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SEC approves reforms to in-house process for enforcement cases

Parties will now have more time to prepare for a hearing and be able to take depositions, but concerns of fairness remain

By **Mark Schoeff Jr.** | July 13, 2016 - 12:47 pm EST

The Securities and Exchange Commission approved [reforms](#) Wednesday to its in-house system for trying enforcement cases.

The agency, which currently has three members, unanimously amended the rules of practice for administrative proceedings, which are conducted by judges that are employed by the SEC.

Parties involved in a case will now have more time to prepare prior to a first hearing and will be allowed to take depositions, among other reforms.

The changes will go into effect 60 days after they are published in the Federal Register. The SEC proposed a rule last fall to [reform the in-house adjudication process](#).

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"The amendments are intended to update the rules and introduce additional flexibility into administrative proceedings, while continuing to provide for the timely and efficient resolution of the proceedings," an SEC fact sheet states.

Many defendants in SEC cases have said the use of administrative proceedings gives the agency a home-court advantage in prosecuting claims.

"What we saw today was a practical, strategic response by the SEC to the criticism that's been leveled [at] the administrative forum," said David Chase, a former SEC prosecutor and owner of an eponymous law firm.

Although the changes make the existing process "fairer to respondents," Mr. Chase said more needs to be done.

"It doesn't address whether a respondent can get a fair shake from a judge who is paid by and an employee of the agency that's trying the case," Mr. Chase said.

The U.S. Chamber of Commerce also wants the SEC to go further.

"Yet more due process reforms are needed in order for parties to have full discovery rights, including a right of removal to district courts and preservation of jury trials in complex cases," Tom Quaadman, senior vice president of the Chamber's Center for Capital Markets Competitiveness, said in a statement.

Some investment advisers have challenged the constitutionality of the SEC judges. There has been a divergence of opinions at the district court level, and the Supreme Court recently declined to hear a case on the issue.

"The court is going to have to force the agency to make substantial structural changes," Mr. Chase said.

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