

signed writing, and (2) confirm receipt of each document by a manually signed receipt. Eliminating these requirements would result in lower costs to the serving parties. However, eliminating the requirement of a signed receipt could make it more difficult to prove that a transmission was received.

The proposed amendment of Rule 151 would allow parties to file documents with the Commission by facsimile transmission. This amendment provides parties an additional option for transmitting documents to the Commission. Facsimile filing would allow the Commission to receive, and be able to address, documents in as timely a fashion as possible. Costs of transmission by facsimile are likely to be lower than overnight or courier fees. The proposal would not impose any new costs, since the existing methods for filing with the Commission remain available.

The proposed amendment to Rule 154 establishes a combined page limit of 15 pages for a motion and a brief in support of the motion. The 15-page limit would also apply to a brief in opposition to a motion and to any reply brief. The proposed amendment to Rule 450(c) provides that pleadings incorporated by reference will be included in determining the page count of briefs.

Reducing page limits may result in lower legal costs to the parties. Limiting the number of pages submitted also keeps proceedings efficient.

The proposed amendment of Rule 233 would allow the taking of a deposition of a witness then within the United States, who is expected to be outside the United States at the time of an administrative hearing, so long as the deposition will serve the interests of justice and it appears that the party requesting the deposition did not procure the witness's absence. The proposal serves the interests of justice by making available a statement that otherwise might not have been made part of the record. If use of such a deposition results in the absence from a hearing of a witness who otherwise would have appeared, there would be a loss in that the hearing officer would have no opportunity to assess demeanor. However, since the Rule allows a deposition only where it appears that the party requesting the deposition did not procure the witness's absence, such a series of events should rarely occur.

The remaining proposals variously clarify existing practice, relate to internal agency management, increase the efficiency of proceedings, or promote due process.

The Commission requests data to quantify the costs and the value of the benefits identified. The Commission also seeks estimates and views regarding these costs and benefits for particular types of market participants, as well as any other costs or benefits that may result from the adoption of the proposed rules.

V. Effect on Efficiency, Competition and Capital Formation

Section 2(b) of the Securities Act of 1933,²⁸ section 3(f) of the Exchange Act,²⁹ section 2(c) of the Investment Company Act of 1940,³⁰ and section 202(c) of the Investment Advisers Act of 1940³¹ require us, when engaging in rulemaking that requires us to consider or determine whether an act is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act³² prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rules are intended to enhance the transparency and facilitate parties' understanding of the applicability of the Commission review process to Board proceedings. The proposed rules and amendments also include regulatory provisions for the submission and administration of Fair Funds plans and disgorgement plans, and the proposed amendments are intended to clarify existing practice and increase the efficiency of Commission enforcement and self-regulatory organization disciplinary review proceedings. The proposed rules and amendments would apply to all persons involved in administrative proceedings before the Commission and therefore the Commission does not expect the proposed rules and amendments to have an anti-competitive effect. To the extent the proposed rules and amendments would foster making whole victims of securities laws violations and would increase the transparency of the Commission's administrative practice and the efficiency of the Commission's proceedings, there might be an increase in investor confidence in market fairness and efficiency. However, the magnitude of the effect of the proposed amendments in this regard is difficult to quantify. We request comment on the possible effects of our rule proposals on

efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VI. Statutory Basis and Text of Proposed Amendments

These amendments to the Rules of Practice and related provisions are being adopted pursuant to statutory authority granted to the Commission, including section 3 of the Sarbanes-Oxley Act, 15 U.S.C. 7202; section 19 of the Securities Act, 15 U.S.C. 77s; sections 19 and 23 of the Securities Exchange Act, 15 U.S.C. 78s and 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

17 CFR Parts 200 and 201

Administrative practice and procedure.

17 CFR Part 240

Reporting and Recordkeeping Requirements; Securities.

Text of the Amendment

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The general authority citation for part 200, subpart A is revised to read as follows:

Subpart A—Organization and Program Management

Authority: 15 U.S.C. 77s, 77sss, 78d-1, 78d-2, 78w, 78l(d), 78mmm, 79t, 80a-37, 80b-11, and 7202, unless otherwise noted.

* * * * *

2. In § 200.21, paragraph (b), remove the words "Rule 2(e) of the Commission's Rules of Practice (§ 201.2(e) of this chapter)" and, in their place, add the words "Rule 102(e) of the Commission's Rules of Practice (§ 201.102(e) of this chapter)".

Subpart B—Disposition of Commission Business

3. The authority citation for subpart B continues to read as follows:

Authority: 5 U.S.C. 552b; 15 U.S.C. 78d-1 and 78w.

²⁸ 15 U.S.C. 77b(b).

²⁹ 15 U.S.C. 78c(f).

³⁰ 15 U.S.C. 80a-2(c).

³¹ 15 U.S.C. 80b-2(c).

³² 15 U.S.C. 78w(a)(2).