

SEC Issues Proposed Changes to Administrative Proceedings

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Amid controversy over its increased use of administrative proceedings to bring enforcement cases, the SEC has recently proposed several reforms. For instance, one change would ease the deadlines by which an initial decision must be rendered and provide a longer prehearing period. Additionally, rather than permitting depositions only where a witness is unable to testify at a hearing (as is currently the case), the SEC's proposal allows each side to depose up to three persons (and, in multiple-defendant cases, the defense could collectively depose up to five persons). The SEC also proposed requiring the parties to file electronically. The SEC appears to be responding directly to several recent legal challenges. See ["Defendants Challenge SEC's Increased Use of Administrative Forum"](#) and ["SEC Administrative Law Judge Appointments Held Likely Unconstitutional"](#) in the Winter 2015 and Summer 2015 issues of *Expect Focus*, respectively. In addition to seeking to improve the process afforded defendants in administrative proceedings, there is some recent evidence that the SEC has reduced the proportion of such proceedings it is bringing, relative to court cases. It is unclear whether that reduction is, at least partly, a response to the legal challenges being raised, or will persist. As for the proposed reforms, although they are a step in the right direction, they raise other questions, including why the SEC settled on the seemingly arbitrary number of depositions per side. And, the fact remains that the Federal Rules of Evidence are inapplicable, there are no juries, and the proceedings are presided over by SEC employees, not federal judges. Accordingly, even if these changes are implemented, challenges by defendants will likely persist.

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