

PUBLIC

- (1) The likelihood of the applicant's success on review;
- (2) Whether the applicant will suffer irreparable harm if a stay is not granted;
- (3) The degree of injury to other parties or third parties if a stay is granted; and
- (4) Whether the stay is in the public interest.

16 C.F.R. § 1.148(d).

Because Appellants' appeal is grounded principally on their dispute of the facts found below, the likelihood of Appellants' success on review is not apparent at this time. Appellants also fail to provide facts or argument from which to assess the probability of irreparable harm if a stay is not granted. However, given that HISA has already found good cause for a stay below, and that HISA has not opposed continuing that stay pending this appeal, there is adequate basis for concluding that the degree of injury to other parties or third parties if a stay is granted is minimal and that the stay is in the public interest.

Based on the foregoing, the request for a stay of HISA's May 17 decision and the Stewards' September 25 ruling and civil sanction during the pendency of the Administrative Law Judge's review is GRANTED.

II. Request for Evidentiary Hearing

A. Parties' Positions and Applicable Rules

Appellants challenge HISA's May 17 decision and the Stewards' September 25 ruling and civil sanction and request *de novo* review under 15 U.S.C. § 3058(b)(1)-(3) and 16 C.F.R. § 1.146(b) on the basis of asserted errors of fact and law. The Authority opposes the request and asks that the ALJ uphold the decision below and limit the appellate review to briefing or oral arguments by the parties, pursuant to 16 C.F.R. § 1.146(c)(3).²

16 C.F.R. § 1.146(c)(2) sets forth:

In reviewing the final civil sanction and decision of the Authority, the Administrative Law Judge may rely in full or in part on the factual record developed before the Authority through the disciplinary process under 15 U.S.C. 3057(c) and disciplinary hearings under Authority Rule Series 8300. The record may be supplemented by an evidentiary hearing conducted by the Administrative Law Judge to ensure each party receives a fair and impartial hearing. Within 20 days of the filing of an application for review, based on the application submitted by the aggrieved party or by the Commission and on any response by the Authority, the Administrative Law Judge will assess whether:

² 16 C.F.R. § 1.146(c)(3) applies when neither party requests to supplement or contest the facts found by the Authority. Here, Appellant requests to supplement or contest the facts. Thus, 16 C.F.R. § 1.146(c)(3) is not applicable.

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- (i) The parties do not request to supplement or contest the facts found by the Authority;
- (ii) The parties do not seek to contest any facts found by the Authority, but at least one party requests to supplement the factual record;
- (iii) At least one party seeks to contest any facts found by the Authority; . . .
- (iv) The Commission, if it filed the application for review, seeks supplementation of the record; or
- (v) In the Administrative Law Judge's view, the factual record is insufficient to adjudicate the merits of the review proceeding.

16 C.F.R. § 1.146(c)(2).

B. Determinations and Notice of Hearing

Based on the Application filed herein, Appellants request to supplement the factual record and seek to contest the facts found by the Authority. In addition, the factual record submitted is insufficient to adjudicate the merits of the review proceeding. Accordingly, the record will be supplemented by an evidentiary hearing conducted by the Administrative Law Judge.

The parties are hereby notified that the evidentiary hearing in this matter will commence on July 13, 2023 at 12:00 p.m., Eastern Standard Time and will be conducted by videoconferencing. Details regarding videoconferencing procedures will be sent to the parties in advance of the hearing date.

Pursuant to 16 C.F.R. § 1.146(c)(4): the evidentiary hearing will last no more than 8 hours for the Appellants and 8 hours for the Authority and will be limited to: an opening statement by Appellants of no more than 15 minutes; direct examination by Appellants, with opportunity for cross-examination by the Authority; and the admission of documentary evidence. 16 C.F.R. § 1.146(c)(4).

Pursuant to 16 C.F.R. § 1.146(c)(4)(i)(C), these procedures apply:

- You are directed to provide a list of all individuals who will be participating in the hearing 3 days in advance of the hearing and file it through the Administrative E-File System ("AEFS").
- Any documentary evidence shall be labeled with an exhibit number and submitted to the Administrative Law Judge and to the opposing party 3 days in advance of the hearing. You are directed to prepare a cover sheet listing the exhibits you wish to submit and to file the exhibit list and exhibits through AEFS.

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- If Appellants wish to examine any witnesses, Appellants shall ensure such witnesses are available. Appellants shall provide notice of the list of witnesses to be called at the hearing to the Administrative Law Judge and to the opposing party 3 days in advance of the hearing. You are directed to prepare a witness list which includes a brief summary of the testimony of each witness and file it through AEFS.
- The hearing will be conducted remotely via videoconferencing (by Zoom) and will be transcribed by a court reporter. An audio line will be provided for public access.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: July 3, 2023