

§ 10.23

17 CFR Ch. I (4-1-06 Edition)

shall notify the respondent of his right to a hearing and shall specify the time required by § 10.23 of these rules for the filing of an answer and the consequence of failure to file an answer.

(b) *Service.* The Proceedings Clerk shall give appropriate notice to each respondent by serving them with a copy of the complaint and notice of hearing. Service may be made in person, by confirmed telegraphic notice, or by registered mail or certified mail, addressed to the last known business or residence address of the person to be served or the address of his duly authorized agent for service. If a respondent is not found at his last known business or residence address and no forwarding address is available, additional service may be made, at the discretion of the Commission, as follows:

(1) By publishing a notice of the filing of the proceeding and a summary of the complaint, approved by the Commission or the Administrative Law Judge, once a week for three consecutive weeks in one or more newspapers having a general circulation where the respondent's last known business or residence address was located and, if ascertainable, where the respondent is believed to reside or be doing business currently; and

(2) By continuously displaying the complaint on the Commission's Internet web site during the period referred to in paragraph (b)(1) of this section.

[41 FR 2511, Jan. 16, 1976, as amended at 60 FR 54802, Oct. 26, 1995; 63 FR 55791, Oct. 19, 1998]

§ 10.23 Answer.

(a) *When required.* Following service of a complaint and notice of hearing as set forth in § 10.22 of these rules, unless otherwise specified in the notice of hearing, each respondent shall file an answer with the Proceedings Clerk within 20 days.

(b) *Content of answer.* The answer shall include:

(1) A statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny each allegation; a statement of a lack of information shall have the effect of a denial; any allegation not expressly denied shall be deemed to be admitted;

(2) A statement of the facts supporting each affirmative defense.

(c) *Effect of failure to file answer.* A party who fails to file an answer within 20 days shall be in default and, pursuant to procedures set forth in § 10.93 of these rules, the proceeding may be determined against him by the Administrative Law Judge upon his consideration of the complaint, the allegations of which shall then be deemed to be true.

(d) *Admission of all allegations of fact.* If a respondent's answer admits the truth of all the material allegations of fact contained in the complaint, it shall constitute a waiver of hearing on those allegations. However, the Administrative Law Judge may conduct a hearing, if so requested, by any of the parties. Following waiver, the parties may submit proposed findings and conclusions and briefs, as provided in § 10.82 and may appeal any initial decision to the Commission as provided in § 10.102 of these rules.

(e) *Motion for more definite statement.* Where a reasonable showing is made by a respondent that he cannot frame a responsive answer based on the allegations in the complaint, he may move for a more definite statement of the charges against him before filing an answer. A motion for a more definite statement shall be filed within ten days after service of the complaint and shall specify the defects complained of and the particular allegation as to which a more definite statement is sought.

[41 FR 2511, Jan. 16, 1976, as amended at 60 FR 54802, Oct. 26, 1995]

§ 10.24 Amendments and supplemental pleadings.

(a) *Complaint and notice of hearing.* The Commission may, at any time, amend the complaint and notice of hearing in any proceeding. If the Commission so amends the complaint and notice of hearing, the Administrative Law Judge shall adjust the scheduling of the proceeding to the extent necessary to avoid any prejudice to any of the parties to the proceeding. Upon motion to the Administrative Law Judge and with notice to all other parties and the Commission, the Division

of Enforcement may amend a complaint to correct typographical and clerical errors or to make other technical, non-substantive revisions within the scope of the original complaint.

(b) *Other pleadings.* Except for the complaint and notice of hearing, a party may amend any pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted, he may amend it within 20 days after it is served. Otherwise a party may amend a pleading only by leave of the Administrative Law Judge, which shall be freely given when justice so requires.

(c) *Response to amended pleadings.* Any party may file a response to any amendment to any pleading, including the complaint, within ten days after the date of service upon him of the amendment or within the time provided to respond to the original pleading, whichever is later.

(d) *Pleadings to conform to the evidence.* When issues not raised by the pleadings but reasonably within the scope of a proceeding initiated by the complaint are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.

[41 FR 2511, Jan. 16, 1976, as amended at 63 FR 55791, Oct. 19, 1998]

§ 10.25 Form of pleadings.

All averments of claim and defense shall be made in consecutively numbered paragraphs. The contents of each paragraph shall be limited as far as practicable to a single set of circumstances.

§ 10.26 Motions and other papers.

(a) *Presentation.* An application for a form of relief not otherwise specifically provided for in these rules shall be made by motion, filed with the Proceedings Clerk, which shall be in writing unless made on the record during a hearing. The motion shall state: (1) The relief sought; (2) the basis for relief; and (3) the authority relied upon. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. All motions and applications, unless otherwise provided in these rules, shall be

directed to the Administrative Law Judge prior to the filing of an initial decision in a proceeding, and to the Commission after the initial decision has been filed.

(b) *Answers to motions.* Any party may serve and file a written response to a motion within ten days after service of the motion upon him or within such longer or shorter period as established by these rules or as the Administrative Law Judge or the Commission may direct. The absence of a response to a motion may be considered by the Administrative Law Judge or the Commission in deciding whether to grant the requested relief.

(c) *Motions for procedural orders.* Motions for procedural orders, including motions for extension of time, may be acted on at any time, without awaiting a response thereto. Any party adversely affected by such order may request reconsideration, vacation or modification of the order.

(d) *Dilatory motions.* Repetitive or numerous motions dealing with the same subject matter shall not be permitted.

(e) *Review by the Commission.* Interlocutory review by the Commission of a ruling on a motion by an Administrative Law Judge may be sought in accordance with the procedures and under the circumstances set forth in § 10.101 of these rules.

[41 FR 2511, Jan. 16, 1976, as amended at 60 FR 54802, Oct. 26, 1995; 63 FR 55791, Oct. 19, 1998]

Subpart C—Parties and Limited Participation

§ 10.31 Parties.

The parties to an adjudicatory proceeding shall include the Division of Enforcement, each respondent named in the complaint and each person permitted to intervene pursuant to § 10.33 of these rules. A respondent shall cease to be a party or purposes of a pending proceeding when (a) a default order is entered against him pursuant to § 10.93; or (b) the Commission accepts an offer of settlement pursuant to § 10.108 of these rules.