

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. The proposed amendment would exempt these requests from the policy of strongly disfavoring such requests, absent a strong showing of substantial prejudice. Comment is requested on the impact of the proposed change on the scheduling of cease and desist proceeding hearings, in particular whether respondents will have adequate time to prepare for a hearing 60 days after service of the notice for the proceeding.

If these or substantially similar rules are adopted, the Commission intends to provide guidance to its staff that they should not seek or support extensions or stays not consistent with this standard. Similarly, staff would be instructed to adopt new procedures to ensure that settlement negotiations do not delay the hearing process. These proposed procedures are described in proposed Rule 161(d)(2).

Finally, the Commission recognizes that it too must shoulder responsibility for delays in its appellate review process. During the past year, the Commission has changed certain internal processes in an effort to reduce delay in its deliberations. Building upon these changes, if these rule proposals are adopted, Commission staff involved in the adjudicative process will be provided instructions designed to substantially reduce the time taken to complete its appellate review duties. Accordingly, the Commission is proposing an amendment to 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 is proposing to amend 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.

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 has determined that it would be useful to publish these proposed rule changes for notice and comment, before adoption.

Following the expiration of the comment period, after consideration of all comments received, the Commission intends to take prompt action on this proposal.

III. Statutory Basis and Text of Proposed Amendment

These rule amendments are proposed 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 proposed to be 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. Removing paragraph (b)(1);
 - b. Redesignating paragraph (b)(2) as paragraph (d)(1); and
 - c. Adding paragraphs (c) and (d)(2).
 The additions read as follows:

§ 201.161 Extensions of time, postponements and adjournments.

* * * * *

(c)(1) *Considerations in determining whether to extend time limits or grant postponements, adjournments, and extensions.* In considering all motions or requests pursuant to paragraph (a) or (b) of this section, the Commission or the hearing officer should adhere to a policy of strongly disfavoring such requests, except in circumstances where the requesting party makes a strong showing that the denial of the request or

motion would substantially prejudice their case. In determining whether to grant any requests, the Commission or hearing officer shall consider, in addition to any other relevant factors:

- (i) The length of the proceeding to date;
- (ii) The number of postponements, adjournments or extensions already granted;
- (iii) The stage of the proceedings at the time of the request;
- (iv) The impact of the request on the hearing officer's ability to complete the proceeding in the time specified by the Commission; and
- (v) Any other such matters as justice may require.

(2) This policy of strongly disfavoring requests for postponement will not apply to any request by a respondent to postpone commencement of a cease and desist proceeding hearing beyond the statutory 60 day period.

(d)(1) *Time limit.* * * *

(2) *Stay pending Commission consideration of offers of settlement.* 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 the settling respondent(s) submitting to the Commission staff, within fifteen business days of the stay, a signed offer of settlement in conformance with § 201.240, and 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.

3. Section 201.360 is amended by:

- a. Redesignating paragraph (a) as paragraph (a)(1); and
- b. Adding paragraph (a)(2).

The addition reads as follows:

§ 201.360 Initial decision of hearing officer.

(a)(1) * * *

(2) *Time period for filing initial decision.* In the Order Instituting Proceedings, the Commission will specify a time period in which the hearing officer's initial decision must be filed with the Secretary. In the