

Statement of Chairman Jon Leibowitz Regarding Revisions to the
Commission's Part 2 Rules and Rule 4.1(e)

September 19, 2012

Today the Commission issued final changes to Parts 2 and 4 of the agency's Rules of Practice. The revised Rules streamline and update the procedures for Commission investigations, and clarify the agency's procedures for evaluating allegations of misconduct by attorneys practicing before the Commission, making us a more effective agency.

All of the Commission generally supports the revisions. A legitimate question has been raised, however, that the revisions to the Part 2 Rules should have gone further. One issue involves the occasional use of "access letters," rather than compulsory process, to conduct Commission competition investigations. Over the past few years, the Commission has moved decisively toward greater use of compulsory process in these investigations. Compulsory process results in faster, more efficient investigations, especially in anticompetitive conduct matters where the recipients may not have strong incentives to cooperate quickly with Commission staff. Our experience has shown that, all too often, the recipients of voluntary access letters slow walk compliance. Nevertheless, while most competition investigations warrant compulsory process, and its use is strongly encouraged, it makes sense to provide staff with at least some flexibility in choosing which method to deploy in at least some investigations.

Another question that has been raised is whether the Rules should require staff to submit regular status reports to all Commissioners on pending investigations. Our staff already meets regularly with individual Commissioners and responds to any inquiries about particular matters. Moreover, our current practice is for staff to submit regular status updates to the Commission at six-month intervals. This best practice, however, is a matter of internal management that does not necessarily need to be enshrined in the Rules of Practice.