

increased to 45 days for the opening brief, 35 days for a brief in opposition and 21 days for a reply brief. One commenter supported such an increase. The Commission has decided, however, that the presumptive filing deadlines set forth in paragraph (a), which are identical to those under the Federal Rules of Appellate Procedure, are reasonable and do not need to be extended in the typical appeal. See Fed. R. App. P. 31.

Unless the Commission provides for a longer time, the Commission will have 21 days to issue the briefing schedule order after the filing of the last petition for review or other filing that triggers the issuance of a briefing schedule order. In the revised rule, this period was increased from 15 days to correspond to the 21-day period allowed the Commission pursuant to Rule 411 to decide whether to order review of an initial decision on its own initiative if no petition for review is received.

Ordinarily, issuance of a briefing schedule order will be a ministerial act, undertaken by staff in the Office of the General Counsel, pursuant to delegated authority. See 17 CFR 200.30–14. Timely issuance of the briefing schedule order is a crucial step in assuring that matters on appeal to the Commission are completed promptly. Consistent with the recommendation of the Task Force on Administrative Proceedings that the Commission itself be involved in resolving problems if proceedings are delayed, the delegation to issue a briefing schedule order is limited. See, *Fair and Efficient Administrative Proceedings: Report of the Task Force on Administrative Proceedings* (1993) at 45. If an order is not issued within the 21-day time-frame established by Rule 450, the Secretary shall submit a proposed order for consideration by the Commission.

Rule 451. Oral Argument Before the Commission

(a) *Availability.* The Commission, on its own motion or the motion of a party or any other aggrieved person entitled to Commission review, may order oral argument with respect to any matter. Motions for oral argument with respect to whether to affirm all or part of an initial decision by a hearing officer shall be granted unless exceptional circumstances make oral argument impractical or inadvisable. The Commission will consider appeals, motions and other matters properly before it on the basis of the papers filed by the parties without oral argument unless the Commission determines that the presentation of facts and legal arguments in the briefs and record and

the decisional process would be significantly aided by oral argument.

(b) *Procedure.* Requests for oral argument shall be made by separate motion accompanying the initial brief on the merits. The Commission shall issue an order as to whether oral argument is to be heard, and if so, the time and place therefor. The grant or denial of a motion for oral argument shall be made promptly after the filing of the last brief called for by the briefing schedule. If oral argument is granted, the time fixed for oral argument shall be changed only by written order of the Commission, for good cause shown. The order shall state at whose request the change is made and the reasons for any such change.

(c) *Time Allowed.* Unless the Commission orders otherwise, not more than one half-hour per side will be allowed for oral argument. The Commission may, in its discretion, determine that several persons have a common interest, and that the interests represented will be considered a single side for purposes of allotting time for oral argument. Time will be divided equally among persons on a single side, provided, however, that by mutual agreement they may reallocate their time among themselves. A request for additional time must be made by motion filed reasonably in advance of the date fixed for argument.

(d) *Participation of Commissioners.* A member of the Commission who was not present at the oral argument may participate in the decision of the proceeding, provided that the member has reviewed the transcript of such argument prior to such participation. The decision shall state whether the required review was made.

Comment: Rule 451 is based on former Rule of Practice 21(a) and former Exchange Act Rule 19d-3(f).

Comment (c): The term "side" is used in this rule to indicate that the time allowed is afforded to opposing interests rather than to individual parties. See Fed. R. App. P. 34(b). If multiple appellants or appellees have a common interest, they may constitute only a single side.

Revision Comment (a): Comment was requested as to (1) whether the Commission's practice with respect to granting requests for oral argument should be changed to limit the opportunity for oral argument on appeals from decisions of administrative law judges to the most significant cases; and (2) whether the Commission should change its standards for granting oral argument in self-regulatory organization appeals to allow argument only in the most significant cases—such as cases in

which fines exceed certain dollar limits, in which a member or associated person with no prior disciplinary record is permanently barred from membership, or in which the decisional process as to an important matter of law would be significantly aided by oral argument.

The Commission received a number of comments on the proposed changes to its oral argument rule. The commenters were divided as to whether the Commission should change its standards for granting oral argument in self-regulatory organization appeals. Some commenters objected to the Commission's current practice of denying oral argument in such proceedings. The comments were also divided as to whether to support the proposed criteria for identifying self-regulatory organization cases that warrant oral argument. One commenter recommended that the Commission provide for oral argument in cases where self-regulatory organization sanctions (either by fine or permanent membership bar) are significant, or where an important issue of law is in question. Another suggested that certain of the proposed criteria (specifically a large fine or bar against a person without a disciplinary record) would not assist the Commission in identifying those self-regulatory organization cases that warrant oral argument. According to this commenter, the total circumstances of the case should be considered. One commenter suggested that as an alternative to increasing oral argument in self-regulatory organization cases, the Commission consider adopting a policy of requesting additional briefing on issues that are of particular interest and not raised by the parties in their briefs. In response to this comment, the Commission has adopted Rule 421(b) relating to supplemental briefing on review of self-regulatory organization determinations.

One commenter supported the proposal to require that requests for oral argument be set forth in a separate motion accompanying the initial brief on the merits. The Commission believes that this requirement will make oral argument requests more readily identifiable than at present.

Where the Commission itself has instituted proceedings, a respondent has a substantial claim for the opportunity to argue directly to the Commission. In the context of issues presented in appeals from self-regulatory organizations, the Commission has determined that, in general, its decisionmaking process would not be significantly aided by oral argument. Accordingly, after careful consideration of the other comments and given the