VIA http://www.sec.gov/rules

December 4, 2015

Brent J. Fields
Secretary
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Proposed Amendments to the Securities and Exchange Commission's Rules of Practice (Securities Exchange Act Release Nos. 75976 and 75977)

Dear Mr. Fields:

The Financial Services Roundtable ("FSR")[1] welcomes the opportunity to provide its comments to the Securities and Exchange Commission (the "Commission") regarding the Commission's proposed amendments to its Rules of Practice (the "Proposed Rules").[2]

FSR appreciates the Commission's efforts to provide fairer *fora* for adjudicating administrative actions before the Commission's administrative law judges, in particular the

[1] *As advocates for a strong financial future*™, FSR represents the largest integrated financial services companies providing banking, insurance, payment, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America's economic engine, accounting directly for $ 92.7 trillion in managed assets, $1.2 trillion in revenue, and 2.3 million jobs. Learn more at FSRoundtable.org.

[2] SEC. & EXCH. COMM'N, Amendments to the Commission's Rules of Practice, Securities Exchange Act Release No. 75976 [File No. S7-18-15], 80 Fed. Reg. 60091 (Oct. 5, 2015); and SEC. & EXCH. COMM'N, Amendments to the Commission's Rules of Practice, Securities Exchange Act Release No. 75977 [File No. S7-19-15], 80 Fed. Reg. 60082 (Oct. 5, 2015) (the "Proposing Release").

proposals to expand the discovery process and discovery tools available to parties defending against the Commission's Division of Enforcement (the "Division"). A robust discovery process allows parties accused of wrongdoing to develop an accurate factual record and to advance appropriate arguments and defenses, and is therefore essential to protecting the rights of the accused.

The Commission's enhanced authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,[3] and the Commission's increasing tendency to bring enforcement actions in administrative *fora*[4] rather than federal courts established under Article III of the United States Constitution makes especially imperative the need to strengthen respondents' discovery tools in administrative proceedings. FSR respectfully submits that the Proposed Rules, while a welcome step in the right direction, fall short of ensuring that the Commission's administrative proceedings are fair for respondents.

---

[3] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1376, 1862, § 929P(a).

[4] *See*, Peter J. Henning, "Challenges to the S.E.C.'s Judges May Be Coming to a Head," THE NY TIMES (Sept. 8, 2015), *available at* http://www.nytimes.com/2015/09/09/business/dealbook/challenges-to-secs-judges-may-be-coming-to-a-head.html?rref=collection%2Ftimestopic%2FRakoff%2C%20Jed&action=click&contentCollection=timestopics&region=stream&module=stream_unit&version=latest&contentPlacement=5&pgtype=collection; Henry Engler, "SEC's 'administrative proceedings' enforcements dwarf court cases in 2015," REUTERS, *available at* http://blogs.reuters.com/financial-regulatory-forum/2015/07/09/secs-administrative-proceedings-enforcements-dwarf-court-cases-in-2015/; Gretchen Morgenson, "Crying Fowl on Plans to Expand the S.E.C.'s In-House Court System," THE NY TIMES (June 26, 2015), *available at* http://www.nytimes.com/2015/06/28/business/secs-in-house-justice-raises-questions.html?rref=collection%2Ftimestopic%2FRakoff%2C%20Jed&action=click&contentCollection=timestopics&region=stream&module=stream_unit&version=latest&contentPlacement=8&pgtype=collection&_r=0; Jed. S. Rakoff, "Is the S.E.C. Becoming a Law Unto Itself," PLI Securities Regulation Institute Keynote Address (Nov. 5, 2014) (suggesting that "any trend toward preferring the S.E.C.'s internal administrative forum to the federal courts . . . hinders the balanced development of securities laws"), *available at* https://securitiesdiary.files.wordpress.com/2014/11/rakoff-pli-speech.pdf; Jean Eaglesham, "SEC Is Steering More Trials to Judges It Appoints," Wall St. J. (Oct. 21, 2014), *available at* http://www.wsj.com/articles/sec-is-steering-more-trials-to-judges-it-appoints-1413849590. *But See* Andrew Ceresney, "Remarks to the American Bar Association's Business Law Section Fall Meeting (Nov. 21, 2104) ("reject[ing]" the assertion that "the [Commission's] use of administrative proceedings against unregistered entities and individuals . . . are unfair"), *available at* http://www.sec.gov/News/Speech/Detail/Speech/1370543515297#_ftnref9.

I. Executive Summary

FSR respectfully requests that the Commission consider the following modifications to the Proposed Rules to facilitate a fair enforcement process:

- **The Commission should afford respondents a reasonable time within which to conduct discovery.** FSR believes that the Commission's proposed four to eight months for discovery in administrative proceedings is too short and unrealistic. FSR recommends a timeframe of eight to twelve months.

- **The restricted number of depositions for respondents is prejudicial.** FSR submits that the Commission's proposal to allow three depositions per side in cases involving a single respondent, and five depositions per side in cases involving multiple respondents, is prejudicial to respondents. FSR proposes that each party be allowed to take up to ten depositions and that the Division should not be allowed to depose persons that it previously examined in the course of its investigation. Additionally, depositions should be allowed to last up to seven hours, rather than the six hours proposed by the Commission.

- **The admission of hearsay evidence should be consistent with the Federal Rules of Evidence.** The Commission should amend its Rules of Practice to make the admission of hearsay evidence consistent with the Federal Rules of Evidence ("FRE"). Alternatively, and at a minimum, the Commission should amend its Proposed Rules to clarify when hearsay evidence will be considered sufficiently "reliable" that it will be admissible.

- **The Commission should revise its appellate procedures to afford respondents a full and fair opportunity to present their arguments.** FSR urges the Commission to expand the page limit for a petition seeking review to 20 pages, and increase the word limit for the opening brief to 16,000 words. FSR submits that the proposed changes to the Commission's appellate procedures will not provide respondents with a full and fair opportunity to present their arguments.

- **The proposed phase-in period for electronic filing should be expanded to at least six months.** While the Proposed Rules relating to electronic filing are commendable, FSR believes that the proposed 90-day "phase-in period" is not realistic. FSR suggests the transition period should be six months or more.

II. The Commission should afford respondents a reasonable time within which to conduct discovery.

Proposed Rule 360 would provide a period of four to eight months between service of the order instituting proceedings and the hearing.[5] While this is an improvement over the current rule, which allows only four months for discovery, the Proposed Rule still does not provide sufficient time for respondents to conduct discovery and prepare for a hearing. FSR proposes that the length of discovery be extended to a minimum of eight to twelve months.

To prepare for a hearing, respondents must review the Commission's voluminous investigative file, gather documents, interview and (under the Proposed Rules) depose witnesses, evaluate the Division's case, and prepare a defense. Reviewing the documents alone that the Division collected during its investigation often takes several months. In the course of an investigation, the Division frequently collects millions of pages of electronic documents spanning many years from multiple parties.[6] Indeed, in several recent cases, respondents were unable to obtain an extension of time even though it was impossible to review the capacious investigative file in four months.[7]

The Division does not face these time constraints. It has the benefit of an unlimited period to conduct an investigation prior to bringing an enforcement action, during which the Division collects and reviews documents, examines witnesses, and builds its case. These investigations often last two years or longer.[8] As such, the compressed time period for discovery in administrative proceedings unfairly prejudices respondents.

---

[5] The Proposed Rules and suggested modifications to those rules discussed herein refer to the rules applicable to proceedings alleging violations of the securities laws (proceedings currently designated as 300-day cases).

[6] In a survey conducted for the U.S. Chamber of Commerce ("Chamber's Survey"), the average length of time covered by a Commission subpoena was 6.3 years. U.S. Chamber of Commerce Ctr. for Capital Markets Competitiveness, *Examining U.S. Securities and Exchange Commission Enforcement: Recommendations on Current Processes and Practices* (July 2015).

[7] *See Harding Advisory Group and Wing F. Chau*, Adm. Proc. File No. 3-15574, at 2 (Jan. 24, 2014) (denying request for extension of time despite respondents' representation that the investigative file was "larger than the entire printed Library of Congress"); *John Thomas Capital Mgmt. Grp. LLC*, Adm. Proc. File No. 3-15255 (Dec. 6, 2013) (denying relief despite respondents' representations that investigative file was 700 GB, which is equivalent to roughly 70 million pages of e-mails).

[8] In its fiscal year 2015 budget submission, the Commission included a performance goal of filing 65% of its enforcement cases within two years of the start of the investigation and reported that in fiscal year 2013, 58% of enforcement cases were filed within two years. U.S. Sec. & Exch. Comm'n, FY 2015 Congressional Budget Justification (2014). Thus, more than 40% of its cases were filed *more* than two years after beginning an investigation. Excluding routine enforcement actions related to delinquent filings would almost certainly result in an even higher percentage.

Extending the discovery period just to a maximum of eight months does not come close to remediating this imbalance. The proposed eight-month timeframe pales in comparison to the length of time allowed in federal courts, which routinely permit parties to conduct discovery for over a year.[9] Adopting a pre-hearing period of eight to twelve months in administrative proceedings would give respondents much-needed time to prepare their defense, particularly in light of the Division's substantial head start.

Furthermore, even with a maximum pre-hearing period of twelve months, administrative proceedings would still provide efficient and timely resolutions of enforcement actions. In comparison, the median length of time between filing a complaint and trial in a federal court is over two years.[10] The Commission's actions in federal court are even longer—the Commission's five jury trials in fiscal year 2015 took between 34 and 66 months from the filing of the complaint to the verdict.[11] Thus, extending the length of discovery to a maximum of twelve months would enhance the fairness of administrative proceedings without eroding their efficiency advantages.

III. The restricted number of depositions for respondents is prejudicial.

In proceedings involving one respondent, Proposed Rule 233 would allow each side to depose three persons. In proceedings involving multiple respondents, Proposed Rule 233 would allow the respondents collectively to depose five persons and the Division to depose five persons. This is an improvement over the current rule, which allows depositions only in the rare situation that a witness is unavailable to testify at the hearing. However, it is still far too restrictive. FSR proposes that each party be allowed to depose up to ten witnesses, and that the Division not be allowed to depose witnesses that it previously examined during its investigation.

Particularly in complex cases, which the Division is increasingly bringing in administrative proceedings, three or five depositions per side is sorely deficient. The Division regularly calls nine or more witnesses in administrative proceedings.[12] In two

---

Additionally, in the Chamber's Survey, 30% of respondents were subject to an informal Commission investigation that lasted over a year and 84% were subject to a formal Commission investigation of over a year.

[9] *See, e.g.*, U.S. District Courts—National Judicial Caseload Profile, Table C-5 (June 30, 2015) (during 12-month period ending June 30, 2015, civil cases in federal courts lasted a median of 26.5 months from filing to trial).

[10] *See id.*

[11] *See SEC v. Levin* (S.D. Fla.) (filed May 22, 2012, verdict entered Apr. 1, 2015); *SEC v. Bankatlantic Bancorp, Inc.*, 12-cv-60082, (S.D. Fla.) (filed Jan. 18, 2012, verdict entered Dec. 15 2014); *SEC v. Heart Tronics, Inc.*, 11-cv-1062) (C.D. Cal.) (filed Dec. 20, 2011, verdict entered Mar. 18, 2015; *SEC v. Charles R. Kokesh,* 1:09-cv-1021, (D.N.M.) (filed Oct. 27, 2009, verdict entered Mar. 30, 2015); *SEC v. Berrettini*, 10-cv-1614, (N.D. Ill.) (filed Mar. 11, 2010, verdict entered Sept. 24, 2015).

[12] *See, e.g.*, *Natural Blue Resources, Inc.*, Adm. Proc. File No. 3-15974 (Aug. 18, 2015) (Division called 11 witnesses); *Mantanino*, Adm. Proc. File No. 3-15943 (Apr. 16, 2015) (9 witnesses); *Thomas R. Delaney II and Charles W. Yancey*, Adm. Proc. File No. 3-15873 (Mar. 18, 2015) (10 witnesses); *Julieann Palmer Martin*,

recent hearings, 31 and 42 witnesses testified, respectively.[13] Moreover, the witnesses actually called at a hearing likely represent just a sub-set of the universe of witnesses with potentially relevant information.

Respondents are at a significant disadvantage when they must confront witnesses for the first time at a hearing. Even when a respondent has the testimony transcript or interview notes from the Division's examination of the witness during an investigation, the respondent still only has the benefit of the Division's lines of inquiry. And where the Division chose not to examine a witness during an investigation, the respondent has no opportunity to discover what the witness might say prior to taking the stand.

The proposed limitation of five collective depositions per side in proceedings involving multiple respondents is particularly unfair. Respondents often have divergent interests and may have significant disagreements about whom to depose. Under the Proposed Rules, in cases involving more than five respondents, each respondent would not even be entitled to choose *one* witness to depose.[14] Each party should be entitled to take a specified number of depositions, regardless of whether the proceeding involves multiple respondents.

The proposed restrictions on depositions unfairly prejudice respondents. The Division is able to interview and/or take on the record testimony pursuant to a subpoena of an unlimited number of witnesses during its investigation. As discussed above, respondents' access to such interview notes and testimony transcripts does not correct this imbalance, as respondents did not have an opportunity to ask such witnesses questions or to choose which witnesses to examine. Because the Division has the opportunity to examine witnesses—even multiple times if it wishes—during its investigation, the Division should not be permitted to depose those same witnesses in the course of an administrative proceeding.

A limit of ten depositions per party is fair and reasonable. This also would be consistent with the rules in federal court, which also allow each party to take ten depositions.[15] Furthermore, there is no reason to restrict depositions to six hours each.

Adm. Proc. File No. 3-15613 (Mar. 9, 2015) (9 witnesses); *Donald Anthony Jr. et al*, Adm. Proc. File No. 3-15514 (Feb. 25, 2015) (19 witnesses); *Harding Advisory LLC and Wing F. Chau*, Adm. Proc. File No. 3-15574 (Jan. 12, 2015) (11 witnesses); *Horowitz and Cohen*, Adm. Proc. File No. 3-15790 (Jan. 7, 2015) (10 witnesses).

[13] *Laurie Bebon and John Buono*, Adm. Proc. File No. 3-16293 (Oct. 2, 2015) (31 witnesses testified); *Donald Anthony Jr. et al*, Adm. Proc. File No. 3-15514 (Feb. 25, 2015) (42 witnesses testified).

[14] *See, e.g.*, Donald Anthony Jr. et al, Adm. File No. 3-15514 (Feb. 25, 2015) (proceeding involving 10 individual respondents).

[15] *See* Fed. R. Civ. P. 30(a)(2)(A)(i).

The seven-hour limit in the Federal Rules of Civil Procedure has been in place for 15 years and is perfectly practicable.[16]

IV. The admission of hearsay evidence should be consistent with the Federal Rules of Evidence.

As proposed, the amendments to Rule 320 would formalize the Commission's troubling practice of admitting hearsay evidence in administrative proceedings. At the same time, the proposed amendments fail to clarify for parties to the proceedings and the administrative law judges ("ALJs") charged with determining admissibility the circumstances under which such evidence may be used. Instead of codifying the Commission's ill-advised hearsay approach in its Rules, FSR urges the Commission to limit the admission of hearsay to those circumstances consistent with the Federal Rules of Evidence ("FRE"). At a minimum, the Commission should clarify the circumstances under which hearsay evidence will be considered sufficiently "reliable" such that it will be admissible.

Under the current Rule 320, which governs the admissibility of evidence in administrative proceedings, the Commission or a hearing officer may receive "relevant evidence" but must exclude "all evidence that is irrelevant, immaterial or unduly repetitious."[17] The Commission has interpreted this Rule to permit the admission of hearsay evidence in administrative proceedings under certain circumstances and, "in an appropriate case, [such evidence] may even form the sole basis for findings of fact."[18] Thus, the Commission's current practice has resulted in the admission of hearsay evidence in an administrative proceeding.[19] This practice is contrary to the FRE, which governs admissibility in federal district courts, and permits admission of hearsay evidence in certain specified, circumscribed circumstances.[20]

The Commission proposes to amend Rule 320 to "clarify" that hearsay evidence may be admitted so long as it is "relevant, material, and bears satisfactory indicia of reliability so that its use is fair."[21] While the Commission should be lauded for attempting to clarify what is quite muddled, the proposed amendments do not in fact provide adequate clarity. As proposed, new Rule 320(b) leaves undefined the "satisfactory indicia of reliability" that ALJs and the Commission will look for to determine whether the

---

[16] *See* Fed. R. Civ. P. 30(d)(1); Committee Notes on Rules—2000 Amendment, Fed. R. Civ. P. 30.

[17] 17 CFR 201.320.

[18] *In the Matter of Edgar B. Alacan*, Securities Act Release No. 8436 (July 6, 2004) (internal citations omitted).

[19] *In the Matter of Guy P. Riordan*, Securities Act Release No. 8436 (Dec. 11, 2009) (admitting as "reliable" certain hearsay statements made by two government witnesses during an FBI interview).

[20] *See generally* FRE 802, 803.

[21] Securities Exchange Act Release No. 75976, at 18.

admission of hearsay evidence is "fair." This places a significant burden on ALJs while providing neither the ALJ, nor parties in a Commission proceeding, guidance on what will be deemed sufficiently "reliable" to permit admission.

Furthermore, the Commission's proposal fails to establish a principled basis for adopting a different standard in the administrative proceeding setting than that adopted by federal courts. In various places in the Proposing Release, the Commission discusses the rules and/or practices of "other tribunals" including the federal courts.[22] Under the FRE, the presumption is that hearsay evidence is barred, and exceptions to this norm are specifically listed.[23] The Commission's Proposed new Rule 320 would stand this presumption on its head, expressly permitting hearsay evidence so long as it bears "satisfactory indicia of reliability."

Flipping the presumption under the FRE would create several problems. First, a loosened approach to the admission of hearsay evidence will only exacerbate the Commission's already-significant evidentiary advantage, obtained through initial years of investigation before any proceeding has begun. Second, the admission of hearsay evidence will remain entirely within the discretion of the Commission's "in-house" judges, agency employees who have recently been under significant judicial scrutiny.[24] Third, the Proposed Rules would place hearsay evidence on an equal footing with ordinary relevant evidence. This result is contrary to our well-settled common law practice which always has required greater scrutiny of hearsay evidence because it is more unreliable and difficult to substantiate.

---

[22] *See, e.g.*, Securities Exchange Act Release No. 75976, at 8 (indicating that drafters "borrowed" from the FRCP and observing that the FRCP "represent a well-settled body of procedural rules familiar to practitioners; Release No. 34-75977, at 17 (the Commission's proposed amendments to its Rules are intended, *inter alia*, to "to modernize" procedures so as to "be consistent with common practice in other tribunals.").

[23] *See generally* FRE 802, 803.

[24] Several federal judges have questioned (in public statements and widely-publicized judicial decisions) the Commission's use of so-called in-house judges. *See, e.g.,* Hon. Jed S. Rakoff, "Is the SEC Becoming a Law Unto Itself?" *PLI Securities Regulation Institute Keynote Address* (Nov. 5, 2014) ("While a claim to greater efficiency by any federal bureaucracy suggests a certain chutzpah, it is hard to find a better example of what is sometimes disparagingly called "administrative creep" than this expansion of the S.E.C.'s internal enforcement power."); *see also Hill v. SEC*, Civil Action No. 15-CV-1801 (N.D. Ga. June 8, 2015) (finding that ALJs are "inferior officers", whom the U.S. Constitution would require be appointed by the President, the Commission acting as the "department head" of the Securities and Exchange Commission, or the federal judiciary); *Gray Financial Group, et al, v. S.E.C.,* 15–CV–492 (N.D.Ga. Aug. 4, 2015) (same); *see also Duka v. U.S. S.E.C.*, No. 15 Civ. 357 (S.D.N.Y. Aug. 12, 2015) (enjoining the Commission's administrative proceeding based on his finding that respondent "had demonstrated irreparable harm along with a substantial likelihood of success on the merits of her claim that the SEC has violated the Appointments Clause.").

V. The Commission should revise its appellate procedures to afford respondents a full and fair opportunity to present their arguments.

The Commission rightly seeks to revise the procedures for appealing an ALJ's initial decision to the Commission by requiring only "a summary statement of the issues presented for review." The proposed amendments also correctly would abandon the Rule that requires a petitioner to set forth all the specific findings and conclusions of the initial decision to which exception is taken, failing which an exception is deemed waived. However, the Commission's proposed imposition of a three-page-limit on all petitions for review should be reconsidered in light of the Federal Rules of Appellate Procedure ("Appellate Rules") relating to permissive appeals, which allows up to 20 pages in support of a petition for review.[25] Although the Commission attempts to justify such a restrictive page limit based on "the Commission's routine grant of appeals," this "routine practice" is not required by the Rules and therefore serves as no protection to petitioners.[26] At a minimum, if the petition for review is limited to three pages and incorporation of pleadings is not allowed in an opening brief, the maximum length of a petitioner's opening brief should be increased.

Under the Proposed Rules, petitioners would be required only to provide the Commission with "summary notice" of the issues presented for review. According to the Commission, this "notice filing" is "consistent" with the Appellate Rules because the Commission "routine[ly] grant[s] . . . appeals."[27]

As a matter of fact, neither the current Rules nor the Proposed Rules establishes that all appeals of an ALJ's initial decision are "as of right." Rather, both the current Rules and Proposed Rules discuss petitions seeking discretionary review. Unless this is changed in the Proposed Rules, it would appear that the Commission's reliance on the comparison to Appellate Rule 3 (governing appeals "as of right") is incorrect; instead, the content and length of a petition for review should be compared to that described by Appellate Rule 5 (governing discretionary appeals).[28]

---

[25] Appellate Rule 5(c) (mandating that "[e]xcept by the court's permission, a [petition for permission to appeal] must not exceed 20 pages, exclusive of the disclosure statement, the proof of service, and . . . accompanying documents" such as the order of which appeal is being sought.

[26] The Commission has discretion over most petitions for review, except limited areas of mandatory review. *See* Rule 411(b). The Commission must take into account whether the petition "makes a reasonable showing" that (1) prejudicial error was committed "in the conduct of the proceeding" or (2) the initial decision "embodies" a finding or conclusion of material fact that is clearly erroneous, a conclusion of law that is erroneous, or an exercise of discretion or decision of law or policy that is important and that the Commission should review. *Id.*, Rule 411(b)(2).

[27] Securities Exchange Act Release No. 75976, at 60096; *see id.* at n.36.

[28] *See* Appellate Rule 3(c) (a notice of an appeal as of right must specify the parties taking appeal, designate the judgment, order, or part thereof being appeals, and name the court to which the appeal is taken), and Appellate Rule 5 (a petition for permission to appeal must include the facts necessary to understand the question presented, the question itself, the relief sought, the reasons why the appeal

The Commission's proposed amendments to its appellate procedures threaten to dramatically and unjustifiably reduce petitioners' ability to describe the necessity of Commission review of an ALJ's initial decision. According to the Commission, limiting the scope of the petition for review to three pages will permit a petitioner "to focus on the brief that develops the reasoned arguments in support of the petition."[29] FSR suggests that three pages may prove too short to allow petitioners to present even a high-level brief of issues to be raised on appeal. As noted above, the Appellate Rules permit 20 pages in support of similar petitions for appeal in federal court. FSR recommends that the Commission adopt this standard, which would allow petitioners adequate space to argue for Commission review of an ALJ's initial decision.

As currently proposed, the Commission would dramatically limit the page limit on petitions for review, but keep the current page limit on opening briefs. FSR questions the utility of this proposed revision because the Proposing Release contemplates that the opening brief will now be the primary paper in which a petitioner will make his arguments justifying rejection of the ALJ's initial decision,[30] and that the Proposed Rules specify that pleadings may no longer be incorporated by reference in a petition for review.[31]

Instead, the Proposed Rules' page limit on petitions for review should be accompanied by adoption of one, or a combination, of the following proposals relating to the form of the opening brief: (i) permit opening briefs up to 16,000 words, as the Commission has selectively done in the past;[32] (ii) allow pleadings to be incorporated by reference, without counting their contents against any word limit; and (iii) remove existing language that disfavors requests for additional space to make arguments seeking reversal of the ALJ's initial decision.[33]

VI. The proposed phase-in period for electronic filing should be expanded to at least six months.

The Proposed Rules relating to electronic filing and service are commendable, but FSR believes that the 90-day "phase-in period" is unrealistic. We recommend that the Commission extend this period to six months or more. As the Commission acknowledges, the adoption of electronic filing and service requirements will "modernize the document

---

should be allowed and is authorized by statute or rule, and a copy of the order, decree, or judgment complained of and any related opinion or memorandum, and any order stating the district court's permission to appeal or finding that the necessary conditions are met).

[29] Securities Exchange Act Release No. 75976, at 60096.

[30] *Id.* ("The proposed amendment to Rule 410(b) would . . . [require] a petitioner to make arguments in its opening brief rather than in the petition for review.").

[31] *Id.*, at 60097.

[32] *See, e.g.*, Order Granting Review and Scheduling Briefs, *In the Matter of Dennis J. Malouf*, Administrative Proceeding File No. 3-15918 (May 18, 2015) (granting review of an ALJ's initial decision and permitting Respondent and the Division to file briefs up to 16,000 words in length).

[33] *See* Rule 450(c) ("Motions to file briefs in excess of these limitations are disfavored.").

management process to be consistent with common practice in other tribunals."[34] One comparable tribunal—the federal court system—took at least a decade to switch from paper filing to e-filing via the CM/ECF system.[35] While admittedly a more complicated system of tribunals, FSR respectfully submits that the experience of the federal courts suggests that the Commission's recommended 90-day phase-in period is not realistic.[36]

* * * * * * *

FSR appreciates the opportunity to address the Proposed Rules. If it would be helpful to discuss our specific comments or general view on these issues, please do not hesitate to contact Richard Foster at [redacted] or Felicia Smith, Vice President and Senior Counsel for Regulatory Affairs at [redacted].

Respectfully submitted,

Richard Foster
Senior Vice President and Senior Counsel for Regulatory and Legal Affairs
Financial Services Roundtable

With a copy to:

The Honorable Mary Jo White, Chair
The Honorable Luis Aguilar, Commissioner
The Honorable Kara Stein, Commissioner
The Honorable Michael Piwowar, Commissioner

United States Securities and Exchange Commission

---

[34] Securities Exchange Act Release No. 75977, at 60086.

[35] J. Michael Greenwood and Gary Bockweg "Insights to Building a Successful E-Filing Case Management Service: U.S. Federal Court Experience," *International Journal for Court Administration* (June 2012), at 2, available at: http://www.iaca.ws/files/journal-eighth_edition/greenwood_bockweg-efilingsystems.pdf.

[36] The Commission appears to anticipate some difficulties, given that the Proposing Release notes that an extension may be necessary "if persons are experiencing substantial difficulties." Securities Exchange Act Release No. 75977, at 60085.