

significant change in administrative cease-and-desist proceedings. Section 21C(b) of the Securities Exchange Act of 1934 (and parallel provisions in the other Federal securities laws) requires that the notice instituting proceedings "shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served." Under current practice, parties routinely request extensions of the 60-day deadline, and the hearing officers routinely grant such requests. To the extent that the Commission has chosen a timeline under which the hearing would occur beyond the statutory 60-day deadline, the amendment exempts these requests from the policy of strongly disfavoring such requests, absent a strong showing of substantial prejudice. This would typically be the case under both the 300-day and 210-day timelines articulated in new Rule 360(a)(2).

We requested comment on the impact of the proposed changes to the scheduling of cease and desist proceeding hearings. The Commission received very few comments on the proposal. However, most of the comments were supportive.² Certain commenters did express concern that respondents will have less time to meet the charges against them.³ In response to this concern, the Commission has amended Rule 230(d) to provide for earlier production of the Commission staff's investigative record.

In addition to the adopted amendments to the Commission's Rules of Practice, the Commission has provided guidance to its staff that they should not seek or support extensions or stays not consistent with the standards set forth above. Similarly, staff have been instructed to adopt new procedures to ensure that settlement negotiations do not delay the hearing process. These procedures are consistent with those described in Rule 161(c)(2). Under that rule, if the Commission staff and one or more respondents in the proceeding file a

joint motion notifying the hearing officer that they have agreed in principle to a settlement on all major terms, then the hearing officer shall stay the proceeding as to the settling respondent(s), or in the discretion of the hearing officer as to all respondents, pending completion of Commission consideration of the settlement offer. Any such stay will be contingent upon: (1) The settling respondent(s) submitting to the Commission staff, within fifteen business days of the stay, a signed offer of settlement in conformance with Rule 240, and (2) within twenty business days of receipt of the signed offer, the staff submitting the settlement offer and accompanying recommendation to the Commission for consideration. If the parties fail to meet either of these deadlines, or if the Commission rejects the offer of settlement, the hearing officer must be promptly notified and, upon notification of the hearing officer, the stay shall lapse and the proceeding will continue.

Because unnecessary delays may result from multiple "agreements in principle" that do not result in an actual signed offer, this procedure will be limited. In the circumstance where (1) a hearing officer has granted a stay because the parties have "agreed in principle to a settlement," (2) the agreement in principle does not result in the submission of a signed settlement offer in conformance with Rule 240 within 15 business days of the stay, and (3) the stay lapses, the ALJ will not be required to grant another stay related to the settlement process until both parties have notified the ALJ in writing that a signed settlement offer has been prepared, received by the enforcement staff, and will be submitted to the Commission.

Finally, the Commission recognizes that it too must shoulder responsibility for delays in its appellate review process. In fact, some comment letters suggested that delay in the Commission's appellate review is a more significant problem than delay in the hearing process. Accordingly, during the past year, the Commission has changed certain internal processes to reduce delay in its deliberations and substantially reduce the time taken to complete its appellate review duties. Accordingly, the Commission has amended Rule 900, reducing the guideline for issuance of Commission opinions from eleven months to seven months from the date of an appeal.

As part of this initiative to expedite appellate review, the Commission has amended Rule 450 to provide that opening briefs must be filed within 30

days of the date of a briefing schedule order rather than the current 40 days.

Any and all deadlines and timelines established by these amendments to the Commission's Rules of Practice confer no substantive rights on respondents.

II. Administrative Procedure Act and Regulatory Flexibility Act

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), that this revision relates solely to agency organization, procedures, or practice. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, also does not apply. Nonetheless, the Commission previously determined that it would be useful to publish the proposed rule changes for notice and comment before adoption. The Commission has considered all comments received.

III. Statutory Basis and Text of Amendment

These rule amendments are adopted pursuant to section 19 of the Securities Act, 15 U.S.C. 77s; section 23 of the Securities Exchange Act, 15 U.S.C. 78w; section 20 of the Public Utility Holding Company Act, 15 U.S.C. 79t; section 319 of the Trust Indenture Act, 15 U.S.C. 77sss; sections 38 and 40 of the Investment Company Act, 15 U.S.C. 80a-37 and 80a-39; and section 211 of the Investment Advisers Act, 15 U.S.C. 80b-11.

List of Subjects in 17 CFR Part 201

Administrative practice and procedure.

■ For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 201—RULES OF PRACTICE

■ 1. The authority citation for part 201, subpart D, is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h-1, 77j, 77s, 77u, 78c(b), 78d-1, 78d-2, 78l, 78m, 78n, 78o(d), 78o-3, 78s, 78u-2, 78u-3, 78v, 78w, 79c, 79s, 79t, 79z-5a, 77sss, 77ttt, 80a-8, 80a-9, 80a-37, 80a-38, 80a-39, 80a-40, 80a-41, 80a-44, 80b-3, 80b-9, 80b-11, and 80b-12.

■ 2. Section 201.161 is amended by:

■ a. Revising the phrase "paragraph (b)" in paragraph (a) to read "paragraphs (b) and (c)";

■ b. Revising the introductory text of paragraph (b) and paragraph (b)(1);

■ c. Redesignating paragraph (b)(2) as paragraph (c)(1); and

² See comments of NASD and Mary L. Schapiro at 2 ("NASD staff believes that the proposed deadlines contained in the Release are an appropriate mechanism to focus the parties and ALJs on achieving timely resolution of cases."). See also comments of Barbara Mortensen and John Polanskey, two individual investors who wrote separately to support the proposal. ("Please move toward all rule changes that will improve the timeliness of your administrative proceedings * * *." Polanskey at 1.)

³ See comments of Corporation, Finance, and Securities Law Section, District of Columbia Bar at 1, 4-8. See also comments of the Section of Business Law of the American Bar Association at 3.