

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 201, 202, 203, 209, 228, 229, 230, 232, 240, 250, 260, 270 and 275

[Release No. 34-35833; File No. S7-40-92]

RIN 3235-AF91

Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission today announces the adoption of comprehensive revisions to its Rules of Practice ("Rules"), the procedural rules that govern Commission administrative proceedings. Enforcement proceedings initiated by the Commission and review of disciplinary proceedings brought by self-regulatory organizations are among the most frequently occurring and significant proceedings governed by the Rules. Adoption of the Rules and the other actions taken today implement recommendations made by the Commission's Task Force on Administrative Proceedings in its final Report, entitled *Fair and Efficient Administrative Proceedings*.

The Rules contain procedures implementing authority granted to the Commission by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 to issue administrative temporary cease-and-desist and disgorgement orders. The Rules also implement revised procedures for the conduct of hearings, including simplified service of orders instituting proceeding, expanded use of prehearing conferences, codification of policies on the availability of certain investigation files to respondents in enforcement and disciplinary proceedings, issuance of subpoenas returnable prior to hearing and the consideration by administrative law judges of dispositive motions prior to hearing. In addition, the Rules contain revised procedures governing appeals to the Commission including various procedural requirements governing Commission review of self-regulatory determinations that were previously contained in part in Rules 19d-2 and 19d-3 under the Securities Exchange Act of 1934.

The revised Rules better facilitate full, fair and efficient proceedings by setting forth applicable procedural requirements more completely and in an easier to use format; by streamlining procedures that had become burdened

with archaic requirements; and by the addition of provisions that address changes in statutory requirements, judicial and administrative case law developments, Commission policies, and litigation practices since the Rules were last revised.

The Commission also announces the issuance of a statement of Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings. This statement establishes guidelines for the completion of key phases of contested adjudications; requires periodic case status reports that will formally apprise the Commission if an adjudicatory matter is pending for longer than specified periods of time, so that the Commission can determine whether additional steps are necessary to reach a fair and timely resolution of the matter; and provides for increased and more timely disclosure concerning the Commission's adjudicatory docket through the periodic publication in the *SEC Docket* of summary statistical information concerning changes in the Commission's case load.

EFFECTIVE DATE: These rules are effective July 24, 1995.

TRANSITION PROVISION: Any administrative proceeding that has been docketed by the Commission—i.e., in which an administrative proceedings file number has been assigned by the Secretary—prior to the date of this **Federal Register** publication, June 23, 1995, shall be completed pursuant to the former Rules of Practice. Any proceeding docketed by the Commission after the date of this **Federal Register** publication but prior to the effective date shall be conducted under the former Rules of Practice unless, within 30 days of the effective date, each respondent in the proceeding submits a request in writing to the Secretary that the proceedings be conducted under the Rules of Practice adopted today.

ADDRESSES: Printed copies of the revised Rules of Practice including the comments will be available from the Commission's Publications Branch, U.S. Securities and Exchange Commission, 450 Fifth Street, NW.; Stop C-11; Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Andrew Z. Glickman or Daniel O. Hirsch, Office of the General Counsel at (202) 942-0870; U.S. Securities and Exchange Commission; 450 Fifth Street, N.W.; Stop 6-6; Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
 - II. Discussion of the Revised Rules
 - A. New Organizational Structure of the Rules
 - B. Comments Accompanying the Rules
 - C. Summary of Major Changes to the Rules from the Former Rules
 - D. Technical Changes and Appendices
 - III. Discussion of the Statement of Informal Procedures and Supplemental Information Concerning Adjudicatory Proceedings
 - A. Guidelines for the Timely Completion of Proceedings
 - B. Reports to the Commission on Pending Cases
 - C. Increased Public Disclosure Concerning the Pending Case Docket
 - IV. Rules of Practice: Table of Contents
 - 100 Series—General Rules
 - 200 Series—Initiation of Proceedings and Prehearing Rules
 - 300 Series—Rules Regarding Hearings
 - 400 Series—Appeal to the Commission and Commission Review
 - 500 Series—Rules Relating to Temporary Orders and Suspensions
 - 600 Series—Rules Regarding Disgorgement and Penalty Payments
 - Form D—A Disclosure of Assets and Financial Information
 - V. Regulatory Flexibility Analysis
 - VI. Statutory Basis for Rules
- TEXT OF ADOPTED RULES

I. Background

Today's adoption of comprehensive revisions to the Rules of Practice ("Rules") of the Securities and Exchange Commission ("Commission") and issuance of a statement of informal procedures with respect to Commission adjudications culminate an extensive review of the Commission's adjudication procedures and process. In July 1990, then-Commissioner Mary L. Schapiro was appointed chairman of the Task Force on Administrative Proceedings ("Task Force" or "Schapiro Task Force"). The mission of the Task Force was to review the rules and procedures relating to Commission administrative proceedings, to identify sources of delay in those proceedings and to recommend steps to make the adjudicatory process more efficient and effective.¹ Following passage of the Securities Enforcement Remedies and Penny Stock Reform Act ("Remedies Act"),² the Task Force greatly expanded its work to include preparing procedures to implement the authority granted to the Commission by the Remedies Act. The Task Force ultimately determined that it would be

¹ SEC Creates Task Force on Administrative Proceedings, News Release 90-39 (July 19, 1990).

² Pub. L. 101-429, 104 Stat. 931 (1990).