D. DIVISION OF CORPORATION FINANCE

Summary

This is the "full disclosure" division of the Commission. This Division reviews registration statements for public offerings, periodic filings, tender offers and proxies of public companies. The Small Business Office is included in this Division.

A staff of 265 performs these functions, not including 117 "Reports and Information" clerical personnel detailed to this Division who receive the filings, check them for form and completeness and put them in the computer. This Division costs $10.1 FY 80 in Washington, $4.0 in the Regional Offices for a total of $14.1. The Division Director is Ed Greene, an ES 5.

Recommendations: (No legislation required)

1. Permit all registrations of publically traded companies to become automatically effective 20 days after filing. Spot-check 5% of periodic filings and proxies; review initial registrations of companies on a sampling basis.

2. Have a six-month moratorium on rules.

3. Utilize the personnel thus made available to complete integration and review rules in functional units.

4. Seek to facilitate, rather than participate in capital information. Steps in this direction include raising exemption limits and relaxing private placement restrictions for small business.

5. Coordinate with other Divisions so that there is a Commission-wide perception of the degree to which deregulation is proceeding in each Division.

6. The new Chairman should appoint Division Directors and some Associate Directors by internal transfer.

7. Personnel reduction from attrition is 25% p.a., which should be offset by 5% new hirings. In the industry-type review branches, two branches review the same industries. These will be combined, resulting in 6 rather than 12 branch chiefs.

Budget Projection for Personnel*:

FY 81		FY 82		FY 83	
Positions	Cost	Positions	Cost	Positions	Cost
239	$7,752	201	$6,546	186	$6,046

*Dollar Figures given in thousands.

Mission

The activities fo this Division are directed toward providing investors which financial and management information about companies that seek to raise money through public offerings of their securities, so that the investor may reach an informed decision. The method selected by the Commission to achieve this goal has been by developing requirements for the form and content of financial statements and detailed corporate information.

Organization and Key Personnel

This Division, as shown in the organization chart in the Appendix has three branches. The largest by far is the Disclosure Operations Branch, which is divided into 12 groups, each devoted to two or three industry types. About 80% of the Washington based personnel are in this Branch, which reviews the filings. The second branch is the rulemaking branch which also includes corporate responsibility. The Division considers about 20% of its workload to be in the rulemaking area. The third branch is Small Business Policy, but in fact includes international corporate finance along with Small Business, and the Chief Accountants Office is put here for organizational purposes. The Division Director is Ed Greene, an ES 5. Deputy Director Lee Spencer, and Associate Directors William Wood, John Schinkle, and Mary Beach, all ES 4's are in this Division.

Discussion

Prior to the 1933 Act, whatever disclosure was made and its reliability was a function of the requirements made by

these filings, together with other information they assemble and reach the conclusions upon which they are others act. The Commission, along with other subscribers, contracts with Disclosure Inc. which computerizes and breaks down the periodic filings for quick review. Abbreviated review has been found sufficient except for tender offers and proxies. Some filings are not reviewed and some registrations now become effective automatically. The practice should be continued and expanded, so that 175 professionals are no longer required to perform this task. It has been concluded that detailed review is not vital to fulfilling the Commission's responsibility. The existance of these filings in a central repository may serve the purpose.

In the Appendix to this section is a listing of the major initiatives SEC. These items for this division are:

1. Rulemaking

(a) Integration

The Division is striving to make all the financial filings required to be based upon the same financial information, calculated in an identical manner, to eliminate the necessity of different accounting methods for different SEC filings.

(b) Sunset Review

The Division is reviewing all its existing Rules to determine their continuing appropriateness, with an eye to simplification and reduction of the regulatory burden.

2. Selective Review

The Division is seeking to determine whether and to what extent selective review will increase productivity and maintain the levels of disclosure required.

3. Corporate Governance

The Commission has long had an interest in Corporate Governance and Accountability. The composition of Boards of Directors and the extent to which the voice of the shareholders is being heard has been of great interest. The increasingly widespread trend toward an independent audit committee on boards of public companies has been lauded by the Commission. It now appears (Chairman Williams's testimony) that the Commission will not seek to impose rules about the make-up of Boards of Directors. This entire area appears to have no statutory basis for SEC action.

4. Small Business

The Division has taken several steps to make it easier for small business to raise capital than for big business. By classifications A, B, and C which refer to size, it proposes to impose different levels of disclosure. Rule 242 is a type of "private placement" without limit on subscribers or sophistication required of them. The limit is $2 million in a six-month period. The maximum amount on Reg A's has been raised to $1.5 million.

Options

1. With regard to registration statements and periodic filings, in effect register the offeror rather than the offering, and require adequate disclosure about the company

in an 'evergreen' prospectus. This document, updated to reflect changes, together with the company's annual report and proxy statements, filed with, but not reviewed by, the SEC will provide availability of the information to investors, and togehter with the fraud provisions will serve to protect investors.

2. Continue to require that the present filings be made, perhaps in a more simplified form, but rather than reviewing them, make the SEC the central repository of information about public companies, permitting private sector analysts to review such filings as they choose.

3. Simplify and complete the integration of the present filings, but only review those filings of companies that are not actively traded, on the theory that the market will reflect the information contained in the statements of those companies that are actively traded.

4. Rely on the existing contract computer services to indicate, by the ratios there developed, those filings which should be reviewed, and just file the rest.

5. Encourage the SRO's and associations to strengthen their disciplinary rules and the education and training requirements for licensed brokers.

5. Instead of regulating municipals and IDB's look carefully to their record. These securities are unregistered and make no filings with the SEC, but the liability imposed upon the principals, accountants, attorneys and underwriters demonstrate that the protection afforded by the SEC is not

the investing community. There were instances when the completeness and accuracy of the facts was less than required to make an informed decision, and cases of outright fraud. The Federal Trade Commission hearings concluded early on that mandatory full and fair disclosure by those seeking to raise capital form the public would help prevent a recurrence of the '29 Crash.

The statutes which govern the activities of this Division are:

The Securities Act of 1933

The Exchange Act of 1934

The Trust Indenture Act of 1939

The '75 Amendments ot the Securities Laws (minor effect)

The Small Business Incentive Act (P.L. 96-477)

The Regulatory Flexibility Act

The Corporate Finance Division's statutory mission under the Securities Act of 1933 is "to provide full and fair disclosure fo the character of securities sold..".; under the Securities and Exchange Act of 34 which created the Commission to require that registered companies "file (periodic reports) with the Commission in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors..." and, under the Trust Indenture Act of 1939, similar filings are required in regard to bonds together with qualifications for Trustees.

These Acts exempt various securities and various transactions, and provide for the imposition of civil and

and criminal penalties upon all parties for omission of material facts, misleading and fraudulent statements.

The '75 Amendments strengthened the Commission's power to regulate the securities industry, with only minor effects to this division.

The Regulatory Flexibility Act enables lessened requirements imposed upon small business, and together with the Small Business Incentives Act, promises to aid capitol formation for small business...

The Commission has throughout its history continually required additional disclosure in wider areas and in greater detail.

Its rulemaking has been such that qualifying for an exemption may be more burdensome and costly than filing a registration. The Division has taken several progressive steps toward deregulation, but the result is a regulator's idea of deregulation.

Its policy is to go step-by-step, make rules as it goes along, and when it is satisfied that there are no ill effects from its policies, to take the next step.

This division is also reviewing its existing rules to determine their continuing appropriateness, and changing them, through the process where it seems possible.

Reevaluating SEC regulations which may impact upon capital formation is most useful. Whether the SEC should insert itself into this question by such means as hosting a $750,000 conference may be questionable. The Small Business

Administration is particularly aware of these problems and the Commission can assist the SBA by providing its insights which should not duplicate the SBA's own work. The Appendix to this section lists initiatives in the areas of capital formation and corporate disclosure presently being conducted by this Division.

The Small Business Act P.L. 96-477 may have salutary effects. The purported simplication and rationalization of the private offerings under Rules 144 and 146, etc., are not particularly "small business" matters in the governmental sense of that term. The present state of these Rules cause confusion, and the presumption of intent as judged by subsequent actions makes the problem worse. The restriction of sale of these securities is a deterrent to an outside investor.

Most of these private offerings tend to be of a much more sophisticated nature and should remain within the SEC, but can be generalized rather than fragmented as they now are.

Whether complete review and evaluation of every filing received is a productive use of resources is a fundamental question already resolved by the Division in the negative.

The Advisory Committee on Corporate Disclosure which met in 1977 concluded that the "efficient-market" hypothesis did not negate the need for madatory disclosure. Although SEC filings are not necessarily a source for new information, the filings may assure reliability and accessibility. Non-government analysts and portfolio managers review these

necessarily the only viable method of assuring investor protection, if other methods of assuring disclosure and risk are utilized.

Policy Issues

The basic issues confronting this Division are:

1. Whether the present rules efficiently provide the "full and fair" disclosure statutorily required?

2. Whether investor protection is provided by the existance of the disclosure documents filed in a central repository and publically available or by the review of these documents by this Division?

Under these two major policy issues, several subissues arise:

1a. While describing itself as being in a "deregulatory mode," is deregulation proceeding quickly enough?

1b. Can greater intergration of filings be made without harm to the interests being protected?

1c. Do the methods of 'exemption' from regulation amount to merely a somewhat simplified registration process, and if so should that be the preferred method?

1d. Is classification a satisfactory method of deregulation?

1e. Can the private placement Rules be made more effective vehicles for capital formation?

2. Should the issue of corporate governance be pursued by the SEC?

3. To what extent should small business be regulated, and by what method by the SEC - or should it be exempt?

4. Should more municipals, and certain IDB's be registered?

Recommendations:

1. The Transition team believes chat the objectives it seeks can be achieved without legislation.

2. Full and fair disclosure must be made and must be accessible to the investing community in order to retain the confidence of investors.

3. Full and fair disclosure can be made by corporations seeking to raise funds without the review and analysis of the Corporate Finance Division of the SEC.

Those seeking comment should be able to get informed answers, but otherwise registrations can become effective 20 days after they become available to the public through filing with the SEC.

4. A six-month moratorium on rules will permit concentrated review of present rules by function, and a resulting integration and simplification which will reduce the burden upon the regulated corporations.

5. The Division should seek to facilitate rather than participate in capital formation by the simplification and resulting cost savings to the issuer.

6. The Divisions should coordinate their deregulatory efforts and utilize methods throughout that have been found effective in some divisions.

7. The Division should be able to develop a genuinely deregulatory mind set, if led by a Director so inclined.

E. CORPORATE REGULATION

Summary

This is the smallest Division of the Commission, and has two unrelated functions. Regulation of certain public utility holding companies is the primary function actually performed in this Division, its Bankruptcy function being undertaken in conjunction with the General Counsel's Office.

A staff of 41 performs these functions. This Division cost $1,379 in FY 80.

The Division Director is Aaron Levy, an ES 4, soon to retire.

Recommendations: (No legislation required).

1. Utilize exemptions and rule-making authority to exempt 13 of the 14 companies this Division regulates from the Public Utilities Holding Company Act.

2. Limit the bankruptcy interventions to court requests.

3. Have those pending bankruptcy matters continue to be handled in the General Counsel's Office.

4. Phase out the Division over FY 81.

Budget Projections For Corporate Regulation*:

FY 81		FY 82		FY 83	
Positions	Cost	Positions	Cost	Positions	Cost
21	$608	-0-	-0-	-0-	-0-

*Dollar Figures all given in thousands.

Mission

The primary mission of this Division is to oversee the operations of certain gas and electric holding companies and pass on the merits of their public offerings. Another unrelated mission of this Division is to raise such issues as it deems will protect the public investors in bankruptcy proceedings of public companies.

This is the smallest Division of the Commission, and has two unrelated functions. Regulation of certain public utility holding companies is the primary function actually performed in this Division, its bankruptcy function being undertaken in conjunction with the General Counsel's Office.

This Division's activities are authorized by two statutes:

1. The Public Utility Holding Company Act (* which was designed to:

   A. Limit electric and gas operations to physically integrated and coordinated properties.

   B. Simplify their complex corporate and capital structures and eliminate any unfair distribution voting power.

   C. Require that issuance and sale of securities by holding companies and their subsidiaries (unless exempt as an issue by the state of incorporation of the issuer) shall be reasonably adapted to the security structure and earning power of the issuer and necessary to the efficient operation of the issuer's business and that the consideration received and fees paid shall be fair and the terms and conditions of the sale shall not be detrimental to investors, consumers, and the public.

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* 15 USC §79 et. seq.

Pursuant to this Act, the Commission has rulemaking authority. The SEC passes on the suitability of public offerings by the regulated companies and determines the merits of the securities being offered. (This is in addition to the registration and periodic filing requirements of other public companies.)

2. The New Bankruptcy Act:*

Under §1109 (a) the Commission may raise and be heard on any issue in a proceeding under new Chapter 11. The SEC may not initiate an appeal, and has no rulemaking authority.

Organization and Key Personnel

The Branch of Public Utility Regulation, through its Branch Chief, and the Branch of Reorganization, through its Branch Chief report to the Associate Director who reports to the Director. Directly reporting to the Director are the Office of Chief Counsel and the Office of Engineering. (See Organization chart in appendix.)

Budget

The 1980 fiscal year budget for the Public Utility Holding Company regulation was $805,000. This figure is up $28,000 in the estimate for fiscal year 1981. Salaries for the 21 staffers employed in this function account for §615,000 of this amount. Budget figures for eleven staffers in the bankruptcy function are included in the General Counsel budget figures. More detailed budget figures will be included in final report.

Congress found a necessity for special regulation of public utility holding companies in the 1920's as a result of the manipulation and failure of some public utility holding

*. 11 USC § 1101 et. seq.

companies which were highly leveraged through complex systems of subsidiaries. The catalogue of abuses included securities issues on fictitious assets, paper profits from inter-company transactions, excessive charges to certain subsidiaries. The corporate structures had no business purpose, the committee concluded but to permit control through disproportionately small investment at the top.

"When abuses of (this) character become persistent and wide-spread the holding company becomes an agency which, unless regulated, becomes injurious to investors, consumers and the general public," Congress found, and passed the Public Utilities Holding Company Act of 1935.

It was determined that Federal Regulation necessary since the holding company was not itself a utility and was not subject to regulation as a utility. In many instances the operating companies were interstate in nature and thus outside state regulation.

It is interesting to note that in the hearings before the Federal Trade Commission that preceeded the passage of this Act, it was contemplated that all utilities over which the Federal government could assume jurisdiction would be included. The telephone company was not included as a result of the information developed during the hearings because its practices did not warrant such additional scrutiny and its public offerings passed muster. Now 50 years later, some 14 companies are regulated under this Act.

The Commission has become involved with fuel filings where both the buying and selling subsidiaries are not classed as utilities, requiring a new area of expertise. (Where both sides are utilities the transactions are subject to regulation by FERC.)

This division describes itself as being in a deregulatory mode, and under its rule making power under the PUHCA has recently promulgated certain rules to that end.

New Rule 14 exempts the construction and operation of joint facilities, undertaken as a joint venture, from making the venturer fall under the definition of holding company, and thus regulated under the PUHCA; and Rule 15 confirms that if another body is regulating an acquisition, the FERC has jurisdiction.

Rule 16 exempts companies that seek to explore and transport natural gas and synfuels, and form a subsidiary for that purpose, from being considered holding companies.

Prospectively, the Division plans exemptions and an accommodation with the FERC under the Energy Security Act. If the SEC will provide an exemption, then the FERC can exempt certain small producers for cogeneration.

In the bankruptcy aspect, the General Counsel's Office now screens the District Court reports for bankruptcies it can become involved in. In some instances, the Court requests the Commission's expertise on issues relating

As utilities, affected with the public interest, the operating companies must also be regulated for rate-making purposes. Although State attempts to regulate the operating units of the holding companies failed in the '20's, all states now have regulatory commissions, and those gas and electric utilities not regulated by the states are regulated by the FERC.

Largely because of the fuel crises, the SEC has become involved with complex fuel filings, ordinarily the province of the FERC. There have also been requests for EPA Environmental Impact statements in connection with some of the filings.

The holding companies, former "bad guys" have gone through successive generations of managers. Only a handful remain to be regulated.

In the area of bankruptcy proceedings, it was the practice of the Commission under the old bankruptcy act to intervene in proceedings involving large public companies. In its role as amicus many Chapter XI's became Chapter X's on the theory that the public investors were better served by dissolution than reorganization. Additional time (and money) was required and the outcome often delayed.

There are still some cases pending in which the SEC is involved under the old Bankruptcy Act.

Under the new Bankruptcy Act, the Commission's role is more limited. The Commission is now seeking a legal publication service that will provide it with information

about all bankruptcy proceedings throughout the country, so that it may raise issues in those proceedings.

Options

This Division was created out of the Investment Management Division and made an unsuitable marriage with Bankruptcy. The Director of this Division is about to retire. Options which may be considered include:

1. The structure of the Commission can be changed to eliminate this division. Those who are involved with PUHCA matters can be folded back into Investment Management, and the Bankruptcy personnel can be included in the General Counsel's Office where a majority of these matters are now handled.

2. Maintaining the Division, with the Bankruptcy proceedings in General Counsel's Office until the regulated companies can be exempted from the Act through the rulemaking process by broadly construing the provisions of Section 3, provided the holding company remains regulated under other SEC statutes and the operating companies remained regulated by FERC or state regulatory commissions. These exemptions are to be broadly construed. Congress has indicated that it is the duty of the Commission, to exempt any company which it finds to fall in one of the five categories specified in Section 3, to the extent that such exemption is not detrimental to the public interest or the interest of investors or consumers.

3. Seeking repeal of the PUHCA, provided the companies it regulates remain regulated as above, and disbanding the Division as soon as possible.

4. Establishing a Commission policy that it will intervene in the bankruptcy proceedings of any public company for the sake of establishing legal precedents under the new Bankruptcy Act.

5. Establishing a Commission policy that it will be heard on issues only when asked to come into the proceeding by the presiding Court.

Recommendations

Adopt Option two discussed above.

F. DIVISION OF INVESTMENT MANAGEMENT

Summary

This division is responsible for the regulation and inspection of investment advisers managing assets over $200 billion and investment companies managing assets over $90 billion. The staff including both accountant-analysts and attorneys review the required disclosure documents. The division also has responsibility for issuing interpretative and "no-action" letters as well as processing applications for registration of investment advisers.

Primary responsibility for in-depth inspections is assigned to the regional offices with the division providing assistance and technical support. A staff of 105 was engaged in performing these functions in fiscal 1980. The SEC budget estimate for fiscal 1981 projects a staff of 107, approximately 10% of the SEC hedquarters personnel.

Recommendations

1. Excellerate the Investment Company Act Study, Investment Company Disclosure Study, and Investment Advisors Act Study and promptly deregulate.

2. Reduce the staff by eliminating unnecessary controls over this companies.

3. Lessen the staff's role in enforcement actions for the reasons discussed in section on the Division of Enforcement.

Budget Projections for Division Personnel*

FY 1981		FY 1982		FY 1983	
Positions	Costs	Positions	Costs	Positions	Costs
157	$5,208	126	$4,166	101**	$3,333

*All dollar figures given in thousands.
**Not more than 50 at headquarters

Mission

The Division of Investment Management is primarily concerned with the administration of the Investment Company Act of 1940 and the Investment Advisors Act of 1940.

Under the Investment Company Act, companies engaged primarily in the business of investing, reinvesting and trading in securities, and whose own securities are offered and sold to and held by the investing public, are required to register with the SEC and are subject to certain prohibitions. For instance, transactions between investment companies and their directors, officers or affiliated companies or persons are prohibited unless approved by the SEC.

Under the Investment Advisors Act, persons or firms who engage for compensation in the business of advising others about their securities transactions are required to register with the SEC and conform their activities to certain standards. For example, an investment advisor's registration may be revoked for fraudulent or deceptive acts and practices, as defined by rules adopted by the SEC pursuant to the Investment Advisors Act.

Securities of investment companies are required to be registered under the Securities Act of 1933. The Division is charged with the responsibility for processing these registration statements.

Organization and Key Personnel

The Division is headed by a Director who oversees the activities of five main Offices:

Chief Counsel
Investment Company Regulation
Disclosure Policy and Review
Compliance and Insurance Products
Investment Adviser Regulation

Each Office, with the exception of Chief Counsel, is headed by an Assistant Director who is directly responsible for the activities of the Office. The total number of personnel assigned to the Division is approximately 100, exclusive of personnel in the Regional Offices who are primarily involved in field inspections of investment companies and advisers.

Budget

The operating budget for the Division in fiscal year 1981 is $7,136,000.00. This represents an increase of $673,800 over fiscal year 1980.

Discussion - Policy Issues

The Division claims to be in a deregulatory mode. In furtherance thereof, the Division is engaged in three principal studies, discussed below, the alleged goals of which are to simplify the rules affecting, and reduce the regulatory burdens placed upon investment companies and advisers.

The Division appears to have more staff members than necessary to accomplish its mission, as evidenced, in part, by the number of full-time personnel assigned to studies.

1. Investment Company Act Study

This study was commenced in 1978, and there are presently 5 employees of the Division working on it exclusively. It is estimated that the study will remain in progress for approximately 2 to 3 more years.

As a result of the work of the study group to date, the SEC has proposed or adopted approximately 25 rules and amendments to rules regarding such matters as transactions with affiliated persons, investment advisory contracts, and routinely granted applications. For example, a recently adopted rule which apparently developed from the study concerns the processing of post-effective amendments to investment company registration statements. Under the rule, post-effective amendments become effective either immediately upon filing or within a short time thereafter, depending upon their nature.

2. Investment Company Disclosure Study

There are 3 Division employees presently engaged full-time on this study, which is estimated to also require 2 to 3 more years before completion. This study entails an examination of the disclosure requirements imposed on investment companies by the Securities Act of 1933 and the Investment Company Act of 1940,

with a view to reducing duplicative and unnecessary requirements.

3. Investment Advisers Act Study

The SEC has determined a need to reevaluate its regulatory program under the Investment Advisers Act in view of the increasing volume of services provided by investment advisers. The Office of Investment Adviser Regulation, which was established within the Division in December, 1978, is conducting a study to determine what changes, if any, are required with respect to the regulatory program affecting investment advisers. There are presently 5 Division employees working full-time on the study, which also is estimated to require 2 to 3 more years before completion.

4. Money Market Funds

The Division is quite interested in money market funds, particularly in view of their recent growth and proliferation. A rule was recently adopted requiring the inclusion in the prospectuses of money market funds of a yield figure computed according to a standardized method. Also, the Division would like to enhance its field inspections of money market funds.

5. Enforcement

The Division is intimately involved in enforcement since it makes recommendations to the Enforcement Division of the SEC based upon field inspections of investment companies and investment advisers. But the

Division does not actively participate in the marshalling of evidence once a recommendation has been made.

The Division feels that its mission would be enhanced if it had responsibility for enforcement actions under the Investment Company Act and Investment Advisers Act.

Recommendations

1. Excellerate the Investment Company Act Study, Investment Company Disclosure Study, and Investment Advisors Act Study and promptly deregulate.

2. Reduce the staff by eliminating unnecessary controls over this companies.

3. Lessen the staff's role in enforcement actions for the reasons discussed in section on the Division of Enforcement.

DEPA

G. DIRECTORATE OF ECONOMIC AND POLICY ANALYSIS

Summary

The primary function of the Directorate is to ensure that the Commission is provided with timely analysis and information on the economic implications of its regulatory activities. Generally, this function entails supporting and working closely with the divisions responsible for developing rule proposals.

Budget estimates for fiscal 1981 call for staffing of 44 persons at a cost of $1,498,000.00.

Recommendations

1. Increase the emphasis upon supplying information and analysis necessary to the deregulation process.

2. Reevaluate the staffing needs to provide a broader range of expertise, without increasing staff size.

3. Gradual down sizing of staff as SEC deregulation proceeds.

Budget Projection for Directorate Personnel*

FY 1981		FY 1982		FY 1983	
Positions	Cost	Positions	Cost	Positions	Cost
39	$1,479	32	$1,198	25	$959

* Dollar figures given in thousands.

Mission

Provision of statistical and economic information to the Commission pertinent to monitoring of Commission rule change activities.

Organization and Key Personnel

The organization is divided into an office of the director, a small number of advisers, and branches assigned responsibility for broker/dealer analysis, corporation finance activities and statistical functions.

A director, two assistant directors and appropriate branch chiefs.

Budget

Total program costs, as reflected in the SEC's budget estimate for fiscal 1981 are $1,498,000.00 compared to $1,571,000.00 in fiscal year 1980 and $1,282,000 in fiscal year 1979.

Discussion

The Directorate has gone through a number of organizational changes in recent years. Its current emphasis is on the production of monitoring studies which track developments following rule changes generally proposed and sponsored by divisions with "line" responsibility. These studies provide useful information to other divisions, commissioners, and upon occasion, the general public. At a time of increased emphasis on regulatory cost-benefit analysis throughout government, however, the Directorate's total input into and

impact upon policymaking at the Commission is meager. Policy analysis and/or advice is rarely given at early stages of major policy initiatives, nor is cogent analysis directed toward the broader, economic implications of those basic Commission activities identified by such critics as Kripke, Benston and Stigler, as costly and not beneficial to the securities investor.

The current standing of the directorate permits it to accommodate the Commission's posture of incremental change, both with regard to policy impact and staff size. Small marginal policy changes have been adopted in recent years with regard to small business registration and reporting release, investment management company deregulation, options market activities, and national market system development. These changes have been slow to develop, and have not been sweeping in scope. Monitoring programs can be and are being implemented by the directorate to study the impact of the changes.

As months and years pass, information from the monitoring studies can be transmitted to other divisions and to the Commission to serve as one input into the decision making apparatus which may or may not elicit futher change. Given the current modest mission of the Directorate, it is over-staffed, and as with a number of other offices/divisions at the Commission such as the OGC, it has sought to find work for its personnel. For example, the Directorate has recently

published for public comment a request asking for advice on how it might expand its statistical program efforts. The Directorate for years has devoted a considerable volume of resources to the collection and publication of data of little use to imdividuals inside or outside the Commission. Any additional resources directed to the provision of more statistical information to the public, in light of the excellent data currently provided by such securities organizations as the SIA, would be misdirected.

Also, with regard to the current modest mission of monitoring incremental rule changes, the Directorate has little need of the large group of GS-11 to GS-15 economists on staff who function with little independence of action and with little need of professional skills other than those of data base management. Compared with economists at many other agencies, the professional staff of the Directorate is engaged more in clerical functions than in high level analytical problem solving functions. There are three GS-15 economist advisers on the staff. Because there is little in the way of major policy involvement, there is littl need for the three high level adviser positions. Two of the advisers, in fact are currently on detail elsewhere in the federal government because of an absence of a need for their services at the Commission. Thus, staff reduction both with regard to size and average GS rating could be effected throughout the Directorate, with no adverse impact on accomplishment of the current mission of minor rule change monitoring.

There is an alternative role which the Directorate could play in a Commission with a goal of more sweeping deregulatory changes. That is, if the Commission were to move to cut back substantially the aggregate number of rules and regulations written almost entirely by attorneys, the group which could logically best assume a stronger policy role in a cost efficient regulatory environment would be the economists. The economists would have to shift from a basically passive monitoring posture to an active role in the selection and recommendation of major rules which could be terminated or substantially altered. The new environment would require major changes in staffing requirements, directed towards enhancing the economists' competence level rather than enhancing staff size. The Director and Deputy Director for example should be nationally known economists with the professional stature to interact directly with the Chairman and Commissioners on new major policy initiatives and with the flexibility to work with representatives from the attorney divisions. In place of a permanent staff of GS-15 bureaucrats, the Directorate should adopt the personnel strategy of the Office of the Chief Accountant which has at any time 4-5 policy fellows from the vast private sector organizations on leave for a two year period. The CAO with this policy is able to enlist the assistance of outstanding expertise for a period generally long enough

for the employee to make a solid contribution and without the personnel strings which keep the employee on long after his contribution has ended. As with the CAO, the economist policy fellows could be attracted from the private sector or from academia. Their professional reputation would do much to enhance the Directorate's credibility as an organization capable of originating and carrying out major deregulatory initiatives.

The monitoring function could be carried out under the new pro-active structure as it is now. The number of permanent advisors and statistical helpers could in either case be substantially reduced so that the Directorate would operate effectively with a smaller staff size.

Options

1. Change the mission of the Directorate to make it a more active vital force in fostering major deregulation at the SEC. Personnel changes would be required throughout the upper levels of the Directorate with regard to the Directorate's management and high level policy personnel Staff cuts could be enacted with adviser and statistical positions. Average GS level may rise however with the hiring of policy fellows from private sectors and academia.

2. Keep same mission Directorate has of monitoring minor rule changes. Management need not be changed although cuts of advisers and statistical personnel should be enacted. Average GS rating should drop as more senior economists, who

do not function as economists but as data base managers leave the organization.

Recommendation

Select Option 1.

CA

H. OFFICE OF THE CHIEF ACCOUNTANT

Summary

The Office is primarily concerned with the development of accounting policies with respect to the numerous federal securities statutes administered by the Commission. In addition, the Office is involved in the execution of the Commission's accounting principles and procedures. A staff of 25 is employed to fulfill the various functions of the Office.

Recommendations

1. Place greater emphasis on attracting high calibre accountants for the post of Chief Accountant, e.g., enhance prestige and promotion prospects for this position.

2. Loosen current accounting standards concerning disclosure of oil reserves.

3. Eliminate any development or reliance upon official SEC auditing standards, developed by the Office of the Chief Accountant.

Budget Projection for Personnel*

FY 81		FY 82		FY 83	
Positions	Cost	Positions	Cost	Position	Cost
22	$888	20	$800	18	$720

*Dollar figures given in thousands.

Mission

The Office of the Chief Accountant is primarily responsible for determining accounting policy and advising the Commission concerning accounting matters arising under the various securities acts. The Office also has general responsibility over the execution of SEC policy concerning accounting principles and procedures applicable to financial statements filed with the SEC and auditing standards and practices observed by independent public accountants. Moreover, the Office makes recommendations on cases arising under the SEC's Rules of Practice which specify, for example, that an accountant may be prevented from practicing before the SEC because of certain unprofessional conduct.

Organization and Key Personnel

A common perception shared by many knowledgeable individuals is that the Office has had a recurring problem,

subject to a few exceptions, of attracting a top grade Chief Accountant. The view has been expressed that if the Chief Accountant's position were regarded as an avenue to a higher position in the SEC, such as Commissioner, more highly qualified accountants would be attracted. Moreover, the SEC has not looked to members of the big accounting firms in filling the post of Chief Accountant since it is felt that severe conflicts of interest would arise when the Chief Accountant returned to his or her firm. Thus, the post has been traditionally filled by accountants from academia or government.

The Office has expanded to include a Chief Counsel to resolve legal issues which sometime arise in developing accounting standards. Some knowledgeable people in the accounting field have taken the view that the Office has unnecessarily become involved in legal questions which could properly be resolved in other Divisions of the SEC.

The Office seems to be relatively lean with a total staff of 25, consisting of 6 clerical, 1 attorney and 18 accountants. This does not mean, however, that the staff cannot be slightly reduced and still accomplish its mission. Included in the foregoing number of accountants are 4 accounting fellows who are, in effect, on loan to the Office from the private sector. The fellows program has been praised by the accounting profession as a means of attracting top flight accountants to the SEC.

Budget

The operating budget for the Office in fiscal year 1981 is approximately $890,000.00. This compares to a budget of $866,000.00 for fiscal year 1980, an increase of less than 3%.

Discussion - Policy Issues

1. Regulation S-X

The Office has been conducting ongoing reviews of the basic accounting regulation in the interest of eliminating differences between financial statements prepared in accordance with the regulation and those prepared in accordance with generally accepted accounting priciples. In this connection, the Office maintains a working relationship with the Financial Accounting Standards Board (FASB).

2. Foreign Currency Translation Standard

The Office has oversight involvement with the FASB in re-examining a foreign currency translation standard. It is anticipated that the FASB will have a decision in 1981.

3. Recognition of Reserves

The present decision of the Office is to have some disclosure of the value of oil reserves. The basic issue is how to calculate that value. The view has been expressed by some in the accounting field that the decision was political in nature and that an accurate valuation determination cannot be made. Accountants will merely attach reports of engineers.

4. Recognition of Impact of Inflation

The Office takes the view that the impact of inflation should be recognized in financials. Whether the method used should be developed by the private sector or the SEC has to be resolved.

5. Auditing Standards

Under the Securities Act of 1933 and the Securities Exchange Act of 1934, it is not clear whether the SEC has authority over auditing standards. Thus, the Office has only been maintaining a working-oversight relationship with the American Institute of Certified Public Accountants (AICPA) in the development of auditing standards.

6. Foreign Corrupt Practices Act (FCPA)

If the FCPA is amended in the near future, perhaps to include a materiality test, the Office will be involved in developing standards for maintaining internal accounting controls.

7. Federal Securities Code

If the proposed Federal Securities Code, which has been developed by an American Law Institute Committee headed by Professor Loss, is adopted in the near future, the Office will be significantly involved in developing the standards of liability for accountants.

Options

1. The SEC could relax its traditional view that the post of Chief Accountant should not be filled by a member of one of the big accounting firms.

2. The Office could relax its view with respect to the disclosure of value of oil reserves.

3. The Office could take a leading role in the development of auditing standards under the guise of having such authority pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934.

Recommendations

1. In view of the Ethics In Government Act, clearly the SEC should look to the big accounting firms in filling the post of Chief Accountant. This would bring greater prestige to the Office and upgrade the calibre of its performance. The Ethics in Government Act should eliminate the conflict of interest concerns.

2. The Office should relax its standards with respect to the disclosure of value of oil reserves. Such value is essentially incapable of accurate determination.

3. The Office should not interpret the Securities Act of 1933 and the Securities Exchange Act of 1934 in such manner as to give it authority over auditing standards. In view of the personal liability which auditors assume, auditing standards developed and required by the Office would merely create a shield. In other words, auditors tend to do only what is required by the government standards, thereby transforming these minimum standards to accounting norms.

4. The accounting fellows program should be continued and, perhaps, expanded. It serves to improve the quality of the Office's performance.