

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

September 13, 1979

Honorable William Proxmire
Chairman, Committee on Banking,
Housing and Urban Affairs
United States Senate
Washington, D.C.20510

Dear Mr. Chairman:

This is in response to your question at my confirmation hearing concerning the Commission's working relationship with the bank regulatory agencies. As I testified, although the Commission's relationship with bank regulatory agencies has improved, conflicts do remain. They stem primarily from different regulatory perspectives- - i.e., the Commission's obligation to protect investors and the concern of the bank regulatory authorities for the solvency of financial institutions.

The staff of the Commission has always experienced a certain amount of difficulty in obtaining reports of examinations involving customers' financial records from certain federal banking regulatory agencies. Recently, although the Right to Financial Privacy Act of 1978 ("Act"), 12 U.S.C. §3400 et seq. provides for the exchange of reports of examination among the enumerated "supervisory agencies," of which the Securities and Exchange Commission is one, the banking agencies have uniformly taken the position that the Commission is a supervisory agency in only certain limited situations. Specifically, the Office of the Comptroller of the Currency has suggested that reports of examination involving customers' financial records may not generally be disclosed to the Commission without triggering the notice requirements of the Act unless the Commission has statutory authority to examine the financial condition or business operations of that institution.

I believe this interpretation frustrates legislative intent which appears to have contemplated an exchange of reports of examination among supervisory agencies without triggering the notice requirements. The solution offered by one federal banking regulatory agency is to redact all customer names from the examiners' reports. This approach only tends to further frustrate the ability of the staff to pursue legitimate investigations.

In addition, the federal banking regulatory agencies have indicated that in order to provide the staff with information derived from customers' records, the agencies need to know the specific nature and scope of the Commission's investigation. It has been suggested that this can be accomplished by providing the agencies with a copy of the formal order of private investigation for their review so they can determine the relevancy of our request. This places us

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in the position of having another agency making a decision as to what information is relevant to our investigation. Certainly this could not have been what the legislators intended. Moreover, it is contrary to judicial decisions wherein federal courts have declined to substitute their judgment of what may be relevant to the Commission's discharge of its statutory obligations.

If you have further questions, please let me know.

Sincerely,

John R. Evans
Commissioner