

**PUBLIC STATEMENT OF THE D.C. BAR CORPORATION, FINANCE  
AND SECURITIES LAW SECTION ON THE SEC'S PROPOSED  
AMENDMENTS TO THE RULES OF PRACTICE CONCERNING DEADLINES  
FOR ADMINISTRATIVE PROCEEDINGS**

The Corporations, Finance and Securities Law Section of the District Columbia Bar<sup>1</sup> has developed comments on the Securities and Exchange Commission's (SEC or Commission) proposed Rules of Practice Concerning Deadlines for Administrative Proceedings(17 C.F.R. Part 201).<sup>2</sup>

The Commission recently proposed new rules governing its administrative proceedings that would put in place deadlines designed to speed up administrative proceedings. Among the deadlines imposed would be ones for when the ALJ shall issue the initial decision, for parties to negotiate and submit offers of settlements. In particular, the proposed rules require the ALJ, depending on the complexity of the matter, to establish deadlines of 90, 180 or 270 days to wrap up the proceeding and issue the initial decision. All interim dates for events between institution and ALJ decision would continue, as before, to be set by the ALJ. The proposed rules would disfavor requests that would delay administrative proceedings.

The comment letter urges the Commission not to adopt the proposed rules as drafted. The principal issue raised by the comment letter is that the proposed deadlines would effectively reduce the time available to respondents, rather than the Commission staff, to litigate administrative proceedings. The deadlines are very short and would provide respondents potentially only a few weeks to prepare a defense to complex charges based on a very large and detailed evidentiary record. For most respondents, these are bet-everything cases that can result in substantial monetary sanctions, a broker-dealer associational bar, an officer and director bar, or other relief that will ruin them financially and exclude them from future employment. Moreover, the proposed rules do not cabin the length of time the Commission has to consider an appeal from an initial decision.

The comment letter offers alternatives to the proposed rules that would speed adjudication without restraining respondents' ability to defend. These alternatives include (a) an earlier production of the record from the staff, perhaps contemporaneously with the institution of proceedings (currently the staff does not have to "begin" production of the record until 14 days after the initiation of the administrative proceeding); (b) imposing a shortened, but flexible pre-trial period, with the ALJ having the discretion to establish such deadlines as appropriate; (c) excluding the time taken for the hearing, since the hearing in an administrative proceeding is a trial and the length of

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<sup>1</sup> Steering Committee of the D.C. Bar Corporation, Finance, and Securities Law Section: Gary L. Goldsholle (Chair); Martha V. Clarke (Vice-Chair); James Bennett; Karen A. Caplan; Jon B. Jordan; Ivan B. Knauer; R. Eric Nielsen; and Suzanne E. Rothwell. The views expressed in the comment letter represent only those of the Section and not those of the District of Columbia Bar or of its Board of Governors. Please note that Ms. Clarke, Ms. Caplan and Mr. Jordan have not participated in this matter.

<sup>2</sup> The comment letter was prepared by Stephen Crimmins, Esq., with comments from members of the Section.

any hearing varies from case to case, depends on the complexity of the case (number of witnesses, etc.), and accordingly is difficult to predict; (d) establish deadlines for post-trial briefing, with a suggestion of 30 days for post-trial briefs and 20 days for replies; (e) establish deadlines for ALJ decisions, to be calculated from the date the post-trial briefing, with a suggested "presumptive standard" of 120 days; (f) establishing 11 months as the deadline for the Commission's decision, with dismissal of the case to occur if the deadline is not met.