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Professional Liability

The Not So Strange Cases of Equity Participation and Troubled Loan Accounting

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In 1993, with little fanfare and hardly a yawn from the financial press, the accounting profession changed or proposed changes to longstanding rules for accounting for certain types of loans commonly made by thrift institutions. The relative silence which greeted these changes is remarkable, for had similar promulgations been effective in the late 1970's and early 1980's when the issues were first raised, it is likely the savings and loan scandal would have surfaced earlier and more dramatically Further the new rules and proposals may well have attenuated some of the most costly and abusive practices which thrifts used to fabricate profits and net worth in the 1980's.

While the accounting profession continues to reel under the weight of dozens of actions alleging audit negligence and several national firms have been staggered by massive settlements with government and other plaintiffs, there has been very little public discussion about the adequacy of the accounting rules and other professional guidance for firms auditing savings and loan institutions. That new and proposed rules, in significant instances,

are substantially more stringent than what was in force during most of the 1980's, raises a number of unwelcome questions about the effectiveness of standard-setting as well.

Thusfar, these questions have been deflected by far more withering criticism of the Federal Home Loan Bank and Congress over their response to the savings and loan crisis. Regardless of accounting rules, legislation or regulations in the early 1980's permitted otherwise insolvent lending institutions to conduct business as usual simply by relaxing capital rules, creating accounting gimmicks which provided for the long-term deferral of some losses and the immediate recognition of some suspect income. Policy changes permitted the infusion of much needed liquidity through the Federal Home Loan Bank and the ultimate reckoning was further exacerbated by the failure of regulators to aggressively force the supervision or closing of thrifts not in compliance even with the diluted regulations. What then, would more stringent accounting rules have accomplished?

For one, a quick, unambiguous professional response to difficult and material accounting issues creates substantial risk of litigation for those firms otherwise willing to make self-serving interpretations of unclear rules or guidelines. Ambiguity will always be a defense in negligence cases, but once generally accepted accounting principles (GAAP) are clearly established, departures from such standards are difficult to justify to the courts.

Secondly more stringent accounting may have forced regulators to face up to the crisis earlier or at the least, forced a vigorous inter-institutional debate had the Federal Home Loan Bank Board created regulations that further vitiated GAAP

Thirdly clear and specific guidance would have leveled the competitive playing field. Ambiguity over what constituted GAAP created a climate which permitted competing firms to profit from the conservative accounting positions of more responsible practitioners. In turn, rewarding permissiveness produced economic constituencies within the profession that may have led to the policy stalemates that have only now been broken.

The fact is, on some crucial thrift issues, the accounting profession reacted painfully late. The purpose of this article, then, is to trace the genesis of two of these issues--equity participation ADC loans and troubled debt restructurings--and to understand some of the forces that shaped them.

Equity Participation Loan

The story of equity participation loan accounting probably began as it should have, with a practitioner identifying a potential problem with a new form of transaction and attempting to solve it. The year was 1982 and the thrift industry beset with a persistently high cost of funds, but locked into largely long-term, low-return home mortgage portfolios, was bleeding red ink. Regulatory relief, which permitted a number of new and artificial inclusions to required net worth, propped up some institutions, but didn't solve the fundamental industry problems of small or negative interest spreads and mismatched maturities on interest-earning assets and interest-paying liabilities.

Consulting firms and aggressive thrift managers quickly realized that acquisition, development and construction (ADC) lending would not only ameliorate the maturity mismatches (since typically the loans repriced in one year or less), but that such transactions would also generate substantial, and more importantly current fee income, which recognizable in-full or not under GAAP was still good net worth for regulatory purposes. During the mid-1980's, when spreads between cost of funds and interest income remained relatively narrow fee income was a major source of revenue for many thrifts and often meant the difference between profitable and unprofitable operations. And it was in search of additional fee income that many in the industry exchanged interest rate risk for credit risk at almost precisely the wrong time.

In 1982, KPMG Peat Marwick (Peat) had the largest thrift audit practice in the country. Because of the size of its presence, Peat was exposed to an increasingly common form of ADC lending that became known as equity participation. In many instances, equity participation loans provided that the lender commit all necessary funds to acquire, develop and complete the project, including origination and commitment fees as well as reserves to cover interest (usually at some premium above the prime rates) from acquisition through

completion. Often, while these loans provided for fees to the developer they required no cash equity no borrower guarantees and no recourse, leaving the lender wholly at risk on the project. In return, the lender received substantial origination and commitment fees ranging from 2 to 5 percent, and a percentage of the equity in the profits, if any The equity participation retained by the lender was often around 50 percent.

By late 1982, Peat's national office began questioning the accounting treatment for these equity participation loans, reasoning that the loans were more characteristically investments. By the end of the year, Peat circulated memoranda to the field which required, under some circumstances, the deferral by the lending institutions of fee and interest income, which by definition, were self-funded. While the lender could capitalize interest while the project remained a "qualifying project," fees and interest in excess of that capitalized could not be recognized as income until a bona fide sale was made to an independent third party

The reaction, as three former Peat partners remember it, was immediate.

As I recall, said Ed Sivess, a former Peat partner who managed the firm's regional thrift practice out of Dallas and retired in 1990, "we took a pounding over the issue of equity participation loans. We may have lost 10, 15 or 20 clients in the southwest alone, but more importantly we just couldn't get any new business." How grievous were the losses? According to Joseph Mauriello, KPMG Peat Marwick's National Director of the firm's Banking and Finance practice, Peat's audit market share in Texas alone declined from 50% of thrift assets to approximately 8%

According to Jim Goble, a former Peat SEC review partner based in Dallas, "We lost some clients. In those days, some savings and loan institutions literally sought out developers for projects. There was no doubt in my mind that our position was correct, but we kept losing clients to other firms and it hurt our ability to obtain new thrift business."

The existing support for the Peat position in then current literature was obviously a matter of debate. Tom Bloom, former Chief Accountant of the Federal Home Loan Bank in the mid-1980's and now a partner of Kenneth Leventhal, strongly believed that the then existing literature was sufficient to force the deferral of fee and interest income. Nevertheless, the exodus of Peat's clients continued in 1983.

In March, 1983, Walter Schuetze, a senior Peat partner, former FASB board member and currently Chief Accountant for the Securities and Exchange Commission, took the issue of equity participation loans to the Accounting Standards Executive Committee (AcSEC) of the American Institute of Certified Public Accountants (AICPA), of which he was also a member. By November AcSEC published a "Notice to Practitioners" in the *Journal of Accountancy*, but as we shall see, the dispute did not end here.

In part, the 1983 notice stated: "Financial institutions, particularly savings and loan associations, increasingly are entering into real estate acquisition, development or construction (ADC) loans on which they have virtually the same risks and potential rewards as those of owners or joint venturers. The American Institute of CPAs accounting standards executive committee (AcSEC) believes that, in some instances, accounting for such arrangements as loans may not be appropriate and is providing guidance in this notice to assist practitioners in determining the proper accounting.

AcSEC defined these transactions in which the lender had a participation interest in the residual profits and which "usually have most of the following characteristics" as investments or joint ventures. Those characteristics included:

> -- *A lender commitment to provide all or substantially all necessary funds to acquire property and complete the project. The borrower has title to, but little or no equity in the underlying property.*
>
> -- *The lender funds the loan commitment or origination fees or both by including them in the amount of the loan. Often, the transaction is structured to maximize the immediate or early recognition of such fees as income.*
>
> -- *The lender completely funds interest during the term of the loan by adding interest to the loan balance.*

-- *The loan is secured only by the ADC project. The lender has no recourse to other assets of the borrower and the borrower does not guarantee the debt.*

-- *In order for the lender to recover the investment in the project, the property must be sold to independent third parties, the borrower must obtain refinancing from another source or the property must be placed in service and generate sufficient net cash flow to service debt principal and interest.*

-- *The arrangement is structured so that foreclosure during the project's development is unlikely because the borrower is not required to fund any payments until the project is complete, and, therefore, the loan cannot become delinquent.*[1]

The AcSEC notice provided that loans with equity participations greater than 50 percent should be treated as investments, which would force the deferral of all interest and fee income by the lender In the case of loans with equity participants 50 percent or less, the transaction was to be accounted for as a joint venture, with a pro-rata portion of interest and fee income to be deferred. Offsetting factors which the "Notice to Practitioners" said should be considered in treating equity participation loans as loans included substantial borrower equity in the project "that is not funded by the lender lender recourse to "substantive net assets" of the borrower apart from project itself, an irrevocable letter of credit for the full amount and term of the equity participation loan, a take-out commitment with attainable conditions, or a non cancelable sales contract sufficient to produce cash flows to serve normal loan amortization.[2]

The AcSEC notice should have ended the controversy over equity participation loans, but for two reasons, it didn't. First, AcSEC notices were fairly low on the hierarchy of what constituted GAAP According to Arthur R. Wyatt, a former AcSEC Chairman, FASB member a senior technical partner at Arthur Andersen, and now a Professor of Accountancy at the University of Illinois, the perception in 1983 was that AcSEC had no real authority to set standards without the concurrence of the FASB.

"AcSEC was attempting to provide guidance," Wyatt said in a recent interview "but there were differences of opinion among accounting firms of whether such guidance meant anything. Some firms believed that AcSEC guidance would be damaging to FASB authority. At the same time, clients were beating on their auditors, demanding to be shown support for conservative positions. To some firms, AcSEC guidance was not sufficiently authoritative."

Donald J Kirk, a former FASB Chairman and Board member believed such arguments were "nonsense and a conscious effort to evade reality "

The FASB, whose authority to promulgate accounting standards is unquestioned, however informally took the position in July 1983 that existing accounting literature on the equity participation loan issue was adequate and stated that no further FASB action was necessary [3] Nevertheless, AcSEC moved forward with its "Notice to Practitioners which was published in November, 1983. Apparently the FASB wanted nothing to do with the issue at that time.

Secondly the AcSEC position didn't go far enough. In essence, AcSEC defined the accounting for equity participation loans by the prospect of potential rewards in addition to the potential risks of the transaction. That is, the AcSEC accounting, in effect, provided that the lender could take virtually all the risks of the transaction, but would only have to defer self-funded interest and fee income if it had a substantial equity participation in the project. The position was illogical, for if the lender made an inferior deal, assuming the same risks of the transaction, but without an equity kicker as an additional reward, no interest or fee income need have been deferred. Only now ten years later has the profession moved to redress the issue.

Wyatt and Donald C. Elwood, an AcSEC member during the period and currently a partner with Ernst & Young, both recall that a necessary two-thirds majority for a risk-based only rule wasn't obtainable. "These things often get watered down, said Wyatt, "because competitive factors sometimes lead firms to take the positions desired by their clients.

Elwood, who has also served on the AICPA'a Savings and Loan Committee, remembers clearly that removing

equity participation as a criterion for classifying whether an ADC loan was an investment or a loan was defeated. "The votes just weren't there," he said. Elwood said banking interests opposed a risk-only based rule because many loans to developing countries (LDC's) had a number of characteristics similar to ADC loans. The analogies might have opened the door for more stringent accounting for such loans by banking institutions. Others believe bodies like AcSEC and AICPA Savings and Loan Association committee had become captives of the industry

So, the issue of equity participation ADC loans continued to fester. The Emerging Issues Task Force (EITF), a creation of the Financial Accounting Standards Board, acknowledged the inconsistent application of the 1983 "Notice to Practitioners" and in November, 1984, stated plainly that there was some opinion "shopping" on the issue.[4] While the EITF surveyed its members to determine prevailing practice, the FASB stood by a July 1984 decision that guidance provided by the 1983 "Notice to Practitioners" was "adequate."[5]

At AcSEC and within the regulatory bodies, the issue moved forward. The AICPA Savings and Loan Committee published a second "Notice to Practitioners" in the November 1984 issue of the *CPA Letter* and AICPA publication. The second notice cautioned practitioners that personal guarantees, which ameliorated the accounting for ADC loans under some circumstances, were not uniformly enforceable in all jurisdictions. The second notice also warned practitioners that equity participation agreements were not always contained in typical loan agreements and urged practitioners to make inquiries and obtain representation letters concerning the existence of such agreements.

Further the Federal Home Loan Bank Board (FHLBB) issued draft regulatory proposals which adopted both the 1983 and 1984 notices. Regulatory blessing by the FHLBB of the notices was significant because of AcSEC's relatively low standing as a promulgating body of accounting standards. The FHLBB regulation, however merely repeated AcSEC language and made no attempt to extend investment accounting to those high risk loans which did not provide for equity participations by the lender

"The FHLBB didn't's consider itself an accounting rule-making body said Bloom, the former FHLBB Chief Accountant, "so we didn't alter the intent of the AcSEC notices." The FHLBB position differs from that taken by the Securities and Exchange Commission, which often proscribes accounting by setting its own accounting standards.

Still, given the divisions of opinion on the legitimacy of AcSEC, the FHLBB regulation was not without meaning. "I can remember one meeting, Wyatt said, "where we attempted to get agreement from all AcSEC members that we would abide by an AcSEC notice if we reached consensus on the content of the notice. One firm refused such an agreement.

Thus, when the FHLBB promulgated its regulation on accounting for acquisition, development and construction loans in April, 1985, the issue of authority was finally overcome. But the issue of whether the accounting was to be driven solely by the lenders' risk instead of lenders' risk and reward may only be resolved now. AcSEC, in June, 1993, forwarded to the FASB for review an exposure draft of the proposed statement of position (SOP) entitled "Identifying and Accounting for Real Estate Loans That Qualify as Investments in Real Estate." The exposure draft was approved by AcSEC at a March, 1993 meeting.

The draft SOP differed significantly from the previous notices in that equity participation was no longer a classification criterion. Instead, the draft SOP stated:

> *A real estate loan should be accounted for as a loan if it has one or more of the following characteristics at inception;*
>
> > *a. The borrower has an equity investment that is substantial to the project and that is not funded by the lender...That investment may be in the form of cash payments by the borrower or a contribution to the project by the borrower of land (without considering value expected to be added by future development or construction), developed real estate or other assets. The value attributed to contributions of land, developed real estate, or other assets should be the fair values of the respective assets net of any encumbrances, such as superior liens. A*

contribution of recently acquired real estate by the borrower should not be valued at any amount greater than the borrower's acquisition cost.

b. The lender has recourse to substantial tangible, salable assets of the borrower other than the real estate subject to the real estate loan and has the ability to control the disposition of the assets by the borrower

c. The borrower has provided the lender with a letter of credit or qualifying surety bond for a substantial portion of the loan from a creditworthy, independent third party, and the letter of credit or surety bond is irrevocable by the third party during the entire term of the loan..

d. A takeout commitment for the full amount due the lender has been obtained from a creditworthy, independent third party..

e. Noncancelable sales contracts, leases, or lease commitments from creditworthy, independent third parties exist that will provide sufficient cash flows on completion of the real estate project to service normal loan amortization of principal and a market rate of interest for a reasonable period of time...

f. A qualifying guarantee is in place..

Otherwise, the entire loan arrangement should be classified and accounted for as an investment in real estate.[6]

The profession's proposed flip-flop, more than 10 years after the issue was first raised, begs several fundamental questions, none of them particularly flattering. Why for example, did the profession allow competing CPA firms to profit from differing interpretations of AcSEC guidelines? Why didn't the FASB provide its imprimatur early in the process, particularly when it knew there was some opinion "shopping" on the issue? And finally, why has it taken so long for the profession to propose what is now being proposed as the proper accounting for ADC loans?

The FASB Equivocates

A stock description of the 1980's invariably begins with a vivid recital of how Reagan's ideological imperative of less government practically translated to an era of permissive regulation, if not the outright deregulation, of key institutions and industries. In turn, this permitted shrewd operators, burdened by neither protective regulation nor government watchdogs, to abuse the system to their own, profitable ends.

To some degree, the model fits the thrift industry and the accounting profession's attempt to provide adequate rules and guidelines. "It was a difficult period, said John W. Hoyt, an AcSEC member in 1983-84 and a partner of McGladrey Hendrickson & Co. at that time. "It seemed we were always grappling with new issues, new financial instruments and new problems. The FHLBB created a climate of permissiveness, by for example, allowing losses on loan portfolio sales to be deferred over a number of years. You couldn't take a cookbook approach to any issue because quantifying approaches to issues just brought their circumvention. It seemed like everytime we would come to grips with a specific accounting for a new financial instrument, for example, Wall Street would take about a week to invent something else to get around what we were trying to do."

Nevertheless, the antecedents for the profession's breakdown on ADC loans preceded the Reagan era and may well have been the result of fears of increased regulation rather than deregulation. Prior to the controversy over equity participation loan accounting, in fact, the FASB proposed to take on the banking industry with proposed new rules that, under certain circumstances, would force the recognition of losses by lending institutions when debt was re-structured. And like the controversy over equity participation loans, the issue did not disappear when the FASB initially dealt with it, but instead, lingered for 17 years until the FASB reversed an earlier position with the issuance of FASB Statement No. 114, which superseded the earlier FASB Statement No. 15.

And like the AcSEC "Notice to Practitioners, has FASB Statement No. 114 been in force during the 1980's, lending institutions would have likely had to recognize loan losses earlier and in greater magnitude than was the

case under FASB Statement No. 15 which preceded it. The recognition of such losses may have forced regulators to face up to the crisis earlier or at the least, forced a vigorous inter-institutional debate had the FHLBB promulgated regulations that vitiated GAAP

FASB Statement No. 15, issued in June, 1977, was the FASB's response to what it perceived was a "substantial increase in recent years in the number of debtors that are unable to meet their obligations on outstanding debt because of financial difficulties,"[7] that resulted from the 1974-1975 recession. The statement defined "troubled debt restructurings" as a restructuring in which "the creditor for economic or legal reasons related to the debtor's financial difficulties grants a concession to the debtor that it would not otherwise consider "[8] A key controversial issue raised by the pronouncement was on what basis losses should be determined and recognized. The FASB's discussion memorandum initially contained among several alternatives, a proposal that the carrying amount of the debt be written down to a present value. When the pronouncement was issued in final form, however, it required write downs only if the "recorded investment in the receivable at the time of the restructuring. .exceeds the total future cash receipts specified by the new terms."[9] In other words, if the restructuring agreement provided only for the repayment of loan principal and no interest, the lender would not be required to write down its loan asset.

Now some 16 years later the FASB has reversed itself and with the issuance of FASB Statement No. 114, GAAP currently provides that a "creditor should measure impairment based on the present value of expected future cash flows discounted at the loan's effective interest rate, which is defined as "the rate of return implicit in the (original) loan."[10]

Like the proposed changes to guidance for accounting for ADC loans, the changes to rules for troubled debt restructurings have been greeted by a relative silence given the history of the issue. The American Bankers Association (ABA) again led opposition to the change, but according to ABA official Donna Fisher the effort was diffused by the organization's involvement in opposing FASB Statement 115 on debt and equity securities and its lobbying efforts in connection with the FDIC Improvement Act of 1991

In 1976, however when the FASB first considered the issue, the banking industry's response was highly organized and overwhelmingly negative. The FASB received some 850 written responses to a discussion memorandum, more than 700 of them reportedly from banks to bankers.[11] In four days of hearings on the issue, a procession of banking giants, including Walter Wriston of Citibank, David Rockefeller of Chase Manhattan and Chief executives from Chemical, Continental Illinois, Bankers Trust, Irving Trust and Bowery Savings, testified against the proposed changes. Although not testifying, Arthur F. Burns, Chairman of the Federal Reserve Bank board, wrote a critical letter to the FASB opposing the changes.[12] Exacerbating the pressure was the fact that during the hearings, a U.S. Senate Committee (known as the Metcalf Committee) was in the process of writing a highly critical report on the accounting profession. Among other criticisms, the report stated that the Securities and Exchange Commission had failed to exercise its authority on accounting matters and urged Congress to exercise stronger oversight over accounting practices.[13]

The primary thrust of the banking industry's opposition was the impact the write downs would have on the financial condition of many institutions. Various executives raised the specter that some major banks would be unable to continue to pay dividends, write long-term, fixed rate loans, or report results of operations with any meaningful consistency. A senior executive from Chemical Bank said the changes would adversely impact loans to disadvantaged borrowers, municipalities, emerging companies and less developed countries.[14] Wriston. the Citibank chief executive, said plainly that the FASB was trying to force current value accounting on banking industry [15] Despite supportive testimony from Arthur Wyatt, then chairman of Arthur Andersen's Accounting Principles Group, the FASB adopted the banking industry's position and the present value of future payments concept included in the Board's discussion memorandum was rejected in favor of the less troublesome future value provision which limited the requirements for write downs. Like its restructured borrowers, the banking industry successfully bought itself time.

Recalls Wyatt, who became a FASB member in 1986: "The pressure from the industry was intense at a time when the FASB was newly formed. Public accounting

was under great pressure from Congress and the banking industry and the Federal Reserve were entrenched interests which opposed the changes. At the same time, standard setting bodies did not view themselves as powerful enough to stand up to these interests and on the issue of FASB Statement No. 15, the FASB didn't."

Others, like Robert T Sprouse, an FASB member at the time and subsequently a Vice Chairman of the Board, agreed there were pressures, but contended that the issue was decided on its merits. "The FASB hearing mechanism encourages inputs from interested parties," Sprouse said, in a recent interview "so the Board will, of course, feel pressure. Nevertheless, we believed that troubled debt restructurings should be accounted for consistently by both debtors and creditors and were troubled by the notion that if creditors booked write downs, then debtors would then record income on restructurings. Further, it seemed significant to me that representatives from the Financial Analysts Federation opposed a change to a discounted present value.

Donald J Kirk, another Board member during the period and subsequently a Board Chairman, said pressures on the Board "were straightforward and above board," but that "interest in the issue was record setting in terms of responses to the discussion memorandum and audience size."

"The present value concept was alien to the industry which had long-ingrained the practice of never conceding principal. The Board was conscious of the economic issues, but felt compelled to issue standards in this area reasonably quickly. The Board also knew that to introduce the concept of present value was to go against imbedded notions and practices and that a lengthy education process was inevitable. We also foresaw that the issue of the appropriate discount rates--that is, a market rate versus the original effective contract rate--would also require study and was a complicating issue we did not have time to deal with.

"Its like a lot of things in public accounting, Kirk said. "Often there is a clear recognition of what the better approach is, but the outcome depends upon from where one starts. Change is very difficult to implement and that limits the profession's ability to get in front of crucial issues. There is clearly a need to persuade, to teach and to cajole to head off resistance to accounting changes. There is always a struggle to do what is right. In the end though, the changes to FASB Statement No. 15 and the accounting for ADC loans may have come not so much because of the persistence of the standard-setters, but because banks and thrifts, crippled by massive losses and in too many cases, riddled by scandal, have simply lost their once-considerable influence.

Competitive forces within the profession, the pursuit of self-interested solutions by impacted industries and the difficulty of foreseeing the full impact of highly technical and often arcane accounting rules assure the continued imperfection of what has proven to be an imperfect process. While actions taken by standard-setters have forestalled some reporting debacles, as with many institutions, on politically-charged issues, it is, unfortunately often the debacle itself that produces impetus for significant and timely change.

ENDNOTES

1 November, 1983 *Journal of Accountancy*, Pgs. 51-54.

2. Ibid

3. Emerging Issues Task Force Issue Summary dated July 12, 1984.

4. November 1984 minutes of the Emerging Task Force of the Financial Accounting Standards Board.

5. July 1984 minutes of the Emerging Task Force of the Financial Accounting Standards Board.

6. Proposed Statement of Position "Identifying and Accounting for Real Estate Loans that Qualify as Investments in Real Estate, dated June 7 1993, Pgs. 10-12.

7 Financial Accounting Standards Board Statement No 15, paragraph 46.

8. Ibid, paragraph 2

9. Ibid, paragraph 30

10. Financial Accounting Standards Board Statement No. 114, paragraphs 13 and 14

11 *American Banker* dated July 28, 1976, Pg. 16

12. *American Banker* dated July 27 1976, Pg. 12

13. *Management Accounting* dated April, 1977 Pg. 52

14. *American Banker* dated July 28, 1976, Pg. 16

15. Ibid

Insurance Coverage -- Directors and Officers Liability Insurance and Employment Litigation:

Employment Litigation: Will the Insurer Respond?

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A significant increase in employment litigation has been apparent to Directors and Officers ("D&O") liability insurers since the economic downturn in the United States in the late 1980s as well as the Thomas Hill hearings and controversy in late 1991 The 1992 Wyatt Directors and Officers Liability Survey Summary reports wrongful termination as .the single most likely claimant issue..."[1] of that survey's more specific choices of allegation by plaintiff(s) equaled only by "inadequate/inaccurate disclosure."[2] The EEOC, announced that at year end 1992, the commission had received approximately 70,000 charges of employment discrimination, ...more...than in the last three years."[3]

While an increase in employment exposures has not been welcomed by D&O insurers, it has resulted in the development and marketing of new products, designed specifically to respond to these kinds of claims. These employment practices policies generally provide entity coverage and are distinct from the standard D&O contract. Certain insurers have, for an additional premium, provided employment practice coverage as a supplement to their existing D&O forms to accommodate their clients' concerns in this area. These "D&O