



OFFICE OF
INSPECTOR GENERAL

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

MEMORANDUM

June 15, 2011

To: The Honorable Barbara Lee
Subcommittee on Financial Services and General Government

From: H. David Kotz *[Signature]*
Inspector General

Re: Establishment of the Office of Minority and Women Inclusion

This memorandum transmits the U.S. Securities and Exchange Commission (SEC), Office of Inspector General report on the status of the SEC's establishment of the Office of Minority and Women Inclusion.

Should you have any questions regarding this report, please do not hesitate to contact me.

Attachment

cc: James R. Burns, Deputy Chief of Staff, Office of the Chairman
Kathleen Casey, Commissioner
Elisse Walter, Commissioner
Luis Aguilar, Commissioner
Troy Paredes, Commissioner
Mark Cahn, General Counsel

BACKGROUND

The mission of the Securities and Exchange Commission (SEC) is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. The SEC's vision is to strengthen the integrity and soundness of U.S. securities markets for the benefit of investors and other market participants, and to conduct its work in a manner that is as sophisticated, flexible, and dynamic as the securities markets it regulates.

The Office of Inspector General (OIG) is an independent office within the SEC that conducts audits of SEC programs and operations and investigations into allegations of misconduct by agency staff and contractors. The mission of the OIG is to detect fraud, waste, and abuse, and to promote integrity, economy, efficiency, and effectiveness in the SEC's programs and operations.

On February 10, 2011, the SEC Inspector General testified before the Subcommittee on Financial Services and General Government, Committee on Appropriations, U.S. House of Representatives, concerning his oversight of the SEC vis-à-vis the OIG's audit and investigative functions. During that testimony, the Inspector General was asked the following question by U.S. Congresswoman Barbara Lee (D-CA):

The Congressional Black Caucus members on the Financial Services Committee made sure that each of our agencies had the Office of Minority Inclusion as part of their new mission. Could you...tell me...where that is, in terms of the SEC now?

See Transcript of Hearing, Financial Services and General Government Appropriations for 2012, Thursday, February 10, 2011, Securities and Exchange Commission – Inspector General, at p. 31. The Inspector General replied that he would provide Congresswoman Lee with information responsive to her questions and concerns.

In response to Congresswoman Lee's request, the OIG has researched the SEC's implementation of the requirement for an Office of Minority and Women Inclusion. The OIG has determined that the SEC has not established an Office of Minority and Women Inclusion within six months after the date of enactment of the Dodd-Frank Wall Street and Consumer Protection Act of 2010 (Dodd-Frank Act), as required by Section 342(a)(1)(A) of the Dodd-Frank Act. SEC management has informed the OIG that it has not met this deadline because while the SEC has requested that Congress approve creation of the office, Congress has not yet approved the request. SEC management further indicated that, in the meantime, the SEC has organized a planning group to discuss and address issues related to the establishment of the Office, and the SEC's Office of Administrative Services and Office of Equal Employment Opportunity are currently conducting activities intended to promote minority and women inclusion in SEC contracts and hiring.

REVIEW

I. The SEC is Required to Establish an Office of Minority and Women Inclusion Pursuant to the Dodd-Frank Act

Section 342(a)(1)(A) of the Dodd-Frank Act requires specified agencies, including the SEC, to establish, not later than six months after enactment of the Dodd-Frank Act, Offices of Minority and Women Inclusion (OMWIs) to be responsible for “all matters of the agency relating to diversity in management, employment, and business activities.”¹ Each OMWI is to be headed by a Director, a career reserved position in the senior executive service or equivalent designation, who will be responsible for developing standards for equal employment opportunity, diversity, and increased participation by minority- and women-owned businesses and women in the agency’s programs and contracts.² Also, the Director is required to develop and implement standards and procedures regarding the fair inclusion and utilization of minorities and women in all the agency’s business and activities, including contracts, as well as a procedure for the Director to recommend termination of a contract if an agency contractor or subcontractor has not made a good faith effort to include women and minorities in its workforce.³ Further, the Director shall develop standards for assessing the diversity policies and practices of entities regulated by the agency, advise the agency head on the impact of the agency’s policies and regulations on minority- and women-owned businesses, and provide annual reports to Congress on the actions taken by the agency and the OMWI under Section 342.⁴ Agencies are required under Section 342 of the Dodd-Frank Act to take affirmative steps to seek diversity in its workforce through recruitment of minorities and women and partnering with minority and women businesses.⁵

II. The SEC Has Stated that it Cannot Use Appropriated Funds to Establish Its Office of Minority and Women Inclusion

Based on the language in Section 342(1)(A) of the Dodd-Frank Act, the SEC was required to establish its OMWI within six months from the date the Dodd-Frank Act was enacted, or by January 17, 2011. The SEC has not met this deadline because SEC management has concluded that language in Section 608 of Public Law 111-117, the Consolidated Appropriations Act, 2010, dated December 16, 2009, does not allow the SEC to use appropriated funds for a reprogramming that “creates or reorganizes offices, programs, or activities unless prior approval is received from the Committee on Appropriations of the House of Representatives and the Senate.” On September 28, 2010 and January 20, 2011, the SEC submitted requests to Congress for approval to create its OMWI (see requests to the Subcommittee on Financial Services and

¹ For purposes of Section 342 of the Dodd-Frank Act, “agency” refers to the Department of the Treasury’s departmental offices, the Federal Deposit Insurance Corporation, Federal Housing Finance Agency, the Federal Reserve Board, each of the Federal reserve banks, the National Credit Union Administration, the Office of the Comptroller of the Currency, Securities and Exchange Commission, and the new Bureau of Consumer Financial Protection. Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Section 342(g)(1).

² Section 342(b)(1) and (b)(2)(A)&(B).

³ Section 342(c)(1) and (c)(3)(B)(i).

⁴ Section 342(b)(2)(C), (b)(3), (e).

⁵ Section 342(f)(1)-(6).

General Government, Committee on Appropriations, U.S. House of Representatives.)⁶, but has not yet received approval. The SEC's Fiscal Year (FY) 2012 budget justification includes a request for three full-time equivalents (FTEs) for the OMWI in FY 2011 and eight FTEs for the OMWI in FY 2012, with the qualification that the creation of the OMWI, which will report directly to the SEC Chairman, is subject to reprogramming approval by the House and Senate Appropriations Committees.⁷

III. The SEC is Planning the Implementation of its Office of Minority and Women Inclusion and Conducting Activities to Promote Diversity

SEC management has informed us that although the SEC has not yet received approval to use appropriated funds to establish an OMWI, the SEC has nevertheless begun planning its implementation. The SEC's Office of Human Resources (OHR), at the request of the Office of the Chairman, organized a planning group in February 2011 with representatives from OHR, the Office of Equal Employment Opportunity (OEEO), Office of Administrative Services (OAS), the Office of the General Counsel (OGC), and the Office of Legislative and Intergovernmental Affairs (OLIA) to discuss issues relating to establishing an OMWI. The planning group plans to meet weekly to discuss OMWI-related matters and to meet with representatives from other government agencies that have already established their own OMWIs. Also, the planning group indicated that it is in the process of identifying and planning for the various tasks that will need to be addressed, such as identifying SEC diversity programs to transfer to the OMWI, identifying related policy and legislation, developing a small business contracting diversity program, and developing baseline diversity data. For example, OAS designated one of its contract specialists as a Small Business Specialist and, in April 2011, advised SEC employees to direct calls and messages from business representatives of small, minority-, woman-, or veteran-owned businesses to the Small Business Specialist. The OEEO indicated that it is engaged in diversity activities regarding hiring and small business activities, including developing alliances and partnerships with organizations, professional associations, and schools, hosting and sponsoring recruitment and career events, and participating in outreach efforts to promote the SEC as an employer of first choice.

CONCLUSION

The OIG found that the SEC has not established its Office of Minority and Women Inclusion (OMWI), as required by Section 342(1)(A) of the Dodd-Frank Act, because it has concluded that it cannot use appropriated funds for this purpose without first obtaining Congressional approval. The SEC requested three FTEs for FY 2011 and eight FTEs for FY 2012 to staff OMWI; however, the SEC has determined that it cannot establish an OMWI until it

⁶ See copies of September 28, 2010 and January 20, 2011 letters from SEC Chairman Mary Schapiro to The Honorable Richard Durbin, Chairman, Subcommittee on Financial Services and General Government, attached. Identical requests were sent to Chairman José E. Serrano, Ranking Member Susan Collins, and Ranking Member Jo Ann Emerson.

⁷ Three other new offices that the Dodd-Frank Act required the SEC to establish also are awaiting reprogramming approval and are mentioned in conjunction with the budget justifications noted above. These three other offices include: the Office of Credit Ratings; Office of the Investor Advocate; and the Office of Municipal Securities.

receives reprogramming approval by the House and Senate Appropriations Committees. In the meantime, according to SEC management, implementation of its OMWI is being planned, and other SEC offices are conducting activities intended to promote diversity and inclusion.



THE CHAIRMAN

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

September 28, 2010

The Honorable Richard Durbin
Chairman
Subcommittee on Financial Services and General Government
Committee on Appropriation
United States Senate
184 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin:

Pursuant to P.L. 111-117, the Consolidated Appropriations Act of 2010, I am writing to request your approval for the Securities and Exchange Commission (SEC) to create five new offices required under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Act"). The new offices are the Office of the Investor Advocate, Office of Credit Ratings, Office of Municipal Securities, Office of Whistleblower Protection, and Office of Minority and Women Inclusion. Some of the offices will require the agency to reassign staff and functions from existing programs.

Office of the Investor Advocate

Section 915 of the Act requires the SEC to establish an Office of the Investor Advocate, to be directed by the Commission's Investor Advocate. The Investor Advocate will report directly to the Chairman. The office will assist retail investors in resolving significant problems they may have with the Commission or with self-regulatory organizations (SROs). The Investor Advocate will identify areas in which investors would benefit from changes in Commission regulations or SRO rules. Specifically, the office will identify problems that investors have with financial service providers and investment products, analyze the potential impact on investors of proposed regulations and rules, and propose changes in regulations, legislation, or administration of programs that may mitigate problems identified. As the SEC builds out the Office of the Investor Advocate, the agency will consider whether any activities performed by the Office of Investor Education and Advocacy should be shifted to the new office.

Office of Credit Ratings

As Section 932 requires, the SEC is establishing an Office of Credit Ratings. The new office is responsible for administering the rules of the Commission with respect to the practices of nationally recognized statistical rating organizations (NRSROs) in determining ratings; promoting accuracy in credit ratings issued by NRSROs; and ensuring that such ratings are not unduly influenced by conflicts of interest. The director of the new office will report to the Chairman, and the office will be staffed with individuals with knowledge of and expertise in corporate, municipal, and structured debt finance. Some of the staff will be transferred from the Division of Trading and Markets and the Office of Compliance Inspections and Examinations.

The new office will conduct examinations of each NRSRO at least annually. Among other things, each examination will include a review of the NRSRO's compliance with its policies, procedures, and rating methodologies; the NRSRO's management of conflicts of interest, implementation of ethics policies, and internal supervisory controls; and the NRSRO's policies governing the post-employment activities of former staff.

Office of Municipal Securities

The SEC is establishing an Office of Municipal Securities to administer the rules pertaining to broker-dealers, advisors, investors, and issuers of municipal securities. As Section 979 of the Act requires, the new office will coordinate with the Municipal Securities Rulemaking Board on rulemaking and enforcement actions. The director of the new office will report to the Chairman, and the office will be staffed with individuals with knowledge of and expertise in municipal finance, of which some will transfer from the SEC's Division of Trading and Markets.

Office of Whistleblower Protection

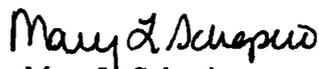
The SEC is establishing a separate Office of Whistleblower Protection, as required by Section 924 (d) of the Act, to administer and enforce the provisions of the Act concerning whistleblowers. The office's activities will include processing applications for whistleblower status, advising the Commission on these applications, and tracking amounts collected in cases stemming from whistleblower leads. The office, which will reside within the Division of Enforcement, also will work closely with the SEC's Office of Financial Management on the administration of the new Investor Protection Fund.

Office of Minority and Women Inclusion

As required by Section 342, the SEC is establishing an Office of Minority and Women Inclusion that is responsible for all matters of the agency relating to diversity in management, employment, and business activities. The director of this office will be a Senior Officer position that reports directly to the Chairman. Additionally, the director will advise the Chairman on the impact of the policies and regulations of the SEC on minority-owned and women-owned businesses. The activities currently being performed by the SEC's Office of Equal Employment Opportunity that are related to the functions described above will be transferred to the new office.

Thank you for your consideration of this request and your continuing support of the SEC as we work to implement financial regulatory reform. Please feel free to call me at (202) 551-2100 or have your staff call Eric Spitler, Director of the Office of Legislative and Intergovernmental Affairs, at (202) 551-2010 if you have any questions or need additional information.

Sincerely,



Mary L. Schapiro
Chairman



THE CHAIRMAN

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

January 20, 2011

The Honorable Richard Durbin
Chairman
Subcommittee on Financial Services and General Government
Committee on Appropriations
United States Senate
133 Dirksen Senate Office Building
Washington, DC 20515

Dear Chairman Durbin:

I am writing to request your approval for the Securities and Exchange Commission (SEC) to create new offices required under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Act"). The new offices are the Office of Credit Ratings (Sec. 932), Office of the Investor Advocate (Sec. 915), Office of Minority and Women Inclusion (Sec. 342), and Office of Municipal Securities (Sec. 979).

This reprogramming request supersedes the SEC's previous request of September 28, 2010, and incorporates changes in staffing levels necessitated by revised assumptions regarding FY 2011 funding. At the time of our previous request, the Congress had not yet appropriated funds for the SEC for FY 2011, and the request was premised on the SEC receiving the House and Senate Appropriations mark-up level of \$1.3 billion.

Since that time, as you know, the SEC has been funded by continuing resolutions that have kept the agency's FY 2011 funding constant at FY 2010 levels. In light of the fact that no additional appropriations have yet been provided for these offices, we have revised our reprogramming request to assume the creation of these offices at reduced levels under a full year continuing resolution, which will limit the agency's ability to fully execute the responsibilities of these new offices until additional resources are available.

While your approval of this reprogramming request is a necessary step in moving forward to create the new offices required by the Act, we also should emphasize that the provision of additional funding to staff these offices at adequate levels also would be necessary for the SEC to fully execute these new responsibilities. Our current plans for each of the new offices are described in greater detail below.

Office of Credit Ratings

As Section 932 of the Act requires, the SEC is establishing an Office of Credit Ratings. The new office is responsible for administering the rules of the Commission with respect to the practices of nationally recognized statistical rating organizations (NRSROs) in determining ratings; promoting accuracy in credit ratings issued by NRSROs; and ensuring that such ratings are not unduly influenced by conflicts of interest. As directed by the statute, the director of the new office will report to the Chairman, and the office will be staffed with individuals with knowledge of and expertise in corporate, municipal, and structured debt finance. We have allocated a new staff position to permit the hiring of a director, and we plan to transfer ten staff members—four from the Division of Trading and Markets and six from the Office of Compliance Inspections and Examinations—to staff the office.

The new office will conduct examinations of each NRSRO at least annually. Among other things, each examination will include a review of the NRSRO's compliance with its policies, procedures, and rating methodologies; the NRSRO's management of conflicts of interest, implementation of ethics policies, and internal supervisory controls; and the NRSRO's policies governing the post-employment activities of former staff. We wish to note, however, that in order to conduct these examinations, we are drawing resources away from other parts of the examination program. We estimate that, during the first six months of the fiscal year, examination staff would have performed eight to ten examinations of broker dealers and eight examinations of investment advisors and investment companies had they not been assigned to NRSRO exams. As indicated in our prior reprogramming request, we estimate this Office will require a total of 35 staff to fulfill the responsibilities identified in the Act.

Office of the Investor Advocate

Section 915 of the Act requires the SEC to establish an Office of the Investor Advocate, to be directed by the Commission's Investor Advocate. As required by the statute, the Investor Advocate will report directly to the Chairman. The office includes an Ombudsman to provide assistance to parties in resolving significant problems they may have with the Commission or with self-regulatory organizations (SROs). Additionally, the Investor Advocate will identify areas in which investors would benefit from changes in Commission regulations or SRO rules. Specifically, the office will identify problems that investors have with financial service providers and investment products, analyze the potential impact on investors of proposed regulations and rules, and propose changes in regulations, legislation, or administration of programs that may mitigate problems identified.

We have allocated two new staff positions to permit the hiring of an Investor Advocate and Ombudsman. We also plan to transfer three staff members from the Office of Investor Education and Advocacy to staff the office. As indicated in our prior reprogramming request, we estimate it will require a total of six staff to fulfill the mission of the office identified in the Act. We would note, however, that Section 915 states that "The Investor Advocate, after consultation with the Chairman of the Commission, may retain or employ independent counsel, research staff, and service staff, as the Investor Advocate deems necessary to carry out the

functions, powers and duties of the Office.” Before we can finalize the establishment of this Office, it will be necessary for us to determine how this statutory language regarding funding for this Office will interact with the agency’s normal appropriations process and the potential impact on the Commission’s resources.

Office of Minority and Women Inclusion

As required by Section 342, the SEC is establishing an Office of Minority and Women Inclusion that is responsible for all matters of the agency relating to diversity in management, employment, and business activities. The director of this office will be a Senior Officer position that, per the statute, reports directly to the Chairman. Additionally, the director will advise the Chairman on the impact of the policies and regulations of the SEC on minority-owned and women-owned businesses. We have allocated a new staff position to permit the hiring of a director. Under our current funding levels, we also plan to transfer two staff members, one from the Office of Human Resources and one from the Office of Equal Employment Opportunity, to staff the office. We estimate it will require an initial staff of five to perform some of the basic responsibilities identified in the Act, such as the development of standards for the evaluation of the SEC’s workforce diversity and for increased participation in SEC contracting. Full implementation of the provisions of Section 342 may require additional staff, with the final number to be determined by additional analysis and input from the Director of the Office, once that person is hired.

Office of Municipal Securities

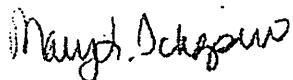
Section 979 of the Act requires the SEC to establish an Office of Municipal Securities reporting directly to the Chairman to administer the rules pertaining to broker-dealers, advisors, investors, and issuers of municipal securities. The new office will coordinate with the Municipal Securities Rulemaking Board on rulemaking and enforcement actions. We plan to transfer three staff members from the Division of Trading and Markets with knowledge of and expertise in municipal finance to staff the office. As the statutory functions of this Office are limited and similar to its current responsibilities, we estimate it will require a total of five staff to fulfill the mission of the office identified in the Act.

In addition to the four offices identified above, for which we are seeking a reprogramming because they will report directly to the head of the agency, we are also writing to provide an update on the establishment of the Office of Whistleblower Protection, as required by Section 924(d), to administer and enforce the provisions of the Act concerning whistleblowers. We have determined that because the head of this office will report within the existing Division of Enforcement organizational structure, the creation of this office is not subject to the reprogramming approval. This new office will reside within the Division of Enforcement and report to the head of Enforcement’s Office of Market Intelligence. We intend to move forward on the creation of this office subject to resource limitations.

The Honorable Richard Durbin
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Thank you for your consideration of this request and your continuing support of the SEC. Please feel free to call me at (202) 551-2100, or have your staff call Eric Spitzer, Director of the Office of Legislative and Intergovernmental Affairs at (202) 551-2010, if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary L. Schapiro". The signature is written in a cursive, flowing style.

Mary L. Schapiro
Chairman

Attachment

**FY2011 Breakdown of Staff for Four New Offices Created Under the Dodd-Frank Act
Assuming a Full Year Continuing Resolution at the FY2010 Level**

	Estimated Total FY 2011 Positions	FTE	Budget (\$ in thousands)	Notes
Office of Credit Ratings	11	5	1,609	Includes: Office director; 4 staff currently working on credit rating agency issues within the Division of Trading and Markets; and 6 staff currently working on these issues within the Office of Compliance Inspections and Examinations.
Office of the Investor Advocate	5	3	1,112	Includes: Office director; an Ombudsman; and 3 staff currently working on investor advocacy issues within the Office of Investor Education and Advocacy.
Office of Minority and Women Inclusion	3	3	876	Includes: Office director; 1 staff from the Office of Human Resources currently working on diversity issues; and 1 staff from the Office of Equal Employment Opportunity currently working on diversity issues.
Office of Municipal Securities	4	2	612	Includes: Office director; and 3 staff currently working on municipal securities issues within the Division of Trading and Markets.