

Comment on Proposed Amendments to SEC's Rules of Practice

November 2015November 1, 2015

I write in response to the Securities and Exchange Commission's request for comments on proposed amendments to the Rules of Practice governing administrative proceedings.

There is no firm rule governing which cases get brought in the SEC's home court and which get brought in federal court. But, after Dodd-Frank, the consequences of an administrative decision are virtually indistinguishable from those that flow from a verdict in federal court.

Given that reality, one might expect that the due process protections would be the same or similar as well. It has been well-documented, though, that respondents almost always lose before the SEC's ALJs, and lose substantially more frequently than do defendants in federal court. This is unsurprising, given that the Commission's own ALJs are both judge and jury, and they know that the very Commission that approved bringing the cases also constitutes the first layer of appellate review.