

Related Definitions: * * *
Items: * * *

Dated: June 10, 2003.

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*Assistant Secretary for Export
Administration.*

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release Nos. 33-8240; 34-48018; 35-
27686; 39-2408; IA-2137; IC-26074; File No.
S7-04-03]

Rules of Practice

AGENCY: Securities and Exchange
Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to its Rules of Practice to formalize new policies designed to improve the timeliness of its administrative proceedings. The changes include specifying in all orders instituting proceedings a maximum time period for completion by an administrative law judge of the initial decision in the proceeding, establishing policies disfavoring requests that would delay proceedings once instituted and creating time limits for the negotiation and submission of offers of settlement to the Commission. The Commission has taken additional steps to reduce delay in its internal deliberations on appeals from hearing officer's initial decisions and from final determinations of self-regulatory organizations and, accordingly amends current guidelines for issuance of Commission opinions.

EFFECTIVE DATE: July 17, 2003.

FOR FURTHER INFORMATION CONTACT: Scot E. Draeger, Counsel to Commissioner Campos at (202) 942-0500. Margaret H. McFarland, Deputy Secretary, or J. Lynn Taylor, Assistant Secretary, at (202) 942-7070, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Rules 161, 230, 360, 450, and 900 of its Rules of Practice [17 CFR 201.161, 201.230, 201.360, 201.450, and 201.900].

I. Discussion

The Commission adopted, after notice and comment (Release No. 33-8190 (February 12, 2003) 68 FR 8137 (February 19, 2003), comprehensive

revisions to its Rules of Practice that became effective on July 24, 1995. These revisions were the result of an approximately two-and-a-half year study by the Commission's Task Force on Administrative Proceedings that culminated in a comprehensive report. The Task Force found that the fundamental structure of the Commission's administrative process was sound and successfully protected the essential interests of respondents, investors, and the public, but that some changes were necessary. The Task Force recommended changes to the Rules of Practice in an effort to set forth applicable procedural requirements more completely, in a format easier to use, and to streamline procedures that had become burdensome.

Promoting the timely adjudication and disposition of administrative proceedings was one of the principal goals of this project. While many of the rule amendments were designed to improve efficiency and timeliness, the Commission as part of this project did not impose firm deadlines for completion of the proceedings. Instead it included, as Rule 900, a series of non-binding goals for the completion of each step in the administrative process. Rule 900 included a ten-month guideline for completion of the hearing and issuance of the initial decision by the administrative law judge and it contained an eleven-month target for completion of deliberations by the Commission when it reviews appeals of administrative law judges' initial decisions and appeals of determinations of the securities self-regulatory organizations. In the seven years since the adoption of these non-binding targets, the Commission and its administrative law judges have generally failed to meet these goals.

Based upon this experience with non-binding completion dates, the Commission has determined that timely completion of proceedings can be achieved more successfully through the adoption of mandatory deadlines and procedures designed to meet these deadlines. Because there is a wide variation in the subject matter, complexity and urgency of administrative proceedings, the Commission believes that a "one-size-fits-all" approach to timely disposition is not feasible. Instead the Commission is adopting procedures in which it will specify, in the order instituting proceedings, a deadline for completion of the hearing process and the issuance of an initial decision. In every non-settled administrative proceeding, the Commission's Order Instituting Proceedings will specify the maximum

time for completion of the hearing and issuance of the initial decision. This deadline will be either 120, 210, or 300 days, in the Commission's discretion, after consideration of the type of proceeding, the complexity of the matter, and its urgency. Certain commenters expressed concern that setting one time period with only an outside deadline for the issuance of an initial decision by the hearing officer would create an irresistible incentive for the hearing officer to set very short timelines for the litigants to prepare for hearing and for post hearing briefing, and to reserve the majority of the overall time period for the hearing officer to draft the initial decision.¹ In response to this concern, the Commission has provided in Rule 360(a)(2), that each of these periods is further broken down into three parts to ensure fairness to both the litigants and the administrative law judges by providing sufficient time: (1) For the litigants and the judge to prepare for hearing, (2) for the litigants to obtain the transcript and prepare briefs, and (3) for the administrative law judge to prepare an initial decision.

As provided in Rule 360(a)(3), if during the proceeding the presiding hearing officer were to decide that the proceeding could not be concluded in the time specified, the hearing officer could request an extension of the stated deadline. To obtain an extension, the hearing officer would first consult with the Chief Administrative Law Judge (ALJ). If the Chief ALJ concurs in the need for an extension, the Chief ALJ would file a motion with the Commission on behalf of the hearing officer explaining why circumstances require an extension and specifying the length of the extension. An extension could be granted by the Commission, in its discretion, on the basis of the motion filed by the Chief ALJ. Parties to the proceeding would be provided copies of the motion and could separately or jointly file in support of or in opposition to the request. Any such motion by the Chief ALJ would have to be filed no later than thirty days prior to the expiration of the time period specified in the order instituting proceedings.

To complement this new procedure, the Commission has amended Rule 161 to make explicit a policy of strongly disfavoring extensions, postponements or adjournments except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case. This amendment to Rule 161 effects a

¹ See comments on the Section of Business Law of the American Bar Association at 3.