

Rules of Elected Officials

Division 30—Secretary of State

Chapter 55—Hearings Under Securities Act

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**Title 15—ELECTED OFFICIALS****Division 30—Secretary of State****Chapter 55—Hearings Under Securities
Act****15 CSR 30-55.010 Who May Request**

PURPOSE: This rule sets out who may request hearings upon matters under the Missouri Securities Act.

(1) Hearings Before Commissioner.

(A) Any person aggrieved by a summary postponement or suspension of a broker-dealer, agent, investment adviser, or investment adviser representative registration pursuant to section 409.204(c) may request a hearing before the commissioner. The hearing shall be governed by Chapter 536, RSMo.

(B) Any person aggrieved by the denial, suspension or revocation of a securities registration, or the denial or revocation of exemptions from registration may request a hearing before the commissioner. Pursuant to section 409.412(a) the hearing shall be governed by Chapter 536, RSMo.

(C) Any person aggrieved by the denial, revocation, suspension, summary postponement or summary suspension of a commodity broker-dealer or sales representative registration under the Missouri Commodities Code, sections 409.800–409.863, RSMo may request a hearing before the commissioner. The hearing shall be governed by Chapter 536, RSMo.

(D) Any person aggrieved by an order issued by the commissioner pursuant to Chapter 409, RSMo, except those provided for below, may request a hearing before the commissioner. The hearing shall be governed by Chapter 536, RSMo.

(2) Hearings Before the Administrative Hearing Commission.

(A) Any person aggrieved by denial of a broker-dealer, agent, investment adviser, or investment adviser representative registration by the commissioner may file a petition with the Administrative Hearing Commission in accordance with section 409.402(f), RSMo.

(B) In matters involving the revocation or suspension of the registration of broker-dealers, agents, investment advisers, or investment adviser representatives under section 409.204(a), the Securities Division shall initiate the matter by submitting to the commissioner a petition for suspension or revocation and a proposed complaint for filing before the Administrative Hearing Commission. The commissioner may then refer the matter to the Administrative Hearing Commission in accordance with section 409.204(f), RSMo.

The Securities Division or counsel for the commissioner may petition the Administrative Hearing Commission for findings of fact and conclusions of law to support grounds for disqualification under section 409.204(a). The Administrative Hearing Commission shall, after opportunity for hearing, issue findings of fact and conclusions of law. The matter shall then be referred back to the commissioner for consideration of sanctions and final order.

AUTHORITY: sections 409.413 and 409.836, RSMo 2000.* Original rule filed June 25, 1968, effective Aug. 1, 1968. Amended: Filed May 21, 1969, effective Aug. 1, 1969. Amended: Filed July 21, 1972, effective Aug. 1, 1972. Amended: Filed Nov. 15, 1974, effective Nov. 25, 1974. Amended: Filed Aug. 11, 1978, effective Feb. 11, 1979. Amended: Filed Aug. 22, 1986, effective Jan. 30, 1987. Amended: Filed July 3, 1989, effective Sept. 28, 1989. Rescinded and readopted: Filed Nov. 1, 2001, effective May 30, 2002.

*Original authority: 409.413, RSMo 1967 and 409.836, RSMo 1985

15 CSR 30-55.020 Instituting Hearing Before the Commissioner

PURPOSE: This rule describes the form and content of the request for hearing, time for filing, number of copies to be filed, the order of hearing, and how notice will be served.

(1) Request for Hearing. A request for hearing shall be filed with the commissioner by any party or interested person aggrieved by any order or refusal to make an order under this chapter. Any request for hearing shall contain:

- (A) A brief statement of the facts;
- (B) A summary of factual and legal issues involved;
- (C) A request for relief;
- (D) Suggestions in support of relief sought including relevant statutes;
- (E) The name of the party requesting the hearing; and
- (F) The name of attorney representing the party, if any.

(2) Time for Filing. Any person entitled to request a hearing in any matter within the jurisdiction of the commissioner must do so within the statutory time limits, if any, applicable in those cases. If there is no time limit, filing should be within a reasonable period of time not to exceed thirty (30) days from the date of receipt of any notice of action or refusal to take action by the commissioner.

(3) Number of Copies to be Filed. Three (3) copies of a request for hearing or other related material shall be filed with the commissioner. One (1) copy shall be served by mail on any other party to the matter.

(4) Hearing Order. The commissioner may order a hearing on any matter within his/her jurisdiction under Chapter 409, RSMo. The commissioner may immediately set the matter for hearing, and may also schedule a pre-hearing conference. The hearing must be set within fifteen (15) days of filing a request for hearing. Subject to more restrictive statutory limitations, a proceeding under the provisions of these rules shall be set for a date not more than ninety (90) days from the date of request. The hearing order shall contain:

- (A) Caption and number of the case;
- (B) Name of party filing;
- (C) Time, place and date of a prehearing conference;
- (D) Time, place and date of the hearing;
- (E) If a petition was submitted by the Securities Division and the request for hearing has raised a dispute of facts or any affirmative defenses, the date an answer must be filed; and

(F) Citation to rules promulgated by the commissioner regarding hearings.

(5) Notice to Parties. All parties and, in the discretion of the commissioner, other interested persons shall be notified promptly by the commissioner upon the filing of a request for hearing or related material filed. The commissioner shall provide notice by serving copies of all documents filed including the request for hearing and the hearing order.

AUTHORITY: sections 409.413 and 409.836, RSMo 2000.* Original rule filed Aug. 11, 1978, effective Feb. 11, 1979. Amended: Filed Aug. 22, 1986, effective Jan. 30, 1987. Rescinded and readopted: Filed Nov. 1, 2001, effective May 30, 2002.

*Original authority: 409.413, RSMo 1967 and 409.836, RSMo 1985

15 CSR 30-55.025 General Prehearing Procedures

PURPOSE: This rule describes the general procedures for contested matters.

(1) Rules of Procedure. The hearings before the commissioner and Administrative Hearing Commission are governed by Chapter 536, RSMo. The commissioner and Administrative Hearing Commission may also be

guided by the Missouri Rules of Civil Procedure.

(2) Place of Filing. If the matter is to be heard by the commissioner, all pleadings shall be filed with the commissioner. If the matter is to be heard by the Administrative Hearing Commission, all pleadings must be filed with the commission. The party filing pleadings or documents shall serve by mail copies of all filed pleadings or documents on all parties.

(3) Continuances. The commissioner shall grant written requests for continuances upon good cause shown. A hearing shall be held no later than ninety (90) days after the request for hearing unless a later date is agreed to by all parties to the matter, or justice requires a continuance, and the commissioner by order continues the hearing.

AUTHORITY: sections 409.413 and 409.836, RSMo 2000.* *Original rule filed Nov. 1, 2001, effective May 30, 2002.*

*Original authority: 409.413, RSMo 1967 and 409.836, RSMo 1985.

15 CSR 30-55.030 Answers and Supplementary Pleadings

PURPOSE: This rule describes the form and content of the answer and supplementary pleadings and how they shall be filed.

(1) Answers.

(A) Matters Prosecuted by Securities Division Before the Commissioner. In any proceeding in which the Securities Division has filed a petition with the commissioner, a party challenging the factual basis for an order shall file an answer to allegations made by the Securities Division in its petition. The answer shall be filed within thirty (30) days of receipt of the hearing order, unless the commissioner orders additional time. All answers shall be in writing and should admit those portions of the petition which respondent believes are true and deny those portions of the petition which respondent believes are not true. The answer shall contain a short and concise statement of those facts, which the respondent believes are true and relevant to the issues raised in the complaint. The respondent or legal counsel must sign the answer.

(B) Matters Prosecuted by Others Before the Commissioner. In those cases where an applicant has filed a petition and the Securities Division files an answer, the answer shall set forth the factual and legal basis for the

action of the commissioner. Unless the answer specifically pleads that petitioner has failed to comply with 15 CSR 30-55.020, objections for failure to comply will be deemed as waived by the Securities Division. Absent a showing that the division has complied with the law and these rules, no complaint of an applicant shall be dismissed without a hearing on the merits.

(C) Matters Prosecuted by the Securities Division Before the Administrative Hearing Commission. In any proceeding that the commissioner has referred to the Administrative Hearing Commission, the respondent shall file an answer within ten (10) days after respondent receives a copy of the complaint. However, the failure to file an answer within the time provided in this rule will not prevent the Administrative Hearing Commission from holding a prehearing conference or a hearing at the time and place specified in the notice. Neither will the failure to file an answer divest the commissioner or Administrative Hearing Commission of jurisdiction to render a decision in the case.

(D) Matters Prosecuted by Others Before the Administrative Hearing Commission. In those cases where an applicant has filed a petition and the commissioner files an answer, the answer shall set forth the factual and legal basis for the action of the commissioner.

(2) Amendments and Supplementary Pleadings.

(A) A petition may be modified or amended without leave of the commissioner or Administrative Hearing Commission at any time preceding the filing of an answer or other responsive pleading by the respondent. After respondent has filed his/her responsive pleading, leave must be granted to amend or modify any petition.

(B) Answers may be modified or amended without leave of the commissioner or Administrative Hearing Commission at any time up to five (5) days preceding the date on which the hearing in the case is actually held. After this time, all modifications or amendments to answers may be made only upon leave being granted by the commissioner or Administrative Hearing Commission.

(C) Any pleading, other than a complaint or an answer, may be filed in any case pending before the Administrative Hearing Commission if leave is first granted.

AUTHORITY: section 409.413, RSMo 2000.* *Original rule filed Aug. 11, 1978, effective Feb. 11, 1979. Rescinded and readopted: Filed Nov. 1, 2001, effective May 30, 2002.*

*Original authority: 409.413, RSMo 1967.

15 CSR 30-55.040 Notice of Hearing

PURPOSE: This rule sets out the timing and content of the notice of hearing.

(1) Immediately upon setting a hearing, the commissioner or Administrative Hearing Commission shall serve notice by mail on all parties to the matter. Service of notice shall be made by mailing a copy of the hearing order required by 15 CSR 30-55.020(4) to all parties. If a party cannot be reached at the last known address, notice shall be given by publication pursuant to Missouri Rule of Civil Procedure 54.17.

(2) The commissioner may serve notice of the hearing on any person the commissioner determines should have notice of the hearing.

(3) If there is a large group whose rights would be affected by the proceeding, notice will be given to a sufficient number of class members as the commissioner determines will give adequate notice to the class.

AUTHORITY: section 409.413, RSMo 2000.* *Original rule filed Aug. 11, 1978, effective Feb. 11, 1979. Rescinded and readopted: Filed Nov. 1, 2001, effective May 30, 2002.*

*Original authority: 409.413, RSMo 1967.

15 CSR 30-55.050 Prehearing Conferences

PURPOSE: This rule describes the setting and subject matter of the prehearing conference.

(1) Setting.

(A) In proceedings before the commissioner all prehearing conferences shall be held within thirty (30) days of the hearing order issued by the commissioner, unless continued by the commissioner for good cause.

(B) In proceedings before the Administrative Hearing Commission, any party or legal counsel may petition the Administrative Hearing Commission to hold a prehearing conference at a time prior to the setting of a conference by order of the commission.

(C) The legal counsel who will actually handle the hearing shall be present at all prehearing conferences, unless excused by the commissioner or Administrative Hearing Commission. Parties to an action may appear in person with counsel at a prehearing conference.



(2) Subject Matter.

(A) Legal counsel for all parties shall attend the prehearing conference and be prepared to discuss the following items:

1. The simplification of the issues;
2. The necessity or desirability of amendments to the pleadings;
3. The possibility of obtaining admission of fact and of documents which will avoid unnecessary proof;
4. The limitation of the number of expert and character witnesses;
5. A discovery schedule, if necessary for the orderly administration of the proceeding;
6. The manner and conditions upon which depositions can be taken;
7. Schedule for disposition of any prehearing motions that have been filed;
8. The anticipated length of the hearing and the time and location of conducting the hearing; and
9. Other matters as may aid in the disposition of the action.

AUTHORITY: section 409.413, RSMo 2000. Original rule filed Aug. 11, 1978, effective Feb. 11, 1979. Rescinded and readopted: Filed Nov. 1, 2001, effective May 30, 2002.*

*Original authority: 409.413, RSMo 1967.

15 CSR 30-55.060 Public Hearing

PURPOSE: This rule states that all hearings will be public and that the parties may attend and be represented by counsel.

All hearings shall be open to the public. All parties have a right to be present and to be represented by counsel, if they so desire. Notice of the hearing will be posted prominently in the Office of the Secretary of State, Securities Division, Missouri State Information Center, Room 229, 600 W. Main, Jefferson City, MO 65101.

AUTHORITY: section 409.413, RSMo 1986. Original rule filed Aug. 11, 1978, effective Feb. 11, 1979. Emergency amendment filed Oct. 29, 1982, effective Nov. 8, 1982, expired March 8, 1983. Amended: Filed Oct. 29, 1982, effective Feb. 11, 1983.*

*Original authority: 409.413, RSMo 1967.

15 CSR 30-55.070 Record of Hearing Before the Commissioner

PURPOSE: This rule states what shall be included in the record of the hearing.

(1) Pursuant to section 536.070, RSMo, the commissioner will cause all proceedings to be suitably recorded either electronically or by court reporter.

(2) Upon the request and at the expense of any party to the proceeding, the commissioner will cause the hearing to be transcribed. Any other party may obtain a copy of the transcript upon payment of the costs of preparation.

(3) The record for judicial review will contain:

(A) If requested and paid for by the requesting party, the transcript of any proceedings;

(B) All petitions, answers, motions, discovery pleadings, and other materials or documents filed by any party with or subsequent to the request for hearing;

(C) All documents and exhibits submitted as evidence;

(D) All matters officially noticed;

(E) Formal questions and offers of proof, objections and rulings; and

(F) All written decisions and orders of the commissioner including his/her findings of fact, conclusions of law, and final order.

AUTHORITY: section 409.413, RSMo 2000. Original rule filed Aug. 11, 1978, effective Feb. 11, 1979. Rescinded and readopted: Filed Nov. 1, 2001, effective May 30, 2002.*

*Original authority: 409.413, RSMo 1967.

15 CSR 30-55.080 Discovery

PURPOSE: This rule outlines procedures for, and permits time limits on, discovery.

(1) Discovery Schedule. The commissioner or the Administrative Hearing Commission may issue orders setting reasonable time limits for completion of discovery and may shorten or lengthen the time parties have to file answers to discovery requests.

(2) Interrogatories. Any party may serve upon any other party written interrogatories, upon and under the same conditions, as in civil actions in the circuit court pursuant to Missouri Rules of Civil Procedure, Rule 57, except as limited by section 536.073, RSMo.

(3) Depositions. Any party may take and use depositions in the same manner, upon and under the same conditions, as in civil actions in the circuit court pursuant to Missouri Rules of Civil Procedure, Rule 57, except as limited by section 536.073, RSMo.

(4) Requests for Production of Documents and Things. Any party may serve upon any other party a request for documents and things, upon and under the same conditions, as in civil actions in the circuit court pursuant to Missouri Rules of Civil Procedure, Rule 58, except as limited by section 536.073, RSMo.

(5) Admission of Facts and of Genuineness of Documents. Any party may serve upon any other party a written request for the admission of facts or of the genuineness of documents, upon and under the same conditions, as in civil actions in the circuit court pursuant to Missouri Rules of Civil Procedure, Rule 59, except as limited by section 536.073, RSMo.

(6) Enforcement of Discovery: Sanctions. The commissioner or the Administrative Hearing Commission may enforce discovery or sanction parties, upon and under the same conditions, as in civil actions in the circuit court pursuant to Missouri Rules of Civil Procedure, Rule 61, except as limited by section 536.073, RSMo.

AUTHORITY: section 409.413, RSMo 2000. Original rule filed Aug. 11, 1978, effective Feb. 11, 1979. Rescinded and readopted: Filed Nov. 1, 2001, effective May 30, 2002.*

*Original authority: 409.413, RSMo 1967.

15 CSR 30-55.090 Procedure at Hearing

PURPOSE: This rule states the procedures and rules of evidence to be followed at the hearing.

(1) Prehearing Motions. The commissioner or Administrative Hearing Commission may consider any motions to dismiss, motion to vacate, motions for summary judgment, or any other dispositive motions prior to commencement of the hearing on the merits.

(2) Evidence. The order in which the evidence will be presented is as follows:

(A) The Securities Division shall present its evidence first. The burden of proof in a hearing on the merits in matters relating to an order of the commissioner, or the failure of the commissioner to act, shall be on the Securities Division. The burden of proof for affirmative defenses, including exemptions and exceptions from definition, shall be upon the party claiming the affirmative defense.

(B) All witnesses may be cross-examined on any relevant issue even though that matter was not the subject of direct examination and

may be impeached regardless of which party first called him/her to testify;

(C) Other parties shall then present their evidence;

(D) Each party has the right to rebut the evidence presented;

(E) The commissioner and Administrative Hearing Commission shall have the authority to administer oaths and affirmations, to rule on the admission or inclusion of evidence, and to take the necessary steps to insure a fair and orderly conduct of the hearing. S/he shall follow section 536.070, RSMo governing admission of evidence in administrative hearings; and

(F) The commissioner and Administrative Hearing Commission shall take official notice of all matters of which courts take judicial notice. Technical facts, not judicially cognizable may be officially noted if they are within his/her competence provided that the parties are notified and are given a chance to contest these facts or show that official notice would not be proper.

(3) Closing Arguments. All parties may make closing statements. The party with the burden of proof shall have the opportunity for rebuttal argument.

AUTHORITY: section 409.413, RSMo 2000. * Original rule filed Aug. 11, 1978, effective Feb. 11, 1979. Rescinded and readopted: Filed Nov. 1, 2001, effective May 30, 2002.

*Original authority: 409.413, RSMo 1967.

15 CSR 30-55.100 Subpoenas

PURPOSE: This rule sets out the manner in which subpoenas may be obtained.

(1) The commissioner shall have the authority to issue subpoenas and subpoenas *duces tecum*.

(A) Subpoenas other than subpoenas *duces tecum* shall be issued upon the request of any party, provided the requesting party provide the following information:

1. Caption and number of the case;
2. Name of witness being subpoenaed; and

3. Date for appearance.

(B) Subpoenas *duces tecum* shall be issued by the commissioner when s/he determines the circumstances are proper.

(2) Subpoenas shall extend to all parts of the state and be served and returned as in civil actions in the circuit court.

(3) Witnesses shall be entitled to the same fees and travel and attendance fees if compelled to travel more than forty (40) miles from home, as provided for civil actions in the circuit court.

(4) Fees for service and witness and travel fees are to be paid by the party requesting the subpoena.

(5) The commissioner shall apply to the circuit court for enforcement of subpoenas pursuant to 536.077, RSMo, except those issued under the provisions of section 409.820, RSMo. Subpoenas issued under the provisions of section 409.820, RSMo are governed by these provisions.

AUTHORITY: section 409.413 and 409.820, RSMo 1986.* Original rule filed Aug. 11, 1978, effective Feb. 11, 1979. Amended: Filed Aug. 22, 1986, effective Jan. 30, 1987.

*Original authority: 409.413, RSMo 1967 and 409.820, RSMo 1985.

15 CSR 30-55.110 Motions, Suggestions and Legal Briefs

PURPOSE: This rule states when motions, suggestions and legal briefs may be filed and answered.

(1) Motions and Suggestions. Each party shall be entitled to file motions and to present written suggestions, accompanied by oral argument if the party so chooses. Motions and written suggestions may be filed at any time during the pendency of the proceeding. Opposing parties shall file any responsive pleadings within five (5) business days, unless the commissioner or Administrative Hearing Commission grants additional time.

(2) Briefs. At any time prior to submitting the case for consideration at the close of the hearing, a party may seek leave to file a brief. If leave is granted, a party shall have twenty (20) days after leave is granted to prepare and file its brief. The other parties will be given twenty (20) days to file responsive briefs. Three (3) copies of briefs must be filed with the commissioner or Administrative Hearing Commission. The filing party shall also mail all briefs filed to all other parties.

AUTHORITY: section 409.413, RSMo 2000. * Original rule filed Aug. 11, 1978, effective Feb. 11, 1979. Rescinded and readopted: Filed Nov. 1, 2001, effective May 30, 2002.

*Original authority: 409.413, RSMo 1967.

15 CSR 30-55.120 Instituting Hearing Before Commissioner Under the Missouri Commodities Act

Emergency rule filed Oct. 2, 1985, effective Oct. 12, 1985, expired Feb. 9, 1986.

15 CSR 30-55.130 Answers and Supplementary Pleadings for Commodities Act

Emergency rule filed Oct. 2, 1985, effective Oct. 12, 1985, expired Feb. 9, 1986.

15 CSR 30-55.140 Notice of Hearing for Missouri Commodities Act

Emergency rule filed Oct. 2, 1985, effective Oct. 12, 1985, expired Feb. 9, 1986.

15 CSR 30-55.150 Prehearing Conferences for Missouri Commodities Act

Emergency rule filed Oct. 2, 1985, effective Oct. 12, 1985, expired Feb. 9, 1986.

15 CSR 30-55.160 Public Hearing Under Missouri Commodities Act

Emergency rule filed Oct. 2, 1985, effective Oct. 12, 1985, expired Feb. 9, 1986.

15 CSR 30-55.170 Record of Hearing Under Missouri Commodities Act

Emergency rule filed Oct. 2, 1985, effective Oct. 12, 1985, expired Feb. 9, 1986.

15 CSR 30-55.180 Discovery Under Missouri Commodities Act

Emergency rule filed Oct. 2, 1985, effective Oct. 12, 1985, expired Feb. 9, 1986.

15 CSR 30-55.190 Procedure and Evidence Under Missouri Commodities Act

Emergency rule filed Oct. 2, 1985, effective Oct. 12, 1985, expired Feb. 9, 1986.

15 CSR 30-55.200 Subpoenas Under Missouri Commodities Act

Emergency rule filed Oct. 2, 1985, effective Oct. 12, 1985, expired Feb. 9, 1986.

15 CSR 30-55.210 Briefs Under Missouri Commodities Act

Emergency rule filed Oct. 2, 1985, effective Oct. 12, 1985, expired Feb. 9, 1986.

**15 CSR 30-55.220 Hearing Officers**

PURPOSE: This rule provides for the appointment of hearing officers by the secretary of state.

(1) In all proceedings before the commissioner initiated under provisions of Chapter 409, RSMo, the secretary of state or his/her designee may appoint a hearing officer to conduct the proceeding.

(2) Upon the written request of a party, the commissioner may modify any interim ruling of the hearing officer, but no hearing on the request must be provided.

(3) When the adjudicatory proceeding has been completed, the hearing officer shall recommend Findings of Fact and Conclusions of Law to the commissioner. The commissioner shall dispose of the matter in the manner applicable to proceedings conducted by the commissioner. No hearing on the recommendations of the hearing officer must be provided.

AUTHORITY: section 409.413, RSMo 2000.*
Original rule filed Aug. 3, 1992, effective April 8, 1993. Amended: Filed Nov. 1, 2001, effective May 30, 2002.

*Original authority: 409.413, RSMo 1967.