

## Securities Regulation Daily Wrap Up, TOP STORY—SEC proposes to slow down administrative ‘rocket docket’, (Sep. 24, 2015)

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In what appears to be an attempt to assuage the defense bar’s frustration over the SEC’s perceived home court advantage in administrative actions, the Commission announced two proposals that would amend its rules of practice to slow down the timing of the proceedings and expand and modernize discovery and filing procedures. The proposals would also permit parties to take depositions of witnesses during discovery, require parties to submit filings electronically, and require redaction of sensitive personal information from filings.

**Dodd-Frank.** The Commission has leaned more heavily on its administrative law judges to process its enforcement docket since passage of the Dodd-Frank Act in 2010, which expanded the administrative powers of the Commission by bringing more individuals and entities into the SEC’s line of fire and allowing it broader authority to impose collateral bars. Enforcement Director Andrew Ceresney has been unapologetic about the uptick in administrative enforcement, arguing that he has to consider all the tools in his toolbox to prevent fraud. He has pointed out that the choice to bring a case before an ALJ limits some remedies, such as injunctions, allows quicker resolution of some matters, and allows defendants to appeal cases. The defense bar, however, has vigorously disputed the constitutionality of the administrative process itself and the SEC’s ALJs.

“The proposed amendments seek to modernize our rules of practice for administrative proceedings, including provisions for additional time and prescribed discovery for the parties,” said SEC Chair Mary Jo White. The Commission’s proposed changes are contained in Release No. 34-75976 and No. 34-75977.

**Timing changes.** The first proposal would modify the timing of administrative proceedings in three ways: (1) the deadline for filing the ALJ’s initial decision would run from the time that the post-hearing briefing is completed, rather than the date the order instituting proceedings is served; (2) the amended rule would expand the range of time during which the hearing must begin, from four months after service to four to eight months after service, and would also double the maximum length of the current rule’s prehearing period; and (3) create a procedure for extending the initial decision deadline by up to thirty days.

**Depositions.** Current rules permit parties to take depositions by oral examination only if a witness will be unable to attend or testify at a hearing. Under the proposal, the SEC’s Division of Enforcement and respondents would be allowed to depose three persons per side in matters involving a single respondent, and five persons in matters involving multiple respondents. Parties would also be able to request that the hearing officer issue a subpoena for documents in conjunction with the deposition.

“Allowing depositions should facilitate the development of the case during the prehearing stage, which may ultimately result in more focused prehearing preparations, with issues distilled for the hearing and post-hearing briefing,” said the Commission. The hearing officer would also be allowed to exclude a person from a hearing or conference if they engage in contemptuous conduct.

Further rule changes were proposed to address expert witness testimony, and methods of service for proceedings on a person in a foreign country. The SEC said the proposal would also simplify the requirements for seeking Commission review of an initial decision and provide enhanced transparency into the timing of the Commission’s decisions in such appeals.

**Electronic submission.** In a separate release, the SEC proposed to require persons involved in administrative proceedings to submit all documents and other items electronically. The Commission said it is developing a comprehensive Internet-based electronic system that would automate and modernize aspects of the filing process to facilitate the flow of information to the public, and the proposed amendments would facilitate use of this system.

The proposal set forth three main components to the system: (1) persons involved in administrative proceedings who currently are required to file documents under Rules 151 and 152 of the rules of practice would be required to file such documents electronically; (2) parties that are required to serve documents under Rule 150 would be required to serve each other electronically; and (3) filers would be required to redact personal information including social security numbers, taxpayer ID numbers, financial account numbers, credit card numbers, addresses, names of minor children, and other sensitive information, from electronic filings.

Comments on both releases are due 60 days after publication in the Federal Register.

The releases are No. 34-75976 and No. 34-75977.

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