

IX. *Are the SEC's Administrative Law Courts Constitutional?: Recent Developments in the SEC's Increased Use of Administrative Proceedings*

A. Introduction

The Securities and Exchange Commission (SEC) is taking full advantage of its expanded powers under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) by bringing a larger number of enforcement actions to its Administrative Law Courts (ALCs) to be heard by Administrative Law Judges (ALJs), rather than in federal court.¹ In 2010, the passage of section 929P of the Dodd-Frank Act made it possible for the SEC to increase the number of in-house administrative hearings by permitting the imposition of civil penalties in these proceedings.² Dodd-Frank also increased the SEC's authority to bring in-house administrative hearings against a much larger group because it included "entities and persons who are not directly regulated by the SEC."³ In recent months, the constitutionality of the ALCs and ALJs has come under fire in federal court.⁴ In response, the SEC recently proposed an amendment designed to remedy some of the criticism of the ALCs,

¹ See Jean Eaglesham, *SEC Wins With In-House Judges*, WALL ST. J. (May 6, 2015, 10:30 PM), <http://www.wsj.com/articles/sec-wins-with-in-house-judges-1430965803> [<http://perma.cc/F5Q9-Q8S8>].

² Dodd-Frank Wall Street Reform and Consumer Protection Act § 929P(a), 15 U.S.C. § 77h-1(a) (2012) ("In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person if the Commission finds . . . that . . . such person is violating or has violated any provision of this title . . . and such penalty is in the public interest.").

³ Robert Rapp & Virginia Davidson, *Challenges to SEC In-House Courts Intensify as Federal Appellate Courts are Poised to Determine Constitutional Validity*, CALFEE, HALTER & GRISWOLD LLP 1 (August 13, 2015), <http://calfee.com/wp-content/uploads/2015/08/032255461.pdf> [<http://perma.cc/Q58B-5YGW>].

⁴ See e.g., Scott Flaherty, *Who's Leading the Charge Against the S.E.C.'s In-House Courts*, AM. LAW. (Aug. 12, 2015), <http://www.americanlawyer.com/id=1202734623585/Whos-Leading-the-Charge-Against-the-SECs-InHouse-Courts?slreturn=20150813114529> [<http://perma.cc/CV6K-U948>].

but many believe the amendments still do not address all the issues at hand.⁵

This Article will provide an overview of the SEC's increased use of administrative proceedings and discuss the recent legal arguments against, and critiques of, the SEC's in-house adjudication system. Part B provides a history of the SEC's ALCs including the process taken by the ALCs to decide cases and how ALJs are hired. Part C discusses the SEC's increased use of ALCs and the potential biases against defendants that may result. Part D examines the most recent challenges to the SEC's in-house court system and discusses the outcomes of those decisions. Finally, Part E concludes that the SEC will have to make changes to how it appoints its ALJs if it wishes to continue use of its in-house administrative proceedings.

B. History

1. Dodd-Frank Expands Exchange Act Powers

The Securities Exchange Act of 1934 (Exchange Act) created the SEC and gave the agency the power to “bring ‘administrative proceedings’ against regulated persons or entities who are alleged violators of the securities laws.”⁶ The Exchange Act limited the SEC's authority to impose monetary penalties in administrative actions to persons who were associated with regulated enterprises.⁷ For non-regulated entities, the SEC could only bring a district court action seeking the imposition of a civil monetary penalty.⁸ With the passage of Dodd-Frank in 2010, however, the SEC may now impose civil monetary penalties and bring cease-and-desist orders against non-regulated entities or persons in administrative proceedings, rather than in district court.⁹ The Act also gives the SEC the “sole discretion” in deciding whether it should bring the case in

⁵ See Press Release, Sec. & Exch. Comm'n, SEC Proposes to Amend Rules Governing Administrative Proceedings (Sept. 24, 2015), *available at* <http://www.sec.gov/rules/proposed/2015/34-75976.pdf> [<http://perma.cc/66J4-SWC6>].

⁶ Rapp & Davidson, *supra* note 3, at 3.

⁷ *See id.*

⁸ *Id.* at 4.

⁹ *Id.*

an administrative proceeding or in federal court.¹⁰ Although the SEC has released guidelines to help determine when to bring a case to its administrative courts or to a district court, the SEC still has the ultimate power to choose the forum.¹¹

2. SEC Administrative Process

Cases against both regulated and non-regulated entities and persons are now brought to the SEC's ALC and are heard before ALJs.¹² The SEC ALCs do not follow the Federal Rules of Civil Procedure, but instead follow their own "Rules of Practice."¹³ Under these Rules of Practice, the defendant has no right to a jury trial in administrative court proceedings; rather, the SEC presides over the hearing either through its Commissioners or by delegating the case to an ALJ.¹⁴ Because there is no jury, the ALJs both "preside over trials and adjudicate the claims."¹⁵ ALJ decisions are not final—a decision only becomes final once any appeals are concluded and the SEC issues the finding.¹⁶ ALJ determinations can be appealed, but the appeal is first heard by the SEC before it can go to a federal court of appeals.¹⁷ Once appealed to the SEC, the SEC defers to any

¹⁰ *Hill v. Sec. & Exch. Comm'n*, No. 1:15-CV-1801-LMM, 2015 WL 4307088, at *2 (N.D. Ga. June 8, 2015).

¹¹ The SEC will consider a number of factors to determine the appropriate forum for a particular case, including "[t]he availability of the desired claims, legal theories, and forms of relief in each forum," "[w]hether any charged party is a registered entity" or associated with one, the cost, resource, and time-effectiveness in each forum, and which will be more "fair, consistent and effective". SEC. & EXCH. COMM'N, DIVISION OF ENFORCEMENT APPROACH TO FORUM SELECTION IN CONTESTED ACTIONS (2015), available at <http://www.sec.gov/divisions/enforce/enforcement-approach-forum-selection-contested-actions.pdf> [<http://perma.cc/THU8-2JPC>].

¹² Rapp & Davidson, *supra* note 3, at 3.

¹³ *Hill*, 2015 WL 4307088, at *1.

¹⁴ *Id.* at *5. See Rules of Practice, 17 C.F.R. § 201.100 *et seq.* (2006).

¹⁵ Rapp & Davidson, *supra* note 3, at 3.

¹⁶ *Hill*, 2015 WL 4307088, at *3.

¹⁷ *2014 Year-End Securities Enforcement Update*, GIBSON DUNN & CRUTCHER 2 (Jan. 12, 2015), <http://www.gibsondunn.com/publications/Pages/2014-Year-End-Securities-Enforcement-Update.aspx> [<http://perma.cc/GYJ2-4DZP>].

credibility determinations made by the ALJs, but the parties may submit new evidence and the review is “essentially de novo.”¹⁸

3. SEC Administrative Law Judges

The SEC hires its ALJs through the U.S. Office of Personnel Management (OPM).¹⁹ OPM prequalifies individuals, which means that the SEC selects from a pool of applicants who have met OPM’s qualification standards and passed OPM’s examination.²⁰ Once in the pool, applicants are ranked and the SEC must pick from the top three ALJs available at that time.²¹ However, the SEC Commissioners do not hire the ALJs; instead the SEC Chief ALJ hires new ALJs from the pool of eligible applicants.²² In 2014, the SEC added two more ALJs to bring the total to five judges.²³

C. SEC Increased Use of In-House Proceedings

Since the passage of Dodd-Frank, the SEC has increasingly filed its cases with its own ALCs.²⁴ A year before Dodd-Frank was enacted, the SEC filed 53% of its cases in the ALCs, and by the end of 2014, 81% of the SEC’s cases were filed in-house.²⁵ The SEC claims that the reason behind this increase is greater “effectiveness and efficiency.”²⁶

The SEC won 100% of its in-house cases “in the twelve months through September,” but only won 61% of its cases in federal court during that time.²⁷ Since Dodd-Frank’s enactment, “the SEC won against 90% of defendants before its own judges . . . from

¹⁸ *Hill*, 2015 WL 4307088, at *3 (quoting *In re Clawson*, Exchange Act Release No. 48143, 2003 WL 21539920, at *2 (July 9, 2003)).

¹⁹ Rapp & Davidson, *supra* note 3, at 3

²⁰ *Id.* at 3.

²¹ *Id.*

²² *Id.*

²³ 2014 Year-End Securities Enforcement Update, *supra* note 17.

²⁴ See Rapp & Davidson, *supra* note 3, at 1.

²⁵ *Id.* at 2.

²⁶ Jed S. Rakoff, Dist. Judge, Keynote Address at PLI Securities Regulation Institute, *Is the S.E.C. Becoming a Law unto Itself?* 6 (Nov. 5, 2014), available at <http://assets.law360news.com/0593000/593644/Sec.Reg.Inst.final.pdf> [<http://perma.cc/4WY2-93ZK>].

²⁷ *Id.* at 7.

October 2010 through March of [2015].”²⁸ This far exceeds “the 69% success the agency obtained against defendants in federal court over the same period.”²⁹ Not only are the initial decisions by ALJs skewed in the SEC’s favor, but the appeals to SEC Commissioners are also decided in the SEC’s favor 95% of the time.³⁰

Patterns in judgments of individual ALJs reveal potential indicators of agency pressures to rule in the SEC’s favor.³¹ SEC ALJ Cameron Elliot has found for the SEC 100% of the time, SEC ALJ Carol Foelak found for the SEC 85% of the time, and SEC ALJ Brenda Murray found for the SEC 87% of the time.³² A former SEC ALJ, Lillian McEwen, stated that her loyalty to the SEC was questioned when she was finding in favor of defendants too often.³³

SEC Enforcement Director Andrew Ceresney stated, however, that the SEC’s “excellent record in administrative proceedings” is not because of its choice of forum, but rather the “strength of the evidence presented in each case.”³⁴ Ceresney also stated that for some cases, just threatening the use of administrative proceedings has led the other side to settle.³⁵ By utilizing the allegedly biased system as leverage against defendants, the SEC may be able to settle more cases in its favor.³⁶ Both the increased leverage and the SEC’s exceptional success rate in its administrative proceedings could explain the increased use of its ALCs.³⁷

D. Recent Developments

²⁸ Eaglesham, *supra* note 1.

²⁹ *Id.*

³⁰ *Id.*

³¹ *See id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Brian Mahoney, *SEC Could Bring More Insider Trading Cases In-House*, LAW360 (June 11, 2014), <http://www.law360.com/articles/547183/sec-could-bring-more-insider-trading-cases-in-house> [perma.cc/N39S-EYXC] (“I will tell you that there have been a number of cases in recent months where we have threatened administrative proceedings, it was something we told the other side we were going to do and they settled,” Ceresney said.”).

³⁶ *Id.*

³⁷ *See* Eaglesham, *supra* note 1.

The SEC's increased use of its ALCs has not gone uncontested.³⁸ Several cases have been filed against the SEC questioning the constitutionality of its administrative proceedings.³⁹ The constitutional foundations for the claims against the ALCs have ranged from a Fifth Amendment due process argument challenging the significant procedural hurdles that exist in an administrative hearing⁴⁰ to a Fourteenth Amendment equal protection argument alleging harm as a result of the SEC's forum shopping,⁴¹ and even an Article II Appointments Clause argument claiming that ALJs are improperly appointed.⁴² Some courts, however, have ruled that as a threshold matter, they do not have authority to determine constitutionality until the plaintiffs have exhausted all their appellate remedies available in the SEC's in-house system.⁴³

1. Constitutional Issues in Federal Court

i. Federal Courts' Jurisdiction Over Challenges to ALC Framework

Recent cases filed against the SEC in federal court have split on whether the court even has jurisdiction to hear a constitutional challenge before the case has fully concluded in the ALC.⁴⁴ For

³⁸ See Flaherty, *supra* note 4.

³⁹ *Id.*

⁴⁰ See *Chau v. U.S. Sec. & Exch. Comm'n*, 72 F. Supp.3d 417, 436 (S.D.N.Y. 2014) (finding that the court lacked subject matter over the plaintiffs' due process claim and that the plaintiffs had entirely adequate channels of review under the SEC's administrative framework).

⁴¹ See *Gupta v. Sec. & Exch. Comm'n*, 796 F.Supp.2d 503, 514 (S.D.N.Y. 2011) (denying the SEC's motion for summary judgment on the claim that the SEC's decision to bring an administrative proceeding against the plaintiff when the other 28 of the "essentially identical" defendants were prosecuted in federal court violated the plaintiff's equal protection rights).

⁴² See *Gray Financial Group, Inc. v. Sec. & Exch. Comm'n*, No. 1:15-CV-0492-LMM, Dkt. No. 56, at *13-14 (Dist. Ga. Aug. 4, 2015); *Hill v. Sec. & Exch. Comm'n*, No. 1:15-CV-1801-LMM, 2015 WL 4307088, at *42 (N.D. Ga. June 8, 2015); *Duka v. U.S. Sec. & Exch. Comm'n*, No. 15 CIV. 357(RMB)(SN), 2015 WL 4940057, at *1 (S.D.N.Y. Aug. 3, 2015).

⁴³ See *Bebo v. Sec. & Exch. Comm'n*, 799 F.3d 765, 775 (7th Cir. 2015); *Jarkesy v. Sec. & Exch. Comm'n*, 803 F.3d 9, 30 (D.C. Cir. 2015).

⁴⁴ Compare *Jarkesy*, 803 F.3d at 30 with *Gray Financial Group, Inc.*, No. 1:15-CV-0492-LMM, at *25.

example, the U.S. Court of Appeals for the District of Columbia Circuit in *Jarkesy v. Securities and Exchange Commission*⁴⁵ affirmed the district court's determination that it did not have jurisdiction to hear the challenge while the administrative case was still pending.⁴⁶ The court proceeded by following a two-part framework set out in *Thunder Basin v. Reich*.⁴⁷ This two-part test requires that a litigant "proceed exclusively through a statutory scheme of administrative and judicial review" if "(i) such intent is 'fairly discernable in the statutory scheme,' and (ii) the litigant's claims are 'of the type Congress intended to be reviewed within [the] statutory structure.'"⁴⁸ Based on this two-part test, the Court in *Jarkesy* determined that Congress "did not . . . enable respondents in administrative proceedings to collaterally attack those proceedings in court."⁴⁹

This ruling, however, merely delays a potential constitutional challenge to the SEC's in-house system because after the plaintiffs in *Jarkesy* conclude their administrative case, they can then challenge the ultimate ruling in federal court.⁵⁰ The court did not focus on "the substantive viability of Jarkesy's constitutional challenges."⁵¹

ii. Appointments Clause Violation

For the courts that come out on the other side of *Jarkesy* on the jurisdiction question, a key substantive dispute pertaining to the constitutionality of the SEC administrative process is whether the ALJs constitute "inferior officers," and are therefore subject to the Constitution's Appointments Clause.⁵² An inferior officer is any appointee "exercise[ing] 'significant authority pursuant to the laws of

⁴⁵ 803 F.3d 9 (D.C. Cir. 2015).

⁴⁶ *Id.* at 30; *Big Win for SEC in Challenge to In-House Court*, SLD (BNA) No. 189, at 2 (Sept. 30, 2015).

⁴⁷ See *Jarkesy*, 803 F.3d at 15 (D.C. Cir. 2015) (citing *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994)).

⁴⁸ *Id.*

⁴⁹ *Id.* at 5.

⁵⁰ *Id.*

⁵¹ Jennifer Lee et al., *D.C. Circuit Court "Tunes In" to SEC Administrative Court Debate*, ORRICK, HERRINGTON, & SUTCLIFFE LLP 1 (Oct. 6, 2015), <http://blogs.orrick.com/securities-litigation/2015/10/06/d-c-circuit-court-tunes-in-to-sec-administrative-court-debate/> [<http://perma.cc/9N9N-3RJS>].

⁵² *Hill*, 2015 WL 4307088, at *41.

the United States.”⁵³ Article II of the Constitution requires that these officers be appointed by the President, department heads, or U.S. courts.⁵⁴ The SEC’s position is that ALJs are not inferior officers, but rather “‘mere employees’ based upon Congress’s treatment of them and the fact that they cannot issue final orders and do not have contempt power.”⁵⁵ The courts have resolved this dispute by examining the Supreme Court’s decision in *Freytag v. Commissioner*,⁵⁶ in which the court held that the Special Trial Judge (STJ) of the Tax Court was an inferior officer.⁵⁷ The court reasoned that STJs and ALJs are similar because they both “exercise significant authority” and are both “established by law, and the duties, salaries, and means of appointment for that office are specified by statutes.”⁵⁸

Under this logic, if STJs are inferior officers, then ALJs are also inferior officers.⁵⁹ A finding that the ALJs are inferior officers means that they must be appointed by the President, department heads, or a court of law.⁶⁰ As discussed previously, the SEC Chief ALJ is responsible for hiring ALJs.⁶¹ This would mean the current process for appointing ALJs violates the Appointments Clause, because the SEC Commissioners—not the Chief ALJ—are considered the department heads, and the Chief ALJ does not fall into either of the other two categories.⁶² On this reasoning, both U.S. District Judges Richard Berman and Leigh May blocked the SEC from continuing an in-house enforcement case and stated that the

⁵³ *Id.* at *36 (quoting *Freytag v. Comm’r of Internal Revenue*, 501 U.S. 868, 881 (1991)).

⁵⁴ U.S. CONST. art. II, § 2, cl. 2.

⁵⁵ *Hill*, 2015 WL 4307088, at *36.

⁵⁶ 501 U.S. 868 (1991).

⁵⁷ See *Freytag v. Comm’r of Internal Revenue*, 501 U.S. 868, 882 (1991) (“[A] special trial judge is an inferior officer . . . within the meaning of the Appointments Clause and he must be properly appointed.”); *Duka v. U.S. Sec. & Exch. Comm’n*, No. 15 CIV. 357(RMB)(SN), 2015 WL 4940057, at *3 (S.D.N.Y. Aug. 3, 2015) (“[A]fter thoroughly reviewing facts quite similar to those presented here, United States District Judge Leigh Martin May concluded that ‘*Freytag* mandates a finding that the SEC ALJs exercise “significant authority” and are thus inferior officers.’”).

⁵⁸ *Hill*, 2015 WL 4307088, at *17.

⁵⁹ *Duka*, 2015 WL 4940057, at *3 (S.D.N.Y. Aug. 3, 2015).

⁶⁰ U.S. CONST. art. II, § 2, cl. 2.

⁶¹ See *supra* text accompanying note 22.

⁶² See *Duka*, 2015 WL 4940057, at *4-5.

appointment of ALJs was most likely unconstitutional.⁶³ Although the courts have not yet made an explicit determination on the constitutionality of the ALCs, recent injunctions indicate that the plaintiffs' claims "ha[ve] at least enough merit to maintain the status quo until the court can decide" whether the appointment of ALJs violates the Appointments Clause.⁶⁴

2. Legislative Developments

The outcomes of recent court cases challenging the constitutionality of the ALCs has prompted the SEC to rethink the structure of its administrative proceedings.⁶⁵ The SEC has taken its first steps in completing an "overhaul" of its in-house court system by proposing changes to its Rules of Practice.⁶⁶ The primary objective of the reforms would be to afford defendants "more of the legal protections" that exist in the traditional court system.⁶⁷ The proposed changes would allow defendants to have up to eight months to prepare for the proceedings, rather than the previous four-month time constraint,⁶⁸ and they could now obtain deposition testimony from up to five parties for multiple-respondent cases, or three for single-respondent cases.⁶⁹ The amendments also provide "that

⁶³ Flaherty, *supra* note 4.

⁶⁴ Peter Henning, *Constitutional Challenges to S.E.C.'s Use of In-House Judges*, N.Y. TIMES, (Oct. 5, 2015), <http://www.nytimes.com/2015/10/06/business/dealbook/constitutional-challenges-to-secs-use-of-in-house-judges.html> [<http://perma.cc/VP6M-JY2U>].

⁶⁵ Jean Eaglesham, *SEC Gives Ground on Judges*, WALL ST. J. (Sept. 24, 2015, 8:03 PM), <http://www.wsj.com/articles/sec-gives-ground-on-judges-1443139425> [<http://perma.cc/5GGC-3C94>].

⁶⁶ *Id.*; Press Release, SEC, SEC Proposed Changes to Amend Rules Governing Administrative Proceedings (Sept. 24, 2015), *available at* <http://www.sec.gov/rules/proposed/2015/34-75976.pdf> [<http://perma.cc/RH9P-MYRJ>].

⁶⁷ Eaglesham, *supra* note 65.

⁶⁸ Joel Cohen et al., *SEC Moves in the Right Direction with Proposed Amendments to Rules Governing Administrative Proceedings, but the Changes Do Not Go Far Enough*, GIBSON DUNN & CRUTCHER (Sept. 28, 2015), <http://www.gibsondunn.com/publications/pages/SEC-Proposed-Amendments-to-Rules-Governing-Administrative-Proceedings.aspx> [<http://perma.cc/4WHX-MG9S>].

⁶⁹ *Id.*

hearsay evidence may be admitted if it is relevant, material, and bears satisfactory indicia of reliability so that its use is fair.”⁷⁰ The SEC has invited public comment on the proposed amendments, so whether these changes are actually implemented is still uncertain.⁷¹

Although the SEC aims to fix many of the processes that have drawn criticism, many believe the proposed overhaul is not enough.⁷² Most critically, the proposed plan does not resolve the central issue in the lawsuits against the SEC—that the appointment of ALJs violates the Appointments Clause and is therefore unconstitutional.⁷³ Judge Berman questioned the SEC on why it would not adopt the “seemingly ‘easy fix’ to its legal headache” and change the way it appoints the ALJs, but the SEC declined to do so.⁷⁴ Berman also “called on the SEC fully to investigate allegations of bias related to [ALJs].”⁷⁵

Most recently, U.S. Representative Scott Garrett introduced legislation that would effectively “give defendants the right to opt out of the [SEC’s] in-house court,” delivering yet another blow to the ALCs.⁷⁶ The proposed bill, entitled the “Due Process Restoration Act of 2015,” seeks to substantially limit the appeal of the ALCs primarily via two major reforms.⁷⁷ First, a defendant in an SEC cease-and-desist action before an ALJ would have 20 days to request

⁷⁰ *Id.*

⁷¹ SEC Press Release, *supra* note 66.

⁷² Cohen et al., *supra* note 68; Eaglesham, *supra* note 65.

⁷³ *Id.*

⁷⁴ See Jean Eaglesham, *SEC Fights Challenges to Its In-House Courts*, WALL ST. J. (June 21, 2015, 7:06 PM), <http://www.wsj.com/articles/sec-fights-challenges-to-its-in-house-courts-1434927977>

[<http://perma.cc/8C4Q-RUTY>]; *Duka v. U.S. S.E.C.*, No. 15 CIV. 357(RMB)(SN), 2015 WL 4940057, at *3 (S.D.N.Y. Aug. 3, 2015).

⁷⁵ Jean Eaglesham, “*Deflategate*” *Judge Urges SEC to Investigate In-House Tribunal*, WALL ST. J. (Sept. 17, 2015, 3:51 PM), <http://www.wsj.com/articles/deflategate-judge-urges-sec-to-investigate-in-house-tribunal-1442512351> [<http://perma.cc/99RN-KCSD>].

⁷⁶ Jean Eaglesham, *SEC Faces New Attack on In-House Judges*, WALL ST. J. (October 21, 2015, 3:15 PM), <http://blogs.wsj.com/moneybeat/2015/10/21/sec-faces-new-attack-on-in-house-judges/> [<http://perma.cc/MP7K-G5FA>].

⁷⁷ *Reforming the S.E.C.’s Administrative Process*, N.Y. TIMES DEALBOOK (Oct. 26, 2015), http://www.nytimes.com/2015/10/27/business/dealbook/reforming-the-secs-administrative-process.html?_r=0 [<https://perma.cc/2LH4-EHQP>].

termination of the administrative action, thus forcing the SEC to bring the case to federal court.⁷⁸ Second, the bill would raise the burden of proof in the ALCs to establish a violation of the securities laws—namely by “clear and convincing evidence”—a more stringent standard than the “preponderance of the evidence” requirement employed in the federal courts.⁷⁹ The combined force of these proposed legislative changes would likely have a major chilling effect on the SEC’s recent tendency to favor its home court in enforcement actions.⁸⁰

E. Conclusion

Despite Dodd-Frank’s explicit expansion of the SEC’s in-house adjudicative power, the attacks against the ALCs have been varied and numerous in recent months.⁸¹ Though the SEC has “acknowledged the need to ‘modernize’ the agency’s in-house court system,” the commissioners have also been vocal about defending the SEC’s administrative processes.⁸² The statistics, however, indicate that the SEC may be feeling the pressure: in the months of July through September 2015, only 4 out of 36 enforcement actions filed were brought before the ALJs.⁸³ Though the future of the SEC’s in-house court system is unclear, it seems apparent that the agency may need to implement some significant changes in order for the ALCs to remain as a viable enforcement forum in the future.

Tessa Stillings⁸⁴

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *See id.*

⁸² Yuka Hayashi, *SEC’s White Defends In-House Courts, but Sees Need to Modernize*, WALL ST. J. (Nov. 17, 2:52 PM), <http://blogs.wsj.com/moneybeat/2015/11/17/secs-white-defends-in-house-courts-but-sees-need-to-modernize/> [<http://perma.cc/4GUE-ZLUQ>].

⁸³ *Reforming the S.E.C.’s Administrative Process*, *supra* note 77.

⁸⁴ Student, Boston University School of Law (J.D. 2017)