

allowing a party to seek confidential treatment under any "applicable statute or rule," without limiting the scope of materials sought to be protected or the timing of the application.

The Commission has decided that a separate rule for protective orders would be more efficient and easier for adjudicatory litigants to use than a rule that encompassed not only protective orders, but also requests for confidential treatment under the federal securities laws¹³ or the Freedom of Information Act.¹⁴

9. *Service.* The rule for service of orders by the Commission, Rule 141, and the rule for service of papers by parties, Rule 150, contain a number of revisions. Rule 141 contains new provisions specifically addressing service upon persons in a foreign country and upon persons currently registered with the Commission. Rule 141 also contains a new provision allowing a waiver of formal service to permit a party to accept service by facsimile transmission. For parties wishing to use facsimile transmission to serve one another, Rule 150 allows delivery of papers by fax when two conditions are met: (i) there must be a written agreement between the persons intending to serve each other by fax specifying such terms as they deem necessary with respect to telephone numbers, hours of facsimile operation, provision of paper original or other matters; and (ii) receipt of each document served by fax must be confirmed by a manually signed receipt delivered by fax or other means agreed to by the parties. These conditions are intended to ensure that service by fax will be both an efficient and an effective means of service.

D. Technical Changes and Appendices

A number of technical changes have been made and appendices created in order to implement the Rules. First, former Rule 24 concerning

incorporation by reference, which related to the making of disclosure or regulatory filings has been moved from the Rules of Practice to Regulation S-K section 10, paragraph (d) (17 CFR 229.10(d); a comparable provision has been added to Regulation S-B section 10, paragraph (f) (17 CFR 228.10(f)). Second, Commission procedures for summary suspensions pursuant to Section 12(k) of the Exchange Act, 15 U.S.C. 78l(k), have been moved from Part 202 of 17 CFR into new Rule 550. Third, new cross-reference tables showing the location of the former rules in the revised rules and vice versa have been included in an appendix to appear in the Code of Federal Regulations. Finally, all references to the Rules of Practice in the Commission's other rules and forms have been updated.

III. Discussion of the Statement of Informal Procedures and Supplemental Information Concerning Adjudicatory Proceedings

In 1990, at the time the Schapiro Task Force was created, there was significant delay in the disposition of administrative proceedings. For example, in fiscal years 1991 and 1992, the Commission issued a total of 10 opinions in Commission-initiated administrative proceedings. These 10 cases took an average of four years from institution of proceedings to conclusion.¹⁵

Interim recommendations made by the Task Force to eliminate unnecessary delay and reduce the backlog were implemented in 1991 and 1992. The Commission reorganized the Adjudications Group within the Office of the General Counsel and appointed new senior staff to supervise the adjudicatory work assigned to the Office of the General Counsel. On a Commission-wide basis, the total number of staff assigned to adjudicatory matters was increased over three fold. For approximately one year attorneys throughout the General Counsel's Office assisted the Adjudications Group in preparing opinions for the Commission. Further, the Commission gave greater priority to adjudicatory matters, held oral arguments on a more timely basis, and met to consider proposed opinions more frequently.¹⁶

In fiscal year 1994, the number of new appeals to the Commission declined and the number of cases resolved increased compared with the prior year. As a result, in fiscal year 1994 the pending appellate caseload declined for the first time in over a decade. In addition, the number of cases pending on appeal for more than one year has declined significantly from the level of four years ago.

Despite these strides, the Commission's past experience strongly suggests that additional steps should be taken, especially given the increase in proceedings assigned to the administrative law judges¹⁷ and the likelihood that the number and complexity of new appeals may increase again in coming years. Backlogs in the Commission's disposition of adjudicatory proceedings have recurred periodically over at least the past 30 years.¹⁸ The Task Force examined prior efforts to address delay in the administrative proceedings process, and considered why earlier "solutions" gave way to new backlogs.

The Task Force considered various alternatives aimed at eliminating systemic causes of the recurring backlog problems. In its Report, the Task Force recommended: (1) That the Commission establish guidelines for the timely completion of adjudicatory proceedings; (2) that the Commission be specifically apprised of matters not completed within designated periods, so that the Commission has a specific opportunity to determine what, if any, steps to take to advance the fair and timely resolution of those particular matters; and (3) that the Commission make increased public disclosure of the status of the pending case docket and changes in its case load.

The Statement of Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings ("Statement of Informal Procedures") adopts, with modifications, these three recommendations. Implementation of these recommendations will increase accountability for the timely and efficient completion of adjudicatory proceedings and consolidate on a more permanent basis the improvements in the adjudications process made since the creation of the Task Force.

A. Guidelines for the Timely Completion of Proceedings

The Guidelines For the Timely Completion of Proceedings provide that an administrative law judge's initial

¹³ See Clause 30 of Schedule A of the Securities Act of 1933, 15 U.S.C. 77aa(30), and Rule 406 thereunder, 17 CFR 230.406; Section 24(b)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78x(b)(2), and Rule 24b-2 thereunder, 17 CFR 240.24b-2; Section 22(b) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79v(b), and Rule 104 thereunder, 17 CFR 250.104; Section 45(a) of the Investment Company Act of 1940, 15 U.S.C. 80a-44(a), and Rule 45a-1 thereunder, 17 CFR 270.45a-1; and Section 210(a) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-10(a). See also Rule of Practice 190, 17 CFR 201.190 (specifying procedures by which registrants may request confidential treatment of certain information contained in regulatory filings).

¹⁴ See 17 CFR 200.83 (providing for procedures by which persons submitting information to the Commission can request that the information not be disclosed pursuant to a request under the Freedom of Information Act, 5 U.S.C. § 552).

¹⁵ See Task Force Report, *supra* note 4, at 20-22.

¹⁶ Also pursuant to a recommendation of the Task Force, the Office of the General Counsel organized a conference with self-regulatory organizations, held in June 1994, to address problems of mutual concern. Changes in adjudicatory procedures or practices by the self-regulatory organizations resulting from the conference may eliminate or simplify certain issues that would otherwise be appealed to the Commission.

¹⁷ There were 56 cases pending before the administrative law judges as of October 1, 1994, up from 32 cases on October 1, 1993 and 25 cases on October 1, 1992.

¹⁸ See Task Force Report, *supra* note 4, at 33 n.46.