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November 30, 2015

Mr. Brent J. Fields
Secretary, Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Comments on Proposed Amendments to the Rules of Practice (File No. S7-18-15)

Dear Mr. Fields:

Our firm, which has a well-established Securities Litigation practice, has a strong interest in the proposed amendments to the SEC's Rules of Practice. While we appreciate and support several aspects of the proposed amendments, we believe that some aspects of the amendments could be changed or supplemented to further improve the administrative proceeding process. Our comments are outlined below.

I. The Proposed Amended Rules should allow for the ALJ to extend the number of per-side depositions if warranted by the circumstances.

As written, Amended Rule 233 provides that in cases involving a single respondent, each side will be permitted to conduct a maximum of three depositions and in cases involving multiple respondents, each side will be permitted to conduct a maximum of five depositions. In multiple-respondent cases, the Rules should instead provide that each respondent, rather than each side, will be permitted to conduct five depositions. Further, providing a maximum number of depositions without taking into account the complexity of an individual case, including the number of witnesses with knowledge of the relevant facts, would be inherently unfair. The Rules should allow for the ALJ, on a case-by-case basis, to extend the number of per-side depositions upon motion of a party if the circumstances so warrant.

II. The Proposed Amended Rules should not include experts in the per-side limit on the number of depositions permitted.

One or more expert witnesses are routinely engaged in connection with administrative actions, by both respondents and the SEC. Their depositions are likely to be taken. If experts are included in the per-side limit on the number of depositions permitted, this could prevent parties from being able to depose relevant fact witnesses because their deposition limit will be partially expended on deposing experts. The limits provided in the amended rules are insufficient to account for both expert and non-expert witnesses. Rule 233 would be much more fair and sufficient if the per-side limit on depositions only pertains to fact witnesses.

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III. The Proposed Amended Rules should follow the Federal Rules of Civil Procedure and allow one day of seven hours for depositions.

Amended Rule 233 provides for a maximum deposition length of one day, six hours of testimony. However, the Federal Rules of Civil Procedure limit depositions to a maximum of one day, seven hours of testimony. *See* Fed. R. Civ. P. 30(c). Several other requirements regarding depositions mirror the Federal Rules. For example, the amendments are consistent with the Federal Rules on the location of the depositions; the method of recording; the deposition officer's duties; examination and cross-examination of the witness; forms of objections and waiver of objections; motions to terminate or limit depositions; review of the transcript or recording by the witness; certification and delivery of the deposition; attachment of documents and tangible things; and copies of the transcript or recording. The discussion of the proposed amendments provided by the SEC states that the SEC has borrowed from the Federal Rules, but has "made changes or declined to follow the Federal Rules of Civil Procedure where appropriate to tailor those rules to [the SEC's] own administrative forum." Because several other aspects pertaining to depositions are borrowed from the Federal Rules and there is no clear reason why following the Federal Rules with respect to length of depositions would be inconsistent with the SEC's administrative forum, the SEC should also borrow Federal Rule 30(c) governing the length of depositions.

IV. The Proposed Amended Rules should use the Federal Rules of Evidence in general and in particular with respect to hearsay.

Rule 320 provides that "hearsay will be admitted if it is relevant, material, and bears satisfactory indicia of reliability so that its use is fair." Rather than have an ALJ make a case-by-case determination of whether hearsay is reliable, the Rules of Practice should follow the Federal Rules of Evidence governing hearsay. Applying the Federal Rules of Evidence will ensure that hearsay is admitted similarly and objectively in each case. Further, applying the Federal Rules of Evidence will ensure similarity and objectivity not only with respect to hearsay, but also in every other aspect of each case.

V. The Proposed Amended Rules should not include incorporated pleadings or filings by reference in the word limit for opening and opposition briefs.

Rule 154 provides that opening and opposition briefs shall not exceed 7,000 words. Pursuant to the Rule, parties are permitted to incorporate pleadings or filings by reference, but the number of words in the documents incorporated by reference count against the 7,000 word limit. This word limit is insufficient to allow for incorporation of pleadings or filings by reference, while also ensuring that a party can adequately make necessary arguments and statements of law. Instead, pleadings and filings incorporated by reference should not be included in the 7,000 word limit.

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VI. The Proposed Amended Rules should include a date of completion by which the Division of Enforcement shall complete file production.

Rule 230(d) provides that the Division “shall commence making documents available to a respondent for inspection and copying pursuant to this rule no later than seven days after service of the order instituting proceedings.” The rule does not provide for a date of completion nor does it take into account a respondent’s time limitations to file required pleadings or briefs. Rule 230 should be amended to require the Division to complete production of documents to a respondent no later than seven days prior to the deadline for filing an answer. Pursuant to Rule 220, the deadline by which a respondent is required to file an answer is “twenty days after service upon the party of the order instituting proceedings.” Therefore, all documents shall be made available by the Division to a respondent prior to the deadline for filing an answer and with enough time for the respondent to take the documents into consideration when drafting an answer.

VII. The Proposed Amended Rules should give an ALJ the ability to alter the time period to file an initial decision and to schedule a hearing.

Amended Rule 360 provides that the hearing officer must file the initial decision with the Secretary either 30, 75, or 120 days from the completion of post-hearing briefing or the completion of briefing on a dispositive motion or the occurrence of a default. The Rule goes on to provide various time periods in which the hearing officer shall schedule a hearing based on the time period to file an initial decision. Rule 360 should be further amended to give an ALJ the ability to alter these time periods based on the complexity and general nature of each individual case .

We hope that our suggested changes to the SEC’s proposed amendments will be considered by the SEC, and urge the SEC to adopt them to provide for a more fair and efficient administrative proceeding process.

Very truly yours,



Mitchell G. Blair