

## Special Committee on Financial Services Regulation

Report of Meeting on October 12, 1990

Committee Chairperson Kenneth J. Bialkin convened the meeting on October 12, 1990 at 11:05 A.M., at the offices of Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue New York, New York.

Those present were--representing the Committee: Chairperson Bialkin, Dorothy Acosta (Farm Credit Administration), James R. Doty (Securities and Exchange Commission), Roger A. Hood (FDIC), William H. McDavid (Chemical Banking Corp.), and Bruce Rabb (Stroock & Stroock & Lavan). Also attending were Susan C. Evans (Federal Home Loan Bank of New York), ACUS Consultant Michael P. Malloy (Fordham University School of Law), and Brian C. Murphy (ACUS Staff Liaison).

Mr. Doty commented that Professor Malloy uses quantification effectively in his draft report, "Administration of the Securities Exchange Act of 1934 by the Federal Bank Regulatory Agencies." He said that Professor Malloy has made a strong case for repeal of Section 12(i) of the Securities Exchange Act of 1934. However, he suggested that Professor Malloy consider the consequences for the market of repeal of Section 12(i) and asked why there should be a one-year delay in the repeal. The Commission's position is that repeal of Section 12(i) should not be delayed.

Professor Malloy said that he was not wedded to the one-year delay. He pointed out that representatives of the bank regulatory agencies agreed that the current system under Section 12(i) is very inefficient and that Section 12(i) should be repealed. Several Committee members commented that, while there seemed to be a consensus for repeal of Section 12(i), the report should have more of a predicate for that recommendation. In particular, several members expressed concern about the recommendation's calling for access by the SEC to supervisory and examination records pertaining to depository institutions registered under Section 12 of the Securities Exchange Act of 1934. Mr. Doty of the SEC responded that the Commission is advised by regulators from Great Britain that the Securities and Investment Board (SIB) and the Bank of England regularly share such information.

Mr. Bialkin asked that Professor Malloy consider the degree to which the public has been harmed by the disparate approaches of the banking agencies in implementing Section 12(i). Mr. Bialkin inquired whether some of the problems in the nation's savings and loan industry might have been avoided or minimized if there had been stronger regulatory oversight, for example, of S & L conversions involving changes of control.

Mr. McDavid pointed out that there appears to be a consensus favoring Recommendation B (Direct Applicability of SEC Regulations). With regard to Recommendation B, Professor Malloy noted the importance of setting time limits on agency actions to adopt the regulations of the SEC.

Mr. Murphy stated that Committee member Dennis J. Lehr provided written comments to the effect that Recommendation B is justified by the material presented in the consultant's report (comments attached).

Mr. Bialkin then asked Committee members what should be the next step for the Committee.

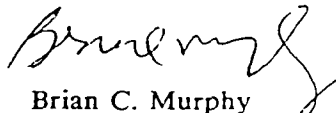
Mr. Bialkin stated that there seemed to be a willingness by Committee members to move forward toward a recommendation in this area. But, he added, a stronger case should be made in the report for the recommendations. For example, it would be helpful to include some discussion of harm to the investing public caused by the disparate practices of agencies under Section 12(i).

Professor Malloy noted that the bank regulatory agencies have indicated support for repeal of Section 12(i), in part because of the groundwork laid in the 1984 Bush Task Force Report, Blueprint of Reform, The Report of the Task Group on Regulation of Financial Services.

Mr. McDavid commented that, in Recommendation A [Repeal of Section 12(i) of the 1934 Act], the issues needed to be separated further. He noted, for example, that the banking agencies likely would not agree to automatic access to their records by the SEC. Mr. Rabb asked Professor Malloy to strengthen the draft report by providing more of the rationale behind the history of Section 12(i) and more discussion of the roles of the federal banking agencies in implementing Section 12(i). As to timing, Professor Malloy said that it may be difficult to obtain more empirical evidence underlying the recommendations, but that he would try to do so. He added that he would attempt to provide a more detailed discussion of the development of agency regulations under Section 12(i), and that he would try to provide a revised draft in about one month.

Mr. Bialkin adjourned the meeting at approximately 12:20 P.M.

Respectfully submitted,



Brian C. Murphy  
ACUS Staff Liaison

Approved:   
Kenneth J. Bialkin  
Chairperson  
Special Committee on Financial Services Regulation

Enclosure