Texas Securities Act, during the 86th legislative session, which became effective September 1, 2019. Section 2-8 of the Act requires the Board to establish a policy on the use of alternative dispute resolution procedures under Chapter 2009, Texas Government Code, to assist in the resolution of internal and external disputes under the Board's jurisdiction. The Board's procedures relating to alternative dispute resolution (ADR) must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings (SOAH) for the use of ADR by state agencies.

The new rule would establish the Agency's policies and procedures for the use of ADR to resolve disputes as required by §2-8 of the Texas Securities Act. It would make ADR an option for contract claims involving the Agency as well as contested case matters that are pending before SOAH.

Travis J. Iles, Securities Commissioner; Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director Inspections and Compliance Division; Derek Lauterjung, Director, Staff Services Division; and Joseph Rotunda, Director, Enforcement Division, have determined that for the first five-year period the proposed rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Iles, Mr. Edgar, Mr. Green, Mr. Lauterjung, and Mr. Rotunda have also determined that for each year of the first five years the proposed rule is in effect, the public benefit expected as a result of adoption of the proposed rule will be to provide a clear and consistent process for resolving disputes through ADR.

There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Iles, Mr. Edgar, Mr. Green, Mr. Lauterjung, and Mr. Rotunda have determined that for the first five-year period the proposed rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed new rule does not limit, expand, or repeal an existing regulation. The proposed rule would create a new rule to comply with an amendment to the Texas Securities Act.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be

submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new rule is proposed 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 proposed 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 (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 proposal and found it to be within the state agency's legal authority to adopt.

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Travis J. Iles

Securities Commissioner

State Securities Board

Earliest possible date of adoption: December 15, 2019

For further information, please call: (512) 305-8303

7 TAC §127.4

The Texas State Securities Board proposes new §127.4, concerning Prosecutorial Assistance to County or District Attorneys, pursuant to House Bill (HB) 1535 amendment to §3 of the Texas Securities Act, during the 86th legislative session, which became effective September 1, 2019, that requires the Board to adopt rules to establish a process to determine staff resources available to support prosecutions of referred cases. Specifically, the Securities Commissioner would be required 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.

Travis J. Iles, Securities Commissioner, and Joseph Rotunda, Director, Enforcement Division, have determined that for the first five-year period the proposed rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Iles and Mr. Rotunda have also determined that for each year of the first five years the proposed rule is in effect, the public benefit expected as a result of adoption of the proposed rule will be ensure 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.

There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Iles and Mr. Rotunda have determined that for the first five-year period the proposed rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or

decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed new rule does not limit, expand, or repeal an existing regulation. The proposed rule would create a new rule to comply with an amendment to the Texas Securities Act.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

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

§127.4. Prosecutorial Assistance to County or District Attorneys.

(a) Prior to referring a case to a county or district attorney for prosecution pursuant to the Texas Securities Act, Section 3.A, the Commissioner shall make a determination of:

(1) the Agency resources, including the number and types of Agency employees, that would potentially be needed to assist in the prosecution of the case; and

(2) the availability of Agency employees and other resources necessary to carry out any request for assistance.

(b) In making the determination in subsection (a) of this section, the Commissioner must consider:

(1) whether resources are available after taking into account any ongoing Board investigations, investigations under §28 of this Act, and criminal prosecutions for which assistance is being provided;

(2) the seriousness of the alleged violation or violations in the case, including the severity of the harm and number of victims involved; and

(3) the state's interest in the prosecution of a particular case and the availability of other methods of redress for the alleged violations, including the pursuit of a civil action.

(c) If a change in circumstances occurs after the time of the determination under subsection (a) of this section, the Commissioner may reconsider the determination and may increase or reduce the number of Board employees or other resources to be made available for a case using the process established in this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 1, 2019.

TRD-201904074

Travis J. Iles

Securities Commissioner

State Securities Board

Earliest possible date of adoption: December 15, 2019

For further information, please call: (512) 305-8303