

SUMMARY OF DISCUSSION REGARDING ENFORCEMENT
ACTIVITIES HELD ON MAY 3, 1954 AT THE
REGIONAL ADMINISTRATORS' CONFERENCE

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REGIONAL ADMINISTRATORS CONFERENCE MEMORANDUM

Re: Discussion regarding enforcement
activities.

In accordance with the Agenda for the Regional Administrators Conference there was held on May 3, 1954, from 2:00 to 5:30 P.M. a discussion session with respect to enforcement activities presided over by Commissioner Rowen who was assisted by Mr. Holden, Assistant Director of the Division of Trading and Exchanges. The Regional Administrators and members of their staffs participating included:

Atlanta	- Mr. Green
Boston	- Mr. Kendrick
Chicago	- Messrs. Hart and O'Connor
Denver	- Mr. Cohn
Ft. Worth	- Mr. Allred
New York	- Messrs. Purcell and Moran
San Francisco	- Mr. Orrick
Seattle	- Mr. Newton
Washington	- Mr. Kelly

Also in attendance was Mr. Tait, Executive Assistant to the Chairman.

At the outset, Commissioner Rowen directed the attention of those present to Office Memorandum 157 entitled Allocation of Responsibility under Realignment of Divisional Functions Authorized July 2, 1948, and the provision therein that the "Regional Offices of the Commission shall have primary responsibility, subject to the general administrative supervision of the Division of Trading and Exchanges, for the conduct of investigative and enforcement activities in connection with the alleged violations of" the Acts administered by the Commission. It was recalled that following the preceding Regional Administrators Conference in 1950, revision of Memorandum 157 in this respect, among others, was a matter to which some attention was given, that a revised draft had been prepared, but that no action in this area was taken by the Commission. The Regional Administrators were requested to give some thought to the matter and were informed that expression of opinions as to appropriate revision would be called for before the end of the discussion.

Commissioner Rowen then suggested that some time should be devoted to the general subject of opening files. In this respect Memorandum 157 provides as follows:

The Regional Offices shall continue to make preliminary and informal investigations on their own initiative. Promptly upon the initiation of a preliminary or informal investigation the Regional Office shall transmit to the Division of Trading and Exchanges for necessary record purposes a brief statement of the nature, proposed scope and classification thereof, the source and date of the complaint on which the investigation is undertaken, the names of the persons involved, and a request that an investigation file be opened.

Mr. Holden stated that from time to time Regional Offices make inquiry into suspected violations without informing the central office of such action. Upon completion of the inquiry a report is submitted, at which time the recommendation is made that, for record purposes, a file be opened and immediately closed. He regarded this as unsatisfactory since the central office has no record of the investigation until after it is completed and should an inquiry be received from the public or from another Regional Office concerning the subject, his office is unaware that the matter is a subject of investigation. In addition, information in the principal office concerning the subject of the investigation would not be available to the Regional Office. Such information is made available to the interested region immediately upon opening a file.

It was apparent that there was an almost complete lack of uniformity of practice with respect to the opening of files and that considerable confusion existed as to what the proper practice should be. One Regional Administrator stated that he had the impression that subsequent to the date of Memorandum 157 he had been instructed by the principal office that preliminary investigation (P.I.) files should not be opened except in cases in which it appeared likely a violation would be established. The same view was expressed by another Administrator. One office requests only docketed investigation files. In other instances such files are opened only when travel is likely to be involved or after a substantial amount of investigation has been made. In some instances index cards are set up for work prior to opening of files and the inquiries are handled as miscellaneous matters. In one office no record is made but the miscellaneous file is held on the desk of the attorney to whom the matter is assigned and it is his responsibility to follow the matter through.

It seemed to be the general practice not to open a P.I. file on inquiries from other regional offices or on complaints which the Regional Administrators were satisfied were groundless. Mr. Holden agreed that in the latter cases there was no necessity to communicate with the central office for the purpose of opening a file, but that in all other cases the provisions of Memorandum #157 should be followed. Mr. Holden pointed out that as soon as an inquiry is initiated a P.I. file should be opened which should be closed within a short time if further investigation does not appear warranted, and that if travel is involved or the matter requires more than the exchange of a few letters or the interviewing of a limited number of persons, the inquiry should become a docketed investigation with a number assigned. It was made clear that if at the outset the Regional Administrator believes that extensive investigation is required, he should request a docketed file rather than a P.I.

The next item considered was the necessity for progress reports. On this matter Memorandum 157 states that:

Progress reports shall hereafter be transmitted to the Division on a quarterly basis. Each quarterly report shall summarize the investigative work done during the previous three

months and indicate the additional investigatory work to be performed and the time needed for completion of the investigation. Important developments between quarterly reports shall be covered by a special report to the Division.

The Regional Administrators stated that while the need for preparing and transmitting progress reports substantially increased the paper work in their offices, they regarded such reports as probably of great value to the central office and as serving a very useful purpose in their own office in facilitating their task of keeping abreast of developments in particular investigations. Some confusion appeared to exist in this area and during the discussion it was made clear that quarterly progress reports were required in all investigations, that they need only be cumulative for the period covered and that the most important items were those pertaining to the evidence adduced during the preceding quarter, what additional investigation is necessary to complete the case and the estimated time of completion. The Administrators generally agreed that comments from the staff of the central office resulting from the filing of progress reports were appreciated and considered helpful, and that a standardized reporting form would probably be useful.

The discussion then proceeded to a consideration of methods of ensuring effective utilization of the time of attorneys and investigators. It became clear that in treating this matter the Regional Offices should be considered as falling into two categories. In the smaller offices it was the practice for the Regional Administrators to confer with investigators virtually from day to day in reviewing the conduct of investigations. In the larger offices, however, this was impossible and particular cases ordinarily were reviewed with investigators two or three times a month. The importance of the Administrator or Supervisor giving initial direction to the course of the investigation was stressed. It was agreed that a theory of the case should be developed as early as possible, that there should be frequent conferences with the Investigator to review progress in the matter and that Investigators should be told when there has been sufficient development of the facts.

Several of the Administrators indicated that in those areas not frequently visited by members of the staff a tickler system is used, so that an Investigator going into an area can attend to all matters requiring attention. It was suggested that when a staff member visits an area not readily accessible, a special attempt should be made to impress him with the need for covering all phases of his cases, including obtaining statements from investors, proof of falsity of representations, and any other material evidence so that upon return to the regional office the staff member can prepare a report either recommending appropriate action or closing of the files, making it unnecessary to take another trip into the same area on any of the same matters.

The Administrators indicated that supervision by the central office had been helpful in the conduct of investigations but it was suggested that speedier and more effective investigative procedures would follow if greater attempts should be made to stipulate facts and testimony. One Administrator was of the view that there could be considerable saving of time and money by use of memoranda of interviews or signed statements rather than the taking of testimony by a contract reporter in many investigations. It was recognized, however, that in certain instances the taking of sworn testimony was necessary.

The next topic discussed was the type of information to be included in requests or recommendations for formal Commission action. In reference to this item Memorandum 157 specifies that:

Requests for formal orders of investigation shall hereafter be transmitted only to the Division of Trading and Exchanges and shall be accompanied by a memorandum stating the nature of the case, the ultimate facts thus far developed which indicate a probable violation of law, those facts which further investigation might be expected to elicit, the reasons for requesting subpoena power and the jurisdictional basis to be relied upon. A draft of the order, including the names of the persons to be designated as officers, shall accompany the memorandum.

Mr. Holden pointed out that presentation to the Commission requires sufficient information to permit the staff of the central office to state the question involved and the necessity for action. He indicated that frequently the information coming in from the Regional Offices was not sufficient for these purposes. If the matter concerns a formal order for investigation the staff sometimes has difficulty in determining whether there has been adequate use of the mails and the basis upon which representations can be proven false. The importance of clearly indicating why subpoena power is necessary was also outlined. One of the Administrators asked what procedure should be employed when the need for the subpoena power had not yet been demonstrated but was anticipated. Mr. Holden replied that the facts upon which anticipation of the need was based should be set forth at length and that he thought the Commission would give consideration to such situation to save time and travel money. It was recognized that these problems would be resolved were there a general delegation of subpoena authority to the Regional Administrators.

Commissioner Rowen then requested the Administrators to describe their experiences in cases where receivers had been appointed by courts upon the request of the Commission. It was generally agreed that receiverships had been effective and beneficial to the interests of investors. Most of the cases referred to involved insolvency of registered broker-dealers. Fees in connection therewith had not in the past proved inordinate and the demands upon the time of Commission personnel had not proven overly burdensome. All of the Administrators who commented upon this matter strongly recommended that the appointment of receivers should be sought more frequently. It was their view that courts would appoint receivers only in cases of insolvency and where grounds for injunctive relief existed.

One Administrator raised the question whether it was the policy to not bring injunctive proceedings if the subject of an investigation in a fraud case promised that he would commit no further fraud. He referred to a case that had been submitted recommending injunctive action and that authorization was not obtained because the subject promised to commit no more fraud. There was some discussion on the subject and most of the Administrators thought that in such circumstances injunctive action would be appropriate. Mr. Holden was unable to

recall the specific situation to which the Administrator made reference, but did point out that injunctive sanction is for the purpose of preventing further violations and not for the purpose of punishing the violator. He said that frequently where the practice has been discontinued authorization to file injunctive action is not granted although violations may have been going on at the time of the initiation of the investigation.

The discussion then proceeded to the matter of short form closing reports. The Administrators expressed favorable opinions with respect to the standard short form of closing reports. The discussion indicated that it was important that there be sufficient flexibility in any directive in connection therewith to permit the submission of a more lengthy closing report in appropriate cases. Mr. Tait pointed out that the Chairman's memorandum of March 15, 1954 permitted such more extensive reports in cases involving "special circumstances." It was generally agreed that cases in which short form would not be appropriate would be the rare exception.

Commissioner Rowen then asked for any views the Administrators might have concerning the general delegation by the Commission to them of the power to issue subpoenas in injunctive matters. The discussion was confined to the legal basis for such delegation and the existence of decisions supporting its validity was made known to them.

The question was raised whether the Administrators felt it was appropriate for them to introduce the topic of rescission in cases where violations of the Acts appeared clear. It was generally agreed that the Administrators should not seek to work out "deals" involving agreements not to recommend prosecution in cases of clear fraud if the prospective defendant offers to make restitution to victimized investors. It was considered proper, however, for the Administrators to discuss the possible effect of offers of rescission and restitution in cases where the violation was not willful or was technical. In all such matters it was recognized that the Commission should be consulted. It was suggested that a method for supervising the effectiveness of such offers of rescission and restitution was to ask for a letter from the subject of investigation showing the results of the offer.

The discussion then returned to the manner in which responsibility was allocated between the Regional Offices and the Division of Trading and Exchanges by the language of Memorandum 157. Most of the Administrators indicated that they felt the arrangement whereby primary responsibility resided in the Regional Offices with a "checkrein" in the hands of the Division, permitting it to ensure that the Regional Offices were doing their work properly, had worked out with complete satisfaction in the past. The Regional Offices welcomed supervision but did not feel that the Division of Trading and Exchanges had authority to direct their activities. One of the Administrators indicated his belief that the offices at great distance from Washington had a greater need of attention from the Division than those located in sufficient proximity to the central office to permit the Administrators to get the "feel" of what was in the mind of the Division by personal contact. Another Administrator felt that supervision should relate only to docketed cases and not to P.I's or office investigations.

Mr. Tait then asked for expression of opinions concerning modification of Memorandum 157 so that it would make the investigative activities of the Regional Offices subject to the supervision and direction of the Division of Trading and Exchanges. Certain of the Administrators stated that this would place too great a burden on the Division and that it could not effectively direct Regional Administrators in the conduct of particular investigations. Most of the Administrators stated that they welcomed comments and suggestions from the Division on progress reports and that such suggestions as might be received would be given consideration but that this did not mean the suggestions would necessarily be accepted. The Administrators indicated that they did not welcome direction by the Division. The present allocation of responsibility was viewed as being as effective and satisfactory as any could be. It was suggested, however, that there should be some clarification as to whether the activities of Regional Offices in particular matters were subject to the Division of Trading and Exchanges or to the Division of Corporation Finance.