

§ 19.33

12 CFR Ch. I (1–1–25 Edition)

(3) A list of the exhibits expected to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(b) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 19.33 Public hearings.

(a) *General rule.* All hearings must be open to the public, unless the Comptroller in their discretion, determines that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice or, in the case of change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), within 20 days from service of the hearing order, any respondent may file with the Comptroller a request for a private hearing, and any party may file a reply to such a request. A party must serve on the ALJ a copy of any request or reply the party files with the Comptroller. The form of, and procedure for, these requests and replies are governed by § 19.23. A party's failure to file a request or a reply constitutes a waiver of any objections regarding whether the hearing will be public or private.

(b) *Filing document under seal.* Enforcement Counsel, in Enforcement Counsel's discretion, may file any document or part of a document under seal if disclosure of the document would be contrary to the public interest. The ALJ will take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ 19.34 Hearing subpoenas.

(a) *Issuance.*—(1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the ALJ may issue a subpoena or a subpoena *duces tecum* requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at the hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying

the attendance of a witness or the production of evidence from any state, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law at any designated place where the hearing is being conducted. The party making the application must serve a copy of the application and the proposed subpoena on every other party.

(2) A party may apply for a hearing subpoena at any time before the commencement of a hearing. During a hearing, a party may make an application for a subpoena orally on the record before the ALJ.

(3) The ALJ will promptly issue any hearing subpoena requested pursuant to this section. If the ALJ determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, the ALJ may refuse to issue the subpoena or may issue it in a modified form upon any conditions consistent with this subpart. Upon issuance by the ALJ, the party making the application must serve the subpoena on the person named in the subpoena and on each party.

(b) *Motion to quash or modify.*—(1) Any person to whom a hearing subpoena is directed or any party may file a motion to quash or modify the subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant must serve the motion on each party and on the person named in the subpoena. Any party may respond to the motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance but not more than ten days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the ALJ which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to § 19.26(c).