



The Office of Secretary of State

Brian P. Kemp
SECRETARY OF STATE

Vincent R. Russo
General Counsel

NOTICE (SEC-2011-01)

RE: Repeal of Chapter 590-4-1 entitled “Rules of General Applicability” Consisting of Rules 590-4-1-.01 to 590-4-1-.14

TO ALL INTERESTED PERSONS AND PARTIES:

Pursuant to the Official Code of Georgia Annotated, O.C.G.A. §§ 10-5-70 and 50-13-4, notice is hereby given that the Commissioner of Securities of the Office of the Georgia Secretary of State, (hereinafter “Commissioner”) proposes to repeal chapter 590-4-1 *Rules of General Applicability*, consisting of Rules 590-4-1-.01, 590-4-1-.02, 590-4-1-.03, 590-4-1-.04, 590-4-1-.05, 590-4-1-.06, 590-4-1-.07, 590-4-1-.08, 590-4-1-.09, 590-4-1-.10, 590-4-1-.11, 590-4-1-.12, 590-4-1-.13, and 590-4-1-.14.

Attached with this notice is an exact copy of each proposed rule to be repealed. The rules are being repealed under the authority of O.C.G.A. §§ 10-5-70 and 10-5-74. The Commissioner finds that the repeal of said rules is necessary and in the public interest because the rules were promulgated under the Georgia Securities Act of 1973, which the General Assembly repealed in its entirety and replaced pursuant to Act 528 during the 2008 legislative session.

The Assistant Commissioner, in accordance with O.C.G.A. § 10-5-70(f), shall consider the repeal of the proposed rules at 9:30 a.m., on November 17, 2011, in Room 810, Suite 802 West Tower at 2 Martin Luther King, Jr. Drive, S.E., Atlanta, Georgia 30334.

Copies of this notice and exact copy of each proposed rule for repeal are available for review on the Securities Divisions’ web page at <http://www.sos.ga.gov/securities>. Interested persons may submit data, views or arguments in writing to the Commissioner. The Commissioner must receive all comments regarding the proposed repeal of the above-referenced Rules from interested persons no later than 5:00 p.m. on November 15, 2011. Written comments must be sent to: Commissioner of Securities, Securities Division, 2 Martin Luther King, Jr. Drive, S.E., 802 West Tower, Atlanta, Georgia 30334. Written comments may be sent via facsimile to (404) 656-0513, or submitted electronically to SECRules@sos.ga.gov. Please reference “SEC-2011-01” on all comments.

For further information, please contact Tom Zagorsky at (404) 463-0344.

This 13th day of October, 2011.



Vincent R. Russo
Interim Assistant Commissioner of Securities

590-4-1-.01 Definitions.

(1) As used in the Act and herein, “accredited investor” shall have such meaning as set forth in Rule 501 of SEC Regulation D, 17 C.F.R. § 230.501.

(2) As used herein, all citations to “the Act” or “Act” refer to the Georgia Securities Act of 1973, as amended, as set forth in Chapter 5 of Title 10 of the Official Code of Georgia Annotated.

(3) As used herein, “APA” means The Georgia Administrative Procedure Act, as set forth in Chapter 13 of Title 50 of the Official Code of Georgia Annotated.

(4) As used herein, all references to “the Assistant Commissioner” or “Assistant Commissioner” mean the Assistant Commissioner of Securities of this State.

(5) As used herein, all references to “the Commissioner” or “Commissioner” mean the Commissioner of Securities of this State.

(6) As used herein, “CRD” means the Central Registration Depository.

(7) As used herein, “IARD” means Investment Adviser Registration Depository.

(8) As used in Code Section 10-5-16, “immediately” shall mean by close of business on the day following receipt of the request.

(9) As used herein, “NASAA” means North American Securities Administrators Association.

(10) As used herein, “NASD” means National Association of Securities Dealers.

(11) As used herein, “notice” means, except where otherwise provided, notice of opportunity for hearing as set forth in Code Section 10-5-16.

(12) As used herein, “Office of Supervisory Jurisdiction” means any main or branch office of a dealer or limited dealer that is registered or required to be registered with the SEC or is a member of the NASD or any national securities exchange registered with the SEC where the activities of associated persons at other branch offices of the dealer or limited dealer are supervised.

(13) As used in the Act and herein, “order” or “consent order” shall include, but is not limited to, an administrative order issued under these Rules or a similar order issued by a court of competent jurisdiction, any federal, foreign, or state agency, or a self regulatory organization that makes a finding that state or federal securities laws have been violated and sanctions administered.

(14) As used herein, all references to “Rule” or “the Rules” shall mean the rules as they appear in the “Official Compilation Rules and Regulations of the State of Georgia” as compiled and

printed by the Secretary of State pursuant to the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 *et seq.*

(15) As used herein, “SEC” means the United States Securities and Exchange Commission.

(16) As used herein, “Self-Regulatory Organization” means any national securities exchange, registered securities association, or registered clearing agency that is responsible for regulating its members by adopting and enforcing rules and regulations that govern the business conduct of its members.

(17) As used in the Act and herein, “willfully” or “willful” means intentionally committing the act that constitutes the violation. There is no requirement that the actor also be aware that he, she, or it is violating the Act or Rules.

(18) All definitions in Code Section 10-5-2 are incorporated herein.

(19) For the purposes of the Act and these Rules:

(a) An offer to sell or to purchase a security is made in this State, whether or not either party is then present in this State, if the offer originates from within this State; or is directed by the offeror to a place in this State and received at the place to which it is directed;

(b) An offer to purchase or to sell is accepted in this State, whether or not either party is then present in this State, if the acceptance is communicated to the offeror in this State and the offeree reasonably believes the offeror to be present in this State and the acceptance is received at the place in this State to which it is directed; and has not previously been communicated to the offeror, orally or in a record, outside this State;

(c) An offer to sell or to purchase is not made in this State when a publisher circulates, or there is circulated on the publisher’s behalf, in this State a *bona fide* newspaper or other publication of general, regular, and paid circulation that is not published in this State, or that is published in this State but has had more than two thirds of its circulation outside this State during the previous 12 months or when a radio or television program or other electronic communication originating outside this State is received in this State. A radio or television program, or other electronic communication, is considered as having originated in this State if either the broadcast studio or the originating source of transmission is located in this State, unless:

1. The program or communication is syndicated and distributed from outside this State for redistribution to the general public in this State;

2. The program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this State for redistribution to the general public in this State;

~~3. The program or communication is an electronic communication that originates outside this State and is captured for redistribution to the general public in this State by a community antenna or cable, radio, cable television, satellite television, or other electronic system; or~~

~~4. The program or communication consists of an electronic communication that originates in this State, but that is not intended for distribution to the general public in this State. Code Section 10-5-12 shall apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this State, whether or not either party is then present in this State; and~~

~~(d) This rule shall apply to any person who engages in an act, practice, or course of business as an investment adviser, investment adviser representative or federal covered adviser that is instrumental in effecting prohibited actionable conduct in this State, whether or not the investment adviser, investment adviser representative, federal covered adviser, or party to whom or for whom advice is given is then present in this State.~~

~~Authority O.C.G.A. Secs. 10-5-2, 10-5-10.~~

~~590-4-1-.02 Delegation to Assistant Commissioner.~~

~~The Assistant Commissioner is empowered to sign all documents, make all decisions and perform all acts under the Act as is the Commissioner. This power is to be exercised by the Assistant Commissioner concurrently with the Commissioner, and all acts of the Assistant Commissioner are of the same force and effect as such acts would be if performed by the Commissioner.~~

~~Authority O.C.G.A. Sec. 10-5-10.~~

590-4-1-.03 Administrative Declaratory Rulings; No-Action Letters; Informal Interpretations; Fees.

(1) Declaratory Rulings.

(a) Availability. Any person whose legal rights will be adversely impacted or impaired by the application of any statutory provision or any rule or order of the Commissioner may petition the Commissioner and request a declaratory ruling thereon. The Commissioner will not render advisory opinions, resolve questions that have become moot or are abstract or hypothetical, or otherwise act hereunder except with respect to such actual controversies or other cases upon which a superior court would be required to act under Chapter 4 of Title 9 of the Official Code of Georgia, relating to declaratory judgments.

(b) Form of Petition. Each such petition shall be filed with the Commissioner in writing and shall state:

1. The name and mailing address of the petitioner;
2. The full text of the statute, rule, or order upon which a ruling is requested;
3. A statement of all pertinent and existing facts necessary to a determination of the applicability of the quoted statute, rule, or order;
4. The petitioner's contention, if any, as to the aforesaid applicability with citation of legal authorities, if any, that authorizes, supports, or requires a decision in accordance therewith; and
5. A statement setting forth in detail the petitioner's interest in the matter and why and how the petitioner is uncertain or insecure with respect to his, her, or its rights. The petition shall be verified under oath by the petitioner, or on behalf of the petitioner by a person legally authorized to represent the petitioner.

(c) Proceedings on Petition. If the Commissioner determines that a decision can be rendered on the face of the petition without further proceedings, he or she shall render a summary decision thereon. Otherwise, all parties known by the Commissioner to have a legal interest in the matter shall be notified and given an opportunity to be heard in a manner determined by the Commissioner.

(2) No-Action Letters.

(a) Availability. Any person may request in writing a statement from the Commissioner's staff that, on the basis of the facts stated in such written request, the staff would not recommend enforcement action. The Commissioner's staff will not respond to requests related to unnamed companies or persons or to hypothetical situations.

~~(b) Form of No-Action Request. Each such no-action request shall be filed with the Commissioner in writing and shall:~~

- ~~1. State the specific subsection of the particular statute, rule, or order to which the request pertains;~~
- ~~2. Provide the names of the company or companies or individual(s) and all other persons involved;~~
- ~~3. Limit the request to the particular situation involving the problem at hand and not attempt to include every possible type of situation that may arise in the future;~~
- ~~4. State concisely and to the point all of the facts necessary to reach a conclusion in the matter; and~~
- ~~5. Indicate why the requesting party thinks a problem exists, indicate the requesting party's opinion in the matter, and indicate the basis for the requesting party's opinion.~~

~~(3) Informal Interpretations. Any request presented in any manner that does not strictly comply with the provisions of paragraphs (1) or (2) above shall not be deemed to be filed as either a petition for declaratory ruling or a request for a no-action letter and shall be dealt with in any manner that the Commissioner may deem appropriate, including failing to respond.~~

~~(4) Fees. The Commissioner may establish and charge fees as provided in the fee schedule published and maintained by the Commissioner, for the issuance of any declaratory ruling, no-action letter, or informal interpretation. Said fee(s) may be changed by the Commissioner by publishing a fee schedule notice and posting such notice in his or her office for a period of not less than thirty (30) days.~~

~~Authority O.C.G.A. Sec. 10-5-10.~~

590-4-1-.04 Petition for Adoption of Rules.

~~(1) Form of petition. Each petition for adoption of rules made pursuant to the Georgia Administrative Procedure Act shall be filed with the Commissioner in writing and shall state:~~

~~(a) The name and address of the petitioner;~~

~~(b) The full text of the rule requested to be amended or repealed or the full text of the rule desired to be promulgated;~~

~~(c) A paragraphed statement of the reason the rule should be amended, repealed or promulgated, including a statement of all pertinent existing facts concerning the petitioner's interest in the matter; and~~

~~(d) Citations of legal authorities, if any, that authorize, support, or require the action requested by the petitioner. The petition shall be verified under oath by the petitioner or on behalf of the petitioner by a person legally authorized to represent the petitioner.~~

~~(2) Proceeding on petition. Within thirty (30) days after the submission of a petition, the Commissioner shall either deny the petition in writing, stating his or her reasons for the denial, or initiate rule-making proceedings in accordance with Code Section 50-13-4.~~

~~Authority O.C.G.A. Secs. 10-5-10, 50-13-9.~~

590-4-1-.05 Contested Cases.

~~(1) Contested cases shall be heard by the Commissioner, Assistant Commissioner, or another designated representative of the Commissioner pursuant to the Georgia Administrative Procedure Act and shall be conducted in accordance with the procedures provided therein, the procedures set forth in the Act, and the following procedures:~~

~~(a) To be entitled to a hearing as a matter of right, a person must, within thirty (30) days of delivery of a notice of opportunity for hearing in the manner prescribed by Code Section 10-5-16, file with the Commissioner a request for hearing as described herein. The Commissioner may, in his or her discretion, allow extensions of time and amendments to requests.~~

~~(b) Any person who is legally entitled to contest a ruling or order of the Commissioner may do so by filing with the Commissioner a request for hearing, which shall contain the following:~~

- ~~1. A title that indicates the nature of the proceedings;~~
- ~~2. The complete name(s) and address(es) of the person(s) on whose behalf the request is filed;~~
- ~~3. The names and addresses of all other persons known to have a legal interest in the proceedings;~~
- ~~4. If the person(s) on whose behalf the request is filed are represented by counsel, the name and address of such counsel;~~
- ~~5. A clear and concise statement of the facts upon which the contested case arises;~~
- ~~6. A prayer setting forth the relief sought; and~~
- ~~7. A statement of the grounds upon which the person(s) contend(s) he, she, it, or they is(are) entitled to the relief sought.~~

~~(c) The Commissioner may, without request by the party who is legally entitled to contest a ruling or order, schedule a hearing and require that the party appear. Failure by the party to appear for the hearing shall be considered a default of the contested case and will result in the entry of the order proposed by the Commissioner and accompanying the notice of opportunity for hearing.~~

~~(d) The Commissioner will respond to all requests for hearings with a notice scheduling a hearing or with an order denying the request for hearing and stating the reasons for the denial.~~

~~(e) All hearings shall be conducted in accordance with the Act, the Rules and Regulations as set forth in 590-4-6, and the Georgia Administrative Procedures Act.~~

~~(2) Informal conferences.~~

~~(a) A party who requests a hearing as provided in (1)(a) above will be accorded a formal hearing pursuant to the Georgia Administrative Procedure Act and Code Section 10-5-16. If a party desires, he, she, or it may request an informal conference with the Commissioner or his or her representative in lieu of, or prior to, a formal hearing.~~

~~(b) The receipt by the Commissioner of a written request for an informal conference will toll, until the date that such conference is scheduled by the Commissioner, the running of the times for requesting and setting hearings that are specified in Code Section 10-5-16 of the Act. In determining the number of days that have run, neither the day on which the request for informal conference is received by the Commissioner nor the day on which the conference is scheduled shall be counted.~~

~~(c) The informal conference shall begin with a telephonic or live meeting between the Commissioner's staff and the party requesting the informal conference or on whose behalf the informal conference was requested. The person entitled to an informal conference may be represented by counsel who may appear at the informal conference with the party or in the party's stead. The informal conference may remain open until such time that the matter is resolved or the informal conference is terminated by order of the Commissioner.~~

~~(3) Any request for hearing that is not in the form specified in paragraph (1)(b) above and does not specifically request a formal hearing will be deemed a request for informal conference and shall be acted on as such. However, if after the Commissioner terminates the informal conference by order, a party requests a hearing, and it appears to the Commissioner that, in an effort to stall the proceedings, the party has purposefully failed to comply with the form specified in paragraph (1)(b) above, the Commissioner may at his or her discretion schedule a formal hearing.~~

~~(4) The Commissioner may require, or any party may voluntarily produce, a brief or submission at any time prior to a request for a hearing, including prior to the issue of a Formal Order of Investigation.~~

~~Authority O.C.G.A. Secs. 10-5-10, 10-5-16.~~

590-4-1-.06 Records.

~~(1) All applications, records, correspondence, reports, and other documents filed with the Commissioner pursuant to the various provisions of the Act may be maintained in original form or by means of microfilm, microfiche, microphotographic reproduction, photographic reproduction, electronic imaging, word processing, computerization, or other acceptable reproductive methods.~~

~~(2) All books, records, correspondence, reports, or other documents produced pursuant to a subpoena, an order, or a notice to produce issued by the Commissioner may be destroyed by order of the Commissioner if a demand for return once the investigative file is closed, is not made by the person producing such records at the time he, she, or it produces the records.~~

~~(3) Any photographic, electronic image, microphotographic, or computer reproduction of any original writing or record filed with, or maintained by, the Commissioner, the Central Registration Depository System operated by the NASD, the Investment Advisory Registration Depository System, or other filing depository designated by the Commissioner, shall be deemed to have been made in the regular course of business. Such reproduction shall be subject to certification pursuant to Code Section 10-5-22.~~

~~(4) Electronic Signatures.~~

~~(a) The Commissioner may direct his or her staff to affix his or her electronic signature to any document to which the Commissioner has the authority to affix his or her manual signature. Such electronic signature shall be of the same force and effect as the Commissioner's manual signature.~~

~~(b) The Assistant Commissioner may direct the Commissioner's staff to affix his or her electronic signature to any document to which the Assistant Commissioner has the authority to affix his or her manual signature. Such electronic signature shall be of the same force and effect as the Assistant Commissioner's manual signature.~~

~~Authority O.C.G.A. Sec. 10-5-10.~~

590-4-1-.07 Confidentiality.

~~(1) Except as provided in the Act and these Rules and Regulations, all information and documents filed with, or obtained by, the Commissioner are public information and are available for public examination.~~

~~(2) The following information and documents do not constitute public information under the Act and these Rules and Regulations and shall be confidential:~~

~~(a) Information or documents obtained in connection with an investigation under Code Section 10-5-11;~~

~~(b) Documents prepared by the Commissioner's staff in connection with an investigation under Code Section 10-5-11 including subpoenas, notices to produce records, staff reports, and reports and summaries of investigations;~~

~~(c) Information or documents filed with the Commissioner in connection with a registration statement or exemption filing under the Act, which constitute or contain trade secrets or constitute or contain commercial or financial information, which the person is entitled to assert, and has asserted, a claim of confidentiality or privilege as authorized by law; and~~

~~(d) Any document or record specifically designated as confidential in accordance with the Act or the Rules and Regulations promulgated thereunder.~~

~~(3) All investigations and investigative proceedings shall be private, unless the Commissioner determines that the protection of the public requires that all or part of an investigation or investigative proceeding be made public.~~

~~(4) Any securities agency or law enforcement agency receiving information or documents pursuant to Code Section 10-5-11 must make the representation required by that Code Section in the form of an access letter. The access letter shall be addressed to the Commissioner and signed by someone at the requesting agency in a position to guarantee the aforementioned representation. Access letters and the Commissioner's response shall be deemed part of an investigative file and shall be confidential.~~

~~(5) The Commissioner may disclose information or documents obtained in connection with an investigation under the Act to the extent provided in the Act and these Rules and Regulations. The Commissioner may further disclose such information if disclosure is for the purpose of a civil, administrative, or criminal investigation or proceeding. Any securities agency or law enforcement agency receiving such information or documents must represent that, under the applicable law, protections exist to preserve the integrity, confidentiality, and security of the information.~~

~~(6) Notices and proposed administrative orders, administrative orders and public notices and investor alerts issued by the Commissioner shall constitute public information under the Act and these Rules and Regulations.~~

~~Authority O.C.G.A. Secs. 10-5-10, 10-5-11.~~

~~590-4-1-.08 Non-Payment of Statutory Fees or Penalties.~~

~~(1) No registration, renewal, filing or administrative penalty required pursuant to the Act or any Rule shall be considered officially received by the Commissioner unless accompanied by the required fee or payment.~~

~~(2) If a check submitted in payment of a fee is dishonored, the registration, renewal or filing shall be immediately suspended, revoked or denied by order of the Commissioner. Upon entry of the order, the Commissioner shall promptly notify by telephone the issuer, applicant, registrant, or filer that the order has been issued and the reasons therefore. The person against whom the order is entered shall have fifteen (15) days from the date of notice to pay the required fee or funds. If such payment is not made, the Commissioner may initiate enforcement proceedings. If payment is received by the Commissioner or a person designated by him within fifteen (15) days from notice of the order, the Commissioner shall issue an order reinstating the effectiveness of the registration, renewal or filing. Provided, however, that no registration, renewal or filing shall become effective until the required fee is paid and all other deficiencies are cleared.~~

~~(3) Any persons subject to an order issued pursuant to this Rule shall have notice of opportunity for hearing as provided for in Code Sections 10-5-7 and 10-5-16.~~

~~(4) The Commissioner may vacate or modify an order issued pursuant to this Rule if he or she finds that the conditions that prompted its entry have changed or that it is otherwise in the public interest to do so.~~

~~(5) The provisions of this Rule shall apply to any administrative penalty or fine required to be paid to the Commissioner as a result of sanctions imposed pursuant to Code Section 10-5-13.~~

~~(6) Any offer to sell or sale of securities that occurred while a registration, renewal or filing was subject to an order prohibiting the offer or sale of such securities shall be subject to the sanctions provided for in the Act and the Rules promulgated thereunder.~~

~~(7) In the event that a civil penalty is imposed upon any person pursuant to Code Section 10-5-13, the Commissioner may, to collect such civil penalty, act under any or all of the following paragraphs:~~

~~(a) In addition to any other method provided by law for the collection of civil penalties imposed pursuant Code Section 10-5-13, any civil penalty assessed by the Commissioner in any order that is not paid when due, including failure to pay any interest or costs thereon, may be collected by the Commissioner by and with the same authority contained in Code Section 48-2-55, which provides for the collection of taxes by the state revenue commissioner. If any civil penalty imposed by the Commissioner pursuant Code Section 10-5-13 is not paid within ten (10) days after notice and demand from the Commissioner, the Commissioner may notify the Attorney~~

~~General. The Attorney General may, in his or her sole discretion, initiate appropriate proceedings to collect such penalty.~~

~~(b) In aid of collection or execution, the Commissioner may do either, or both, of the following:~~

~~1. Examine any person, including the person liable, by taking depositions or propounding interrogatories as provided in the Georgia Civil Practice Act, Chapter 11 of Title 9 of the Official Code of Georgia; or~~

~~2. Compel the production of documents or other items as provided in the Georgia Civil Practice Act, Chapter 11 of Title 9 of the Official Code of Georgia.~~

~~Authority O.C.G.A. Secs. 10-5-3, 10-5-5, 10-5-6, 10-5-9, 10-5-10, 10-5-13.~~

590-4-1-.09 Proceedings under O.C.G.A. Secs. 10-5-4 and 10-5-7.

(1) The word “proceeding” as used in Code Sections 10-5-4 and 10-5-7 shall mean the initiation of an administrative proceeding by a notice and proposed order or a notice and emergency order issued by the Commissioner.

(2) Where the Commissioner finds that there are grounds to deny, suspend, revoke, bar or limit a person pursuant to Code Section 10-5-4 or to issue a stop order pursuant to Code Section 10-5-7, denying effectiveness to, or suspending or revoking the effectiveness of, any registration or receipt of filing, he or she may issue such an order regarding any filing, applicant, registered person, or partner, officer, director or person occupying a similar status or performing a similar function for an applicant or registered person. Such an order shall not become effective until notice and opportunity for hearing are provided in accordance with Code Section 10-5-16 and until the Commissioner shall issue a written order in accordance with Code Section 10-5-16 if such person requests a hearing under Code Section 10-5-16.

(3) The Commissioner may, if he or she finds that the public interest, safety, or welfare requires emergency action, issue an order pursuant to Code Sections 10-5-4 or 10-5-7 that is effective immediately. Such an “Emergency Order” will expire automatically if the Commissioner fails to afford notice and opportunity for hearing pursuant to Code Section 10-5-16.

(4) An order that denies, suspends, revokes or limits the registration or securities activities of a dealer or limited dealer shall also deny, suspend, revoke or limit the registration or securities activities of said dealer or limited dealer’s salespersons or limited salesperson. However, the denial, suspension, revocation or limitation of the registration or securities activities of a salesperson or limited salesperson solely because of employment by a dealer or limited dealer subject to such an order shall not, in and of itself, prejudice a subsequent application for registration by the salesperson or limited salesperson.

Authority O.C.G.A. Secs. 10-5-4, 10-5-7, 10-5-10, 10-5-16.

590-4-1-10 Enforcement Procedures.

~~(1) Formal Orders of Investigation. The Commissioner may, at any time, whether based upon a complaint, referral, or information and belief, issue a formal order of investigation that shall commence such public or private investigation within or outside this State, as he or she deems necessary, to determine whether any person has violated or is about to violate the Act or any Rule, Regulation, or order created under the Act or to aid in the enforcement of the Act or in the prescribing of Rules and Regulations thereunder.~~

~~(2) Referrals to a district attorney or the Attorney General. The Commissioner may, at any time, whether by complaint or otherwise, or based on information or belief, transmit a civil or criminal referral investigative report and evidence of violations of the Act to any district attorney or to the Attorney General, who may, at his or her individual discretion, institute any necessary civil or criminal proceedings.~~

~~(3) Appointment of an auditor, examiner, or regulatory monitor. In addition to those administrative sanctions the Commissioner may impose pursuant to Code Section 10-5-13, the Commissioner may also issue an order for the appointment of an individual qualified by education and experience as an auditor, examiner, or regulatory monitor.~~

~~(4) Report of Examination or Inspection. The Commissioner, within his or her sole discretion, may accept or reject such examination or inspection, in whole or in part. If the report is accepted, the Commissioner shall file said report in the public records of the Commissioner. The Commissioner may, within his or her sole discretion, accept or reject, in whole or in part, the recommendations of the independent examiner.~~

~~(5) Emergency Orders. Notwithstanding any other provision of the Act or the Rules and Regulations promulgated thereunder, an emergency order under this Rule is effective on the date of issuance, provided that:~~

~~(a) The Commissioner deems that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in the emergency order, in which case the order may be effective immediately pending proceedings. The proceedings shall be promptly instituted;~~

~~(b) The order is issued pursuant to Code Sections 10-5-4, 10-5-7, or 10-5-13; or~~

~~(c) The order is expressly required, by a judgment or a statute, to be made without the right to a hearing or continuance of any type.~~

Upon issuance of the order, the Commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must

~~include a statement of any administrative sanction(s) that the Commissioner will seek, a statement of the reasons for the order, and notice that, upon the request by any respondent named in the emergency order, a hearing will be promptly scheduled. If a person subject to the order does not request a hearing, and the Commissioner orders no hearing within thirty (30) days after the date of service of the order, the order shall become final as to that person by operation of law. If a hearing is requested by any person subject to the emergency order, or is ordered by the Commissioner, after notice and opportunity for hearing has been served upon each person subject to the emergency order, the Commissioner may modify, vacate, or extend the emergency order any time prior to a final determination.~~

Authority O.C.G.A Secs. 10-5-10, 10-5-13.

~~590-4-1-.11 Uniform Interpretation of Securities Laws, Cooperation with Other Agencies, Investor Education, Referrals to SEC Fair Fund.~~

~~(1) To encourage uniform interpretation and administration of the Act and these Rules and effective securities regulation and enforcement, the Commissioner is authorized to adopt rules to facilitate consistency with federal securities statutes and regulations.~~

~~(2) The Commissioner may participate in any multi-state regulatory investigation or proceeding and participate in any financial or regulatory settlement resulting therefrom.~~

~~(3) The Commissioner may cooperate with the United States Securities and Exchange Commission, self-regulatory organizations, and other state securities administrators in programs to distribute restitution or disgorgement proceeds.~~

~~(4) The Commissioner may develop and implement investment education and financial literacy initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the Commissioner may collaborate with public and nonprofit organizations with an interest in investor education or financial literacy. The Commissioner may accept or administer one or more grants or donations from any person to develop and implement such investment education and financial literacy initiatives. The Commissioner is further authorized to participate in investor education initiatives and programs administered by any nonprofit or governmental organization or trust whose purposes include investment education and financial literacy.~~

~~(5) The Commissioner is authorized, to the extent he or she determines appropriate for the benefit of investors, to cooperate with the SEC in implementing the Fair Fund in accordance with 15 U.S.C. § 7246(b) and 17 C.F.R. § 201.1100.~~

~~Authority O.C.G.A. Sec. 10-5-10.~~

590-4-1-.12 Appointment of Investigative Agent, Examiner or Regulatory Monitor.

~~(1) In the case of any investigation or examination conducted under Code Section 10-5-11, the Commissioner may appoint an investigative agent, examiner or regulatory monitor to conduct the investigation or examination who shall have the powers and authority granted by the Commissioner.~~

~~(2) An investigative agent, examiner or regulatory monitor must possess the necessary investigative, legal, accounting or financial skills and expertise to properly analyze the evidence, prepare and present a comprehensive report, and follow through until completion of the assigned task. Depending on the nature and complexity of the assignment, special skills and qualifications may be required. This may require a person to be a member of the State Bar of Georgia, a Certified Public Accountant, a trained and experienced state or federal government administrative or criminal investigator, a financial analyst or a current or former licensed person in one of the regulated industries. The investigative agent, examiner or regulatory monitor must certify that he or she does not have, nor is there a perception that he or she may have, a professional conflict of interest in the matter to be investigated. The Commissioner, in his or her sole discretion, shall determine the qualifications of an investigative agent, examiner or regulatory monitor.~~

~~(3) Unless otherwise indicated in the order, supervision of the investigative agent is vested in the Commissioner or his or her designee.~~

~~(4) An investigative agent, examiner or regulatory monitor shall be appointed by order under the appropriate Code Section. The order shall generally identify the matter, the persons to be investigated, the qualifications of the individual appointed as investigative agent, procedures for securing subpoenas, and reporting requirements. The order shall also establish the rate of compensation and invoicing and billing procedures.~~

~~(5) Only individuals may be appointed to act as investigative agents, examiners or regulatory monitors. If a matter requires additional individuals or expertise, additional appointments may be made by order in which a supervising investigative agent, examiner or regulatory monitor shall be designated.~~

~~(6) An investigative agent, examiner or regulatory monitor shall serve for a period of up to twelve (12) months. The period of appointment may be shortened or extended by the Commissioner as circumstances require.~~

~~(7) Types of Cases. An investigative agent, examiner or regulatory monitor shall not ordinarily be appointed to handle routine matters and complaints that come before the Commissioner.~~

Examples of matters in which an appointment would normally occur include, by way of illustration only, any of the following:

~~(a) Complex investigations requiring detailed analytical skills not available to the staff due to staff cutbacks, new and inexperienced staff; or that require skills that are not presently available on staff;~~

~~(b) The existence of heavy workloads that make current staff unavailable to address the matter in a reasonable amount of time;~~

~~(c) Matters requiring extensive litigation skills in preparing administrative orders, civil complaints, criminal indictments, or similar documents;~~

~~(d) Complex audits that require the skills of a senior and qualified CPA specializing in the area;~~

~~(e) A regulatory enforcement order or consent order that requires the appointment of an investigative agent, examiner or regulatory monitor; or~~

~~(f) A multi-state cooperative investigation or program that the staff would not be able to complete in a timely manner.~~

~~(8) In any case where investigations or examinations are conducted by an investigative agent, examiner or regulatory monitor, he or she shall submit to the Commissioner a written report, including the transcript of the testimony in evidence (if requested by the Commissioner), the findings and recommendations of the action to be taken by the Commissioner. The recommendation of the agent may be approved, modified, or disapproved by the Commissioner. The Commissioner may direct an investigative agent or examiner to conduct further investigation, take additional testimony or acquire further documentary evidence as may be necessary and appropriate.~~

~~Authority O.C.G.A. Secs. 10-5-10, 10-5-11.~~

~~590-4-1-.13 Criminal History Access and Confidential Law Enforcement Information.~~

~~(1) The Commissioner's investigators who are certified as peace officers by the Georgia Peace Officers Standards and Training Council are authorized to request access to criminal history files maintained by any state or federal law enforcement agency.~~

~~(2) Criminal history information that the Commissioner's investigators obtain from state or federal law enforcement agencies shall be securely maintained by the Commissioner and his or her staff and shall be confidential.~~

~~(3) Any access to such criminal history information shall be made in accordance with applicable laws, conditions, and limits imposed by the providing enforcement agency.~~

~~(4) The Commissioner may determine, in his or her sole discretion, whether the identity of a confidential informer shall be disclosed. The Commissioner shall take into account the public interest and the safety and security of the confidential informer.~~

~~Authority O.C.G.A. Secs. 10-5-10, 10-5-11.~~

590-4-1-.14 Copies of Documents.

~~(1) Upon request, the Commissioner shall provide certified copies of any document, instrument, data, or paper officially filed as available on the automated database, microfilm files or other records maintained by or on behalf of the Commissioner.~~

~~(2) Except as otherwise provided in the Act or by these Rules, the Commissioner may accept telephonic or electronic requests for copies of documents and the certification of such documents, provided such requests specifically identify the documents requested.~~

~~Authority O.C.G.A. Secs. 10-5-10, 10-5-11.~~