



The Securities and Exchange Commission has had its fair share of controversy related to its in-house administrative enforcement proceedings.

In early June, the SEC invited one of its own Administrative Law Judges to submit an affidavit on the topic of whether he had been pressured to rule in favor of the agency following allegations of bias brought by [Timbervest LLC](#), and a Wall Street Journal article that discussed allegations by a former ALJ that she had faced such pressures. Then, on June 8, [as observed on this blog](#) and elsewhere, a federal district court in Georgia enjoined SEC administrative proceedings against a defendant, accepting the claim that the SEC's hiring process for ALJs violated the Appointments Clause. A similar injunction was issued by a federal judge in the Southern District of New York in August. These injunctions have been appealed, but they all challenge the fairness and propriety of the SEC's in-house administrative enforcement proceedings. [In a recent move](#) aimed at some of the issues related

to "fairness" concerns, the Commission announced that it has voted to propose amendments to how its administrative tribunals work. According to SEC Chair Mary Jo White, "the proposed amendments seek to modernize our rules of practice for administrative proceedings, including provisions for additional time and prescribed discovery for the parties." The proposals include three primary changes to the Commission's Rules of Practice that would:

- Adjust the timing of administrative proceedings, including by extending the time before a hearing occurs in appropriate cases
- Permit parties to take depositions of witnesses as part of discovery
- Require parties in administrative proceedings to submit filings and serve each other electronically, and to redact certain sensitive personal information from those filings

While the new proposals do not address many of the fundamental questions related to the constitutionality of the SEC's in-house administrative enforcement proceedings, if adopted they should afford defendants a better opportunity to collect and present evidence, and give defendants more time to prepare for important hearings. Opponents of administrative enforcement proceedings will continue to argue that despite these new proposals, the proceedings still lack many of the legal protections that are available in federal courts, such as the prohibition of the use of hearsay evidence. As the broader attacks on the administrative proceeding process play out through the courts, these proposed rules are at least a step in the right direction for those concerned over the "fairness" of these in-house proceedings.

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