

Testimony Concerning H.R. 658, the “Accountant, Compliance, and Enforcement Staffing Act of 2003”

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Before the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises of the House Committee on Financial Services

March 6, 2003

Introduction and Summary

Chairman Baker, Ranking Member Kanjorski and Members of the Subcommittee:

I appreciate the opportunity to testify before you today, on behalf of the Securities and Exchange Commission, in support of H.R. 658, the “Accountant, Compliance, and Enforcement Staffing Act of 2003.” This legislation would provide much needed authority to the Commission in its effort to expedite and simplify the hiring of accountants, economists and securities compliance examiners. We thank you, Mr. Chairman, for your leadership on this vital issue. My testimony will focus primarily on the extraordinary challenges facing the Commission in filling these crucial positions, and the steps that we believe are necessary to make this task simpler, faster, more efficient, and thereby more successful. Making these changes will assist the Commission in fully implementing the Sarbanes-Oxley Act as well as executing the rest of the federal securities laws.

Dramatic changes have occurred in the Commission’s personnel environment during the past year. Thanks in large part to the efforts of this committee, the Commission has been granted the authority to pay its staff substantially higher salaries, provide additional benefits and has received increases in its appropriations sufficient to fill over 800 new positions. While the new pay authority and higher appropriations funding have greatly eased the Commission’s crisis in hiring and retaining attorneys, substantial difficulties still remain in our efforts to hire accountants, economists and securities compliance examiners.

In our experience, the reason for this distinction between attorney hiring and hiring of other Commission professionals is clear: while the hiring of Commission attorneys is excepted from civil service posting and competitive requirements, the hiring of Commission accountants, economists and securities compliance examiners is not. When we are filling a vacancy under competitive service requirements, the process can

take months to complete. Under excepted service authority, the hiring process can be completed in a few weeks' time because hiring officials get to the interview step much more rapidly. Placing Commission accountants, economists and securities compliance examiners in the excepted service will give us the critical tools we need to fill these positions far more quickly, allowing the Commission to meet the challenges of its mission with the full resources that Congress intended.

Background

In January 2002, the Commission received its long sought "pay parity" authority as part of the Investor and Capital Markets Fee Relief Act.¹ This authority allowed us to implement a new pay scale in May 2002 that compensates all Commission employees with salaries commensurate with those paid by other federal financial regulators. It is expected that this authority will help stem the long-term drain of our most talented and experienced staff members. Additionally, in August 2002, as part of the Fiscal Year 2002 Supplemental Appropriations Act,² the Commission received a supplemental appropriation of \$30.9 million, of which \$25 million was earmarked for the purpose of filling 125 additional staff positions.

As expected, the combined effect of these two pieces of legislation has already had a profoundly positive influence on our ability to hire and retain attorneys. Nearly all of the attorney positions funded by last year's Supplemental Appropriations Act have been filled at this time. However, our experience in hiring accountants -- who comprise the bulk of the additional new slots from the supplemental funding -- has been far less successful. So far, despite our best efforts, only a few more than half of the new accountant positions funded with last year's Supplemental Appropriation have been filled. We are greatly concerned that without legislative assistance the struggle to fill positions will only intensify in the future. On February 20, 2003, the President signed into law the Consolidated Appropriations Resolution, providing the Commission with a Fiscal Year 2003 appropriation of \$711.7 million, over \$273 million more than our Fiscal Year 2002 appropriation.³ The Commission is expected to use these funds primarily to increase staff by another 700 positions this fiscal year, the majority of which will be accountants, economists and securities compliance examiners.

Specialized Experience Needed

The nature of the Commission's work requires that we seek highly skilled individuals who often are at a point in their careers where they have a number of employment options available to them. Our task is therefore hindered by the slow speed and inflexibility of the competitive service hiring process. We have, time and time again,

¹ Pub. L. No. 107-123, 115 Stat. 2390 (2002).

² Pub. L. No. 107-206, 116 Stat. 820 (2002).

³ This amount is net of the .65 percent rescission that was enacted as part of the omnibus appropriation (\$716.4 million – \$4.7 million = \$711.7 million).

seen the best applicants for accountant, economist and securities compliance examiner positions snapped up by competitors before the Commission has reached the point in the rigid competitive service hiring process where it can make them an offer. In marked contrast, this rarely happens with attorneys. Simply put, if we want an attorney, we can make them an offer almost as fast as any other employer can.

The Commission's efforts to hire accountants under our existing authority are particularly complicated by the special caliber of accountants that our mission demands. Most other federal agencies hire only a handful of accountants, for the limited purpose of keeping the agency's own books and records. However, in order to perform the complex task of ensuring the adequacy of disclosures by public companies, and to review the books and records of broker-dealers, investment advisers and mutual funds, the Commission must maintain a staff of hundreds of accountants, most of whom must have specialized experience in auditing or preparing the financial statements and reports of public companies. The Commission cannot maintain the high standard of professionalism that the investing public deserves by hiring accountants immediately out of school and expecting them to acquire their skills and experience "on-the-job" at the Commission. The learning curve is too steep, and our workload is too great.

Our difficulties in shepherding experienced, in-demand people in mid-career through the lengthy competitive service applications process are not limited to accountants. The complexity of the issues that Commission staff comes into contact with on a daily basis also mandates a similar level of skill and experience in our economists and securities compliance examiners. Often, the best candidates for securities compliance examiners are those with industry experience. Securities compliance examiners inspect broker-dealers, investment advisers, and mutual funds for compliance with the federal securities laws. There is no substitute for having been on the other side of the fence when it comes to performing effective compliance examinations. As for economists, they analyze the impact of regulations to assist rulemakers in adopting the most cost-effective regulations, as well as assist with enforcement and other administrative tasks of the agency. The work of economists is highly specialized, and there is only a relatively small pool from which to hire in the first instance. Moreover, we must compete not just with the corporate world, but also with think tanks and academia for economists who qualify to do our work.

We believe the solution to these problems is to allow us to hire accountants, economists, and securities compliance examiners as we have successfully hired attorneys for years. We therefore support legislation to grant excepted service status to Commission accountants, economists, and securities compliance examiners.

Hiring Process is Cumbersome and Time-Consuming

The procedures required for hiring under the competitive service system have proven unduly time-consuming and inefficient. A position is usually posted for two weeks, and then several days are allowed to elapse in order to be certain that all applications have arrived in our Office of Administrative and Personnel Management

(OAPM). After OAPM sifts out the obviously incomplete and unqualified applications, a rating panel in the division or office that is seeking to hire must first review and rate qualified applicants, based solely on their written applications. The rating panel in the division is made up of three or more professional staff who are at or above the grade level of the job posted. These professional staff, often managers, must set aside the regular duties of their jobs and spend up to two days at a time rating the applicants' resumes. After the division's work in this phase, the file of applicants goes back to OAPM where, based on the ratings given by the division, staff members check the work of the division, and then send the top three to five candidates back to the division. Then, yet another panel of selecting officials in the division or office may begin the process of setting up interviews with these candidates to determine if one is suitable for hiring.

Beyond the cumbersomeness of the process, managers hiring for these positions have found that the rating process often favors not the best candidates, but those most familiar with how to fill out the relevant application with keywords and phrases used by the various panels in rating the candidates against specified criteria. Also, because the hiring panel only sees the three or five candidates identified by the rating panel, they may never see candidates who are otherwise highly qualified, and perhaps better suited for the job, but who were not rated among the top candidates under the ground rules of the rigid competitive service process. This process, even when it works well, can take several months to complete, but if none of the top ranked candidates proves satisfactory, the position is often reposted and the selection process starts all over again. In contrast, under the excepted service, the hiring panel can simply review all the applications and interview all candidates whom they believed are highly qualified.

Differences Between Excepted and Competitive Service

Most of the civil service protections accorded to excepted and competitive service personnel are exactly the same under the law. These include veteran's preference, bargaining rights and union representation, health care options, EEO rights, and retirement and leave benefits. However, there are several differences in the treatment of employees in the excepted service that we would like to bring to your attention. First, while certain appeal rights to the Merit System Protection Board are obtained after two years for excepted service employees, compared to one year for competitive service employees, the Commission has historically provided a one-year probationary period for excepted service employees.

Another difference might occur if the agency were experiencing a reduction in force, since mandatory protections are lessened for excepted service employees in a RIF. A RIF is highly unlikely in the out years given our mandate and resources. Finally, an employee in the excepted service would not have the same advantage as an employee in the competitive service if he or she wanted to transfer to another government agency. We do, however, feel this is a relatively rare issue given that the majority of SEC employees go to the private sector when they leave the agency.

Overall, the differences between excepted and competitive service for our agency come into play in rare or extenuating circumstances, if at all, and thus are far outweighed by our need for relief.

Conclusion

The proposed legislation granting the SEC excepted service authority for certain specialized positions is not unprecedented. Congress has already placed specialized employees of other agencies in the excepted service. For example, Congress has placed health care professionals (including doctors, dentists, and nurses) employed by the Department of Defense in the excepted service, along with Defense intelligence employees, employees in the Office of National Counterintelligence Executive, employees in the Department of Education's Performance-Based Organization for federal student financial assistance, and air traffic controllers hired through the FAA's College Training Initiative Program. Indeed, Congress placed all of the employees of the FBI in the excepted service.

In short, the Commission believes that its needs are significant and extraordinarily time-sensitive—we are trying to fill over 800 positions by the end of this fiscal year and to date have experienced serious difficulties in filling “mission-critical” positions for accountants, economists and securities compliance examiners. Thus, to be competitive in the hiring market, we believe we would greatly benefit from passage of H.R. 658, granting excepted service authority for those positions.

I appreciate the opportunity to share the agency's needs and concerns with you here today, and we look forward to working with you to solve this important problem.