

Subject: FW: re Supplementary submission to PJCFs inquiry on ASIC Oversight June 2011

21 June 2011

Mr Tim Bryant
Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Parliament House
Canberra 2600 ACT

Dear Sir

Many thanks for arranging for RoLIA to appear before the Committee last Thursday. During the hearings we undertook to provide the inquiry with some overseas data on how regulators are supervised and made accountable in relation to the use of their various powers. The following might assist the Committee in this regard:

USA – SEC

The US Securities Exchange Commission is the primary overseer and regulator of the U.S. securities markets. In addition to its annual Performance and Accountability Report the SEC also publishes annual data on:

- The number of SEC-related criminal cases filed;
- An Enforcement Act Summary chart, including the number of enforcement actions initiated with a breakdown by classification (e.g. insider trading, market manipulation) and by type (Civil Actions or Administrative Proceedings);
- The number of investigations of possible violations of the Acts the SEC administers, including the figures on investigations which were pending, closed and opened
- The number of 'Formal Orders of Investigation' which were issued - with a formal order of investigation, the SEC's Enforcement Division's may compel witnesses by subpoena to testify and produce books, records, and other relevant documents.
- The number of times the SEC used its statutory powers to obtain customer financial records.

Copies of this data for the last 2 years is attached.

I also alert the Committee to a recent news item published by Leonard Street and Deinard in relation to the SEC's filing of its report to Congress on the use of its regulatory powers. In that report is a link <http://www.sec.gov/about/internalcontrols961.pdf> to the actual report which details the certification and internal supervisory controls applicable to the exercise of power conferred on the SEC. The Article is as follows:

SEC Gets a Taste of Its Own Medicine While Preparing Report for Congress

by [Steve Quinlivan](#) | January 6, 2011

Section 961 of the Dodd-Frank Act requires that the SEC provide the Senate Committee on Banking, Housing, and Urban Affairs, and the House Committee on Financial Services, a report on the “supervisory controls” over the conduct by the SEC of examinations of registered entities, enforcement investigations, and reviews of corporate financial securities filings. The report is required to be provided not later than 90 days after the end of each fiscal year. The SEC has delivered the [first such report](#) for the fiscal year ending September 30, 2010.

Perhaps not surprisingly, the SEC concluded no significant deficiencies in internal supervisory controls were identified as of September 30, 2010. Based on the results of the evaluation, the report also concluded the internal supervisory controls of the SEC with respect to examinations of the Office of Compliance and Inspections, or OCIE, enforcement investigations, and Corporation Finance filing reviews are effective, and the procedures of the SEC applicable to the OCIE, enforcement, and Corporation Finance staff who perform examinations of registered entities, enforcement investigations, and reviews of corporate financial securities filings, respectively, are effective.

We’ll see if the Comptroller General agrees when it reviews the adequacy of the SEC’s internal supervisory control structure and procedures once every three years, as required by the Dodd-Frank Act. After all, the SEC left itself plenty of wiggle room. For instance, the report states “there may be instances where judgments made in good faith are, in hindsight, deemed inappropriate.” A reference to the Madoff investigations perhaps?

The report describes some of the procedures used. For instance, the OCIE assessment team identified the key parties responsible for execution of the controls and created a “process flow narrative” that is, a step-by-step description of how the controls apply to the examination and investigative processes. There will probably not be a lot of sympathy from corporate America that has been grappling with the costs of Sarbanes-Oxley Section 404 compliance for the last several years.

UK FSA

The FSA is an independent non-governmental body, given statutory powers by the Financial Services and Markets Act 2000. The FSA regulates the financial services industry in the UK. In 2010 the FSA was given new statutory powers to enable it to require a person to provide information and documents that the FSA considers are or might be relevant to the stability of the UK financial system. The new powers were granted in the wake of the Global Financial Crisis and appear in s

165A of the Act. The grant of these new powers was accompanied by statutory safeguards which appear in s 165B of the Act. Relevantly, the statutory safeguards:

- Require the FSA to prepare a statement of its policy with respect to the exercise of the new powers for approval by the Treasury; and
- Once approved, the FSA must publish the policy statement.

The safeguards also provide that the FSA may not exercise the new powers until the approved policy statement has been published.

The FSA has published the approved policy statement and included it in the FSA Handbook, which is available through its website. A copy of the statement is attached.

Yours faithfully

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