

M E M O R A N D U M

This is a later version  
of an earlier memo  
& table prepared  
by Mr. Loomis.  
Please put together  
as "Enforcement  
Organization".

September 22, 1961

To : Chairman Cary  
Commissioner Woodside  
Commissioner Frear

From : Philip A. Loomis, Jr., Director *P.A. Loomis*  
Division of Trading and Exchanges

Subject : Proposed Enforcement Organization

Following a discussion on September 15th, concerning possible changes in the organizational structure of the Commission in the field of enforcement, the Chairman requested me to prepare a general memorandum summarizing the considerations and possible changes in organizational structure discussed at that time. Such memorandum is attached.

As indicated therein, it does not purport to suggest a table of organization or to go into any detail with regard to personnel assignments, but rather to discuss more broadly the question of organizational structure in this area.

cc: Commissioner-designate Cohen ✓  
Messrs. Conwill  
Dammann  
Ferber  
Pollack  
North

## PROPOSED ENFORCEMENT ORGANIZATION

### I. Introduction

This memorandum has been prepared following the discussion of this matter on September 15th, in order to reflect certain of the considerations discussed at that time. It does not purport to suggest a definite organizational structure or specific personnel assignments and requirements, but rather to consider the subject more generally.

### II. General Considerations

At the present time, there are four organizational units in the Commission: two in the Division of Trading and Exchanges, one in the Office of the General Counsel and one in the Division of Corporation Finance, which are concerned primarily with enforcement activities.

These are as follows:

(A) The Section of Enforcement in the Division of Trading and Exchanges is concerned primarily with coordinating enforcement activities conducted in the regional offices. Its primary functions are the review of various enforcement recommendations by the regional offices, the furnishing of suggestions and advice to the regional offices, and the maintenance of dockets and other records concerning investigations and enforcement actions in the regional offices.

(B) The Special Investigations Unit in the Division of Trading and Exchanges is concerned primarily with conducting investigations in significant cases which are either of inter-regional significance or which are believed to require attention which no regional office is in

a position to give to them. Most of these are potential criminal cases and are developed as such.

(C) The Criminal Reference Unit in the General Counsel's Office is primarily concerned, as its name indicates, with processing recommendations for criminal prosecution either from the regional offices or from the Special Investigations Unit or, to some extent, from the Division of Corporation Finance and the Corporate Regulation Division. This unit also maintains liaison with the Department of Justice and furnishes advice and supervision in connection with the drafting of indictments and the trial of criminal cases.

(D) The Branch of Administrative Proceedings and Investigations in the Division of Corporation Finance is engaged primarily in conducting investigations and administrative proceedings arising out of filings processed by that Division, particularly proceedings under Section 8 of the Securities Act, proceedings under Section 19(a)(2) of the Securities Exchange Act arising out of defective filings made under Sections 12 or 13 of the Securities Exchange Act, and Regulation A suspension proceedings. From time to time, this branch has also conducted investigations directed towards ultimate criminal prosecution.

In addition to the foregoing organizations specifically responsible for enforcement, certain personnel in the Division of Corporation Finance, particularly Mr. Eisenhart, have been called upon from time to time to provide advice and assistance in enforcement matters because of their special competence in this field.

It is proposed that the above-mentioned organizations specifically concerned with enforcement, other than the Branch of Administrative Proceedings and Investigations in the Division of Corporation Finance, be brought together within an enforcement unit to be located in the Division of Trading and Exchanges. In connection with this proposal, it is recognized that the enforcement problems which confront the Commission cannot be resolved simply by realigning the enforcement organization in the Headquarters Office. Other steps, which are probably of more basic importance, include the development of regulatory programs and procedures which will both simplify enforcement and minimize the necessity of relying upon difficult and time-consuming enforcement proceedings as a principal source of investor protection, together with the more effective coordination of the enforcement work of the regional offices in terms of a general Commission enforcement policy and enforcement strategy. Nevertheless, some unification of enforcement organization could have definite advantages. These include the following:

(1) It might produce a better use of existing enforcement talent. Thus, personnel in the General Counsel's Office, particularly Mr. Irving Pollack, who are now expected to concern themselves almost exclusively with criminal prosecution, could bring their experience and ability to bear upon other types of enforcement activity. Similarly, it might be possible to utilize Mr. Eisenhart's gifts for the analysis of potential enforcement cases otherwise than on an extra-curricular or part-time basis.

(2) It would regularize, and thus to a degree make more direct and perhaps more efficient, informal arrangements which now exist. Thus,

for example, since the Special Investigations Unit is particularly concerned with the development of criminal cases, it works closely with the Criminal Reference Unit in the General Counsel's Office and, to some degree, under the informal supervision of that office. Conversely, because of their familiarity with the cases, the Criminal Reference Unit frequently has suggestions and advice concerning other than criminal remedies. Some advantage probably could be gained by placing these people, who in practice work so closely together, in one place and in one organization.

(3) An enforcement organization having responsibility for substantially all phases of enforcement, other than that conducted by the Division of Corporation Finance, could be in a position to develop enforcement policies, strategies, and tactical approaches derived from a familiarity from all phases of the problem, and thus be somewhat more effective in coordinating the enforcement work of the regional offices. Probably, also, it would be simpler for the regional offices if they could look to one place for advice and policy in substantially all aspects of enforcement.

### III. Possible Organizational Structure

Without going into detail, the Enforcement Organization might be organized somewhat as follows. There would be appointed an additional Associate Director of the Division of Trading and Exchanges who would presumably be Mr. Irving Pollack. He would also retain his title as Assistant General Counsel primarily to permit him to continue to represent the Office of the General Counsel in relations with the Department of Justice. Under his supervision, there might be three or four branches

each headed by an Assistant Director. These could be a Branch of Special Investigations, consisting of the present Special Investigations Unit, a Branch of Field Enforcement, comprising the present Section of Enforcement in the Division of Trading and Exchanges, a Criminal Reference Branch, comprising the present Criminal Reference Unit of the General Counsel's Office, and perhaps a Branch of Analysis and Accounting which would provide analytical and accounting services in connection with investigations both in the home office and in the field offices and which could be headed by Mr. Eisenhart.

There are two other enforcement activities in the Commission which would have to be related to the work of the new enforcement group. These are the Branch of Administrative Proceedings and Investigations in the Division of Corporation Finance and the personnel in the General Counsel's Office responsible for the supervision of civil litigation, including injunction suits commenced for enforcement purposes. With regard to the Branch in the Division of Corporation Finance, it is not contemplated that its present functions would be significantly altered. It would probably be desirable, however, for the enforcement group either to supervise or to conduct those investigations which are determined to involve issues and enforcement implications extending significantly beyond the mere correction or elimination of a defective filing. These might include cases in which administrative proceedings against a filing are to be consolidated with broker-dealer proceedings and those investigations in which criminal reference is contemplated.

It is also anticipated that the existing supervision of civil injunction actions in the General Counsel's Office would not be significantly modified, but there would probably be a greater degree of coordination with the enforcement organization. This could be done by Mr. Pollack in his capacity as an Assistant General Counsel.

IV. Summary

The proposed change in enforcement organization in and of itself is not the answer to what has commonly been referred to as "the enforcement problem," but it might contribute to the development of more effective answers. It would not be revolutionary but would, to a considerable degree, reflect informal arrangements which have evolved under the pressure of events. Its principal advantage would be to permit those members of the staff who have a particular experience and aptitude for enforcement to work together upon the whole problem of enforcement rather than, in form at least, working separately upon separate segments of it. Of particular importance would be the development of a more unified enforcement policy and strategy and the more effective communication of this to the regional offices.