

Securities and Exchange Commission

Reduce the Number of Securities and Exchange Commission Managers Who Report Directly to the Chairman

RECOMMENDATION

The number of Securities and Exchange Commission (SEC) managers directly reporting to the Chairman should be reduced.

RATIONALE

Under Reorganization Plan No. 10 of 1950, the Chairman has executive authority over the SEC staff and, in general, the structure of the SEC. Currently, 23 managers report directly to the Chairman (counting the newly created Advocate for Small Business Capital Formation). This is two to three times the number typically considered optimal (six to 10), and more than the vast majority of government agencies or private enterprises have.

The SEC should be restructured to reduce the number of direct reports to the Chairman. Specifically, the following offices should be merged with other offices and their managers made to report to an SEC official other than the Chairman:

1. Division of Investment Management;
2. Office of Compliance Inspections and Examinations;
3. Office of the Secretary;
4. Office of Administrative Law Judges;
5. Office of the Ethics Counsel;
6. Office of International Affairs;
7. Office of the Chief Accountant;
8. Office of Credit Ratings;
9. Office of Municipal Securities;
10. Office of Public Affairs;
11. Office of Equal Employment Opportunity;
12. Office of Minority and Women Inclusion; and
13. The Office of Investor Education and Advocacy

Some of these changes can be undertaken by the Chairman because of the authority granted by Reorganization Plan No. 10 of 1950. Others will require statutory changes.

Merge the Division of Investment Management with the Division of Trading and Markets. Both divisions regulate financial services providers, and regulated firms are often subject to regulation by both divisions. The Division of Trading and Markets

regulates broker-dealers, stock exchanges, self-regulatory organizations, and other financial-market participants. The Division of Investment Management regulates investment companies, variable insurance products, and registered investment advisers.

Merge the Office of the Ethics Counsel, the Office of Administrative Law Judges, the Office of the Secretary, and the Office of International Affairs with the Office of the General Counsel. Alternatively, all or some functions of the Office of International Affairs could be moved to the Division of Corporate Finance.

Legal functions, such as providing ethics advice and enforcement, conducting administrative hearings, and providing legal advice to the Commission regarding Commission procedures, administrative law, and international comparative law and coordination should be unified under one chief legal officer, the General Counsel.

Merge the Office of the Chief Accountant, the Office of Credit Ratings, and the Office of Municipal Securities into the Division of Corporate Finance. The primary duty of Office of the Chief Accountant involves financial-accounting disclosures. That, combined with non-financial-accounting disclosure is also the core function of the Division of Corporate Finance. The Office of the Chief Accountant should become an office within the Division of Corporate Finance and their functions integrated. The Office of Credit Ratings also plays a key function in the disclosure process, particularly with respect to debt securities and in ensuring the integrity of the rating process by rating organizations. It should become an office within the Division of Corporate Finance.

Merge the Office of Compliance Inspections and Examinations with the Division of Trading and Markets. The Division of Trading and Markets provides oversight of financial services providers. The Office of Compliance Inspections and Examinations is an integral part of that oversight. The division and

office should be part of an integrated compliance program within one office.

Merge the Office of Public Affairs with the Office of Legislative and Intergovernmental Affairs. The Office of Public Affairs and the Office of Legislative and Intergovernmental Affairs discharge allied functions. They should be integrated as a single office. There is no need to have two separate directors reporting separately to the Chairman.

Merge the Office of Equal Employment Opportunity with the Office of Minority and Women Inclusion, and Have the New Office Report to the Chief Operating Officer. These two offices perform

similar and materially overlapping functions. They should be merged. There is no need to have two separate directors reporting separately to the Chairman. In addition, the new office should report to the Chief Operating Officer.

Merge the Office of Investor Education and Advocacy with the Office of the Investor Advocate. The Office of Investor Education and Advocacy and the Office of the Investor Advocate perform similar and materially overlapping functions. There is no need to have two separate directors reporting separately to the Chairman.

Improve Data on Securities Markets for Policymakers

RECOMMENDATION

The SEC should substantially improve the collection and publication of data with respect to securities markets, securities offerings, securities market participants, and securities law enforcement.

RATIONALE

Data available to the SEC and congressional policymakers with respect to securities markets, securities offerings, securities market participants, and securities law enforcement is seriously deficient. The Division of Economic and Risk Analysis (DERA) should substantially improve the collection and regular publication of data on securities offerings, securities markets, and securities law enforcement and publish an annual data book of time series data on these matters.

DERA should consult with the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) and the Interagency Council on Statistical Policy, and secure advice from key statistic agencies, such as the Census Bureau and the Bureau of Economic Analysis. DERA should conduct surveys and collect information internally available and publish on a regular basis time series data in compliance with OMB's Standards and Guidelines for Statistical Surveys and the Paperwork Reduction Act.

Specifically, DERA should publish annual data on:

1. The number of offerings and offering amounts by type (including type of issuer, type of security, and exemption used);
2. Ongoing and offering compliance costs by size and type of firm and by exemption used or registered status (such as emerging growth company, smaller reporting company, and fully reporting company);
3. Enforcement, including the type and number of violations, the type and number of violators (such as private issuer, Regulation A issuer, crowdfunding issuer, reporting company, investment company, registered investor advisor, broker-dealer, and registered representative);
4. Basic market statistics, such as market capitalization by type of issuer; the number of reporting companies, Regulation A issuers, and the like; trading volumes by exchange or ATS; and
5. Market participants, including the number (and, if relevant, size) of broker-dealers, registered representatives, exchanges, alternative trading systems, investment companies, registered investment advisors, and other information.

Create a Complex Case Unit in the Enforcement Division

RECOMMENDATION

Create a Complex Case Unit with the Enforcement Division to handle cases involving large, complex, and well-financed investment banks, banks, investment companies, and similar market participants.

RATIONALE

Many large institutions have committed multibillion-dollar frauds. Shareholders of these firms have paid billions of dollars in settlements and fines. Yet almost no individual managers have been barred from the industry, had civil money penalties imposed, or been subject to criminal prosecution. The prevention of fraud is a central objective of the securities laws, yet the individuals who commit fraud in large institutions have been able to do so largely free of any individual consequences. This policy encourages fraud because those that profit from fraud in large institutions know that they are highly unlikely to personally bear any adverse legal consequences.

Enforcement officials, when criticized about the lack of pursuit of individual malefactors, usually cite the difficulty of determining which individuals actually perpetrated the fraud in the context of a large organization. They are also reluctant to devote the time and resources necessary to successfully pursue

individual malefactors given the large resources available to defend culpable management of these large firms from individual legal responsibility for fraud. Enforcement officials are usually satisfied with headlines announcing the imposition of large fines on the corporation—even though these fines are borne by innocent shareholders rather than the individuals who committed the fraudulent acts. Officials may also be reluctant to pursue individuals for fear of damaging their future employment prospects at large firms or at the large law and accounting firms that perform services for large firms.

In the interest of justice and investor protection, there is a need to adequately pursue individual managers who commit fraud while employed by large firms. The creation of a Complex Case Unit within the Enforcement Division with the institutional expertise and mission of addressing large corporate fraud is warranted.

Allow Respondents to Choose the SEC's Administrative Law Court or an Article III Court

RECOMMENDATION

Allow respondents to elect between the SEC's administrative law courts and proceeding in an Article III court.

RATIONALE

Serious questions have been raised about the objectivity of SEC administrative law judges. Evidence strongly implies that the SEC's win rate is substantially higher in its administrative law courts than in ordinary federal courts. Similarly, serious questions have been raised about whether procedural due process is adequately provided in the SEC's in-house administrative law courts.

By allowing respondents to elect whether the adjudication occurs in the SEC's administrative law court or in an ordinary Article III federal court, respondents who are concerned about the fairness of the SEC proceedings can choose to proceed in a federal district court.

Study Regional Office Consolidation

RECOMMENDATION

The SEC, the Government Accountability Office (GAO), or both should study whether regional office consolidation is warranted.

RATIONALE

The SEC has 11 regional offices: in Atlanta, Boston, Chicago, Denver, Fort Worth, Los Angeles, Miami, New York, Philadelphia, Salt Lake, and San Francisco. Consolidation of those offices may save significant resources and streamline administration without endangering enforcement or inconveniencing the public. Whether this is the case is not clear. The issue should be studied.

Study Delegation to Staff and Consider Sunsetting Delegations

RECOMMENDATION

The SEC, the GAO, or both should study whether SEC delegation of authority to staff should be narrowed, and whether sunsetting of delegations should be standard practice to ensure review of various delegations' practical effects and efficacy.

RATIONALE

Concerns have been raised that too much authority has been delegated to staff and, specifically, whether SEC approval should be required to issue formal orders of investigation. The scope and duration of SEC delegation to SEC staff should be studied comprehensively.

Require SEC Approval for Market-Data Fee Increases

RECOMMENDATION

Require SEC approval of market-data fee increases.

RATIONALE

Exchanges charge broker-dealers for obtaining exchange data about exchange transactions and offers to buy and sell securities. Broker-dealers are required to purchase this data to comply with SEC best-execution requirements. Exchanges have been de-mutualized and are now independent for-profit companies rather than broker-dealer-controlled entities. There is concern that exchanges are able to charge unwarranted fees, and that broker-dealers

are mandated nevertheless to purchase the data no matter the cost, due to the best-execution rules. Given the effective mandate to purchase the data, the SEC's approval of fee increases should be required, rather than the fee increases taking effect automatically. SEC approval should generally be based on whether there is an objective reason for the fees to increase, such as an increase in exchange costs.