Securities Regulation Daily Wrap Up,ENFORCEMENT—POGO Urges Vigilance On SEC Revolving Door,(Feb. 12, 2013)

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The Project On Government Oversight (POGO) has published its second study of the SEC's revolving door and its potential effect on securities regulation and enforcement. Although POGO said it found some positive changes since the first study published in May 2011, it offered new recommendations to minimize the potential conflicts posed by the SEC's revolving door.

The numbers. POGO said that 419 ex-SEC officials and staffers filed more than 1,900 disclosure statements between 2001 and 2010. Of these former SEC employees, one person accounted for 46 statements. POGO said it obtained the data via Freedom of Information Act (FOIA) requests. POGO also noted that ex-SEC employees file statements for just two years after leaving the SEC, so the available data may not tell the full story.

POGO also was concerned that the SEC's disclosure requirements have been applied "unevenly" to exempt some SEC employees. Similarly, POGO said it was hindered in its effort to get full data on the SEC's revolving door because large portions of some SEC replies to POGO's FOIA requests were redacted. Moreover, POGO said it was concerned that published disclosures of industry meetings with SEC officials and staff lacked detail and that the SEC does not always publish official's remarks at conferences.

Academic study limited. POGO said it had identified faults in an oft-cited academic study by the American Accounting Association titled "Does the Revolving Door Affect the SEC's Enforcement Outcomes?" The study had found that the SEC's revolving door generally did not negatively affect SEC enforcement. POGO, however, said the study did not cover SEC rule-writing teams and failed to account for some non-revolving SEC staff who should have been deemed to be revolvers.

POGO said the most glaring omission from the academic study was its lack of data on the so-called reverse revolving door, through which industry talent flows to the SEC. POGO cited as an example the SEC's former enforcement director, Robert Khuzami, who worked as a general counsel for Deutsche Bank prior to joining the SEC. POGO also noted that the GAO's Dodd-Frank-mandated study (See GAO-11-654, January 2011) found that industry can help to identify fresh SEC talent. However, POGO suggested that the question whether the reverse revolving door's benefits outweigh its potential to spawn conflicts needs to be answered with empirical data.

To-do list. POGO made numerous recommendations for improving disclosures about the SEC's revolving door. For one, POGO would have former SEC employees disclose all work for regulated firms. Likewise, POGO would require persons in industry to disclose their communications with SEC officials on enforcement and policy. POGO also said the SEC should create an online resource where the public can view disclosure statements and ethics documents.

POGO also would lengthen "cooling off" periods for ex-SEC officials and codify President Barack Obama's restrictions for administration officials, but with an exception for nonprofit lobbyists. POGO said that the SEC should publish webcasts or transcripts of meetings with industry representatives and of SEC official's remarks at professional conferences.

Additionally, POGO recommended that Congress fully fund the SEC. POGO, however, said federal courts should require the SEC to detail all evidence in enforcement cases. POGO said that too often the SEC need only disclose findings it negotiated with the defendants. POGO also urged Congress to revise the PSLRA to make it easier for securities plaintiffs to bring private suits against firms accused of securities fraud, including claims that secondary actors aided and abetted securities fraud.

Companies: The Project On Government Oversight

RegulatoryActivity: Enforcement