



# U.S. Securities and Exchange Commission

## Putting investors first

2009 Performance and Accountability Report



# CERTIFICATE OF EXCELLENCE IN ACCOUNTABILITY REPORTING®

Presented to the


## *U.S. Securities and Exchange Commission*

In recognition of your outstanding efforts  
preparing SEC's Performance and  
Accountability Report for the fiscal  
year ended **September 30, 2008.**

A Certificate of Excellence in Accountability Reporting is presented  
by AGA to federal government agencies whose annual  
Performance and Accountability Reports achieve the  
highest standards demonstrating accountability  
and communicating results.



  
John H. Hummel, CGFM  
Chair, Certificate of Excellence  
in Accountability Reporting Board

  
Raymond P. Van Daniker, DBA, CPA  
Executive Director, AGA

For the third year in a row, the Securities and Exchange Commission received a Certificate of Excellence in Accountability Reporting from the Association of Government Accountants. The award is presented to federal government agencies whose annual reports achieve the highest standards demonstrating accountability and communicating results.

# Contents

<b>Message from the Chairman</b> .....	<b>2</b>
<b>Management's Discussion and Analysis</b> .....	<b>5</b>
Vision, Mission, Values, and Goals.....	6
Organizational Structure and Resources.....	7
FY 2009 Year in Review.....	8
Financial and Performance Highlights.....	15
Performance Results Summary .....	19
Chairman's Assurance Statement.....	22
Management Assurances.....	23
Limitations of the Financial Statements.....	26
<b>Performance Section</b> .....	<b>27</b>
Performance Results by Strategic Goal .....	28
Program Assessments and Evaluations .....	60
<b>Financial Section</b> .....	<b>61</b>
Message from the Chief Financial Officer.....	62
Financial Statements .....	64
Notes to Financial Statements .....	69
Report of Independent Auditors.....	91
Management's Response to Audit Opinion.....	111
<b>Other Accompanying Information</b> .....	<b>112</b>
Inspector General's Statement on Management and Performance Challenges .....	113
Management's Response to Inspector General's Statement.....	118
Summary of Financial Statement Audit and Management Assurances.....	122
Improper Payments Information Act Reporting Details .....	123
<b>Appendixes</b> .....	<b>124</b>
Appendix A: Chairman and Commissioners.....	124
Appendix B: Major Enforcement Cases .....	127
Appendix C: SEC Divisions and Offices .....	132
Appendix D: Acronyms.....	133

**Available on the Web at <http://www.sec.gov/about/secpar2009.shtml>**

To contact the SEC, please see "Contact Us" at <http://www.sec.gov/contact.shtml>.  
For further information on selected terms and topics, please see "Fast Answers" at <http://www.sec.gov/answers.shtml>.

## Message from the Chairman



**Mary L. Schapiro**  
CHAIRMAN

Dear Investor,

Over the past year, as a result of the economic turmoil, millions of Americans experienced significant losses in their retirement and family investments. That turmoil also had an impact on investor confidence.

Since I became Chairman in January 2009, the SEC has moved swiftly to renew our commitment to protecting investors and restoring that confidence. Indeed, everything the agency has done has been with these goals in mind.

We have been making extensive reforms within the agency and have been proposing, and in some cases already adopting, new rules by which market participants operate.

### Internal Reforms

Many of the reforms we have initiated internally are a response to the Madoff fraud which came to light in December 2008. At that time, my predecessor directed the SEC's Inspector General to launch an investigation into why the agency did not detect the fraud. But, I did not believe we should wait for the inquiry to be completed to take action. Instead, we immediately began to take steps to improve the way we protect investors and to reduce the chances that such scams will occur or go undetected in the future.

One of the first steps we took was to initiate changes to revitalize the Enforcement Division. Under the leadership of a new director, the SEC has been restructuring the division to reduce bureaucracy and speed up the enforcement

process. The newly structured division will include specialized units that will enable staff to concentrate their expertise in focused areas and bring cases more quickly. The Commission also adjusted its procedures for launching investigations and approving settlements with corporate defendants, thereby removing impediments to swift action.

In addition, we have begun the process of revamping the way we handle the many thousands of emails, letters, and calls the SEC receives each year to better identify the high-impact tips, complaints, and referrals that require the focused attention of our staff. And, we are creating a centralized, agency-wide system for collecting, recording, investigating, referring, and tracking this information. Applying risk analytics, we hope to be better able to reveal links and patterns that might not be observable when each complaint is examined independently.

Oftentimes, these tips and complaints provide valuable information that can be helpful in detecting and stopping a fraud. To encourage more tipsters to come forward and assist the SEC in its anti-fraud efforts, we have asked Congress for expanded authority to reward whistleblowers who bring forward substantial evidence about significant federal securities violations.

The SEC also has created a new Division of Risk, Strategy, and Financial Innovation. The purpose of this new division is to study emerging market trends and financial products, and proactively uncover potential risks to investors. The specialized expertise that will reside in this division will support our policy making, examination, and enforcement functions. In addition, the agency is building new risk assessment processes to ensure that the financial institutions our staff are examining are the ones where an exam is most needed.

Finally, to further improve our ability to detect wrongdoing and to keep pace with the financial products of the day, the agency is recruiting more staff with specialized, in-depth industry experience. And, we are expanding and better targeting our internal training to build greater expertise in areas such as hedge funds and specialized products, derivatives and options, and complex trading strategies.

## Updating the Rules of the Road

In addition to our ongoing internal improvements, the SEC has engaged in an aggressive period of rulemaking in a number of areas vital to investors.

**Control of Assets.** In May, the Commission proposed measures that would better protect clients of investment advisers from theft and abuse. The proposal includes several important safeguards designed to make sure that client accounts contain the assets that the client's investment adviser and account statements say they contain. Among other things, the proposed rules may have the effect of encouraging investment advisers to place their clients' assets in the custody of an independent firm.

**Proxy Access.** In June, the Commission proposed rules that would facilitate the effective exercise of the rights of shareholders to nominate directors. Under the new SEC proposal, qualifying shareholders who otherwise have the right to nominate directors at a shareholder meeting would be able to have a limited number of nominees included in the company proxy ballot that is sent to all voters. Good corporate governance is about maintaining appropriate accountability to shareholders for two key groups of players: the directors whom the shareholders elect, and the managers whom the directors select. Accountability requires both transparency and an effective means to take action for poor performance or bad decisions, and our proposals are designed to strengthen accountability.

**Proxy Disclosure.** Over the summer, the SEC also proposed rules regarding the types of information that should be included in proxy materials, including disclosure about compensation practices and risk management practices. These measures were designed, among other things, to ensure that activities that materially contribute to a company's risk profile would be fully disclosed to investors. In the area of compensation, the SEC is seeking better disclosure about the relationship between a company's overall compensation policies and its risk profile, as well as about conflicts of interests of compensation consultants.

**Money Market Funds.** In order to help avoid a repeat of the experiences in the fall of 2008 in the money market fund arena, the Commission proposed several measures designed to make money market funds more resilient to economic stresses. Among other things, the proposal would strengthen the credit quality and maturity standards applicable to money market funds and would establish new liquidity requirements designed to better position money market funds to meet significant redemption demands from investors. In addition, the proposal calls for stress-testing of money market funds to detect risks in their portfolios and would enhance the Commission's data collection from these funds.

**Pay-to-Play.** The SEC also has taken steps to level the playing field for all investment advisers, both large and small, so they can compete for government advisory business based on investment skill and quality of service, as opposed to political contributions. In August, the Commission issued its "pay-to-play" proposal which would prohibit an investment adviser who makes a political contribution to an elected official in a position to influence the selection of the adviser from providing advisory services to that government entity for a period of two years.

**Municipal Securities.** In July, the Commission proposed a rule to improve the quality and timing of municipal securities disclosure. Currently there is a significant disparity between the level of information available to investors in municipal securities versus information available to investors in corporate securities. Although the Commission's ability to rectify this disparity is limited by the scope of its statutory authority, these proposals should help investors make more knowledgeable investment decisions about municipal securities.

**Short Sales and Naked Shorts.** Another area of concern for investors and the markets is abusive short selling. Following a thoughtful, deliberative process to determine how to best protect investors, the Commission sought comments on various mechanisms that would potentially restrict short sales, and whether such measures would help promote market stability and restore investor

confidence. The Commission also took regulatory actions focused on the issue of abusive “naked” short selling, leading to a significant decline in failures to deliver securities on time following a short sale.

**Credit Rating Agencies.** Because of concerns about the reliability and integrity of the credit rating process, the Commission adopted, proposed, and sought comment on several measures, including measures that would require greater disclosure, foster competition, help to address conflicts of interest, shed light on rating shopping, and promote accountability among credit rating agencies.

**Flash Orders.** At the same time, the Commission proposed a rule that would end the use of marketable flash orders, which may, among other things, create an unfair “two-tiered” market by giving only certain market participants effective access to information about the best available prices for listed securities.

**Dark Pools.** As a part of a broad, ongoing review of how the equity markets are structured, Commission staff developed draft proposals intended to increase transparency and fairness of dark pools—which are essentially trading systems in which participants can transact their trades without displaying quotations to the public. These proposals are intended to prevent the formation of a “two-tiered” market that deprives the public of information that is available to only select market participants. The number of active dark pools transacting in stocks that trade on major U.S. stock markets has nearly tripled since 2002.

We are engaging in these internal reforms and rulemaking efforts to help protect investors who are entrusting their funds to the capital markets. To do that job effectively requires listening to investors as the Commission shapes its regulatory agenda. As such, the SEC formed an Investor Advisory Committee to give investors a greater voice in the Commission’s work. Already, the committee has been focusing on a number of areas, including investor education, investor protection, and shareholder voting and corporate governance.

Finally, the Commission has been working with Congress and others in the administration to help reshape the regulatory landscape and fill the regulatory gaps that have been exposed by the credit crisis. In particular, we have been working closely with the Commodity Futures Trading Commission to harmonize our approaches to over-the-counter derivatives so that these products are brought under the regulatory umbrella.

We are pleased to confirm that the financial and performance data we present in this report are fundamentally complete, reliable, and conform to the Office of Management and Budget guidance. Our independent auditors, the U.S. Government Accountability Office, affirm that the SEC’s financial statements are presented fairly in all material respects in conformity with U.S. generally accepted accounting principles (GAAP). Our assessment of the effectiveness of internal controls over financial reporting has revealed certain significant deficiencies, which in the aggregate we deem to represent a material weakness in information systems and related financial reporting controls. Remediation of these deficiencies will be a high priority during 2010.

The SEC has faced the enormous challenges of this past year with decisive action, determination, and focus. As we continue the work to fulfill the SEC’s mission—to protect investors, maintain fair and orderly markets, and facilitate capital formation—we are all dedicated to learning from the past and expanding upon the real, dramatic reforms begun this year.

I am confident the Commission, along with the dedicated and talented staff, will continue to make great strides on behalf of investors in the year ahead.

Sincerely,



Mary L. Schapiro  
Chairman

November 16, 2009

## **Management's Discussion and Analysis**

The Securities and Exchange Commission's Management's Discussion and Analysis (MD&A) serves as a brief overview of this entire report. It provides you with a concise description of the agency's performance measures, financial statements, systems and controls, compliance with laws and regulations, and actions taken or planned. It should also provide you with a balanced assessment of our program and financial performance, and the efficiency and effectiveness of our operations.

## Vision, Mission, Values, and Goals

### Vision

The SEC's vision is to strengthen the integrity and soundness of U.S. securities markets for the benefit of investors and other market participants, and to conduct its work in a manner that is as sophisticated, flexible, and dynamic as the securities markets it regulates.

### Mission

The mission of the SEC is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation.

### Values

In managing the evolving needs of a complex marketplace and in pursuing its mission, the SEC embraces the following values:

- Integrity
- Accountability
- Fairness
- Resourcefulness
- Teamwork
- Commitment to Excellence

During 2009, managers and staff from across the Securities and Exchange Commission worked to prepare a new strategic plan covering FYs 2010–2015. The draft plan addresses the agency's mission, vision, values, strategic goals, major initiatives, and performance measures. In October, the plan was made available for public comment and can be accessed on the SEC's Web site at <http://www.sec.gov/about/secstratplan1015.pdf>.

### Goals

#### • Enforce compliance with federal securities laws

The Commission seeks to detect problems in the securities markets, prevent and deter violations of federal securities laws, and alert investors to possible wrongdoing. When violations occur, the SEC aims to take prompt action to halt the misconduct, sanction wrongdoers effectively, and, where possible, return funds to harmed investors.

#### • Promote healthy capital markets through an effective and flexible regulatory environment

The savings and investments of every American are dependent upon healthy capital markets. The Commission seeks to sustain an effective and flexible regulatory environment that will facilitate innovation, competition, and capital formation to ensure that our economy can continue to grow and create jobs for our nation's future. Enhancing the productivity of America is a key goal that the SEC works to achieve by increasing investor confidence in the capital markets.

#### • Foster informed investment decision making

An educated investing public ultimately provides the best defense against fraud and costly mistakes. The Commission works to promote informed investment decisions through two main approaches: reviewing disclosures of companies and mutual funds to ensure that clear, complete, and accurate information is available to investors; and implementing a variety of investor education initiatives.

#### • Maximize the use of SEC resources

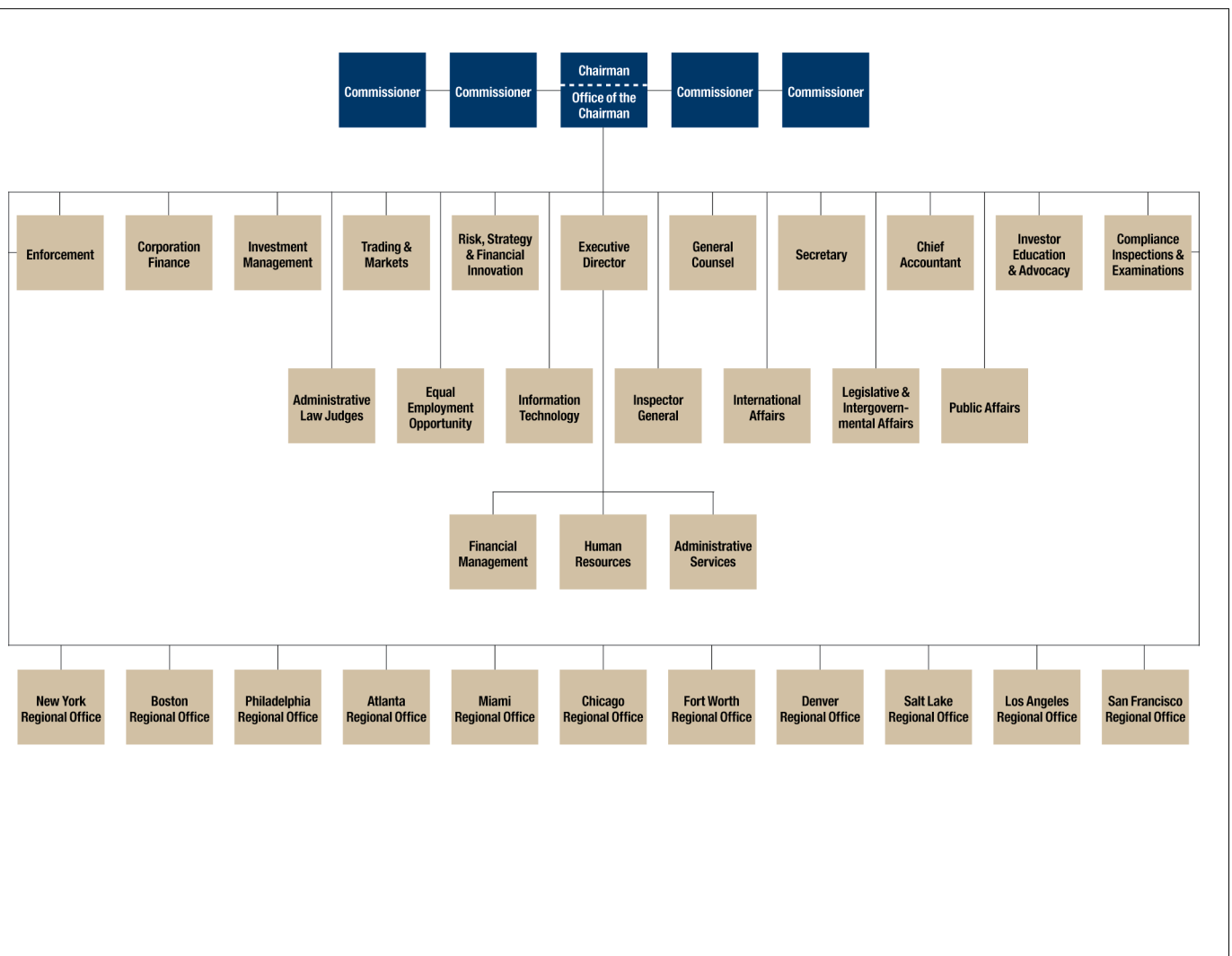
The investing public and the securities markets are best served by an efficient, well-managed, and proactive SEC. The agency strives to improve its organizational effectiveness by making sound investments in human capital and new technologies, and by enhancing internal controls.



## Organizational Structure and Resources

The U.S. Securities and Exchange Commission (SEC) is an independent federal agency established pursuant to the Securities Exchange Act of 1934 (Exchange Act). It is headed by a bipartisan five-member Commission, comprised of the Chairman and four Commissioners, who are appointed by the President and confirmed by the Senate (see *Appendix A: Chairman and Commissioners*). The Chairman serves as the chief executive officer (CEO). The SEC is organized into five main divisions: Enforcement; Corporation Finance; Investment Management; Trading and Markets; and Risk, Strategy, and Financial Innovation. The SEC's headquarters are in Washington, D.C., and it has 11 regional offices located throughout the country. In Fiscal Year (FY) 2009, the SEC received budget authority of \$970 million consisting of current-year offsetting collections in the amount of \$894 million, a two-year direct appropriation of \$10 million, and \$66 million in funds carried over from prior fiscal years. At September 30, 2009, the agency employed 3,642 Full-time Equivalents (FTE), including 3,584 permanent and 58 temporary FTE.

**CHART 1.1**  
**SEC ORGANIZATION CHART**



## FY 2009 Year in Review

### Responses to Economic Crisis

The confidence of American investors was shaken over the past 18 months by a deep financial crisis, a pronounced decline in asset values, and a deterioration of the world economy. This confidence was further shaken by the revelation of the massive fraud perpetrated over many years by Bernard L. Madoff. Under the leadership of new Chairman Mary L. Schapiro, the SEC has worked to restore confidence by redoubling efforts to protect investors through vigilant and comprehensive examinations and enforcement activity, and by embarking on a series of reforms designed to make our markets stronger, safer, and more transparent. These reforms include working to close regulatory gaps, strengthening shareholder rights, and improving the quality of disclosures provided to investors. The reforms also include improvements to the internal operations of the SEC designed to enhance the ability of the agency to detect wrongdoing, punish violators quickly when it occurs, and identify and address as early as possible emerging problems that may threaten investors and the vitality of the capital markets.

### Strengthening Enforcement and Examinations

In January 2009, the SEC launched a series of initiatives to enable enforcement efforts to proceed more swiftly and decisively against alleged securities law violators. To ensure that subpoena power is available to the staff as soon as it is needed, the Commission delegated the authority to initiate formal orders of investigation to the Division of Enforcement. In February, the SEC began a comprehensive review of its internal procedures to improve the way the agency tracks and handles the high volume of tips, complaints, and referrals received each year, and the Commission is now in the process of revamping this system. The new system will centralize this information so it can be analyzed and utilized in a more effective way to identify valuable leads for potential enforcement action and compliance exams. We are also creating an Office of Market Intelligence, within the Division of Enforcement, to improve the handling of tips and complaints.

A number of organizational reforms are also being implemented within Enforcement, as further ways to increase effectiveness. These reforms include creating units specializing in mission critical areas such as structured products and asset management, and streamlining the management structure.

To assist the Enforcement Division in identifying and bringing actions against wrongdoers, the SEC has asked Congress for expanded authority to reward whistleblowers who bring forward substantial evidence to the agency about significant federal securities law violations. Under proposed legislation, money collected from wrongdoers that is not otherwise distributed to investors would be used to establish a fund to reward whistleblowers whose contributions lead to successful enforcement actions.

The Office of Compliance Inspections and Examinations (OCIE) launched a variety of initiatives in 2009 designed to significantly improve compliance by registered broker-dealers, investment advisers, and credit rating agencies with the federal securities laws, and to improve the ability of OCIE to identify fraud and other serious wrongdoing. The Senior Specialized Examiner program was created in order to deepen the expertise available to the agency. Positions in this program are being filled by industry professionals with specialized experience in areas such as trading, portfolio management, valuation, complex products, sales, compliance, and forensic accounting. The SEC also worked to enhance the skill level of existing examination staff through certification as Certified Fraud Examiners, Chartered Financial Analysts, or Chartered Alternative Investment Analysts. The agency also conducted training sessions on complex issues such as options trading, and credit default swaps (CDS), hedge funds, and specialized programs on uncovering potential frauds and establishing third-party verification of customer assets.

### Combating Abusive Short Selling

The SEC has taken significant action in FY 2009 to address issues surrounding short selling, particularly the problems raised by potentially abusive “naked” short selling.

In October 2008, the SEC adopted temporary rules to address concerns about the sudden and unexplained declines in the prices of equity securities and the deterioration in investor confidence in the U.S. financial markets. This crisis of confidence can impair the liquidity and ultimate viability of an entity, with potentially broad market consequences. A preliminary study by the SEC's Office of Economic Analysis found that these Commission actions had their intended effect—failures to deliver securities have decreased by approximately 57 percent across all equity securities. In July 2009, the Commission adopted the provisions of the temporary rule in a permanent rule designed to help maintain this reduction in failures to deliver securities and to help further address abusive practices in this area.

In addition to rulemaking, the SEC also brought two cases against broker-dealers and options traders for violations of Regulation SHO, the Commission's primary short sale regulation. In these actions, the SEC alleged that the respondents improperly claimed that they were entitled to an exception to the Regulation SHO requirements that broker-dealers must locate a source of borrowable shares prior to selling short, and that they circumvented the requirement to deliver securities sold short by a specified closeout date.

In April 2009, the Commission proposed short sale price test and circuit breaker rules. In May and September 2009, the SEC hosted roundtables to examine short selling practices. Topics included discussions on investor confidence and the necessity and effectiveness of short sale price tests and short sale circuit breakers, potential pre-borrow and disclosure requirements related to short selling, the operational and compliance issues raised by the SEC's recently proposed regulatory approaches in the area of short selling, and what empirical data say about short sale price tests and short sale circuit breakers. Completion of this rule-making will be a high priority in early calendar year 2010.

### Filling Regulatory Gaps

During FY 2009, the SEC took several steps to encourage central counterparties to clear CDS. The SEC worked closely with the Federal Reserve Board and the Commodity

Futures Trading Commission (CFTC) to facilitate the establishment of central counterparties for over-the-counter CDS. Between December 2008 and July 2009, the Commission approved temporary exemptions allowing a number of entities to operate as central counterparties for clearing CDS. These central counterparties reduce counterparty risk in the CDS market.

The Administration has requested legislative authority to permit the SEC to require advisers to hedge funds and other private pools of capital to register with the Commission. If enacted, this oversight will better protect U.S. financial markets and enable investors, regulators, and the marketplace to have more complete and meaningful information about private fund advisers, the funds they manage, and their market activities.

### Creation of New Division of Risk, Strategy, and Financial Innovation

In September 2009, the Commission created a new Division of Risk, Strategy, and Financial Innovation. The division combines the Office of Economic Analysis and the Office of Risk Assessment to provide the Commission with sophisticated analysis that integrates economic, financial, and legal disciplines. The new division will focus on strategic and long-term analysis, identifying new developments and trends in financial markets and systemic risk, and recommending ways to adjust Commission policies and practices to adapt to these new developments and trends.

In addition, the Commission created the Industry and Market Fellows Program in order to hire highly seasoned financial experts who will enhance the agency's expertise and perspectives on emerging issues and trends in the securities markets.

### Major Enforcement Cases

The SEC pursued significant cases during FY 2009 that brought lawbreakers to justice, returned money to harmed investors, and sent a clear message of deterrence.

In December 2008, the SEC charged Bernard Madoff with securities fraud for a multibillion dollar Ponzi scheme

he perpetrated on advisory clients of his firm for many years. The SEC filed emergency motions to freeze assets and appoint a receiver, and worked to return as much money as possible to harmed investors. In March 2009, the Commission charged the auditors of Madoff's broker-dealer firm with committing securities fraud by falsely representing that they had conducted legitimate audits. In June, the SEC charged a New York-based broker-dealer and four individuals with securities fraud, alleging that they collectively raised billions of dollars from investors for Madoff's Ponzi scheme. Additionally, the Commission charged Madoff's chief financial officer (CFO), Frank DiPascali, with securities fraud for overseeing the mechanics of Madoff's fictitious investment strategy and creating millions of phony documents and trading records to conceal the fraud from investors and regulators.

In August and September 2009, the SEC's Office of Inspector General (OIG) issued three reports on the Madoff fraud, including one entitled *Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme*. The reports have been closely analyzed by the SEC. Even before the release of these reports, major efforts were underway—as discussed previously in this section—to make improvements and address the shortcomings that were identified in the reports, including insufficient expertise, training, experience, and supervision by management; inadequate internal communication and coordination among and within various SEC divisions; deficiencies in investigative planning and prioritization; failure to follow through on leads; and insufficient resources.

### Credit Crisis-Related Cases

The SEC charged the former CEO of Countrywide Financial and two other former executives with fraud for allegedly misleading investors about the significant risks the company was undertaking. The SEC charged that Countrywide portrayed itself as underwriting mainly prime quality mortgages, while privately describing as “toxic” certain loans it was extending. The SEC's complaint also charged the former CEO with insider trading.

In other mortgage-related cases, the SEC brought actions against former mortgage-lending company executives alleging accounting fraud and making false and misleading disclosures relating to the risk of the mortgages originated and held by the company as the credit crisis began to unfold. The SEC sued registered representatives of a broker-dealer firm for allegedly making false statements in marketing investments in mortgage-backed securities as safe and suitable for retirees and others with conservative investment goals. The SEC also charged a registered investment adviser and its affiliate with overstating the value of a mutual fund that invested primarily in mortgage-backed securities and for selectively disclosing problems with the fund to favored investors, allowing them to bail out early to avoid losses.

In the matter of the Reserve Primary Fund, the SEC charged the managers of the \$62 billion money market fund with allegedly failing to properly disclose to the fund board all material facts relating to the value of the fund's investments in Lehman Brothers, Inc. The Reserve Primary Fund net asset value per share fell below \$1.00, or “broke the buck,” caused in part by investments in Lehman-backed assets. Part of the basis for the SEC's action was to request a pro-rata distribution of assets so that shareholders could have their money distributed to them as quickly and equitably as possible.

### Ponzi Schemes

The SEC investigates and prosecutes many Ponzi scheme cases each year both to prevent new victims from being harmed and to maximize the recovery of assets to investors. The majority of such cases are brought as emergency actions, which seek a temporary restraining order and an asset freeze. During FY 2009, the SEC filed a significantly higher number of enforcement actions involving Ponzi schemes or Ponzi-like payments compared to the previous year.

The Commission charged Robert Allen Stanford and his companies—Antiguan-based Stanford International Bank, Houston-based broker-dealer and investment adviser

Stanford Group Company, and investment adviser Stanford Capital Management—with allegedly conducting an \$8 billion Ponzi scheme. The SEC also charged Leroy King, the administrator and CEO of Antigua's Financial Services Regulatory Commission, with allegedly accepting bribes to ignore the Stanford Ponzi scheme and supply Stanford with confidential information about the SEC's investigation.

### Other Cases

As part of the more than \$50 billion in auction rate securities (ARS) settlements for tens of thousands of investors, the SEC in February announced a settlement that would provide more than \$7 billion in liquidity from Wachovia Securities, LLC to thousands of customers who invested in ARS before the market for those securities collapsed. Other ARS actions announced this year include settled charges against TD Ameritrade for making inaccurate statements when selling ARS to customers, and charges filed against broker-dealer Morgan Keegan & Company, Inc. for allegedly misleading thousands of investors about the liquidity risks associated with ARS.

Working with the New York State Attorney General, the SEC pursued New York's former Deputy Comptroller, a top political adviser, and others for allegedly extracting kickbacks from investment management firms seeking to manage the assets of New York's largest pension fund, the New York State Common Retirement Fund.

The SEC charged a former portfolio manager at hedge fund investment adviser Millennium Partners and a salesman at Deutsche Bank alleging insider trading in the CDS of international holding company VNU. In addition, the SEC filed a civil injunctive action late last year against four individuals for allegedly engaging in a fraudulent scheme to overvalue the commodity derivatives trading portfolio at Bank of Montreal and thereby inflate the bank's publicly reported financial results.

Among the cases of accounting fraud filed by the SEC this year, the Commission charged General Electric (GE) with using improper accounting methods to increase its reported earnings or revenues and avoid reporting

negative financial results. The SEC also charged Terex Corporation with accounting fraud for making material misstatements in its financial reports to investors, as well as aiding and abetting a fraudulent accounting scheme at United Rentals, another public company.

Under authority provided by the Foreign Corrupt Practices Act (FCPA), the Commission this year filed a civil injunctive action charging Siemens AG (Siemens), a Munich, Germany-based manufacturer, with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA. Siemens offered to pay \$350 million in disgorgement to settle the SEC's charges. In total, the company agreed to \$1.6 billion in combined sanctions to simultaneously settle actions brought by the U.S. Department of Justice, the Office of the Prosecutor General in Munich, and the SEC, which is the largest settlement in the history of the FCPA since it became law in 1977.

During FY 2009, the SEC filed numerous insider trading cases. In one case, the Commission charged a former Citigroup investment banker and seven others with allegedly engaging in a widespread insider trading scheme that involved repeated tips about upcoming merger deals. In another case, the SEC charged two mergers and acquisitions professionals at UBS Investment Bank and Blackstone Advisory Services, L.P. with allegedly tipping off five individuals, including a portfolio manager for a Jefferies Group, Inc. hedge fund, with material nonpublic information about three impending corporate acquisitions.

### Disgorgement and Fair Funds

In the Fair Funds provision of the Sarbanes-Oxley Act, Congress granted the SEC increased authority to help harmed investors by allowing both ill-gotten gains and civil money penalties to be distributed to them directly. Previously, only ill-gotten gains could be distributed to investors. The SEC has already returned approximately \$6.6 billion in Disgorgement and Fair Fund distributions to injured investors since the 2002 passage of the Sarbanes-Oxley Act. This important work continued in 2009, as the SEC distributed more than \$2.1 billion to injured investors.

## Investor Protection and Outreach

In 2009, the Commission launched a series of initiatives intended to strengthen investor protection.

The economic crisis has focused renewed attention on the accountability borne by boards of directors for the decisions they make. In May 2009, the Commission proposed a comprehensive series of rule amendments to facilitate the exercise by shareholders of their state law right to nominate directors to the corporate boards of the companies they own. The Commission is continuing to consider whether and how the federal proxy rules may be impeding the ability of shareholders to exercise their fundamental state law rights in this area.

In July 2009, the Commission acted on measures to better inform and empower investors to improve corporate governance and help restore investor confidence. Consistent with congressional legislation, the Commission proposed rules implementing the requirement that public companies receiving money from the Troubled Asset Relief Program provide a shareholder vote on executive pay in their proxy solicitations. The Commission proposed other significant proxy enhancements, including new disclosure requirements regarding board oversight of risk, and the relationship of compensation to risk. The Commission also approved a New York Stock Exchange (NYSE) rule change to prohibit brokers from voting proxies in corporate elections without instructions from their customers.

In May 2009, the Commission proposed rule amendments to substantially increase protections for investors who entrust their money to investment advisers. The proposals are intended to help ensure that investment advisers who have custody of clients' funds and securities are handling those assets properly. The additional safeguards proposed by the SEC would include a yearly "surprise exam" of investment advisers performed by an independent public accountant to verify client assets. In addition, when an adviser or an affiliate directly holds client assets, the adviser or the affiliate must obtain a written report including an opinion of the qualified custodian's controls relating to the custody of client assets

from an accounting firm registered with and inspected by the Public Company Accounting Oversight Board (PCAOB). The proposed rule amendments are designed to strengthen custody requirements and enable independent public accountants to provide an additional check on the safeguards of the assets.

In September, the Commission proposed a rule amendment that would effectively prohibit the practice of "flash-ing" marketable orders. A flash order enables certain market participants with sophisticated trading technology the opportunity to interact with the order for a sub-second period of time before the public is given an opportunity to trade with those orders. The Commission is concerned, among other things, that flash orders may create a "two-tiered" market because only certain market participants can effectively access this valuable market information, as well as that they may erode public price discovery in the markets generally by reducing the incentive to display orders. The proposed amendment would effectively prohibit all markets, including equity exchanges, options exchanges, and alternative trading systems, from using marketable flash orders.

In October, the Commission proposed measures intended to address discrete issues related to liquidity. The growth of dark pools over the past few years has raised concerns that their lack of transparency could lead to a "two-tiered" market that deprives the public of information about stock prices and liquidity. Consequently, the proposals would require that certain information about an investor's interest in buying or selling a stock be made publicly available. In addition, the proposals would require real-time disclosure of the identity of the dark pool that executed the trade.

In addition, the Commission proposed measures intended to curtail "pay-to-play" practices by investment advisers that seek to manage money for state and local governments. The measures are designed to prevent an adviser from making political contributions or hidden payments to influence selection decisions by government officials.

In July, the Commission proposed amendments to SEC Rule 15c2-12 intended to help investors make more

knowledgeable investment decisions regarding municipal securities, effectively manage and monitor their investments, and avoid fraud as well as assist broker-dealers in carrying out their responsibilities under the securities laws. Specifically, the proposed amendments would expand the Rule to cover additional municipal securities, improve disclosure of tax risk, strengthen and expand disclosure of important events, and establish a more specific filing deadline.

In order to give investors a greater voice in the SEC's work, the agency established an Investor Advisory Committee composed of prominent and highly respected members of the retail and institutional investor communities. The Committee has three subcommittees focusing on investor education, investor protection, and shareholder voting and corporate governance. The Committee is tasked with advising the Commission on matters of concern to investors in the securities markets and providing the Commission with information and recommendations regarding its regulatory programs from the point of view of investors.

## **Fair, Efficient, and Effective Markets**

### **Transparency and Accountability at Nationally Recognized Statistical Rating Organizations (NRSROs)**

In September 2009, the Commission took several rule-making actions to bolster oversight of credit rating agencies by enhancing disclosure and improving the quality of credit ratings. The Commission adopted rules to provide greater information concerning ratings performance and requirements to enable competing credit rating agencies to offer unsolicited ratings for structured finance products, by granting them access to the necessary underlying data for structured products. The Commission also adopted amendments to its rules and forms to remove certain references to credit ratings issued by NRSROs.

Another proposal includes new rules that would require enhanced disclosure of information by issuers, including

what a credit rating covers and any material limitations on the scope of the rating and whether any "preliminary ratings" were obtained from other rating agencies—in other words, whether there was "ratings shopping." The SEC also voted to seek public comment on whether to amend Commission rules to subject NRSROs to liability when a rating is used in connection with a registered offering. Other amendments proposed by the Commission would seek to strengthen compliance programs through requiring annual compliance reports and to enhance disclosure of potential sources of revenue-related conflicts.

### **Money Market Fund Regulation**

In June 2009, the Commission proposed rule amendments that would significantly strengthen the regulatory framework for money market funds in order to increase their resilience in times of economic stress and reduce the risks of runs on the funds. The proposals would require money market funds to maintain a portion of their portfolios in highly liquid investments, reduce their exposure to long-term debt, and limit their investments to only the highest quality portfolio securities. The proposals also would require the monthly reporting of portfolio holdings, and permit the suspension of redemptions if a fund "breaks the buck" to allow for the orderly liquidation of fund assets.

### **Study of Fair Value Accounting**

In December 2008, the Commission delivered a report to Congress mandated by the Emergency Economic Stabilization Act of 2008 that recommended against the suspension of fair value accounting standards. In the report, SEC staff recommended improvements to existing practice, including recommendations to continue to focus on the needs of investors in the development of accounting standards and recommendations to the Financial Accounting Standards Board and the International Accounting Standards Board to work together to simplify the accounting for financial instruments.

Among key findings, the staff noted that investors generally believe fair value accounting increases financial

reporting transparency and facilitates better investment decision making. The staff also observed that fair value accounting did not appear to play a meaningful role in the bank failures that occurred in 2008. The staff indicated that bank failures in the United States appeared to be the result of growing probable credit losses, concerns about asset quality, and in certain cases, eroding lender and investor confidence.

### **Target Date Funds**

In June 2009, the Commission and the U.S. Department of Labor (DOL) held a joint hearing examining target date funds, a popular investment vehicle for investors focused on retirement planning. Target date funds allocate their investments among various asset classes and automatically shift that allocation to more conservative investments as a target date for retirement approaches and thereafter. This shift in asset allocation, often referred to as a fund's "glide path," may differ significantly among funds with the same target date. Topics discussed at the joint hearing included issues related to how target date fund managers determine asset allocations and changes to asset allocations over the course of a fund's operation; how they select and monitor underlying investments; how the foregoing and related risks are disclosed to investors; the approaches or factors for comparing and evaluating target date funds; and the utilization of target date funds in defined contribution plans.

### **Mutual Fund Disclosure Reform**

In January 2009, the Commission issued rule amendments to implement an improved mutual fund disclosure framework. The amendments require key information to appear in plain English in a standardized order at the front of the mutual fund prospectus. The amendments

also permit a fund or underwriter to satisfy its prospectus delivery obligations by sending or giving a "summary prospectus" and providing the statutory prospectus and other information on an Internet Web site or, on request, in paper format.

### **SEC and CFTC Joint Meetings**

In September 2009, the SEC and the CFTC hosted joint meetings to discuss harmonization of rules and oversight. The meetings solicited views from members of the investor community, academics, industry experts, and market participants on the current regulatory scheme, harmonization of the agencies' rules, and recommendations for changes to statutes and regulations. In October 2009, the agencies issued a joint report which includes 20 recommendations to enhance enforcement powers, strengthen market and intermediary oversight, and improve operational coordination.

### **Sarbanes-Oxley Study**

In September 2009, the Commission completed a study on implementation of Section 404 of the Sarbanes-Oxley Act. Data were collected through an extensive survey of companies, along with supplemental outreach to investors and other users of financial statements, to evaluate the effectiveness and efficiency of Section 404 and related reforms before non-accelerated filers begin to comply with Section 404(b). The report documents how costs of compliance vary with company size and experience. Costs generally decreased after the Commission's 2007 release of Management Guidance and the PCAOB's adoption of a new audit standard (Auditing Standard 5), and that both companies and investors attribute improvements in the financial reporting processes to compliance with Section 404.



## Financial and Performance Highlights

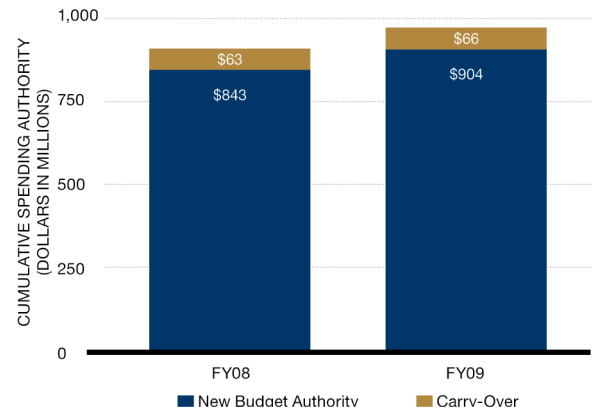
This section provides key financial and performance information for FY 2009. It summarizes the SEC's efforts to manage resources efficiently and responsibly while accomplishing the agency's mission.

In FY 2009, the SEC was authorized by Congress to spend \$970 million, a 7 percent increase over the \$906 million authorized in FY 2008. The funding included \$894 million in offsetting collections, a \$10 million two-year supplemental appropriation issued by Congress to use for investigating securities fraud, and \$66 million of prior years' carry-over of unobligated balances and recoveries from prior year obligations. The SEC's spending authority by source is illustrated in *Chart 1.2, Spending Authority by Source*. Additional discussion can be found in *Note 1.R. Budgets and Budgetary Accounting* on page 73.

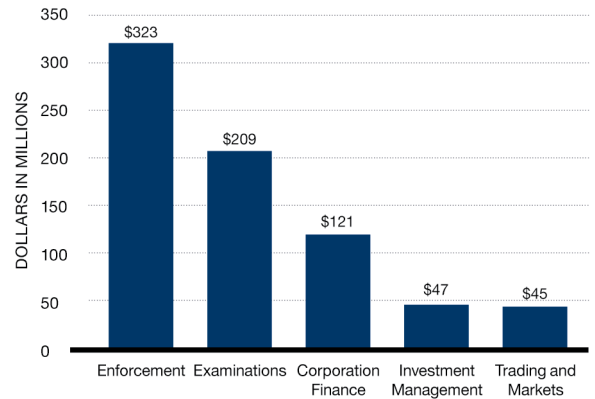
The SEC employed a total of 3,642 FTE in FY 2009. This represents an increase of 131 FTE over FY 2008. The increase in FTE from FY 2008 to FY 2009 is explained in part by a much lower attrition rate. The attrition rate for FY 2009 was 4 percent, down significantly from the FY 2008 rate of about 6 percent.

The agency devoted nearly 55 percent of its FY 2009 funding to the enforcement and examination programs, as shown in *Chart 1.3, Top Programs by Budget*.

**CHART 1.2  
SPENDING AUTHORITY BY SOURCE**



**CHART 1.3  
TOP PROGRAMS BY BUDGET**



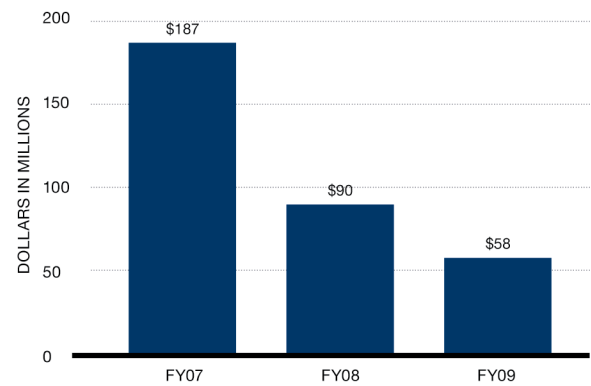
Of the \$960 million authority from offsetting collections, carry-over, and recoveries in FY 2009, approximately \$958 million was obligated during the fiscal year. Rigorous oversight and management of budgetary resources are evidenced by the steady decrease in unobligated balances brought forward, as illustrated in *Chart 1.4, Unobligated Balance, Brought Forward*. As reported on the Statement of Budgetary Resources (SBR) on page 67, in FY 2009 there was a \$32 million decrease on the Unobligated Balance Brought Forward, October 1 line and a \$40 million decrease on the Unobligated Balance Not Available line. Additional discussion can be found in *Note 1.R. Budgets and Budgetary Accounting* on page 73.

In order to meet the FY 2008 offsetting collections target set forth by the Investor and Capital Markets Fee Relief Act, the rates used to calculate the fees collected for securities transactions on the exchanges and certain over-the-counter markets were reduced. The lower fee rates were in effect throughout the first and second quarters of FY 2009 while the SEC operated under a continuing resolution. When the appropriations bill was signed on March 11, 2009, the SEC announced increases in the filing fee rate and the exchange transaction fee rate in order to reach the FY 2009 offsetting collections target. *Chart 1.5, Offsetting Collections vs. New Budget Authority*, presents the budget authority and offsetting collections from FY 2002 through FY 2009.

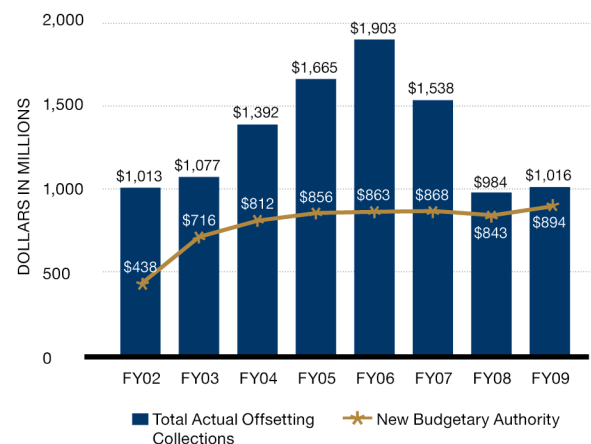
Despite a decrease in the volume of securities transactions on the exchanges between FY 2008 and FY 2009, a substantial rate increase to \$25.70 per million in the third quarter of FY 2009 generated higher Exchange Revenues as seen on the Earned Revenue Not Attributed to Programs line of the Statement of Net Cost (SNC) on page 65 and the Spending Authority from Offsetting Collections Earned and Collected line of the SBR on page 67. While the SEC collected \$32 million more in offsetting collections in FY 2009 as compared to FY 2008, the increased authority of the SEC resulted in a lower amount reported on the Temporarily not Available Pursuant to Public Law line of the SBR on page 67. The higher fee rate also contributed to an increase in accounts receivable reported on the Balance Sheet on page 64.

Additional discussion of the fees collected by the SEC can be found in *Note 1.Q. Revenue and Other Financing Sources* and *Note 14. Exchange Revenues*.

**CHART 1.4**  
**UNOBLIGATED BALANCE, BROUGHT FORWARD**



**CHART 1.5**  
**OFFSETTING COLLECTIONS VS. NEW BUDGET AUTHORITY**



As of September 30, 2009, Total Assets decreased by \$655 million compared to the FY 2008 ending balance, as illustrated in *Chart 1.6, Assets, Liabilities, and Net Position*. There was a corresponding decrease of \$820 million in Total Liabilities and a \$165 million increase in Net Position.

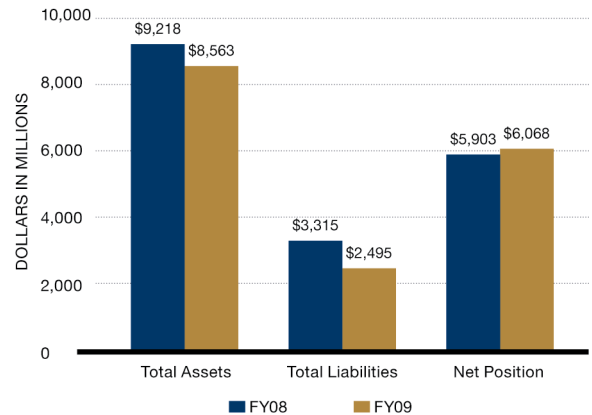
The decrease in Total Assets is largely attributable to the SEC's efforts to accelerate distributions to harmed investors, resulting in a \$1 billion decrease in Investments. Significant distributions during the period of October 1, 2008 through September 30, 2009 were made to harmed investors in relation to cases involving Alliance Capital Management, Bear Stearns & Co., and Millennium Partners. There was a corresponding decrease of \$811 million in the Liability for Disgorgement and Penalties. This was offset by a \$206 million increase in disgorgement and penalties receivable largely as a result of the UBS AG and Real Estate Partners, Inc. cases and a higher collectability on receivables established in FY 2009.

The SEC also had a decrease in registrant deposit account balances compared to FY 2008 which contributed to the decrease in Total Liabilities. Registrant deposit accounts are maintained by the SEC for filers to facilitate the filing process. The funds are drawn down as filings are submitted and filers can replenish their deposit account as desired. The decrease is largely attributed to approximately \$6.6 million from dormant accounts returned to the depositors and \$4.3 million in drawdowns.

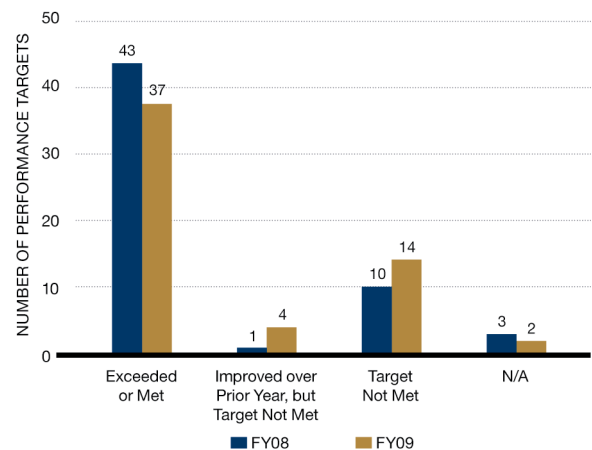
As illustrated on the Statement of Custodial Activity on page 68, the SEC had a large increase in custodial revenue in FY 2009, which was primarily the result of the following settlements: Siemens, a combined case with Halliburton and KBR for violating the FCPA, the E\*Trade settlement for trading violations, and the GE case for accounting fraud. These cases totaled \$611 million, accounting for 98 percent of the increase in custodial collections. The remaining 2 percent is related to collections from smaller cases. Additional disclosure of custodial revenues can be found in *Note 16. Custodial Revenues*.

Due to sustained efforts of SEC staff, about 65 percent of the agency's performance targets were either met or exceeded in FY 2009, as illustrated in *Chart 1.7, Results by Performance Level*. Additional details related to the performance of SEC programs can be found in the *Performance Results Summary* on page 19 and the *Performance Section* beginning on page 27.

**CHART 1.6  
ASSETS, LIABILITIES, AND NET POSITION**



**CHART 1.7  
RESULTS BY PERFORMANCE LEVEL**



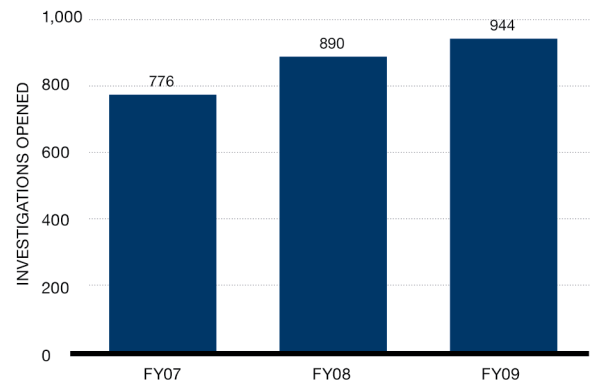
In FY 2009, the Commission removed procedural barriers to the staff's investigative and litigation practices and eliminated a layer of management to put more investigators and attorneys on the front lines. Additionally, in order to keep pace with the complexity of market practices, the division created five national specialized investigative groups comprised of staff with practical trading, market, and other specialized skills. Staff assigned to these specialized units will receive training customized to reflect market developments and particular investigative challenges in those subject areas.

The Enforcement Division's efforts toward specialization and reducing process and administrative burdens in FY 2009 improved investigative planning and execution. In FY 2009, the SEC opened about 6 percent more investigations when compared to FY 2008 and about 22 percent more investigations when compared to FY 2007 (*Chart 1.8, Number of Investigations Opened*).

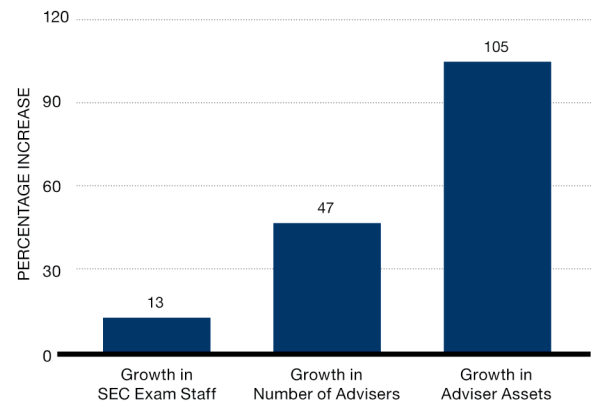
In FY 2009, OCIE instituted a number of significant reforms. In order to strengthen examination procedures and internal controls, OCIE began reviewing its written procedures and internal guidance to make sure it provides clear and consistent practices across the examination program. OCIE placed an emphasis on fraud detection in addition to the program's overall goal of identifying potential violations of specific securities laws and rules, and increased expertise through enhanced training and widespread participation in certified training programs.

In recent years, the number of registered advisers has increased by nearly 50 percent and the assets under management by these advisers have nearly doubled (*Chart 1.9, Percentage of Growth in SEC Adviser/Fund Exam Staff and Registered Advisers, FY03–FY09*). While OCIE staff has not increased proportionally, OCIE continues to target high-risk firms and activities as resources permit. During the past year, OCIE examined the operations, or some portion thereof, of nearly 10 percent of all registered advisers and 30 percent of all registered fund complexes.

**CHART 1.8**  
**NUMBER OF INVESTIGATIONS OPENED**



**CHART 1.9**  
**PERCENTAGE OF GROWTH IN SEC ADVISER/FUND EXAM STAFF AND REGISTERED ADVISERS, FY03–FY09**



# Performance Results Summary

**TABLE 1.1**  
**PERFORMANCE RESULTS SUMMARY**

In FY 2009, the SEC exceeded or met 37 planned performance targets out of 57 for the agency's 35 performance measures. Several of the performance measures are comprised of multiple planned performance targets. A comparison of the SEC's performance results for FY 2008 and FY 2009, organized by goal, is presented in this *Table 1.1*. A discussion of the agency's program achievements and detailed performance results is located in the *Performance Section*.

**Key: Level of Performance Attained**

<b>Exceeded/Met</b> Performance target exceeded or met	<b>Improved</b> Performance improved over prior year, but target not met	<b>Indicator</b> Denotes an indicator; does not have performance targets
<b>Not Met</b> Performance target not met	<b>N/A</b> New performance measure in FY 2008, target was not set or data is not available	

**Goal 1**

**ENFORCE COMPLIANCE WITH THE FEDERAL SECURITIES LAWS**

<b>Performance</b>	
<b>FY 2008</b>	<b>FY 2009</b>

1. Percentage of firms receiving deficiency letters that stated they took or would take corrective action in response to all exam findings	<b>Not Met</b>	<b>Improved</b>
2. Percentage of advisers deemed "high risk" examined during the year	<b>Exceeded/Met</b>	<b>Not Met</b>
3. Percentage of registrant population examined during the year:		
Investment advisers	<b>Exceeded/Met</b>	<b>Exceeded/Met</b>
Investment companies	<b>Exceeded/Met</b>	<b>Exceeded/Met</b>
Broker-dealers (exams by SEC and SROs)	<b>Exceeded/Met</b>	<b>Not Met</b>
4. Percentage of (non-sweep) exams that are concluded within 120 days	<b>Not Met</b>	<b>Not Met</b>
5. Percentage of attendees at CCO outreach that rated the program as "Useful" or "Extremely Useful" in their compliance efforts	<b>Exceeded/Met</b>	<b>Not Met</b>
6. Percentage of exams with "significant" findings	<b>Indicator</b>	<b>Indicator</b>
7. Percentage of first enforcement cases filed within two years	<b>Exceeded/Met</b>	<b>Exceeded/Met</b>
8. Maintaining an effective distribution of cases across core enforcement areas	<b>Exceeded/Met</b>	<b>Exceeded/Met</b>
9. Percentage of enforcement cases successfully resolved	<b>Exceeded/Met</b>	<b>Exceeded/Met</b>
10. Percentage of debts where either a payment has been made, or a collection activity has been initiated within six months of the due date of the debt	<b>Exceeded/Met</b>	<b>Exceeded/Met</b>
11. Percentage of Fair Funds and disgorgement dollars designated for distribution that are distributed to investors within 12 months	<b>N/A</b>	<b>N/A</b>
12. Volume of enforcement activity: investigations opened, cases filed, and investigations closed	<b>Indicator</b>	<b>Indicator</b>
13. Assets frozen abroad in SEC cases through coordination with foreign regulators	<b>Indicator</b>	<b>Indicator</b>

**Goal 2**

**PROMOTE HEALTHY CAPITAL MARKETS THROUGH AN EFFECTIVE AND FLEXIBLE REGULATORY ENVIRONMENT**

14. Percentage of SRO rule filings closed in less than 60 days from filing	<b>Exceeded/Met</b>	<b>Exceeded/Met</b>
15. Average daily share volume (in billions of shares) on the NYSE and Nasdaq exchanges:		
NYSE	<b>Not Met</b>	<b>Exceeded/Met</b>
Nasdaq	<b>Exceeded/Met</b>	<b>Not Met</b>
16. Percentage of transaction dollars settled on time each year	<b>Exceeded/Met</b>	<b>Exceeded/Met</b>
17. Percentage of market outages at SROs and ECNs that are corrected within targeted timeframes:		
Within 2 hours	<b>Exceeded/Met</b>	<b>Exceeded/Met</b>
Within 4 hours	<b>Exceeded/Met</b>	<b>Exceeded/Met</b>
Within 24 hours	<b>Exceeded/Met</b>	<b>Exceeded/Met</b>
18. Equity portfolio holdings of U.S. investment companies as a percentage of total U.S. stock market capitalization	<b>Exceeded/Met</b>	<b>Exceeded/Met</b>
19. Number of new foreign private issuers and dollar amount of registered securities	<b>Indicator</b>	<b>Indicator</b>

**TABLE 1.1**  
**PERFORMANCE RESULTS SUMMARY** (continued)

**Goal 2** (continued)

PROMOTE HEALTHY CAPITAL MARKETS THROUGH AN EFFECTIVE AND FLEXIBLE REGULATORY ENVIRONMENT

**Performance**  
FY 2008 FY 2009

20. Percentage of regulated entities representing a single point of failure that meet the continuity of operations standards of the White Paper, the Policy Statement, and the Automated Review Program:		
White Paper analysis	Exceeded/Met	Exceeded/Met
Policy Statement analysis	Not Met	Not Met
21. Timeliness of SEC responses to written no-action letter, exemptive applications, and interpretive requests:		
Trading and Markets: No-action letter, exemptive, and interpretive requests (combined figure)	Not Met	Exceeded/Met
Investment Management: No-action letter and interpretive requests	Exceeded/Met	Exceeded/Met
Investment Management: Exemptive applications	Exceeded/Met	Exceeded/Met
Corporation Finance: No-action letter and interpretive requests	Not Met	Improved
Corporation Finance: Shareholder proposals	Exceeded/Met	Exceeded/Met
22. Percentage of U.S. households owning mutual fund shares	Exceeded/Met	Exceeded/Met
23. Percentage of U.S. households investing in the securities market either through direct share ownership or ownership of mutual funds	Not Met	N/A
24. Mutual fund share of total retirement assets	Exceeded/Met	Exceeded/Met

**Goal 3**

FOSTER INFORMED INVESTMENT DECISION MAKING

25. Percentage of Exchange Act reporting companies reviewed by the SEC:		
Corporations	Exceeded/Met	Exceeded/Met
Investment company portfolios	Exceeded/Met	Exceeded/Met
26. Average time to issue initial comments on Securities Act filings	Exceeded/Met	Exceeded/Met
27. Percentage of investment company disclosure reviews for which initial comments are completed within timeliness goals:		
Initial registration statements	Exceeded/Met	Exceeded/Met
Post-effective amendments	Exceeded/Met	Exceeded/Met
Preliminary proxy statements	Exceeded/Met	Exceeded/Met
28. Percentage of forms and submissions filed electronically and in a structured format:		
Forms: Total percentage in electronic format	Exceeded/Met	Not Met
Filings received: Total percentage in electronic format	Exceeded/Met	Exceeded/Met
29. Number of searches for filings on www.sec.gov	Not Met	Exceeded/Met
30. Demand for investor education information, and average cost per thousand investors reached:		
Total number of investors reached (in millions, with Web visits)	N/A	Exceeded/Met
Average cost per thousand investors reached (with Web visits)	N/A	Exceeded/Met
31. Percentage of investor complaints and inquiries completed within 7 and 30 business days:		
Closed within 7 days	Exceeded/Met	Not Met
Closed within 30 days	Exceeded/Met	Not Met
32. Investor assistance and public information telephone inquiries:		
Investor assistance	Exceeded/Met	Not Met
Public information	Exceeded/Met	Not Met
33. Responses to Freedom of Information Act requests	Exceeded/Met	Exceeded/Met

**TABLE 1.1**  
**PERFORMANCE RESULTS SUMMARY** *(continued)*

<b>Goal 4</b> MAXIMIZE THE USE OF SEC RESOURCES	<b>Performance</b>	
	<b>FY 2008</b>	<b>FY 2009</b>
34. Staff turnover rate	Exceeded/Met	Exceeded/Met
35. Maintain a top five ranking among the Best Places to Work in Government	Exceeded/Met	Not Met
36. Percentage of the time that www.sec.gov and EDGAR are operable:		
www.sec.gov	Exceeded/Met	Exceeded/Met
EDGAR	Exceeded/Met	Exceeded/Met
37. Number of OIG and GAO information security-related recommendations outstanding for more than 18 months:		
GAO recommendations	Improved	Improved
OIG recommendations	Exceeded/Met	Exceeded/Met
38. Percentage of major systems that have been certified and accredited, and given a privacy impact assessment, within required timeframes:		
Major systems certified and accredited	Not Met	Exceeded/Met
Major systems with privacy impact assessment completed	Not Met	Improved
39. Financial audit results:		
Unqualified opinion	Exceeded/Met	Exceeded/Met
Material weaknesses	Exceeded/Met	Not Met
Significant deficiency	Exceeded/Met	Not Met

## Chairman's Assurance Statement

The management of the SEC is responsible for establishing and maintaining effective internal control and financial management systems that meet the objectives of the Federal Managers' Financial Integrity Act of 1982 (FMFIA). Internal control is an integral component of the agency's management that provides reasonable assurance that the following objectives are being achieved: effectiveness and efficiency of operations, reliability of financial reporting, and compliance with laws and regulations. The SEC is able to provide a qualified statement of assurance that the internal controls and financial management systems meet the objectives of FMFIA, with the exception of a material weakness resulting from an aggregation of significant deficiencies related to information systems and related financial reporting controls.

The SEC conducted its evaluation of internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations in accordance with the Office of Management and Budget (OMB) Circular No. A-123, *Management's Responsibility for Internal Control*. Based on the results of this evaluation, the SEC identified a material weakness resulting from an aggregation of significant deficiencies related to information systems security and controls and related financial reporting controls. Other than the exception noted, the internal controls were operating effectively and no other material weaknesses were found in the design or operation of the internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations as of September 30, 2009.

The SEC's internal control over financial reporting is a process effected by those charged with governance, management, and other personnel, the objectives of which are to provide reasonable assurance that (1) transactions are properly recorded, processed, and summarized to permit the preparation of financial statements in accordance with U.S. generally accepted accounting principles (GAAP), and assets are safeguarded against loss from unauthorized acquisition, use, or disposition; and (2) transactions are executed in accordance with the laws governing the use of budget authority and other laws and regulations that could have a direct and material effect on the financial statements.

SEC management is responsible for establishing and maintaining effective internal control over financial reporting. SEC management evaluated the effectiveness of the SEC's internal control over financial reporting as of September 30, 2009, based on the criteria established under the FMFIA. Based on the results of this evaluation, the SEC identified a material weakness resulting from an aggregation of significant deficiencies related to information systems and related financial reporting controls. Because of this material weakness, SEC management concludes that the agency's internal controls over financial reporting were not effective as of September 30, 2009.



Mary Schapiro

Chairman

November 16, 2009



## Management Assurances

### Federal Managers' Financial Integrity Act

The FMFIA is implemented by OMB Circular No. A-123, revised, *Management's Responsibility for Internal Control*.

**Section 2 of the FMFIA** requires federal agencies to report, on the basis of annual assessments, any material weaknesses that have been identified in connection with its internal and administrative controls. The reviews that took place during FY 2009 provide qualified assurance that SEC systems and management controls comply with the requirements of the FMFIA, with the exception of a material weakness in internal control over information systems and related financial reporting controls.

**Section 4 of the FMFIA** requires that agencies annually evaluate and report on whether financial management systems conform to government-wide requirements. The SEC evaluated its financial management systems for the fiscal year ending September 30, 2009, in accordance with the Federal Financial Management Improvement Act of 1996 (FFMIA) and OMB Circular No. A-127, *Financial Management Systems*, as applicable.

The SEC conducted its annual assessment of the effectiveness of internal control in accordance with the requirements of OMB Circular No. A-123. The agency completed the Internal Control Evaluation Checklist, which was based on the *GAO-01-1008G Internal Control Management and Evaluation Tool*, to evaluate controls and structure the support for providing assurance. In accordance with guidance issued by the SEC's Office of the Executive Director and the Office of the Chief Financial Officer, 33 directors and office heads conducted reviews of their financial, administrative, and program management controls in FY 2009. This process ensures comprehensive coverage of SEC offices.

Each director and office head provided an assurance statement identifying management challenges. These statements were based on information gathered from various sources, including, among other things:

- Management's personal knowledge gained from the daily operation of the office;
- Internal management reviews, self-assessments, and tests of internal controls;
- Completion of the Internal Control Evaluation Checklist;
- Government Accountability Office (GAO) and OIG reports;
- Annual performance plans and reports;
- Reports and other information from Congress or OMB; and
- Additional reviews relating to the office's operations, including those discussed in the *Other Reviews* section below.

Each year, the agency's Financial Management Oversight Committee (FMOC) evaluates the FMFIA Section 2 and 4 submissions, recommendations from OIG, and other supplemental sources of information. Based on this review, the FMOC advises the Chairman as to whether the SEC had any internal control or system design deficiencies serious enough to be reported as a material weakness or non-conformance.

### Review of Internal Control Over Financial Reporting

Management reviewed internal control over financial reporting from a top-down, risk-based approach. Material financial statement line items and business processes relevant to the line items were mapped to the relevant controls. The following elements were documented in this risk and control matrix for each business process area: high-level key risks; financial reporting assertions; safeguarding of assets and compliance with laws and regulations; control objectives and activity; key and secondary controls; and frequency of controls.

### Other Reviews

Also during the year, the Office of Information Technology (OIT) in conjunction with system owners, completed certification and accreditation activities for 20 reportable systems in FY 2009. As a result, the SEC has now certified and accredited a total of 50 reportable systems in

accordance with the appropriate guidance from OMB and the National Institute of Standards and Technology. OIT also completed contingency testing on the majority of the SEC's accredited systems in conjunction with several of its disaster recovery exercises.

Finally, GAO audited the SEC's financial statements. The objective of GAO's audit was to express an opinion on the financial statements and on internal control over financial reporting, and report on tests of compliance with selected laws and regulations.

### Status of Internal Control Over Financial Reporting

During the SEC's assessment of the effectiveness of its internal controls, management identified six significant deficiencies, which in the aggregate were deemed to represent a material weakness over information systems and related financial controls. The audit standards for federal agencies established by GAO define "material weakness" as a significant control deficiency or aggregation of deficiencies that result in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected. Although none of the significant deficiencies identified were determined to present a risk of a material misstatement individually, the SEC considered the combination of the following control deficiencies to collectively constitute a material weakness:

- **Information security and control:** The SEC has not fully implemented adequate controls to ensure integrity and reliability of the data within its financial systems and financial sub-processes. Management assessment of control deficiencies identified weaknesses in system security: access control, segregation of duties, and configuration management.
- **Financial reporting processes:** Due to limitations of its financial systems, the SEC is heavily dependent on manual processes that are inherently inefficient and more susceptible to human error, increasing the possibility that controls will not be effective. Lack of integration between several automated systems requires extensive compensating controls

and labor-intensive accounting procedures, which complicates review of financial data and increases the risk of error.

- **Accounting for budgetary resources:** Software problems identified in the general ledger system required making adjusting journal entries that elevate the risk of misstatement. Additionally, insufficient documentation was provided of authorization of downward adjustments to obligations.
- **Risk assessment and monitoring process:** The SEC's formal process to evaluate the effectiveness of its internal control environment, implemented for the first time this year, was not as comprehensive as it should be with respect to identification of risk or evaluation of the adequacy of controls.
- **Liability for registrant deposits:** The SEC identified design deficiencies in the sub-system that maintains information related to registrant deposits and filing fee revenue. These deficiencies impede a correct accounting of a registrant's deposits across multiple filing types, resulting in the need to implement manual controls. After review this year, the controls designed to compensate for system deficiencies were not deemed effective.
- **Reconciliation of Fund Balance with Treasury:** Certain reconciliations were not performed consistently and differences were not resolved, or documented, in a timely manner.

### Corrective Action Planned

The SEC has already begun to develop a remediation plan; some deficiencies are likely to be resolved during the first half of FY 2010, while others—which have been the result of long-term and growing constraints affecting our information technology and human resources—will take longer to fully resolve. Moving toward the full integration of core and subsidiary financial systems will be a critical component of the corrective action to be taken in the coming year. The agency will move forward on the design and implementation of improvements to financial and mixed systems to

address lack of automated control. The design deficiencies in SEC systems used to record filing fee revenue and manage registrant deposits will be of particular focus.

Action will also be taken to tighten controls and improve functionality and efficiency in existing financial system components. The remediation plan will include actions to improve access control, segregation of duties, and configuration management. The SEC has begun the process of defining security roles in the core financial system and developing implementation guidelines for separating incompatible functions to ensure proper segregation of duties and monitoring. Early in FY 2010, the SEC will revisit the configuration management issues relative to database logging or otherwise providing an audit trail of security events within the core financial system to ensure that only authorized changes are made to production.

The SEC also intends to significantly enhance its risk assessment and control monitoring processes. The agency expects to retain an independent outside expert to assist in this important endeavor.

### **Financial Management System Conformance**

The FFMIA requires that each agency shall implement and maintain financial management systems that comply substantially with federal financial management systems requirements, applicable federal accounting standards, and the U.S. Standard General Ledger at the transaction level. The purpose of the FFMIA is to advance federal financial management by ensuring that financial management systems provide accurate, reliable, and timely financial management information. Although the SEC is exempt from the requirement to determine substantial compliance with FFMIA, the agency assesses its financial management systems annually for conformance with the requirements of OMB Circular A-127 and other federal financial system requirements.

The process used by the SEC changed significantly this year due to the January 9, 2009, revision of OMB Circular

A-127, including a new FFMIA risk model, which ranks risks from nominal to significant. Although the circular's revision is not effective until October 1, 2009, early implementation was encouraged, and the SEC has elected to implement the new requirements in FY 2009. Based on the results of the review, the SEC can provide qualified assurance that its financial management systems substantially conform with federal financial management system requirements except for the internal control finding reported under Section 2 of FFMIA discussed above.

### **Federal Information Security Management Act (FISMA)**

FISMA requires federal agencies to conduct annual assessments of their information technology security and privacy programs, to develop and implement remediation efforts for identified weaknesses and vulnerabilities, and to report compliance to OMB. As of this writing, the SEC's Inspector General (IG), Chief Information Officer, and Privacy Officer are performing a joint review of the agency's compliance with FISMA requirements during 2009, and will submit the report to OMB on November 18, 2009, as required.

During the year, additional steps were taken to enhance the overall information security and privacy programs at the SEC, including additional reviews at regional offices, as well as improving policies and procedures related to information management; conducting a privacy review of 20 new systems, for a total 60 systems; and revising several privacy-related policies and procedures in accordance with requirements to reflect the importance of protecting personally identifiable information. The agency strengthened a range of technical, management, and operational controls by deploying a new intrusion detection system; redesigning and implementing new infrastructure; reviewing system access and audit logs; improving change management policies and procedures; and enhancing database security features.

## Limitations of the Financial Statements

The principal financial statements included in this report have been prepared to report the financial position and results of operations of the SEC, pursuant to the requirements of 31 U.S.C. 3515(b). While the statements have been prepared from the books and records of the SEC in accordance with GAAP for federal entities and the formats prescribed by OMB, the statements are in addition to the financial reports used to monitor and control budgetary resources, which are prepared from the same books and records. The statements should be read with the understanding that they are for a component of the U.S. Government, a sovereign entity.

## Performance Section

This section provides performance information for each of the SEC's four strategic goals: (1) enforce compliance with federal securities laws, (2) promote healthy capital markets through an effective and flexible regulatory environment, (3) foster informed investment decision making, and (4) maximize the use of SEC resources. Through various program initiatives, the SEC strives to achieve its mission by meeting performance targets. Throughout the year, the performance results are analyzed to determine the success of program activities.

Organized by strategic goal, the following section discusses FY 2009 program achievements and progress toward reaching planned performance levels. For each performance measure, this section presents the actual performance level achieved, analysis of the performance results, and, when applicable, plans for improving performance. The end of the section discusses program assessments and evaluations conducted in FY 2009.

## Performance Results by Strategic Goal

In FY 2009, the SEC expended more than \$980 million to achieve its goals of enforcing compliance with the federal securities laws, promoting healthy capital markets, fostering informed investment decision making, and maximizing the use of agency resources. Overall, the agency exceeded or met about 65 percent of its planned performance levels. See *Performance Results Summary Table 1.1* in *Management's Discussion and Analysis*.

The *Performance Section* is organized by strategic goal. Each strategic goal chapter opens by reviewing the purpose of the goal, followed by a general discussion of program performance for FY 2009. Each strategic goal

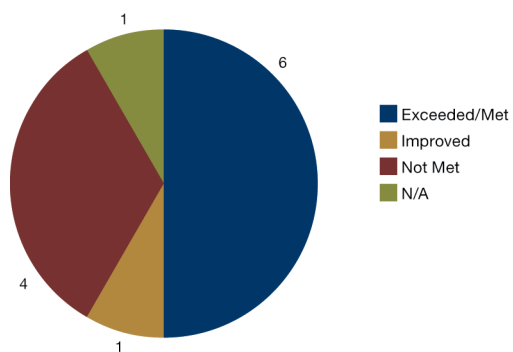
chapter also includes a presentation of performance measures comparing planned and actual performance levels for FY 2009 and four years of historical data, where available. A plan for improving program performance is included for measures where non-achievement was significant.

The performance indicators do not include planned performance targets, but instead provide useful information for understanding the agency's activities. For some indicators, no targets are included because it would be inappropriate for the agency to conduct certain activities with an eye towards hitting predetermined targets.

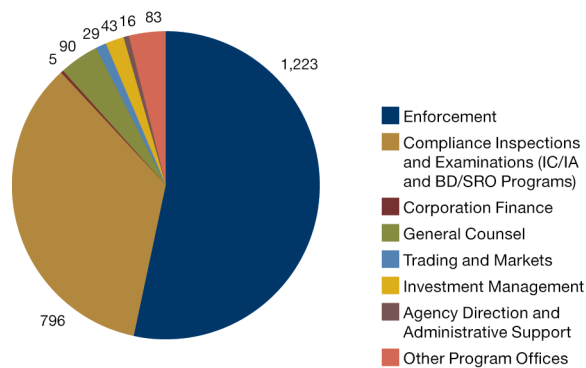
### Goal 1: Enforce Compliance with Federal Securities Laws

In enforcing compliance with federal securities laws, the SEC focused on detecting potential problems or issues in the securities markets, preventing violations of securities laws, and sanctioning violators. In FY 2009, 2,275 FTE were directed at achieving results in Goal 1, with the agency exceeding or meeting six of 12 planned performance targets.

**CHART 2.1**  
FY 2009 PERFORMANCE RESULTS



**CHART 2.2**  
FY 2009 FTE BY PROGRAM



### Program Achievements

In FY 2009, under the direction of Chairman Schapiro, OCIE began instituting several significant reforms that are reshaping the examination program. Changes in the program include, for example, vastly expanding training programs to bolster staff knowledge of fraud detection techniques,

hiring staff with specialized industry-related skill sets, and improving risk-assessment techniques. Staff also placed an increased emphasis on fraud detection by implementing a number of new examination protocols and procedures, and further strengthened procedures and internal controls to better ensure that exam practices addressed areas of high risk.

OCIE's risk-based program is designed to focus the SEC's resources on those firms and practices that have the greatest potential risk of securities law violations that can harm investors. In response to market turmoil and the effect of the massive fraud perpetrated by the Madoff scheme, the SEC implemented significant improvements to its surveillance efforts. As a result of improved risk-based processes that OCIE developed in FY 2009 for selecting firms and activities for examination, there was a significant increase in the number of firms identified with high-risk characteristics or profiles.

The substantial increase in high-risk advisers as well as more rigorous examination procedures instituted during the year made it difficult for staff to meet the 33 percent target review rate of high-risk advisers (*Goal 1, Measure 2*). Furthermore, in FY 2009, new protocols were implemented to verify the existence of client/customer assets, and staff responded to an increased amount of tips, complaints, and referrals that resulted in a large number of cause exams. These factors made it difficult for staff to complete at least 80 percent of examinations within 120 days (*Goal 1, Measure 4*).

While it is likely that examinations will continue to take longer to complete in the future due to newly implemented examination protocols and associated training requirements, the SEC will continue to focus its resources on those firms and activities presenting the most risk to investors. In FY 2009, OCIE exceeded its targets for examinations of registered investment advisers and investment companies, resulting in part from sweep exams of money market funds at investment company complexes (*Goal 1, Measure 3*). Additionally, registrants continued to use the examination results and other information from OCIE to improve their operations. Of the firms notified of deficiencies in their records, books, or other aspects of their operations in FY 2009, 94 percent took action or stated they would take action to correct the problems and prevent them from recurring (*Goal 1, Measure 1*).

In FY 2009, the SEC filed 70 percent of first enforcement actions within two years of opening an investigation or inquiry, an 8 percentage point increase over FY

2008 (*Goal 1, Measure 6*). The improvement was due in part to a series of initiatives that enabled enforcement staff to move more decisively against alleged securities law violators. Prosecuting securities offerings violations has become an increasingly visible and important part of restoring investor confidence in the securities markets. While financial disclosure cases continued to be the largest category of cases filed, securities offerings cases were a significantly higher proportion of the caseload in FY 2009 due to the large number of Ponzi schemes and other offering frauds detected during the market crisis (*Goal 1, Measure 7*).

The SEC successfully resolved 92 percent of its cases in FY 2009, continuing a multiyear trend of success rates in excess of 90 percent (*Goal 1, Measure 8*). Overall, the number of investigations opened in FY 2009 was about 6 percent higher than the prior year due to a comprehensive review of the agency's internal procedures to improve the way the agency handles tips, complaints, and referrals received each year. The Division of Enforcement also focused its resources on completing a number of outstanding investigations, closing 716 investigations in FY 2009 (*Goal 1, Indicator 2*).

The SEC has returned more than \$6.6 billion to harmed investors since the 2002 passage of the Sarbanes-Oxley Act. Under the Sarbanes-Oxley Act, the SEC can redirect penalties collected from securities law violators to the victims of their wrongdoing. In FY 2009, the SEC began the distribution of \$843 million to more than 257,000 harmed investors in the American International Group, Inc. (AIG) Fair Fund. Throughout the year, the SEC focused on collecting penalties and disgorgements ordered as quickly as possible to compensate harmed investors for their losses (*Goal 1, Measure 9*).

In FY 2009, the Office of International Affairs, in conjunction with the Division of Enforcement, successfully engaged foreign counterparts in over a dozen jurisdictions and obtained asset freezes totaling \$325.9 million (*Goal 1, Indicator 3*). The significant increase in the FY 2009 assets frozen abroad is largely attributable to the agency's efforts in the case *SEC v. Stanford International Bank, Ltd., et al.*

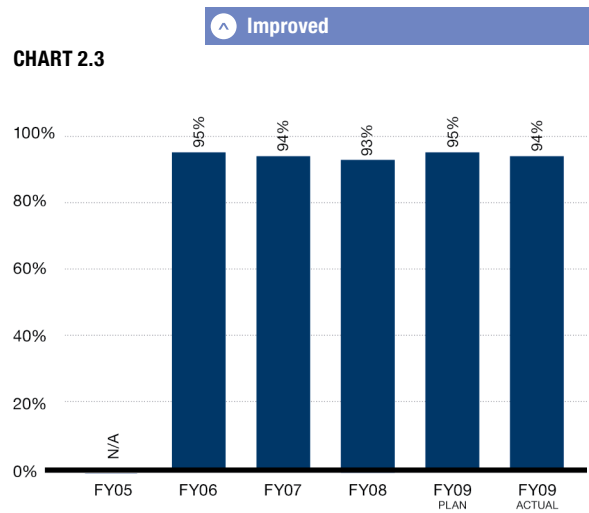
## Goal 1: Measure 1

### Percentage of firms receiving deficiency letters that stated they took or would take corrective action in response to all exam findings

OFFICE OF COMPLIANCE INSPECTIONS AND EXAMINATIONS

**Description:** At the conclusion of examinations, the staff communicates identified deficiencies to registrants in the form of a deficiency letter. Registrants are then given a chance to respond to staff findings and often take action to remedy any problems and potential risks. Most often, registrants respond that they have corrected the deficiencies and implemented measures to ensure that they do not recur. FY 2005 data are not available.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** During examinations in FY 2009, the staff reviewed a variety of books and records, and identified areas where firms appeared not to be in compliance with federal securities laws. In response to examinations that identified deficiencies, the vast majority of registrants have continued to state they had taken or would take remedial action. The performance goal was set at an approximate target level, and the deviation from that level is slight. There was no effect on overall program or activity performance.



## Goal 1: Measure 2

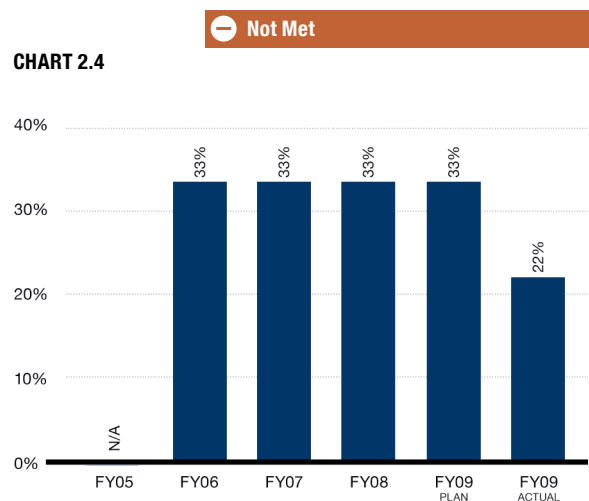
### Percentage of advisers deemed “high risk” examined during the year

OFFICE OF COMPLIANCE INSPECTIONS AND EXAMINATIONS

**Description:** To conduct oversight of investment advisers, the staff conducts a risk-based program of examinations. Advisers are identified as high risk at the beginning of every fiscal year, and then inspections are planned on a cyclical basis. The staff’s goal is to inspect high-risk advisers at least once every three years. FY 2005 data are not available.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** The SEC focuses its resources on those firms and activities presenting the most risk to investors. In FY 2009, as a result of improved risk-based processes that OCIE developed, there was a significant increase in the number of firms identified as high risk. In addition, OCIE introduced more rigorous exam procedures, improved its surveillance techniques, and enhanced staff training. These factors impacted the time it took to complete examinations and the overall number of examinations completed, resulting in the examination of 22 percent of firms identified as high risk at the beginning of the fiscal year.

**Plan for Improving Program Performance:** The staff will continue to focus its resources on those firms and activities presenting the most risk to investors. As additional resources and risk tools become available, we will continue to assess appropriate examination targets and will strive to increase this percentage in future years.





### Goal 1: Measure 3

#### Percentage of registrant population examined during the year

OFFICE OF COMPLIANCE INSPECTIONS AND EXAMINATIONS

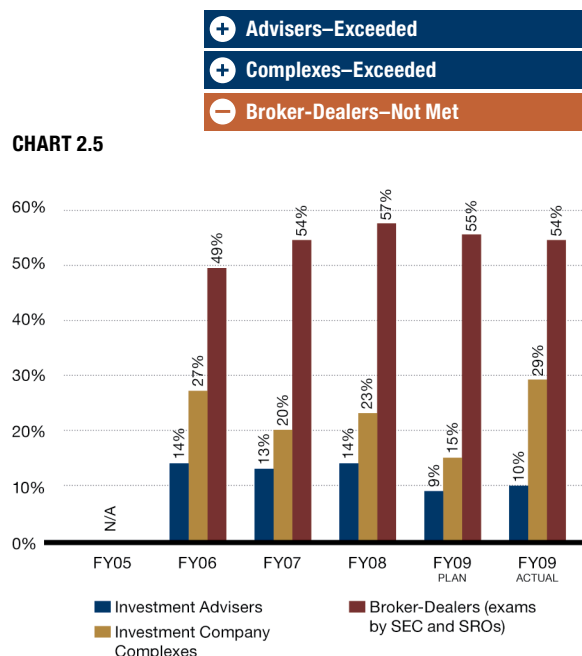
**Description:** This measure indicates the number of registrants examined by the SEC or a self-regulatory organization (SRO) as a percentage of the total number of registrants. This measure includes all types of examinations: routine examinations, cause inspections to follow up on tips and complaints, limited-scope special inspections to probe emerging risk areas, oversight examinations of broker-dealers to test compliance and the quality of the SROs' inspections, and examinations by the Financial Industry Regulatory Authority (FINRA) of broker-dealer firms. FY 2005 data are not available.

#### Analysis of FY 2009 Plan vs. Actual Level of Performance

**Investment advisers:** In FY 2009, the percentage of investment advisers examined was slightly higher than planned. This was due, in part, to the number of targeted risk assessment verification reviews that were completed during the year.

**Investment company complexes:** In FY 2009, the percentage of investment company complexes examined was higher than planned. This was primarily due to the completion of a large-scale risk-targeted examination sweep of money market fund complexes. This examination sweep was a result of the troubled conditions in the credit markets in FY 2008, specifically those faced by money market funds.

**Broker-dealers (exams by SEC and SROs):** In FY 2009, 54 percent of broker-dealers were examined, slightly lower than planned. The performance goal was set at an approximate target level, and the deviation from that level is slight. There was no effect on overall program or activity performance.



## Goal 1: Measure 4

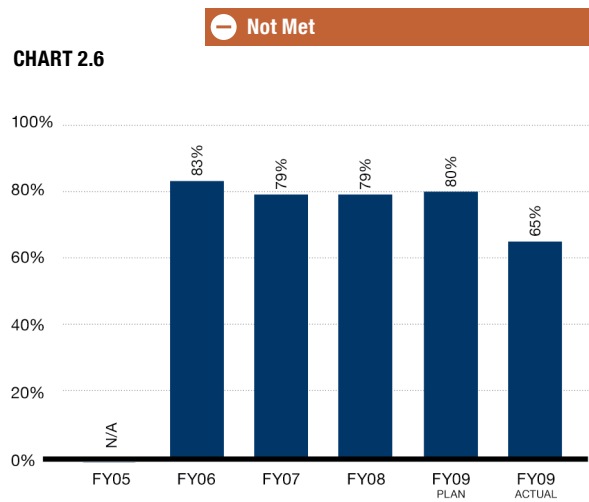
### Percentage of (non-sweep) exams that are concluded within 120 days

#### OFFICE OF COMPLIANCE INSPECTIONS AND EXAMINATIONS

**Description:** The staff conducts thousands of examinations each year of investment advisers, investment company complexes, transfer agents, and broker-dealers. The staff strives to complete its examinations in the most efficient and effective manner. When possible, the staff attempts to conclude its examinations within 120 days of the end of any field work completed. FY 2005 data are not available.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** The SEC strives to identify and communicate potential issues to firms to help ensure that compliance problems and issues are corrected quickly. In FY 2009, OCIE implemented new examination protocols and procedures to help ensure the highest level of investor protection. The new procedures carried out during many examinations increased the amount of time spent by staff on each exam. Additionally, staff spent a significant amount of time on general training and training in relation to specific examination protocols. Therefore, in FY 2009, staff completed only 65 percent of (non-sweep) examinations within 120 days.

**Plan for Improving Program Performance:** Staff will continue to focus its resources on those firms and activities presenting the most risk to investors. These examinations generally require significant staff time and resources. Additionally, it is likely that examinations will take longer to complete in the future due to newly implemented examination protocols. While future targets might need to be adjusted downward to reflect time spent on new examination protocols, staff will strive to increase the percentage of exams completed within 120 days.



### Goal 1: Measure 5

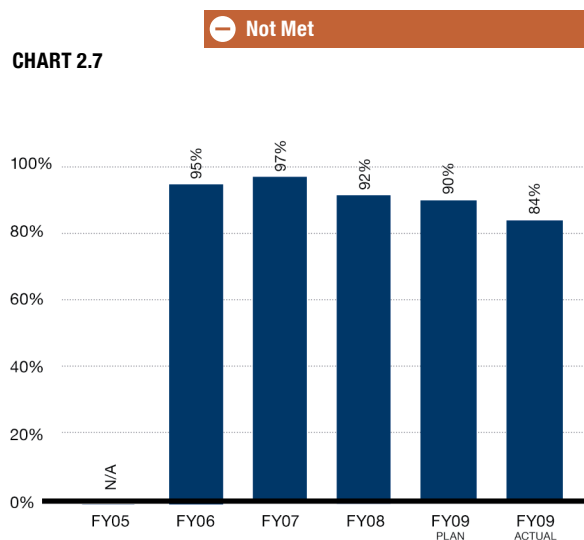
#### Percentage of attendees at *CCOutreach* that rated the program as “Useful” or “Extremely Useful” in their compliance efforts

OFFICE OF COMPLIANCE INSPECTIONS AND EXAMINATIONS

**Description:** The *CCOutreach* program consists of several components that are designed to educate, inform, and alert chief compliance officers (CCOs) of pertinent information, including effective compliance controls, that may assist them in administering compliance programs within registered firms. Improving compliance programs will reduce violative activity, resulting in increased protection for investors. At the conclusion of all *CCOutreach* events in which CCOs participate, CCOs are given the opportunity to rate the usefulness of the information provided in assisting them in their compliance efforts. FY 2005 data are not available.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** During FY 2009, staff devoted a significant amount of time to the *CCOutreach* program in order to make it as relevant and beneficial as possible for registered entities. Overall, the SEC is pleased that the overwhelming majority of attendees continue to find these sessions to be useful.

**Plan for Improving Program Performance:** The SEC will strive to improve the *CCOutreach* program so that CCOs continue to learn about common deficiencies and weaknesses that SEC examiners find during compliance examinations.



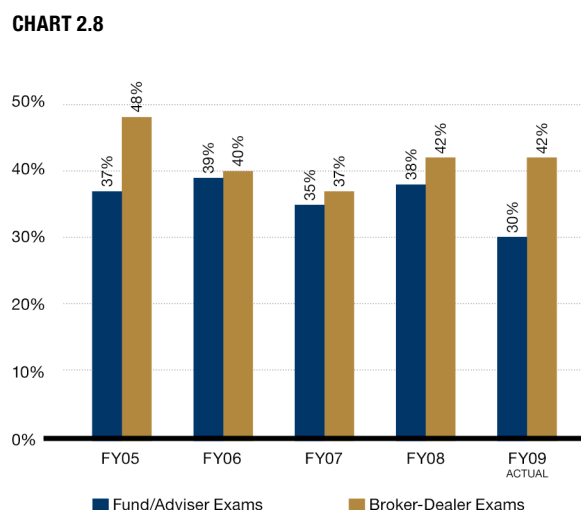
### Goal 1: Indicator 1

#### Percentage of exams with “significant” findings

OFFICE OF COMPLIANCE INSPECTIONS AND EXAMINATIONS

**Description:** Examiners find a wide range of deficiencies during examinations. Some of these deficiencies are more technical in nature, such as apparently failing to include all information that is required to be in a record. Other deficiencies may cause harm to customers or clients of a firm, have a high potential to cause harm, or reflect recidivist misconduct. The latter deficiencies are among those categorized as “significant.” This indicator was implemented in FY 2005 and the staff expects to continue to refine the factors that are used to measure the significance of examination findings. This indicator is useful for understanding the SEC’s activities, but should not be considered a performance measure and does not include a target that the agency will strive to reach in future years.

**Discussion:** Examiners continued to use risk-assessment techniques to focus examinations on areas most likely to reveal significant compliance issues. Due to a high number of exams conducted in FY 2009 that were limited in scope (e.g., money market exams), the overall percentage of exams with “significant” findings was lower than in FY 2008. In FY 2009, 30 percent of fund/adviser exams and 42 percent of broker-dealer exams identified significant findings. Differences in percentages are expected from year to year, primarily due to the types of examinations conducted and the nature of the findings in a given year.



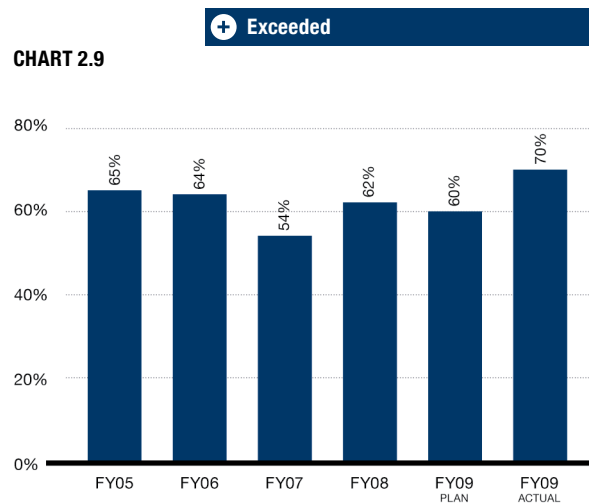
## Goal 1: Measure 6

### Percentage of first enforcement cases filed within two years

DIVISION OF ENFORCEMENT

**Description:** This measure identifies the percentage of first enforcement actions filed within two years of opening an investigation or inquiry. In conducting investigations, the Division of Enforcement continually strives to balance the need for complete, effective, and fair investigations with the need to file enforcement actions in as timely a manner as possible.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** In FY 2009, the percentage of first enforcement actions filed within two years exceeded the planned level and is higher than FY 2008 results due to the exceptional number of emergency actions brought in FY 2009. These actions were driven by the fact that a large number of Ponzi schemes and other offering frauds were exposed during the market crisis. In order to combat ongoing fraud and to preserve remaining assets, the agency worked diligently to expedite the action filing process.



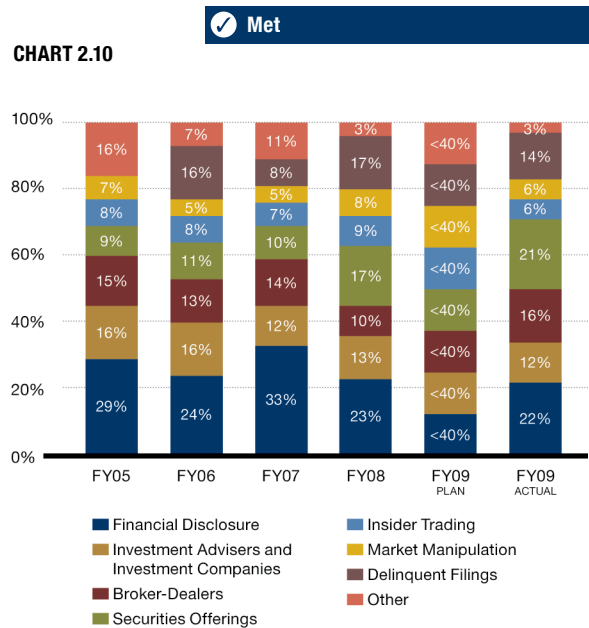
## Goal 1: Measure 7

### Maintaining an effective distribution of cases across core enforcement areas

DIVISION OF ENFORCEMENT

**Description:** Effective deterrence of securities fraud requires that the cases filed by the SEC have adequate reach across all core enforcement program areas. The mix and types of cases vary from year to year based upon the conditions of the markets and changes in financial instruments being used. The SEC's enforcement program seeks to maintain a presence and depth so that no single area dominates its case mix, nor is underrepresented.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** The SEC met the target of no category exceeding 40 percent of the total amount of cases brought in any one year. Financial disclosure cases continue to be the largest category of enforcement cases, closely followed by securities offerings cases. Securities offering cases rose to this level because the market crisis caused a large number of Ponzi schemes and other offering frauds to be exposed. The SEC moved quickly to halt ongoing fraud and preserve remaining assets.



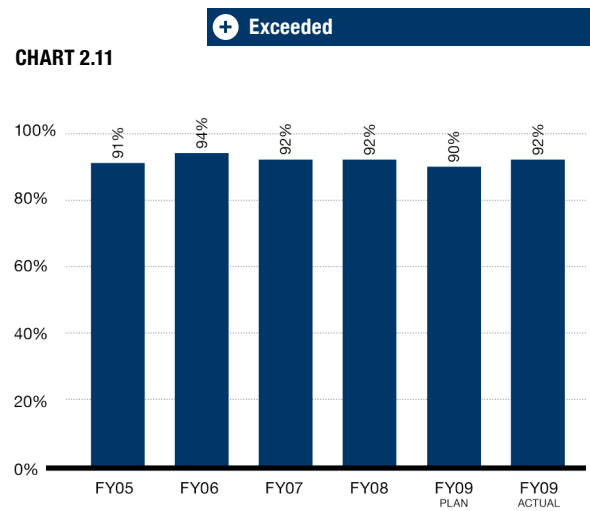
### Goal 1: Measure 8

#### Percentage of enforcement cases successfully resolved

DIVISION OF ENFORCEMENT

**Description:** A case is considered “successfully resolved” if it results in a favorable outcome for the SEC, including through litigation, a settlement, or the issuance of a default judgment. In general, the SEC strives to successfully resolve as many cases as possible but, at the same time, aims to file large, difficult, or precedent-setting cases when appropriate, even if success is not assured. This measure does not include any cases in which the SEC awaits a final outcome. The measure is calculated on a per-defendant basis. Large cases may involve several defendants. (Percentages for FY 2005–FY 2006 have been recalculated to reflect a change in categorization; consequently, these numbers are slightly lower than those reported previously.)

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** A high success ratio depends on numerous factors, including the complexity of cases, the extent to which parties contest actions, and the availability of litigation and investigation resources. In FY 2009, the SEC successfully resolved 92 percent of cases.



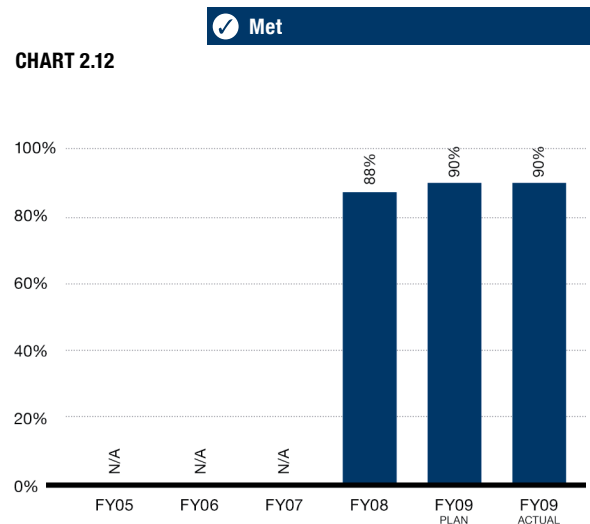
### Goal 1: Measure 9

#### Percentage of debts where either a payment has been made, or a collection activity has been initiated within six months of the due date of the debt

DIVISION OF ENFORCEMENT

**Description:** The SEC can seek a wide range of remedies for failure to comply with the securities laws. These remedies include civil monetary penalties and disgorgements. When the remedies are imposed by the Commission or the federal district court, payments must be made by a certain date. This measure identifies the percentage of debts where debtors have made payments or the SEC has initiated a collection activity within 180 days of the due date. Such collection activities include, among other things, demand letters, negotiation of payment plans, enforcing the payment of the debt through the courts, or other judicial remedies.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** The SEC met the target of collecting a payment or initiating a collection activity within six months of the due date.



## Goal 1: Measure 10

### Percentage of Fair Funds and disgorgement dollars designated for distribution that are distributed to investors within 12 months

#### DIVISION OF ENFORCEMENT

**Description:** In addition to other types of relief, the Commission may seek orders requiring parties to disgorge any money obtained through wrongdoing. The Commission also is empowered to seek civil penalties for violations of the securities laws. Where appropriate, the Commission has sought to return disgorged funds to harmed investors and, as a result of the Fair Funds provision of the Sarbanes-Oxley Act, to use amounts paid as penalties to reduce losses to injured parties. The Commission seeks to return money to wronged investors as quickly as possible. Funds not returned to investors are sent to the U.S. Treasury; neither disgorgement nor penalties go to the SEC.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** This measure is currently under review and may be adjusted in the near future. As a result, no data is available for FY 2009.

N/A Data Not Available

CHART 2.13



## Goal 1: Indicator 2

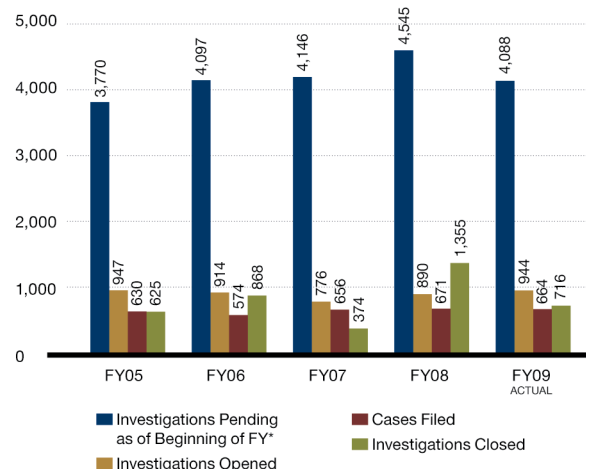
### Volume of enforcement activity: investigations opened, cases filed, and investigations closed

#### DIVISION OF ENFORCEMENT

**Description:** The volume of enforcement activity depends on a variety of factors, including the incidence of wrongdoing in a given fiscal year, the amount of staff resources available, and the timeframes imposed in court proceedings. This indicator captures the number of investigations and cases opened in a given fiscal year, as well as the number of investigations closed. An investigation may be closed without an enforcement action because of a number of factors, including insufficient evidence. An investigation also may be closed when all related cases have been adjudicated and all related penalties and disgorgements have been collected and dispersed, including to injured investors. This indicator is useful for understanding the SEC's activities, but should not be considered a performance measure and does not include a target that the agency will strive to reach in future years.

**Discussion:** The Division of Enforcement continued to focus on closing outstanding investigations in FY 2009. During that time period the staff closed 716 investigations. The number of investigations opened during FY 2009 increased about 6 percent when compared to FY 2008. This was caused in part by the SEC's initiatives to streamline internal processes, therefore allowing staff to move more quickly to open investigations.

CHART 2.14



\*The number of investigations pending at the beginning of the fiscal year may change from previously reported numbers due to investigations being reopened or because of delays in entering closed investigations in the case management system.

**Goal 1: Indicator 3**

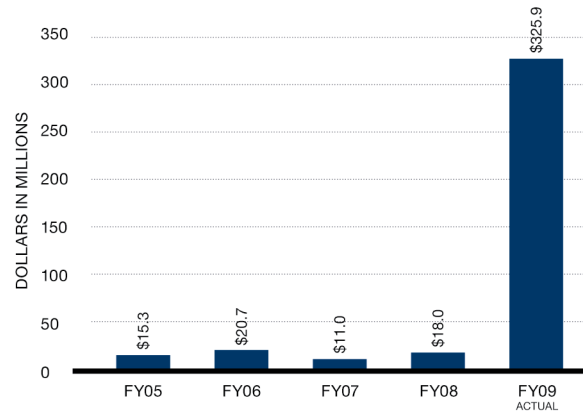
**Assets frozen abroad in SEC cases through coordination with foreign regulators**

OFFICE OF INTERNATIONAL AFFAIRS

**Description:** In order to effectively enforce compliance with federal securities laws and in support of enforcement cases filed domestically, the SEC works closely with foreign regulators, law enforcement agencies, and courts on SEC cases to locate ill-gotten proceeds that have been transferred overseas and freeze the accounts in which they are located. The SEC works to freeze such assets so that violators cannot benefit from their wrongdoing. This indicator is useful for understanding the SEC’s activities, but should not be considered a performance measure and does not include a target that the agency will strive to reach in future years.

**Discussion:** The SEC will continue its efforts to freeze assets obtained in violation of securities laws and transferred abroad. Although future estimates for the amount of frozen assets cannot be projected, the agency’s efforts in this area will continue as international cooperation on enforcement matters increases. The significant increase in the FY 2009 assets frozen abroad is largely attributable to the agency’s efforts in working with the U.S. Department of Justice and foreign authorities to freeze assets in connection with the agency’s litigation in *SEC v. Stanford International Bank, Ltd., et al.* Case No.: 3:09-cv-0298 (N.D. Texas).

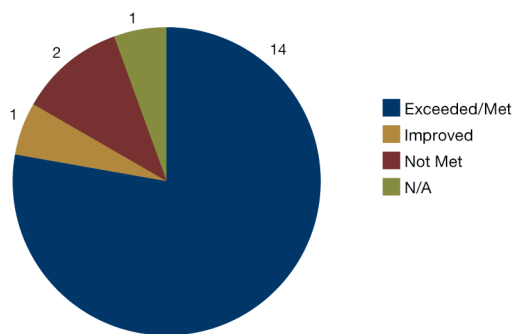
**CHART 2.15**



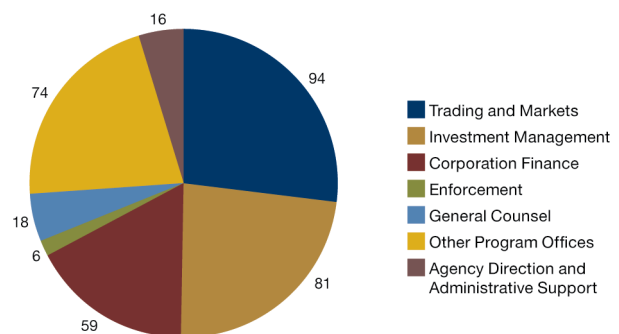
## Goal 2: Promote Healthy Capital Markets through an Effective and Flexible Regulatory Environment

During FY 2009, the agency focused on several regulations, including those that strengthen corporate governance, improve regulation of credit rating agencies, and promote high-quality financial reporting standards worldwide. Under Chairman Schapiro, the SEC pursued a more vigorous investor-focused rulemaking agenda that will help protect investors and ensure that our markets operate fairly—while simultaneously participating in the ongoing regulatory reform effort underway in Congress. In FY 2009, 14 of 18 planned performance targets were exceeded or met through the efforts of 348 FTE.

**CHART 2.16**  
FY 2009 PERFORMANCE RESULTS



**CHART 2.17**  
FY 2009 FTE BY PROGRAM



### Program Achievements

Rulemaking is one of the SEC’s primary functions and involves staff in virtually every program. In FY 2009, the Commission embarked on an aggressive rulemaking agenda intended to address problems exposed by the financial crisis as well as restore investor confidence in the markets.

In addition to rulemaking initiatives, the SEC continued to work with the Financial Industry Regulatory Authority (FINRA) to consolidate and revise Self-Regulatory Organization (SRO) rules governing securities firms. In FY 2009, the SEC worked efficiently to review SRO rule proposals and closed 91 percent of the filings in less than 60 days (*Goal 2, Measure 1*).

The Division of Trading and Markets continued to perform inspections of the automated trading and clearance processes of markets and clearing organizations in FY 2009. The daily share volume in NYSE-listed issues

increased dramatically over previous year’s levels (*Goal 2, Measure 2*). This was primarily due to an increased number of exchanges and Electronic Communications Networks (ECNs) that are active trading venues for most stocks, as well as exponential growth of “high frequency” trading strategies. Additionally, 99 percent of transaction dollars was settled on time, continuing a trend of timely settlement (*Goal 2, Measure 3*).

The SEC also monitors the industry’s efforts to provide stable trading platforms. The agency continued to assess the resiliency of market systems in FY 2009, reporting that market outages were corrected well above targeted timeframes (*Goal 2, Measure 4*).

The SEC devotes a large share of resources responding to no-action letters, interpretive and other requests from regulated entities, and the agency is committed to speeding the response to such requests (*Goal 2, Measure 7*) where appropriate. In FY 2009, the



Divisions of Trading and Markets and Investment Management met or exceeded their response rate targets. In particular, as a result of improved processes, the Division of Investment Management significantly surpassed its targets for no-action letter and interpretive requests and exemptive applications. While the Division of Corporation Finance did not meet its target for no-action letter and interpretive requests, Corporation Finance significantly improved its response

rate in FY 2009 by 19 percentage points over the response rate achieved in FY 2008.

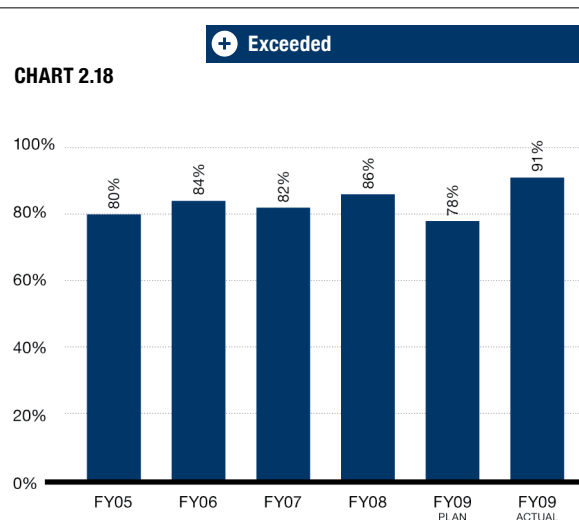
In FY 2009, the proportion of U.S. households owning mutual funds increased to its highest level since FY 2002, reaching 45 percent (*Goal 2, Measure 8*). However, during the same time period, the percentage of mutual fund shares of total retirement assets was considerably below the previous year’s level, perhaps reflecting the major declines in the stock market indices (*Goal 2, Measure 10*).

### Goal 2: Measure 1

#### Percentage of SRO rule filings closed in less than 60 days from filing DIVISION OF TRADING AND MARKETS

**Description:** The SEC reviews SRO rule proposals for consistency with investor protection and market operation and structure rules that govern the operation of registered national securities exchanges, clearing agencies, the Financial Industry Regulatory Authority (FINRA), and the Municipal Securities Rulemaking Board. This measure gauges how quickly the SEC completes these reviews after each amendment is filed by the SRO.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** Success in closing SRO rule filings in less than 60 days from filing is dependent on the number of filings and the complexity of filings submitted. In FY 2009, the SEC worked efficiently to review SRO rule proposals and closed 91 percent of filings in less than 60 days, exceeding both the FY 2009 goal of 78 percent and the FY 2008 actual of 86 percent. The significant increase in the timely closing of rule filings is attributable to a number of factors, including better management controls, streamlining of the review process, and more efficient utilization of staff.



## Goal 2: Measure 2

### Average daily share volume (in billions of shares) on the New York Stock Exchange (NYSE) and Nasdaq exchanges

DIVISION OF TRADING AND MARKETS

**Description:** The average daily share volume (in billions of shares) is indicative of whether the markets have sufficient capacity to be able to handle effectively and efficiently the volume of message traffic that is directed to those markets. The source for the data is Bloomberg.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** Average daily trading volume in NYSE stocks (and, to a lesser extent, in Nasdaq stocks) has increased dramatically over the past few years for two reasons. First, the majority of stock trading in previous years was conducted only at the “primary” market where the stock was listed. Now, an increased number of exchanges and ECNs are active trading venues for most stocks. Volume statistics that were limited to trading on the NYSE or Nasdaq severely undercounted overall trading volume.

Second, “algorithmic” or “high frequency” trading strategies have grown exponentially over the past few years. Therefore, overall trading volume in both share amounts and numbers of transactions has increased dramatically.

While the FY 2009 Nasdaq daily share volume did not meet the planned level, it is consistent with FY 2008 levels and reflects the steady rate of growth anticipated by the SEC. The performance goal was set at an approximate target level, and the deviation from that level is slight. There was no effect on overall program or activity performance.

## Goal 2: Measure 3

### Percentage of transaction dollars settled on time each year

DIVISION OF TRADING AND MARKETS

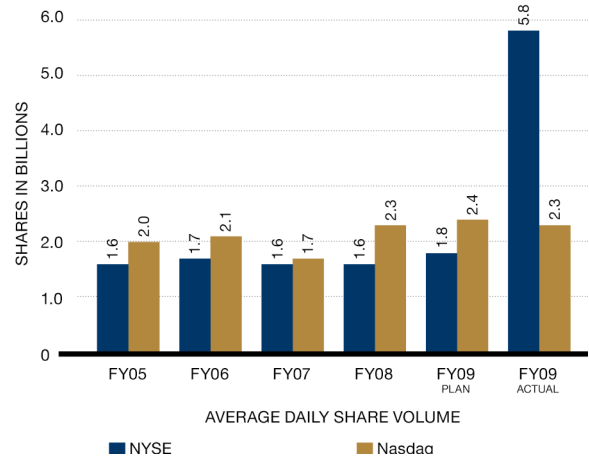
**Description:** Efficient and timely settlement of securities transactions is indicative of a fair and orderly market. The percentage of dollar value of transactions settled on time indicates that the relative value of unsettled transactions is decreasing compared to the increasing value of transactions. The source of the data is The Depository Trust & Clearing Corporation’s Annual Reports.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** In FY 2009, 99 percent of transaction dollars was settled on time. The previous trend of timely settlement has continued, and is expected to continue in future years.

+ NYSE–Exceeded

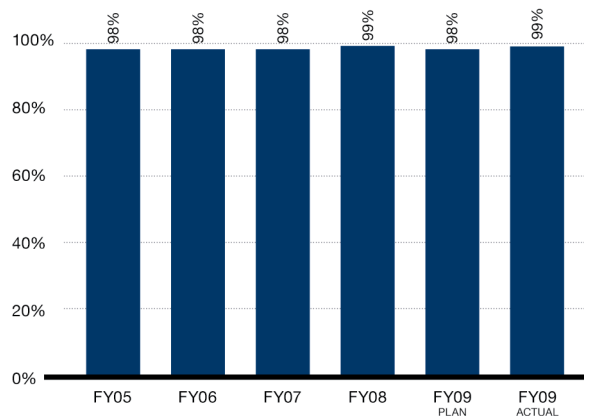
– Nasdaq–Not Met

CHART 2.19



+ Exceeded

CHART 2.20



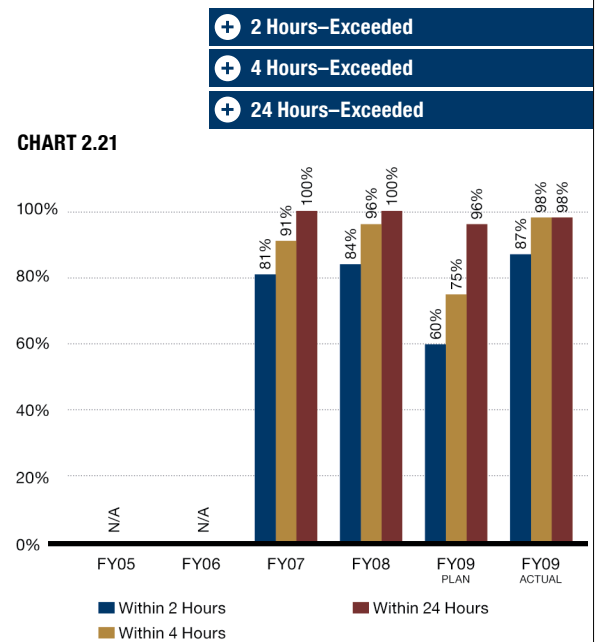
### Goal 2: Measure 4

#### Percentage of market outages at SROs and ECNs that are corrected within targeted timeframes

DIVISION OF TRADING AND MARKETS

**Description:** Market outages reflect problems in the systems underlying the securities markets that could have an adverse effect on the markets' ability to function as required. The SEC assesses the reliability and resiliency of these systems to minimize the number and duration of outages. This measure gauges how quickly outages are resolved, so that market activity can resume. Data for FY 2005 and FY 2006 are not available.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** While it is difficult to project the rate at which the industry will resolve market outages, FY 2009 results exceeded the projected plan as market outages were corrected in a timely manner.



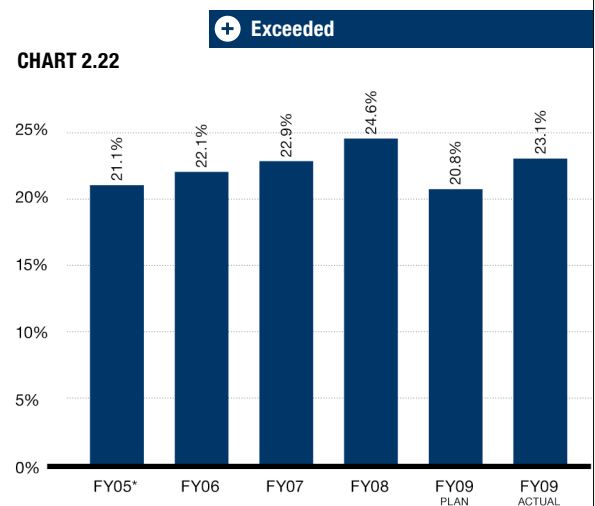
### Goal 2: Measure 5

#### Equity portfolio holdings of U.S. investment companies as a percentage of total U.S. stock market capitalization

DIVISION OF INVESTMENT MANAGEMENT

**Description:** This measure may reflect, among other things, the effectiveness of investment companies as a vehicle for capital formation. Other factors that may influence short- and long-term changes in this metric include bull and bear markets, technological changes, investor perceptions of industry ethical standards, investor reaction to industry marketing efforts, and competition from other financial products and services. The future-year targets for this measure are calculated based on a rolling 10-year average.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** FY 2009 saw a moderate decline in the percentage of U.S. stock market capitalization accounted for by the equity holdings of investment companies believed to be due in part to the unsettled financial markets and economic recession.



\*Historical numbers for this measure have been revised to reflect revisions made by the Federal Reserve, which is the source of data for this measure.

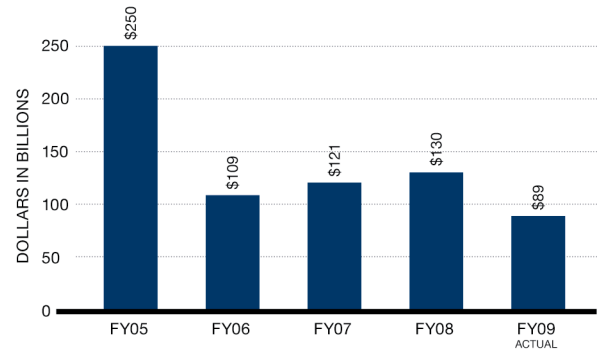
## Goal 2: Indicator 1

### Number of new foreign private issuers and dollar amount of registered securities DIVISION OF CORPORATION FINANCE

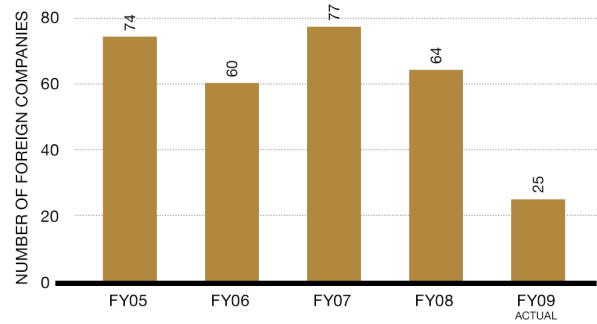
**Description:** The number of foreign companies registering securities in the United States and the amount of money they raise in the public markets can be viewed as an indicator of the integrity, liquidity, and fairness of the U.S. markets. This indicator is useful for understanding the SEC's activities, but should not be considered a performance measure because many other factors influence a company's decision to register in the United States, and it does not include a target that the agency will strive to reach in future years.

**Discussion:** Historically, these trends have been difficult to predict, since there are many economic and other factors outside of the Commission's control that influence the registration decisions of foreign companies. Although difficult to predict, the significant drop in the amount of registered securities could be attributed to the volatility in the financial markets and the economic recession.

**CHART 2.23  
REGISTERED SECURITIES**



**CHART 2.24  
FOREIGN COMPANIES**



## Goal 2: Measure 6

### Percentage of regulated entities representing a single point of failure that meet the continuity of operations standards of the White Paper, the Policy Statement, and the Automated Review Program

DIVISION OF TRADING AND MARKETS

**Description:** In 2003, the SEC and several other agencies jointly published the *Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System* (White Paper). It identifies sound practices to ensure the resilience of the U.S. financial system with a focus on minimizing the immediate system effects of a wide-scale disruption on critical financial markets. Subsequent to the release of the White Paper, the SEC issued a policy statement, *Business Continuity Planning for Trading Markets*, which sets forth the Commission’s view that SROs operating trading markets and ECNs should apply certain sound practices in their business continuity planning, specifically, that backup trading sites require geographic diversity and their operation should not be impaired by a wide-scale evacuation. A concern is that the failure of any one entity to adopt the sound practices would represent a single point of failure that could prevent trading in its securities in another venue, thus undermining the fairness and efficiency of the markets.

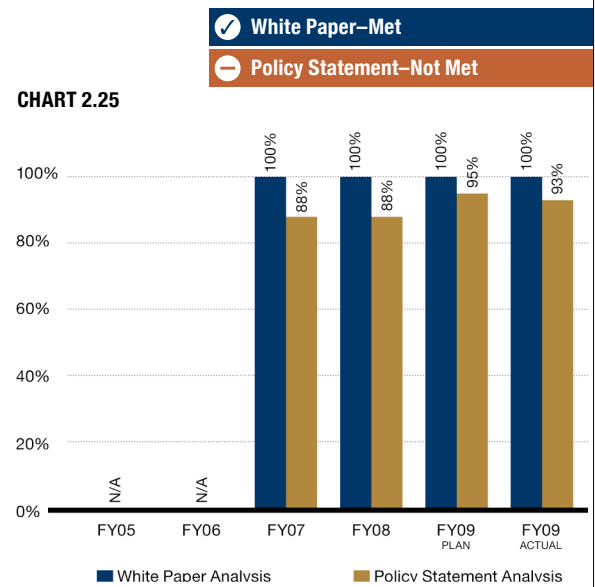
#### White paper analysis

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** In FY 2007, the SEC conducted a review of the core clearing and settlement organizations and significant firms covered by the White Paper. The review concluded that 100 percent of organizations met the sound practices objectives in the White Paper. In FY 2009, all organizations continued to meet the sound practices objectives in the White Paper.

#### Policy statement analysis

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** In FY 2008, the SEC reported that two newly established markets did not meet the policy statement standards, and that the Commission expected them to be compliant within two years. In FY 2009, one of the two markets fully met the policy statement standards; the other market did not fully meet the standards.

**Plan for Improving Program Performance:** The SEC expects the market that did not fully meet the policy statement standards in FY 2009 to be fully compliant in FY 2010.



## Goal 2: Measure 7

### Timeliness of SEC responses to written no-action letter, exemptive, and interpretive requests

DIVISIONS OF TRADING AND MARKETS, INVESTMENT MANAGEMENT, AND CORPORATION FINANCE

**Description:** The SEC staff responds to requests for guidance from individuals and companies about specific provisions of the federal securities laws. These queries may be for proper interpretation of the securities laws or regulations, or for assurances that no enforcement action will be recommended in certain circumstances. The staff also reviews applications for exemptions from the securities laws. Written responses to such requests for guidance, when provided, generally are publicly available, as are applications and related notices and orders, when issued. This measure gauges whether the Division of Trading and Markets, the Division of Investment Management, and the Division of Corporation Finance are responding to these requests on a timely basis.

#### Trading and Markets

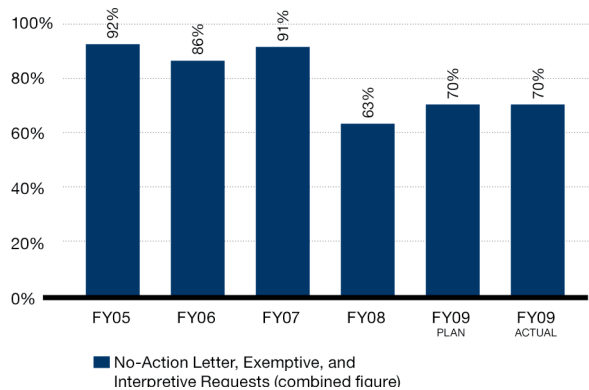
##### No-action letter, exemptive, and interpretive requests (combined figure)

**Target:** Complete 70 percent of all responses within 60 days.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** In FY 2009, the Division of Trading and Markets met its target of completing 70 percent of all responses within 60 days.

Met

CHART 2.26  
TRADING AND MARKETS



#### Investment Management

##### No-action letter and interpretive requests

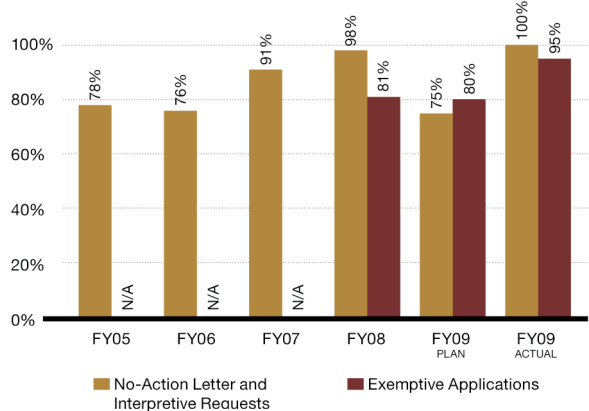
**Target:** Provide initial comments on at least 75 percent of interpretive and no-action requests within three weeks of receipt of the letter request.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** The Division of Investment Management significantly surpassed its FY 2009 target for the timely provision of initial comments in connection with the handling of no-action and interpretive letter requests.

Requests Exceeded

Applications Exceeded

CHART 2.27  
INVESTMENT MANAGEMENT



**Goal 2: Measure 7** *(continued)*

**Investment Management** *(continued)*

**Exemptive Applications**

**Target:** Provide initial comments on at least 80 percent of exemptive applications within 120 days after receipt of an application.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** The Division of Investment Management significantly exceeded its planned target for responding to exemptive applications.

**Corporation Finance**

**No-action letter and interpretive requests**

**Target:** Complete 90 percent of initial comments on no-action letters within 30 days.

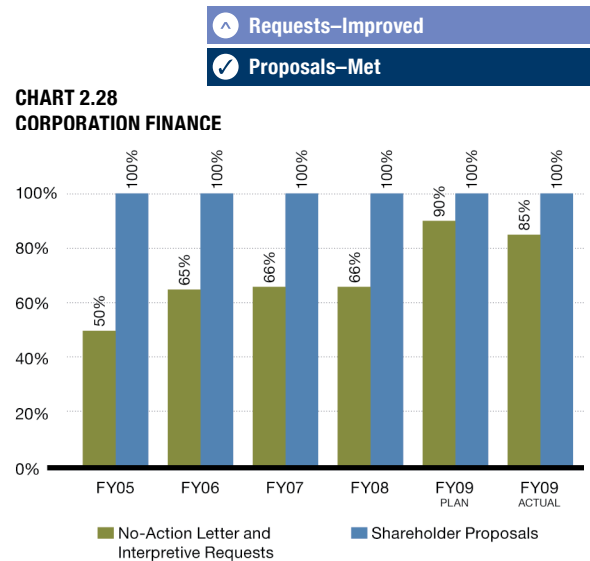
**Analysis of FY 2009 Plan vs. Actual Level of Performance:** In FY 2009, the Division of Corporation Finance did not meet its target of completing 90 percent of initial comments on no-action letters within 30 days. However, the completion rate of 85 percent is a significant improvement over the previous year's performance.

**Plan for Improving Program Performance:** In FY 2010, the Division of Corporation Finance will continue to focus on achieving its goal of completing 90 percent of initial comments on no-action letters within 30 days.

**Shareholder proposals**

**Target:** Answer 100 percent of no-action requests on shareholder proposals by the company's planned proxy mailing date.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** In FY 2009, the Division of Corporation Finance continued to meet its goal of responding to all shareholder proposals prior to the companies' mailing dates.



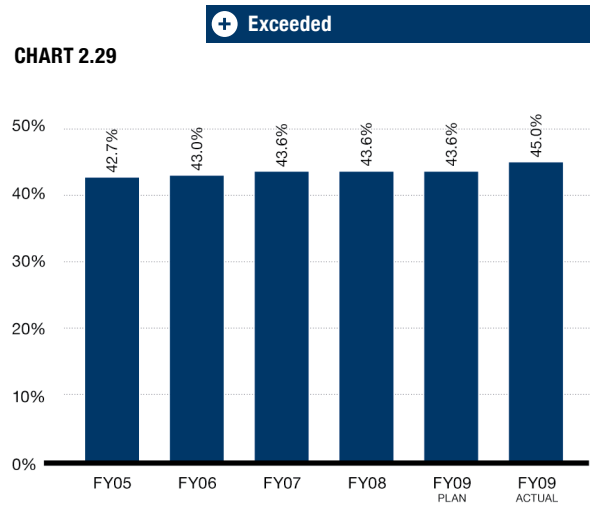
## Goal 2: Measure 8

### Percentage of U.S. households owning mutual fund shares

DIVISION OF INVESTMENT MANAGEMENT

**Description:** The percentage of U.S. households that own mutual fund shares may reflect, among other things, the extent to which the regulatory regime allows for industry innovation and fosters investor confidence. Other factors that may influence short- and long-term changes in this metric include bull and bear markets, technological changes, investor perceptions of industry ethical standards, investor reaction to industry marketing efforts, and competition from other financial products and services. The future-year targets for this measure are calculated based on a rolling 10-year average.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** The proportion of U.S. households owning mutual funds in FY 2009 rose to its highest level since FY 2002.



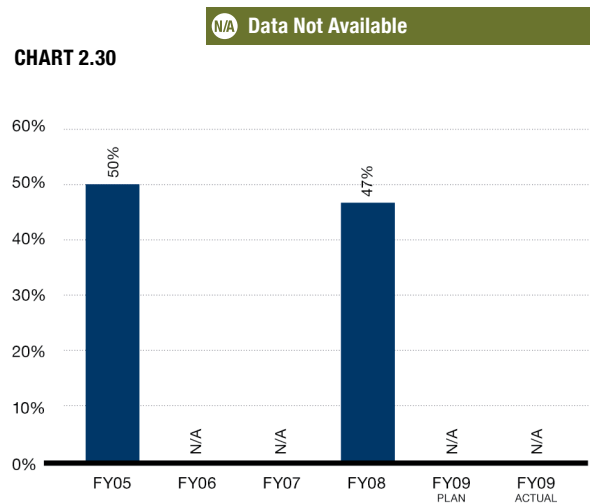
## Goal 2: Measure 9

### Percentage of U.S. households investing in the securities market either through direct share ownership or ownership of mutual funds

DIVISION OF TRADING AND MARKETS

**Description:** The percentage and number of households that invest in the securities market reflect, among other things, the extent to which the regulatory regime provides a fair, orderly, and efficient market while fostering investor protection and confidence in the markets. The source of this data is the Investment Company Institute and the Securities Industry and Financial Markets Association's reports entitled "Equity Ownership in America," which are available once every three years. Targets are updated every three years and use a base period of 1983–1995.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** Data for this particular measure is not currently available. The next report containing this data will not be published until November 2011. However, the Division of Trading and Markets anticipates the downward trend observed in FY 2008 is likely to continue in FY 2009 in part as a result of the recent volatility in the securities markets and the general poor global economic condition.





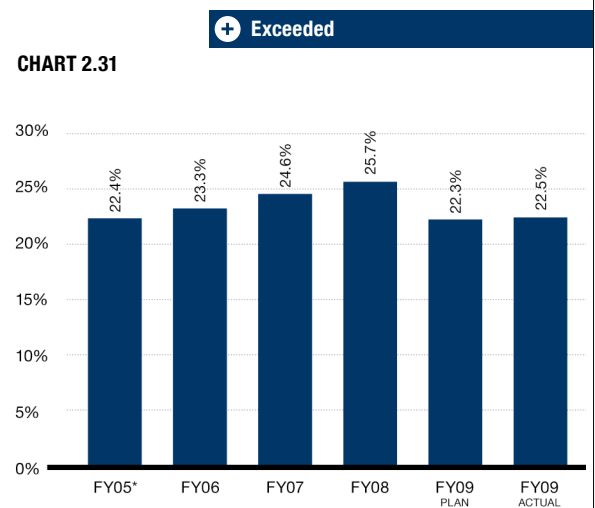
## Goal 2: Measure 10

### Mutual fund share of total retirement assets

#### DIVISION OF INVESTMENT MANAGEMENT

**Description:** This measure reflects, among other things, investor confidence in mutual funds and a flexible regulatory scheme that allows funds to successfully compete in the market with other financial institutions. Other factors that may influence short- and long-term changes in this metric include bull and bear markets, technological changes, investor perceptions of industry ethical standards, investor reaction to industry marketing efforts, competition from other financial products and services, changes in tax law, legislation or rule changes that affect retirement accounts, and the pending transition of baby boom generation retirement investments from the accumulation phase to the distribution phase. The future-year targets for this measure are calculated based on a rolling 10-year average.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** FY 2009 results represent mutual fund assets held in IRA, 401(k), 403(b), and other retirement accounts divided by total private defined benefit plan, government pension plan, defined contribution plan, and IRA assets on December 31, 2008 as reported by the Investment Company Institute. FY 2009 results fell significantly from their FY 2008 peak as leading stock market indices suffered major declines in FY 2009.

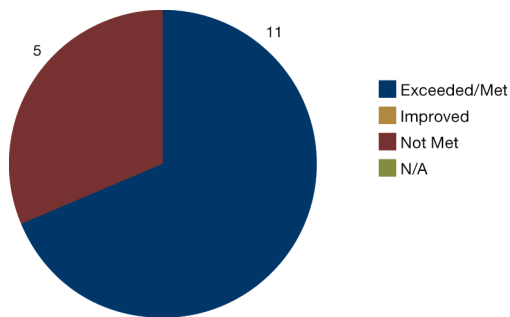


*\*Historical numbers for this measure have been revised to reflect revisions made by the Investment Company Institute, which is the source of data for this measure.*

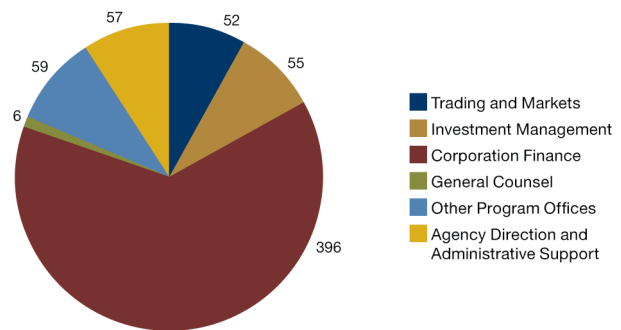
### Goal 3: Foster Informed Investment Decision Making

A strong economy and a vibrant market rely on investor confidence. The SEC promotes informed investment decisions through two main approaches. The first is to require that investors have accurate, adequate, and timely public access to disclosure materials that are easily understood and analyzed. Secondly, the SEC implements a variety of investor education initiatives, aimed at giving investors a better understanding of the operations of the nation's securities markets. The agency dedicated 625 FTE toward achieving results in Goal 3 this fiscal year, exceeding or meeting 11 of 16 planned performance targets.

**CHART 2.32**  
FY 2009 PERFORMANCE RESULTS



**CHART 2.33**  
FY 2009 FTE BY PROGRAM



#### Program Achievements

In FY 2009, the SEC redoubled its commitment to protecting investors, and implemented many changes to reinforce the SEC's focus on investor protection and market integrity. During the fiscal year, the Commission worked to make sure that the federal securities laws required issuers of securities to provide investors with clear, complete, and accurate financial information.

As part of its disclosure program, the SEC requires issuers to disclose material financial and other information to the public. In FY 2009, the SEC's review of company disclosures and investment company portfolios exceeded planned performance targets. Additionally, agency staff sustained the rate for the number of days to issue initial comments on Securities Act of 1933 (Securities Act) filings, averaging about 25 days in FY 2009 (*Goal 3, Measure 2*), nearly five days faster than planned. Staff also exceeded timeliness targets for reviewing investment company disclosures (*Goal 3, Measure 3*).

The data and information contained in the filings made available on the SEC Web site is an important resource for staff and investors. Over time, the agency has experienced a steady increase in the number of searches for filings on the agency's Web site. In FY 2009, there were over one billion searches performed, which is more than 30 percent greater than the number of searches in FY 2008 (*Goal 3, Measure 4*).

In FY 2009, the SEC launched the Investor Advisory Committee. The work of this Committee supports the Commission's goals to promote the interests of investors, by shaping the Commission's investor education efforts and rulemaking initiatives. The agency carried out its investor education program by informing retail investors, including senior citizens, about investments marketed to them and providing tips to detect and avoid potential scams. The SEC reached about 77 percent more investors in FY 2009 than in FY 2008, while reducing the average cost per thousand investors reached

by approximately 33 percent (*Goal 3, Measure 6*). Staff attended fewer in-person events, which is the most expensive channel to reach investors on a per capita basis; however, this was offset by outreach gains from direct mailings to more than 10 million investors.

The SEC was unable to meet its planned performance levels for seven-day and thirty-day completion rates in responding to investor complaints and inquiries during FY 2009.

While the agency was able to respond to incoming phone calls from investors on a timely basis, the completion rate for other forms of contacts was significantly below planned levels (*Goal 3, Measure 7*). A number of factors affected both the seven-day and thirty-day response rates for these contacts, including the complexity of issues raised by investors during the economic downturn and the introduction of new operating procedures for addressing complaints.

### Goal 3: Measure 1

#### Percentage of Exchange Act reporting companies reviewed by the SEC

DIVISIONS OF CORPORATION FINANCE AND INVESTMENT MANAGEMENT

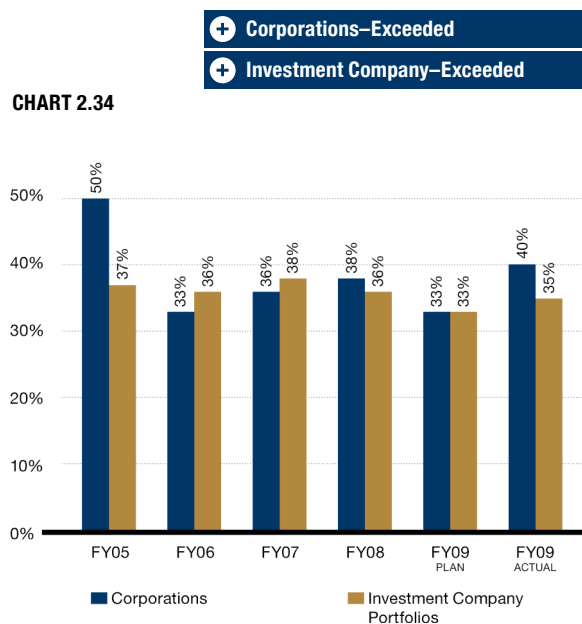
**Description:** The Sarbanes-Oxley Act requires that the SEC review the disclosures of all companies and investment company portfolios reporting under the Exchange Act at least once every three years. These reviews help improve the information available to investors and may uncover possible violations of the securities laws.

#### Corporations

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** The SEC exceeded its planned level of review of corporations in FY 2009. This review level is expected to deter fraud in public securities transactions and should help ensure that investors receive material information about the companies they invest in.

#### Investment company portfolios

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** The SEC exceeded its planned review level for FY 2009. Investment company portfolios are on track to be reviewed once every three years.



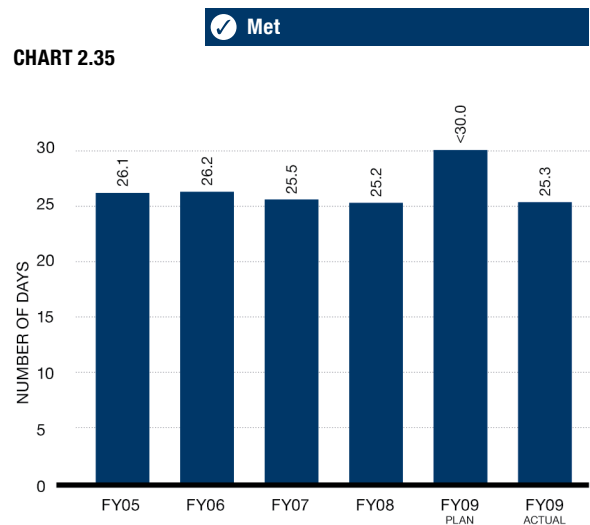
## Goal 3: Measure 2

### Average time to issue initial comments on Securities Act filings

DIVISION OF CORPORATION FINANCE

**Description:** The target of 30 days or less has become a *de facto* industry standard for the maximum time to receive initial SEC comments. Companies often build this timeframe into their plans. The 30-day timeframe is considered aggressive given the other mandatory reviews the agency conducts and the fluctuation in filing volume that impacts workload plans.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** In FY 2009, the SEC issued initial comments on Securities Act filings within an average of 25.3 days of filing.



## Goal 3: Measure 3

### Percentage of investment company disclosure reviews for which initial comments are completed within timeliness goals

DIVISION OF INVESTMENT MANAGEMENT

**Description:** For initial registration statements, the SEC's goal is to issue initial comments within 30 days after they are filed (60 days for registration statements of separate insurance product accounts). The SEC also aims to comment on post-effective amendments within 45 days and preliminary proxy statements within 10 days after they are filed.

#### Initial registration statements

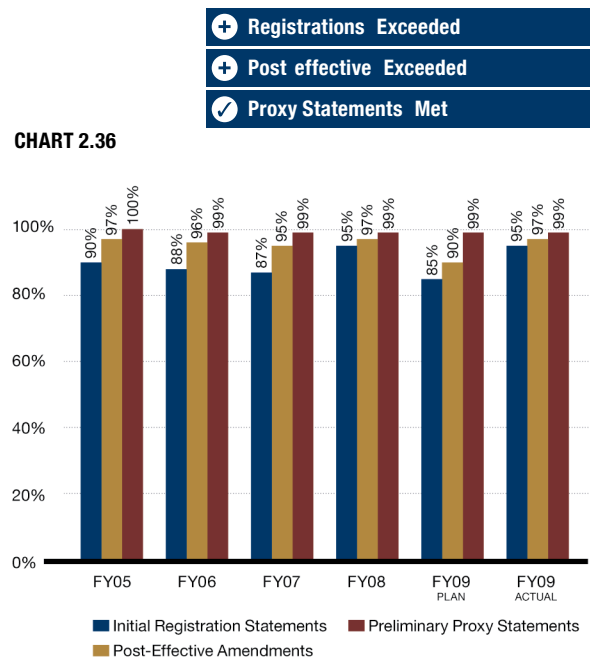
**Analysis of FY 2009 Plan vs. Actual Level of Performance:** In addition to reviewing the filings of Exchange Act reporting companies, the SEC met its FY 2009 targets for timely review of registration statements.

#### Post-effective amendments

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** The SEC met the FY 2009 target for timely review of post-effective amendments.

#### Preliminary proxy statements

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** For the fourth year in a row, the SEC met its target of reviewing 99 percent of preliminary proxy statements within 10 days of filing.



### Goal 3: Measure 4

#### Percentage of forms and submissions filed electronically and in a structured format

OFFICE OF INFORMATION TECHNOLOGY

**Description:** The SEC continues to emphasize electronic filing to make information available to the public in a format that can be easily obtained and analyzed. The SEC currently has over 100 forms that must be filed with the agency, which annually generate hundreds of thousands of filings with the agency. This measure identifies the percentage of forms that are in electronic format and the percentage of resulting filings that are received electronically by the SEC. In addition, the agency is redesigning its systems to allow additional forms to be filed using structured formats (e.g., information is captured in a comma delimited, XML, XBRL, or other format). This measure also gauges the percentage of forms that are available to be filed in a structured format and the percentage of resulting filings that are received in the structured format.

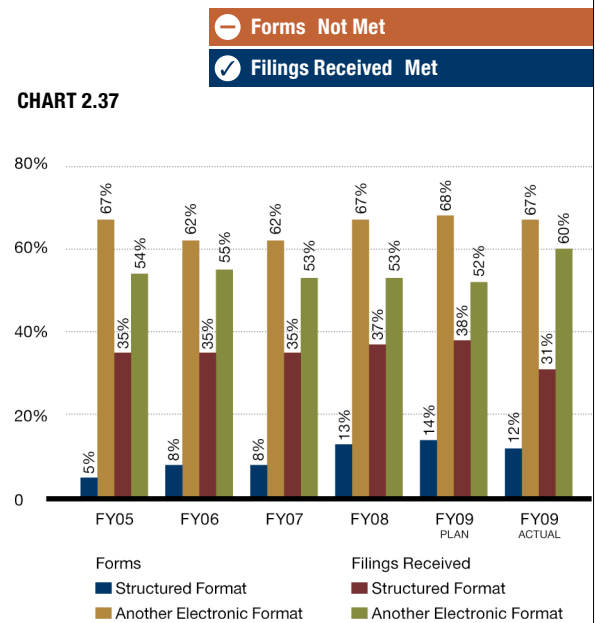
#### Forms: Total percentage in electronic format

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** In FY 2009, the SEC missed the targets established for percentage of forms that are in a structured format. The total of forms available in other electronic formats exceeded the planned number, which decreased the percentage of structured forms.

**Plan for Improving Program Performance:** The Office of Information Technology will continue to work toward attaining its goal of achieving the target level of forms in electronic format.

#### Filings received: Total percentage in electronic format

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** In FY 2009, the SEC achieved the targets established for the percentage of filings that are received electronically. The total number of electronic filings in another electronic format increased substantially over the prior year.



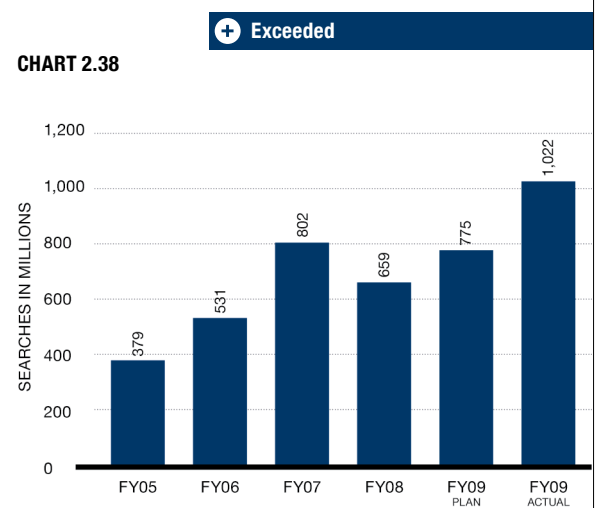
### Goal 3: Measure 5

#### Number of searches for filings on www.sec.gov

OFFICE OF INFORMATION TECHNOLOGY

**Description:** Greater availability of market-sensitive information through the SEC's next-generation Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system provides investors with the ability to make better-informed investment decisions. This measure gauges the demand for company filings through the SEC's Web site (in millions).

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** The FY 2009 target is calculated using an algorithm based on prior year actual results. The large increase in activity for FY 2009 exceeded the growth projection. Since the demand for company filings is external to the SEC, it has been difficult to accurately predict future demand.



## Goal 3: Measure 6

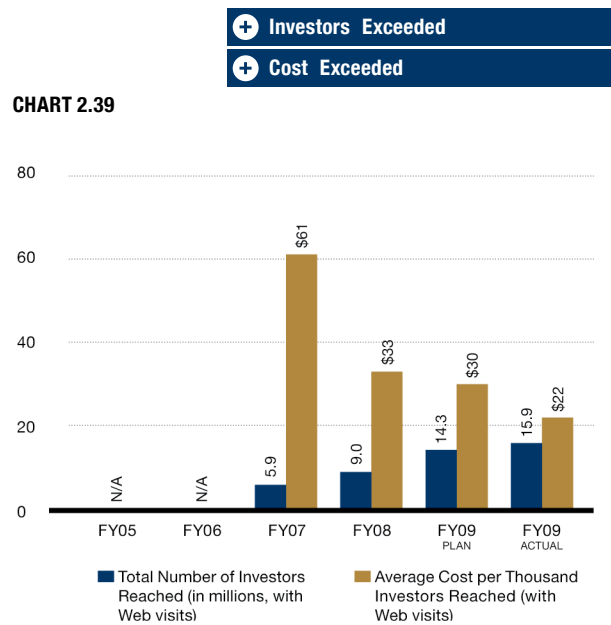
### Demand for investor education information, and average cost per thousand investors reached

OFFICE OF INVESTOR EDUCATION AND ADVOCACY

**Description:** OIEA has developed an extensive collection of free information and investment education publications. These resources help investors to understand the basics of investing, the risks and rewards of various products and strategies, the importance of diversification, and ways to find information about brokers, advisers, and companies. Much of this information is posted on the SEC's Investor Education Web page, a key tool for informing and educating the investing public. In addition, OIEA publishes hard-copy educational brochures. The General Services Administration's Federal Citizen Information Center serves as one of the most important distribution channels for the SEC's most popular English and Spanish publications. OIEA staff members also attend investor fairs and participate in other outreach activities, as feasible. In order to help educate the largest number of investors, OIEA carefully considers the costs and potential reach of its investor education programs. Data for prior years are not available.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** OIEA reached more investors in FY 2009 than in FY 2008, while reducing the average cost per thousand investors reached. OIEA staff attended fewer in-person events, which is the most expensive channel to reach investors on a per capita basis. However, this was offset by outreach gains from direct mailings to more than 10 million investors. Through its various investor education initiatives, including electronic publications and online multimedia content, OIEA continues to seek the most cost-effective means of maximizing the number of investors it reaches without sacrificing the quality of contacts.

CHART 2.39



**Goal 3: Measure 7**

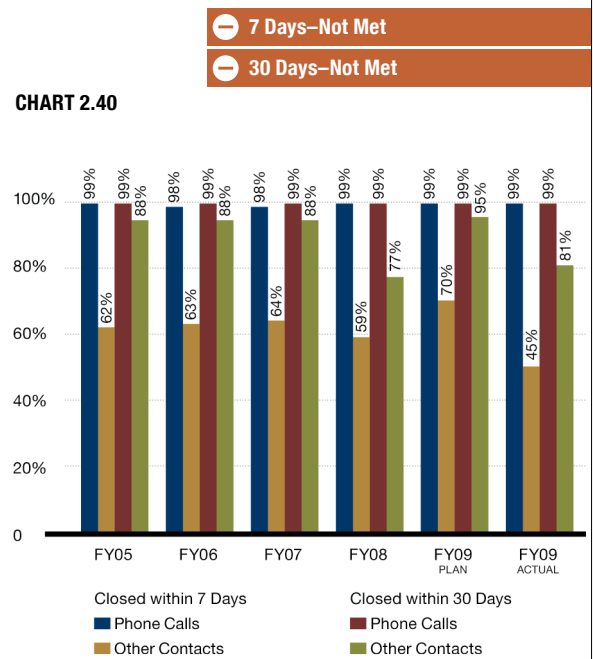
**Percentage of investor complaints and inquiries completed within seven and thirty business days**

OFFICE OF INVESTOR EDUCATION AND ADVOCACY

**Description:** OIEA serves the tens of thousands of investors who contact the SEC each year with investment-related complaints and questions. The staff aims to close out as many new investor assistance matters as possible between seven and thirty business days.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** With the exception of phone calls, OIEA did not meet its seven-day and thirty-day targets for FY 2009. With the current economic downturn, investors' questions and complaints became more complex and required more time to resolve. Additionally, FY 2009 actual results exclude public information requests, resulting in lower percentages than estimated in the FY 2009 plan, which included such requests.

**Plan for Improving Program Performance:** FY 2008 actual data have been revised to reflect a change in methodology to exclude the processing of public information requests. OIEA's implementation of the Investor Response Information System will automate and streamline numerous processes for handling investor complaints and inquiries, resulting in improved quality and timeliness of responses.



### Goal 3: Measure 8

#### Investor assistance and public information telephone inquiries

OFFICE OF INVESTOR EDUCATION AND ADVOCACY

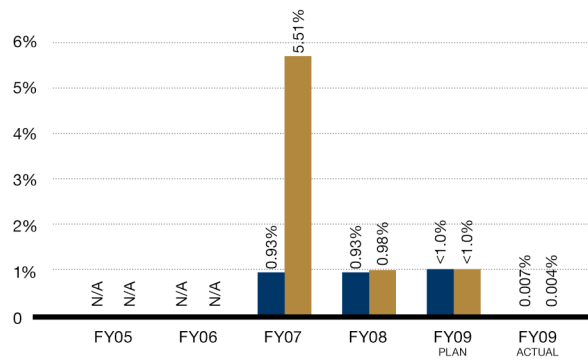
**Description:** The SEC seeks to provide the investing public with timely and accurate responses to their telephone inquiries by maintaining service levels that meet or exceed industry standards. Data for 2006 and prior years are not available.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** OIEA's management practices are focused on maintaining low abandoned call rates and reducing wait time. However, as a result of the current economic downturn, investor calls received during FY 2009 were more complex and required more time to resolve compared to prior years.

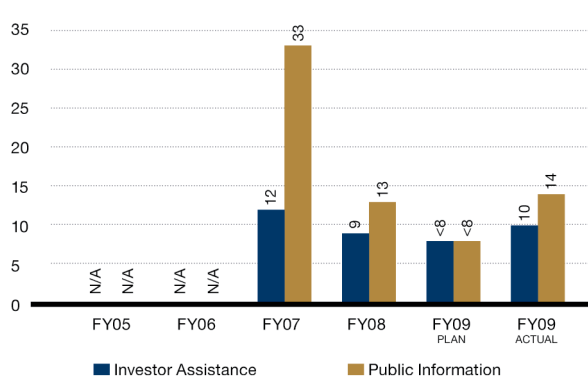
**Plan for Improving Program Performance:** OIEA's abandoned call rate continues to decline. In an effort to minimize call wait times, OIEA has launched an improved integrated voice response system for its toll-free number (800-SEC-0330), ensuring all calls are properly and efficiently routed within OIEA and the agency.

Investor Assistance Not Met  
Public Information Not Met

**CHART 2.41**  
ABANDONED CALL RATE (PERCENT)



**CHART 2.42**  
AVERAGE CALL WAIT TIME (SECONDS)



### Goal 3: Measure 9

#### Responses to Freedom of Information Act requests

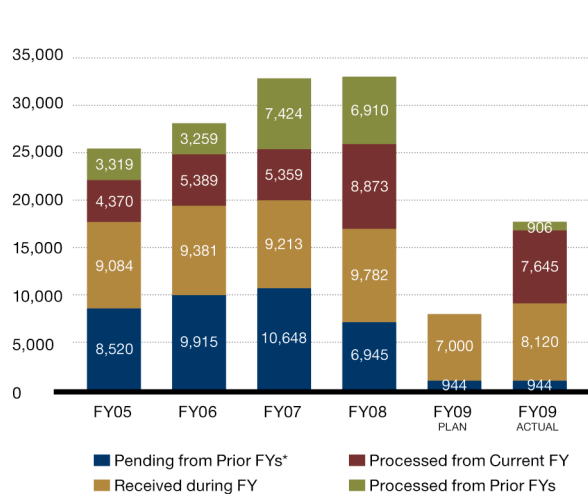
OFFICE OF INVESTOR EDUCATION AND ADVOCACY

**Description:** The Freedom of Information Act (FOIA) establishes timeframes within which the agency must respond to requests for nonpublic information. The agency is working to improve its FOIA response time and reduce its pending workload through efforts such as streamlining its internal processes for handling requests and posting correspondence related to its disclosure reviews on the SEC Web site.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** In FY 2009, the FOIA office received and processed more requests than expected, and continued its progress toward reducing the prior year backlog.

Exceeded

**CHART 2.43**



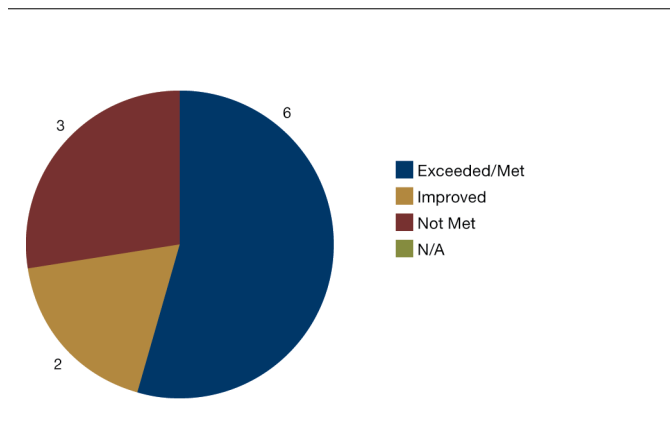
\*The pending requests for this measure reflect initial requests and appeals.



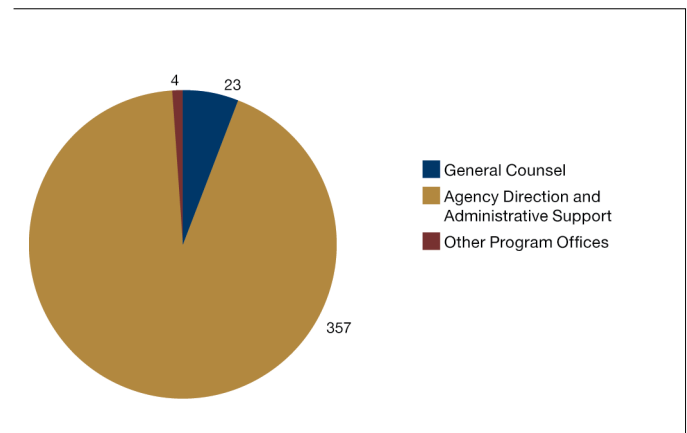
## Goal 4: Maximize the Use of SEC Resources

The investing public and the securities markets are best served by a well-managed SEC. In FY 2009, the SEC took steps to restore the agency as an effective regulator of the U.S. financial markets by improving organizational effectiveness through sound investments in information technology and human capital, and by enhancing internal controls. The agency directed 384 FTE toward maximizing the use of SEC resources in FY 2009, exceeding or meeting 6 of 11 planned performance targets.

**CHART 2.44**  
FY 2009 PERFORMANCE RESULTS



**CHART 2.45**  
FY 2009 FTE BY PROGRAM



### Program Achievements

The SEC’s employees are the most vital strategic resource. In FY 2009, the agency continued to provide management training, establish career tracks for junior staff, and roll out a new performance management system. During the fiscal year, the agency was successful at keeping its turnover rate well below 8 percent (*Goal 4, Measure 1*), partly influenced by the weakened labor market and the turmoil in the financial services industry. Although the SEC turnover rate remains low, the agency dropped eight positions in the rankings to number eleven among the top places to work in the federal government (*Goal 4, Measure 2*). An agency-wide effort is underway to determine the best approach to regain the SEC’s previous ranking in the top five.

Given the size, complexity, and rapidly changing structure of the U.S. securities markets, the SEC leveraged technology to identify and address threats to investors and continuously improve the agency’s productivity. The SEC’s public Web site and the next-generation Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system are the agency’s two primary tools for disseminating useful

information to investors in a timely and efficient manner. In FY 2009, the agency maintained the highest levels of availability for the public Web site and electronic filing systems (*Goal 4, Measure 3*).

In FY 2009, the agency continued to commit significant resources to its capital planning and investment control, information security management, and privacy management efforts. The agency was successful at certifying and accrediting all major systems, and completed a privacy impact assessment on 95 percent of information systems (*Goal 4, Measure 5*). Furthermore, all OIG information security-related recommendations and four of the six outstanding GAO recommendations were addressed within targeted timeframes in FY 2009 (*Goal 4, Measure 4*).

During the year, the SEC worked to further integrate its financial management systems, strengthen internal controls, and improve accounting processes. The SEC received an unqualified audit opinion, however six significant deficiencies were identified which in the aggregate represent a material weakness in SEC’s internal control over financial reporting (*Goal 4, Measure 6*).

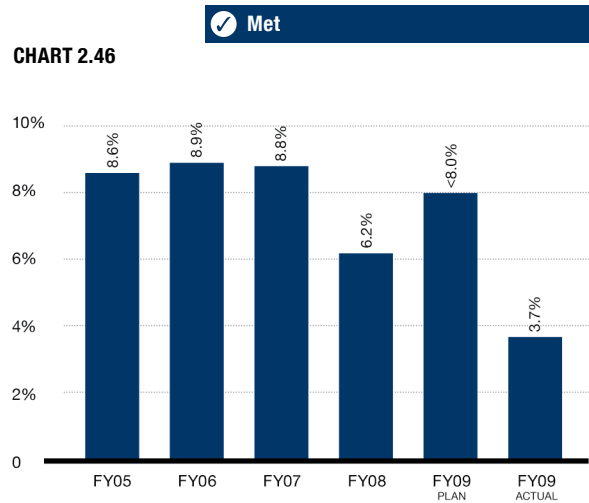
## Goal 4: Measure 1

### Staff turnover rate

OFFICE OF HUMAN RESOURCES

**Description:** This rate is determined by dividing the number of permanent employees that leave the agency during the fiscal year by the total number of permanent employees on board at the beginning of the fiscal year. (Percentages for FY 2005–FY 2007 have been recalculated to reflect a change in methodology. Term employees are no longer included in the calculation because many of the agency’s term positions, such as Fellows, are intended to have regular turnover.)

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** The staff turnover rate for FY 2009 is significantly below the planned rate. This is a positive indicator for the agency’s success in its mission to be an “employer of choice.” However, another contributing factor to a low turnover rate is the current condition of the labor market. As the labor market improves, the agency may incur a higher turnover rate.



## Goal 4: Measure 2

### Maintain a top five ranking among the Best Places to Work in Government

OFFICE OF HUMAN RESOURCES

**Description:** By offering competitive pay-for-performance and benefits systems that rival those offered by the private sector, the SEC aims to be an “employer of choice” in the federal government. The SEC aims to maintain a high ranking in this bi-annual survey conducted by the Partnership for Public Service and the Institute for the Study of Public Policy Implementation at American University.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** In FY 2009, the SEC dropped eight spots in the rankings to number eleven among the top places to work in the federal government.

**Plan for Improving Performance:** An agency-wide effort is underway to determine the best way to regain the SEC’s previous high ranking. A full report is scheduled to be completed by the end of November 2009. The agency will then begin to develop and implement action plans, based on the report findings.

**TABLE 2.1**

Not Met

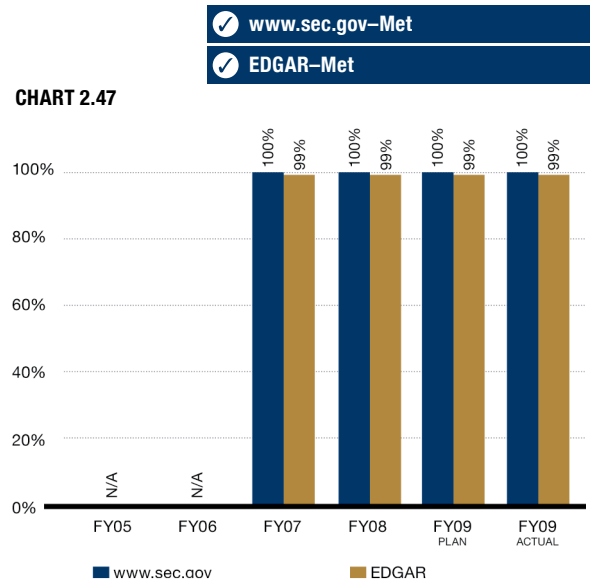
	FY05 / FY06	FY07 / FY08	FY09 / FY10
Rank	#5	#3	#11

**Goal 4: Measure 3**

**Percentage of the time that www.sec.gov and EDGAR are operable**  
OFFICE OF INFORMATION TECHNOLOGY

**Description:** The SEC is committed to disseminating useful information to investors and the financial community in a timely and efficient manner. The agency uses two primary tools for this purpose: its public Web site and the EDGAR system. This measure gauges the percentage of time that these tools are operable and able to provide information to the public and the financial community. Data for FY 2005 and FY 2006 are not available.

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** In FY 2009, the SEC achieved the goals established for both measures.



**Goal 4: Measure 4**

**Number of OIG and GAO information security-related recommendations outstanding for more than 18 months**  
OFFICE OF INFORMATION TECHNOLOGY

**Description:** The SEC is focused on establishing and maintaining sound and effective controls over the information systems that support the agency’s business operations. This measure gauges the timeliness of the agency’s corrective actions to substantially complete OIG and GAO recommendations related to information security. Data for prior years are not available.

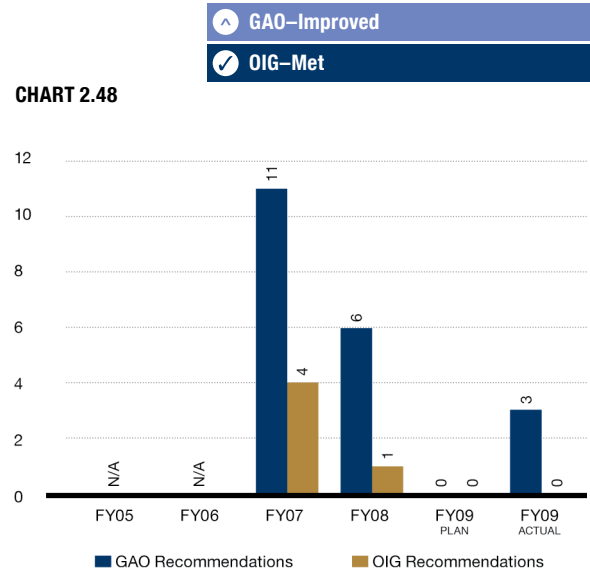
**GAO recommendations**

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** In FY 2009, the SEC reduced the GAO security management recommendations to three.

**Plan for Improving Program Performance:** OIT will continue to work toward attaining its goal of implementing all security-related audit recommendations within an 18-month period.

**OIG recommendations**

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** The remaining open security audit was closed this year.



## Goal 4: Measure 5

### Percentage of major systems that have been certified and accredited, and given a privacy impact assessment, within required timeframes

OFFICE OF INFORMATION TECHNOLOGY

**Description:** The SEC works to ensure the confidentiality and integrity of the agency's information and systems and to protect the privacy of any personal information contained in those systems. This measure gauges the percentage of the agency's major applications and systems that have been certified and accredited in accordance with the security mandates of the Federal Information Security Management Act; OMB Circular A-130, *Management of Federal Information Resources*; and National Institute of Standards and Technology security guidelines. In addition, this measure gauges the percentage of agency electronic information systems and collections that have undergone a privacy assessment to determine personally identifiable information and mitigate potential privacy risks, in accordance with the E-Government Act of 2002 and other applicable laws and regulations. Data for prior years are not available.

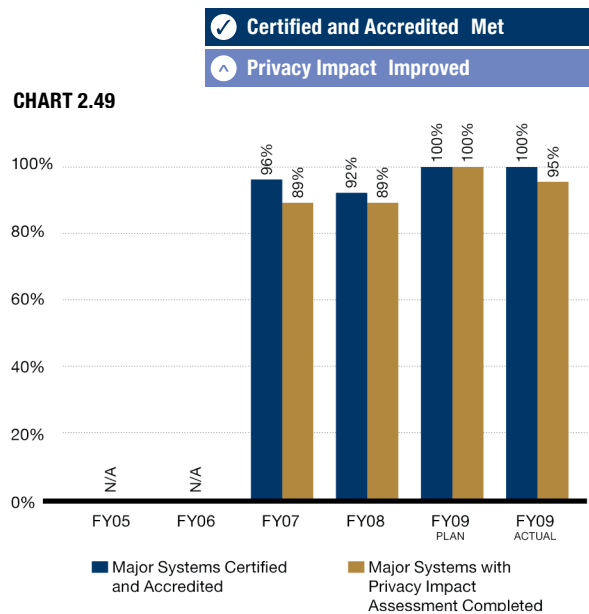
#### Major systems certified and accredited

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** The number of systems requiring certification and accreditation continues to increase. In FY 2009, there were 20 additional agency systems identified that required certification and accreditation. At the end of FY 2009, the SEC completed all of the 50 total systems requiring certification and accreditation.

#### Major systems with privacy impact assessment completed

**Analysis of FY 2009 Plan vs. Actual Level of Performance:** At the end of FY 2009, the SEC completed the privacy analysis for 57 of 60 systems, achieving 95 percent of this goal.

**Plan for Improving Program Performance:** The SEC plans to complete privacy analysis for the remaining systems in the coming years.



### Goal 4: Measure 6

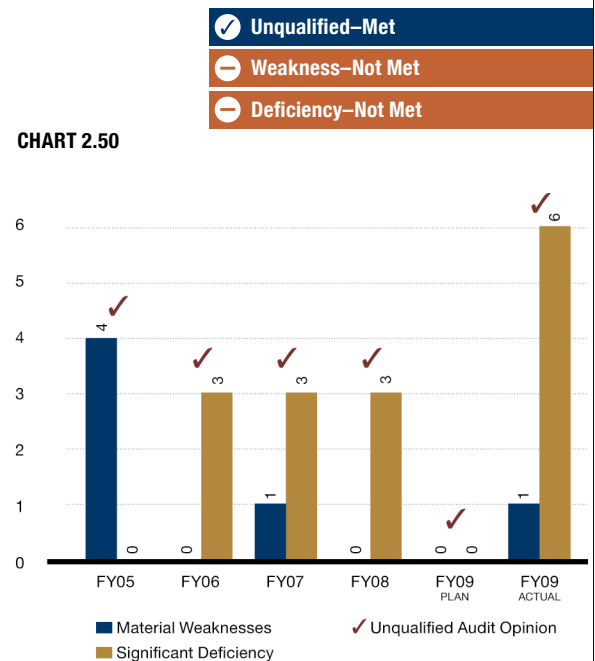
#### Financial audit results

OFFICE OF FINANCIAL MANAGEMENT

**Description:** Under the Accountability of Taxpayer Dollars Act of 2002, the agency is required to meet all proprietary accounting guidelines for federal agencies and to undergo annual audits. The SEC’s audits are conducted by the GAO. In 2007, new auditing standards eliminated the term reportable condition and introduced new definitions for the terms “significant deficiency” and “material weakness.”

**Analysis of Results:** In FY 2009, the SEC received an unqualified audit opinion on its financial statements for the sixth year in a row. SEC’s material weakness in internal control over information systems and related financial reporting controls prevented the SEC from achieving full compliance with federal financial systems requirements, and resulted in providing only qualified assurance that the SEC is meeting federal financial management and internal control objectives. The material weakness represents the aggregate of six significant deficiencies.

**Plan for Improving Performance:** In FY 2010, the SEC will develop a remediation plan to resolve the material weakness. We expect that due to the complex nature of the system design deficiencies it will be a multiyear plan. We will continue improvements to our ability to evaluate and monitor risk and control throughout the year.



## Program Assessments and Evaluations

Internal and external evaluations play a significant role in monitoring and improving SEC program performance. Through objective measurement and analysis, agency managers determine the extent to which programs are achieving mission objectives and direct SEC resources accordingly. In FY 2009, over 20 audits, studies, and evaluations of SEC programs and securities industry-related issues were completed.

### Office of Inspector General Audits and Evaluations

The OIG is an independent office within the SEC that conducts audits of programs and operations of the Commission and investigations into allegations of misconduct by staff or contractors. The mission of the OIG is to detect waste, fraud, and abuse, and to promote integrity, economy, efficiency, and effectiveness, in the agency's programs and operations. During FY 2009, the OIG issued 14 audit, inspection, and evaluation reports and one investigative memorandum covering a variety of matters including SEC procurement and contract management functions, agency compliance with the Freedom of Information Act, and its oversight of NRSRO. OIG reports are located at: <http://www.sec-oig.gov/AuditsInspections/Reports.html>.

### Government Accountability Office

GAO conducts numerous studies or investigations related to the SEC's programs every year. In FY 2009, GAO issued nine reports covering communication and utilization of resources within the enforcement program,

oversight of clearing agencies, and the Commission's rules regarding short selling, among other things. In addition, GAO also performs an annual audit of the SEC's financial statements and internal controls. GAO's annual report to Congress on high-risk areas, completed since 1990, serve to bring focus to specific areas needing extra attention. In its 2009 report, GAO identified the need to modernize the outdated U.S. financial regulatory system as a high-risk area. The SEC will coordinate with other federal departments and agencies to address this high-risk challenge. GAO reports are available at: [www.gao.gov](http://www.gao.gov).

### Internal Performance Measurement Assessments

In FY 2009, division and office staff responsible for calculating performance measurement data began working to improve processes and internal controls around the collection, reporting, and assessment of performance measurement data. The SEC also developed validation and verification checklists to assist in evaluating the procedures that divisions and offices follow when preparing and reviewing performance measurement data.

## Financial Section

This section of the Performance and Accountability Report contains the Agency's financial statements, required supplementary information and related Independent Auditor's Report, as well as other information on the Agency's financial management. Information presented here satisfies the reporting requirements of OMB Circular A-136, *Financial Reporting Requirements*, as well as the Accountability of Tax Dollars Act of 2002.

The first portion of this section contains Principal Financial Statements. The statements provide a comparison of FY 2009 and FY 2008 data. The SEC prepares the following required financial statements:

- Balance Sheet—presents, as of a specific time, amounts of future economic benefits owned or managed by the reporting entity exclusive of items subject to stewardship reporting (assets), amounts owed by the entity (liabilities), and amounts which comprise the difference (net position).
- Statement of Net Cost—presents the gross cost incurred by the reporting entity less any exchange revenue earned from its activities. The SEC also prepares a Statement of Net Cost by Goal to provide cost information at the strategic goal level.
- Statement of Changes in Net Position—reports the change in net position during the reporting period. Net position is affected by changes to Cumulative Results of Operations.
- Statement of Budgetary Resources—provides information about how budgetary resources were made available as well as their status at the end of the period.
- Statement of Custodial Activity—reports collection of non-exchange revenue for the General Fund of the Treasury. The SEC, as the collecting entity, does not recognize these collections as revenue. Rather, the Agency accounts for sources and disposition of the collections as custodial activities on this statement.

The SEC does not have stewardship over resources or responsibilities for which supplementary stewardship reporting would be required.

The accompanying *Notes to Financial Statements* provide a description of significant accounting policies as well as detailed information on select statement lines. These notes and the principal statements are audited by the GAO.

## Message from the Chief Financial Officer



**Kristine M. Chadwick**  
CHIEF FINANCIAL OFFICER  
AND ASSOCIATE EXECUTIVE  
DIRECTOR

I am pleased to join Chairman Schapiro in presenting the SEC's FY 2009 Performance and Accountability Report, which provides information relative to the SEC's budgetary integrity, operating performance, stewardship, and systems and control. In a year marked by market turmoil and far-reaching changes, I am grateful for the dedicated SEC staff who worked diligently to ensure accountability for financial resources and the results of the SEC's programs and activities.

In 2009, the SEC once again received an unqualified audit opinion on its financial statements. Over the past year, the SEC successfully addressed 21 of the 43 security weaknesses in information system controls identified by GAO, as well as 36 of the 43 financial recommendations that were open as of the end of the FY 2008 financial statement audit. Nevertheless, this year GAO found repeat conditions in the area of information security and control and accounting for budgetary resources, as well as significant deficiencies in the areas of financial reporting, internal control risk assessment and monitoring processes, and liability for registrant deposits. In the aggregate, these significant deficiencies were determined to represent a material weakness in internal control over information system security and related financial controls.

This determination prevents the SEC from reporting full compliance with federal financial systems requirements. These results were disappointing as improving internal control has been, and continues to be, one of our highest priorities. Nonetheless, these findings will spur us on to further strengthen our financial performance. The SEC has already begun to develop a remediation plan; some deficiencies are likely to be resolved during the first half of FY 2010, while others—which have been the result of long-term and growing constraints affecting our information technology and human resources—will take longer to fully resolve.

Our actions during the past year, and anticipated action over the coming year, are summarized below.

- In FY 2010, the SEC will continue to execute our long-term strategy to achieve fully automated integration of financial systems in order to address deficiencies caused by manual integration of systems supporting material balances.
- The SEC undertook several initiatives in FY 2009 that improved the SEC's budgetary accounting control. However, GAO identified the same types of problems in the SEC's accounting for budgetary activities as were reported in the prior year. The SEC will strive to improve discipline in this area in the short term, and the implementation of an integrated procurement system planned for 2010 will provide preventative control.
- In the short term, the weakness related to registrant deposits will be addressed by dedicated staffing assigned to resolve the backlog of aged balances pending review and analysis. Underlying the problem are issues related to the aging EDGAR systems, which are currently under consideration and will be addressed in the forthcoming plan of action.



- In FY 2010, the SEC will move to implement a more robust internal control risk assessment and monitoring process. Increased oversight over treasury and cash management functions, including reconciliation processes, will be supported by structural realignment within the Office of Financial Management expected in the first half of FY 2010.
- Actions taken over the past year resulted in the resolution of the significant deficiency previously found in property and equipment controls.

I look forward to further financial management improvements in FY 2010 to increase the efficiency, transparency, and accountability of the SEC's financial systems and operations.

Sincerely,



Kristine M. Chadwick  
Chief Financial Officer and  
Associate Executive Director, Finance  
November 16, 2009

**Balance Sheet**

As of September 30, 2009 and 2008

<i>(DOLLARS IN THOUSANDS)</i>	<b>FY 2009</b>	<b>FY 2008</b>
<b>ASSETS (Note 2):</b>		
Intragovernmental:		
Fund Balance with Treasury (Note 3)	\$6,083,307	\$6,011,310
Investments, Net (Notes 4 and 12)	1,959,611	2,982,542
Accounts Receivable (Note 5)	188	45
Advances and Prepayments	2,284	3,936
Total Intragovernmental	8,045,390	8,997,833
Accounts Receivable, Net (Note 5)	434,033	135,470
Advances and Prepayments	1,273	1,032
Property and Equipment, Net (Note 6)	82,435	84,007
<b>Total Assets</b>	<b>\$8,563,131</b>	<b>\$9,218,342</b>
<b>LIABILITIES (Note 7):</b>		
Intragovernmental:		
Accounts Payable	\$ 9,080	\$ 15,588
Employee Benefits	5,213	4,433
Unfunded FECA and Unemployment Liability	1,441	1,340
Custodial Liability (Note 16)	4	2
Liability for Non-Entity Assets	1	—
Other	157	—
Total Intragovernmental	15,896	21,363
Accounts Payable	34,084	39,122
Accrued Payroll and Benefits	27,131	22,970
Accrued Leave	42,696	38,829
Registrant Deposits	40,898	51,793
Actuarial FECA Liability (Note 8)	6,178	5,604
Liability for Disgorgement and Penalties (Notes 12 and 18)	2,297,741	3,108,367
Contingent Liabilities (Note 11.B)	9,500	—
Other Accrued Liabilities (Note 9)	20,922	27,005
<b>Total Liabilities</b>	<b>2,495,046</b>	<b>3,315,053</b>
Commitments and Contingencies (Note 11)		
<b>NET POSITION (Note 12):</b>		
Unexpended Appropriations—Other Funds	9,860	—
Cumulative Results of Operations—Earmarked Funds	6,058,225	5,903,289
<b>Total Net Position</b>	<b>\$6,068,085</b>	<b>\$5,903,289</b>
<b>Total Liabilities and Net Position</b>	<b>\$8,563,131</b>	<b>\$9,218,342</b>

The accompanying notes are an integral part of these financial statements.

U.S. SECURITIES AND EXCHANGE COMMISSION

**Statement of Net Cost***For the years ended September 30, 2009 and 2008*

<i>(DOLLARS IN THOUSANDS)</i>	<b>FY 2009</b>	<b>FY 2008</b>
<b>COSTS BY STRATEGIC GOAL (Note 13)</b>		
<b>Enforce compliance with federal securities laws</b>		
Total Gross Cost	\$ 615,414	\$595,327
<b>Promote healthy capital markets through an effective and flexible regulatory environment</b>		
Total Gross Cost	93,716	102,822
<b>Foster informed investment decision making</b>		
Total Gross Cost	168,436	133,487
<b>Maximize the use of SEC resources</b>		
Total Gross Cost	103,399	99,267
<b>Total Entity</b>		
Total Gross Program Cost	980,965	930,903
Less: Earned Revenue Not Attributed to Programs (Note 14)	1,109,891	956,317
<b>Net (Income) from Operations (Note 17)</b>	<b>\$ (128,926)</b>	<b>\$ (25,414)</b>

*The accompanying notes are an integral part of these financial statements.*

**Statement of Changes in Net Position**

For the years ended September 30, 2009 and 2008

(DOLLARS IN THOUSANDS)	FY 2009		
	Earmarked Funds	All Other Funds	Consolidated Total
<b>CUMULATIVE RESULTS OF OPERATIONS:</b>			
Beginning Balances	\$5,903,289	\$ —	\$5,903,289
<b>Budgetary Financing Sources:</b>			
Appropriations Used	—	140	140
<b>Other Financing Sources:</b>			
Imputed Financing (Note 10)	25,955	—	25,955
Other	—	(85)	(85)
Total Financing Sources	25,955	55	26,010
Net Income (Cost) from Operations	128,981	(55)	128,926
Net Change	154,936	—	154,936
Cumulative Results of Operations (Note 12)	6,058,225	—	6,058,225
<b>UNEXPENDED APPROPRIATIONS:</b>			
<b>Budgetary Financing Sources:</b>			
Appropriations Received	—	10,000	10,000
Appropriations Used	—	(140)	(140)
Total Unexpended Appropriations	—	9,860	9,860
<b>Net Position, End of Period</b>	<b>\$6,058,225</b>	<b>\$ 9,860</b>	<b>\$6,068,085</b>
<hr/>			
(DOLLARS IN THOUSANDS)	FY 2008		
	Earmarked Funds	All Other Funds	Consolidated Total
<b>CUMULATIVE RESULTS OF OPERATIONS:</b>			
Beginning Balances	\$5,853,768	\$ —	\$5,853,768
<b>Budgetary Financing Sources:</b>			
Appropriations Used	—	—	—
<b>Other Financing Sources:</b>			
Imputed Financing (Note 10)	24,107	—	24,107
Other	—	—	—
Total Financing Sources	24,107	—	24,107
Net Income (Cost) from Operations	25,414	—	25,414
Net Change	49,521	—	49,521
Cumulative Results of Operations (Note 12)	5,903,289	—	5,903,289
<b>UNEXPENDED APPROPRIATIONS:</b>			
<b>Budgetary Financing Sources:</b>			
Appropriations Received	—	—	—
Appropriations Used	—	—	—
Total Unexpended Appropriations	—	—	—
<b>Net Position, End of Period</b>	<b>\$5,903,289</b>	<b>\$ —</b>	<b>\$5,903,289</b>

The accompanying notes are an integral part of these financial statements.

U.S. SECURITIES AND EXCHANGE COMMISSION

**Statement of Budgetary Resources**

For the years ended September 30, 2009 and 2008

<i>(DOLLARS IN THOUSANDS)</i>	<b>FY 2009</b>	<b>FY 2008</b>
<b>BUDGETARY RESOURCES:</b>		
Unobligated Balance, Brought Forward, October 1	\$ 57,696	\$ 90,012
Recoveries of Prior Year Unpaid Obligations	28,982	38,384
Budget Authority:		
Appropriation	10,000	—
Spending Authority from Offsetting Collections:		
Earned		
Collected	1,017,763	985,997
Change in Receivables from Federal Sources	143	45
Change in Unfilled Customer		
Advance Received	157	—
Without Advance from Federal Sources	1	122
Subtotal	1,028,064	986,164
Temporarily not Available Pursuant to Public Law	(122,101)	(141,039)
<b>Total Budgetary Resources</b>	<b>\$ 992,641</b>	<b>\$ 973,521</b>
<b>STATUS OF BUDGETARY RESOURCES:</b>		
Obligations Incurred:		
Direct (Note 15)	\$ 964,640	\$ 915,422
Reimbursable (Note 15)	1,236	403
Subtotal	965,876	915,825
Unobligated Balance Available:		
Realized and Apportioned for Current Period	9,968	687
Unobligated Balance Not Available	16,797	57,009
<b>Total Status of Budgetary Resources</b>	<b>\$ 992,641</b>	<b>\$ 973,521</b>
<b>CHANGE IN OBLIGATED BALANCE:</b>		
Obligated Balance, Net		
Unpaid Obligations, Brought Forward, October 1	\$ 250,974	\$ 254,660
Uncollected Customer Payments from Federal Sources, Brought Forward, October 1	(167)	—
Total Unpaid Obligated Balance, Net	250,807	254,660
Obligations Incurred Net	965,876	915,825
Gross Outlays	(951,469)	(881,127)
Recoveries of Prior Year Unpaid, Obligations Actual	(28,982)	(38,384)
Change in Uncollected Customer Payments from Federal Sources	(144)	(167)
Obligated Balance, Net, End of Period		
Unpaid Obligations	236,399	250,974
Uncollected Customer Payments from Federal Sources	(311)	(167)
Total, Unpaid Obligated Balance, Net, End of Period (Note 11)	\$ 236,088	\$ 250,807
<b>NET OUTLAYS:</b>		
Net Outlays:		
Gross Outlays	\$ 951,469	\$ 881,127
Offsetting Collections	(1,017,920)	(985,997)
Distributed Offsetting Receipts	(702)	(3,779)
Net Outlays/(Collections)	\$ (67,153)	\$(108,649)

The accompanying notes are an integral part of these financial statements.

**Statement of Custodial Activity***For the years ended September 30, 2009 and 2008**(DOLLARS IN THOUSANDS)*

	<b>FY 2009</b>	<b>FY 2008</b>
<b>REVENUE ACTIVITY:</b>		
Sources of Cash Collections:		
Disgorgement and Penalties (Note 18)	\$815,802	\$192,958
Other	10	111
Net Collections	815,812	193,069
Accrual Adjustments	4	(2)
<b>Total Custodial Revenue (Note 16)</b>	<b>815,816</b>	<b>193,067</b>
<b>DISPOSITION OF COLLECTIONS:</b>		
Amounts Transferred to:		
Department of the Treasury	815,812	193,069
Change in Liability Accounts	4	(2)
<b>Total Disposition of Collections</b>	<b>815,816</b>	<b>193,067</b>
<b>NET CUSTODIAL ACTIVITY</b>	<b>\$ —</b>	<b>\$ —</b>

*The accompanying notes are an integral part of these financial statements.*

## Notes to Financial Statements

As of September 30, 2009 and 2008

### NOTE 1. Summary of Significant Accounting Policies

#### A. Reporting Entity

The SEC is an independent agency of the U.S. Government established pursuant to the Exchange Act, charged with regulating this country's capital markets. The SEC's mission is to protect investors; maintain fair, orderly, and efficient securities markets; and facilitate capital formation. The SEC works with Congress, other executive branch agencies, SROs (e.g., stock exchanges and FINRA), accounting and auditing standards setters, state securities regulators, law enforcement officials, and many other organizations in support of the agency's mission.

The agency's programs protect investors and promote the public interest by fostering and promoting compliance with the federal securities laws; establishing an effective regulatory environment that promotes high-quality disclosure, prevents abusive practice by market participants, and provides for fair, efficient, transparent, and competitive capital formation and innovation; and facilitating access to information that investors need to make informed investment decisions.

#### B. Basis of Presentation and Accounting

The accompanying financial statements present the financial position, net cost of operations, changes in net position, budgetary resources, and custodial activities of the SEC's core business activities as required by the Accountability of Tax Dollars Act of 2002. The statements may differ from other financial reports submitted pursuant to the OMB directives for the purpose of monitoring and controlling the use of the SEC budgetary resources. The SEC's books and records serve as the source of the information presented in the accompanying financial statements. The agency classified assets, liabilities, revenues, and costs in these financial statements according to the type of entity associated with the transactions. Intragovernmental assets and liabilities are those due from or to other federal entities. Intragovernmental earned revenues are collections or accruals due from

other federal entities. Intragovernmental costs are payments or accruals due to other federal entities.

The SEC's financial statements have been prepared on the accrual basis of accounting in conformity with GAAP for the federal government. Accordingly, revenues are recognized when earned and expenses are recognized when incurred, without regard to the receipt or payment of cash. These principles differ from budgetary accounting and reporting principles from which the SBR is prepared. The differences relate primarily to the capitalization and depreciation of property and equipment, as well as the recognition of other long-term assets and liabilities. The statements were also prepared in conformity with OMB Circular No. A-136, *Financial Reporting Requirements*.

#### C. Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities. These estimates and assumptions include the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results may differ from those estimates. Estimates are also used in the allocation of costs to the SEC strategic goals presented in the SNC.

#### D. Intra- and Inter-Agency Relationships

The SEC is comprised of a single federal bureau. Therefore, the current organizational structure does not give rise to the need for intra-entity eliminations.

#### E. Fund Accounting Structure

The SEC accounts for financial activities by Treasury Appropriation Fund Symbol (TAFS), summarized as follows:

- **General Fund—Salaries and Expenses** (0100 and X0100) consist of earmarked funds for use in carrying out the SEC's mission and functions and revenues collected by the SEC in excess of appropriated funds for FY 2004 (0100) and FY

2005 through FY 2009 (X0100). In addition to these TAFS, the SEC received a supplemental appropriation of \$10 million for use in FY 2009 and FY 2010; the supplemental appropriation will be accounted for in TAFS 09/10 0100 and is not earmarked. (Refer to *Note 1.F. Earmarked Funds*, *Note 3. Fund Balance with Treasury*, and *Note 12. Earmarked, Other, Disgorgement and Penalties, and Non-Entity Funds*).

#### **Other Funds:**

- **Deposit and Suspense Funds** (F3875, X6561, and X6563) carry disgorgement, penalties, and interest collected and held on behalf of harmed investors, registrant monies held temporarily until earned by the SEC, and collections awaiting disposition or reclassification.
- **Miscellaneous Receipt Accounts** (1099 and 3220) hold non-entity receipts and accounts receivable from custodial activities that the SEC cannot deposit into funds under its control. These accounts include receipts, pursuant to SEC enforcement actions, that will be sent to the Treasury.

The SEC does not have lending or borrowing authority, except as discussed in *Note 11. Commitments and Contingencies*. The SEC has custodial responsibilities, as disclosed in *Note 16. Custodial Revenues*.

#### **F. Earmarked Funds**

Earmarked funds are financed by specifically identified revenues, often supplemented by other financing sources, which remain available over time. The SEC collects such funds, which statutes require the SEC to use for designated activities, benefits, or purposes; and to account for them separately from the government's general revenues. The SEC accounts for these as offsetting collections and deposits amounts collected in TAFS 0100, Salaries and Expenses as detailed in *Note 12. Earmarked, Other, Disgorgement and Penalties, and Non-Entity Funds*.

#### **G. Entity/Non-Entity Assets**

Assets that an agency is authorized to use in its operations are entity assets. Assets that an agency holds on behalf of another federal agency or a third party and are not available for the agency's use are non-entity assets. The SEC's non-entity assets include the following: (i) disgorgement, penalties, and interest collected or to be collected and held or invested by the SEC pending distribution to harmed investors (disgorgement funds); (ii) accounts receivable in respect to Freedom of Information Act (FOIA) fees; and (iii) excess filing fees remitted by registrants (registrant deposits).

#### **H. Fund Balance with Treasury**

Fund Balance with Treasury (FBWT) includes certain funds held on behalf of third parties. These include registrant deposits and uninvested disgorgement funds. FBWT also includes undisbursed account balances with Treasury and balances in excess of appropriated amounts that are unavailable to the SEC. The SEC conducts all of its banking activity in accordance with directives issued by Treasury's Financial Management Service (FMS). The SEC deposits all revenue and receipts in commercial bank accounts maintained by the FMS, or wires them directly to a Federal Reserve Bank. Treasury processes all disbursements made by the SEC. The Federal Reserve Bank transfers all monies maintained in commercial bank accounts on the business day following the day of deposit.

#### **I. Investments**

The SEC invests disgorgement funds in short-term Treasury securities, whenever practicable. Disgorgement funds may also include civil penalties collected under the "Fair Fund" provision of the Sarbanes-Oxley Act of 2002. As the funds are collected, the SEC holds them in a deposit fund account and may invest them in overnight and short-term market-based Treasury bills through a facility provided by the Bureau of the Public Debt, pending their distribution to investors. The SEC adds interest earned to the funds and these funds are subject to taxation under Treasury Regulation section 1.468B-2. Additional details regarding SEC investments are provided in *Note 4. Investments, Net*.



## J. Accounts Receivable and Allowance for Uncollectible Accounts

Both SEC's entity and non-entity accounts receivable consist primarily of amounts due from the public. Entity accounts receivable are amounts that the SEC will retain upon collection. These generally include claims arising from: (i) securities transaction fees paid by exchanges, (ii) filing fees paid by registrants, (iii) goods or services that the SEC has provided to another federal agency pursuant to an inter-agency agreement, (iv) host reimbursement of employee travel, and (v) employee-related debt. Entity accounts receivable represent a small volume of the SEC's business activities because agency fee legislation generally requires payment of filing fees at the time of filing, and SRO transaction fees are payable to the SEC twice a year: in March for the period September through December, and in September for the period January through August. Accordingly, the year-end accounts receivable accrual generally represents fees payable by the SROs to the SEC for activity during the month of September.

Non-entity accounts receivable are amounts that the SEC will not retain upon collection. These mainly include disgorgement, penalties, and interest assessments. The SEC recognizes these accounts receivable when an order of the Commission or a court designates it to collect the assessed disgorgement, penalties, and interest. The SEC does not recognize interest as accounts receivable, unless specified by the court or an administrative order.

The SEC is also party to court orders directing violators of federal securities laws to pay the court or a receiver to collect the disgorgement, penalties, and interest assessed against them. These orders are not recognized as accounts receivable by the SEC because the debts are payable to another party. However, these debts are subject to change based on, for example, future orders issued by the presiding court that could result in the SEC recognizing a receivable. In the cases where the court order or other legally binding instrument requires the debtor to remit funds to the SEC, a receivable is recorded.

The SEC uses a two-tiered methodology to calculate the allowance for loss on accounts receivable. Previously, the SEC identified the 25 largest disgorgement and penalty receivable balances and made an individual collection assessment for each of these cases. For disgorgement and penalty receivable balances that fell below the "Top 25" threshold, the SEC applied an overall allowance percentage calculated from historical data to estimate uncollectible balances.

For the year ended September 30, 2009, the SEC enhanced the criteria used to determine accounts subject to an individual collectability assessment. Rather than using a "Top 25" population, which provided coverage over the portfolio ranging from 79 percent to 86 percent, the SEC used a specified 90 percent coverage threshold. In regard to the group of accounts that comprise the remainder of the portfolio, the SEC applied a rate based on a recent study of historical collection data. The SEC considers this to be a change in accounting estimate and will account for these changes on a prospective basis.

The SEC bases the allowance for uncollectible amounts and the related provision for estimated losses for filing fees and other accounts receivable on analysis of historical collection data. No allowance for uncollectible amounts or related provision for estimated losses have been established for fees payable by SROs, as these gross accounts receivable are deemed to represent their net realizable value based on historical experience.

## K. Advances and Prepayments

The SEC may prepay amounts in anticipation of receiving future benefits such as training and supplemental health benefits for the SEC employees. The agency expenses these payments when the goods are received or services are performed. The SEC also may advance funds to its personnel for travel costs. The SEC expenses these amounts when the expense voucher is processed.

## L. Property and Equipment, Net

The SEC's property and equipment consist of software, general-purpose equipment used by the agency, capital

improvements made to buildings leased by the SEC for office space, and internal-use software development costs for projects in development. The SEC reports property and equipment purchases and additions at cost. The agency expenses property and equipment acquisitions that do not meet the capitalization criteria, normal repairs, and maintenance when received or incurred by the SEC.

The SEC depreciates property and equipment over their estimated useful lives using the straight-line method of depreciation. The agency removes property and equipment from its asset accounts in the period of disposal, retirement, or removal from service. The SEC recognizes the difference between the book value and the amount realized as a gain or loss in the same period that the asset is removed.

#### **M. Liabilities**

The SEC records liabilities for amounts that are likely to be paid as a result of events that have occurred as of the relevant balance sheet dates. The SEC's liabilities consist of routine operating accounts payable, accrued payroll and benefits, registrant deposit accounts, liabilities for disgorgement and penalties, and custodial liabilities for amounts held on behalf of Treasury.

Liability for disgorgement and penalties represents the largest portion of the SEC's liabilities. A liability for disgorgement and penalties arises when an order is issued for the SEC to collect disgorgement, penalties, and interest from securities law violators, which may be returned to harmed investors. When the Commission or court issues an order, the SEC establishes an account receivable due to the SEC. When collected, the SEC holds receipts in FBWT or invests in Treasury securities pending distribution to harmed investors. The SEC reports an equal and offsetting liability for assets held at Treasury as a non-entity liability on the balance sheet.

The SEC recognizes liabilities covered by three types of resources: realized budgetary resources, unrealized budgetary resources that become available without further congressional action, and amounts held that do

not require the use of budgetary resources. Realized budgetary resources include obligated balances that fund existing liabilities and unobligated balances as of the relevant balance sheet dates. Unrealized budgetary resources represent fee collections in excess of amounts appropriated for current fiscal year spending. The SEC uses these resources to cover liabilities when appropriation language makes these unrealized budgetary resources available in the fiscal year without further congressional action.

#### **N. Employee Retirement Systems and Benefits**

The SEC's employees may participate in either the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS), depending on when they started working for the federal government. Pursuant to Public Law 99-335, FERS and Social Security automatically cover most employees hired after December 31, 1983. Employees who are rehired after a break in service of more than one year and who had five years of federal civilian service prior to 1987 are eligible to participate in the CSRS offset retirement system or may elect to join FERS.

The SEC does not report CSRS or FERS assets or accumulated plan benefits that may be applicable to its employees in its financial statements. The U.S. Office of Personnel Management reports them. Although the SEC reports no liability for future payments to employees under these programs, the federal government is liable for future payments to employees through the various agencies administering these programs. The SEC does not fund post-retirement benefits such as the Federal Employees Health Benefit Program and the Federal Employees Group Life Insurance Program. The SEC is also not required to fully fund CSRS pension liabilities. Instead, the financial statements of the SEC recognize an imputed financing source and corresponding expense that represent the SEC's share of the cost to the federal government of providing pension, post-retirement health, and life insurance benefits to all eligible SEC employees. All employees are eligible to contribute to a Thrift Savings Plan (TSP). For

those employees participating in FERS, the TSP is automatically established, and the SEC makes a mandatory 1 percent contribution to this plan. In addition, the SEC matches contributions ranging from 1 to 4 percent for FERS-eligible employees who contribute to their TSP. The SEC contributes a matching amount to the Social Security Administration under the Federal Insurance Contributions Act, which fully covers FERS participating employees. Employees participating in CSRS do not receive matching contributions to their TSP.

#### **O. Injury and Post-employment Compensation**

The Federal Employees' Compensation Act (FECA), administered by the DOL, addresses all claims brought by SEC employees for on-the-job injuries. The DOL bills each agency annually as its claims are paid, but payment on these bills is deferred for two years to allow for funding through the budget process. Similarly, employees that the SEC terminates without cause may receive unemployment compensation benefits under the unemployment insurance program also administered by the DOL, which bills each agency quarterly for paid claims.

#### **P. Annual, Sick, and Other Leave**

The SEC accrues annual leave and compensatory time as earned and reduces the accrual when leave is taken. Each month, the SEC makes an adjustment so that the balances in the accrued leave accounts reflect current leave balances and pay rates. No portion of this liability has been obligated. Future financing sources provide funding to the extent that current or prior year funding is not available to pay for leave earned but not taken. The SEC expenses sick leave and other types of non-vested leave as used.

#### **Q. Revenue and Other Financing Sources**

The SEC's revenue and financing sources include exchange revenues, which are generated from arm's-length transactions, and non-exchange revenues, which arise from the government's ability to demand payment. The SEC's exchange revenue mainly consists of collections from security transaction fees. The SEC's non-exchange revenue

consists of amounts collected in enforcement proceedings from violators of securities laws, as described below.

The SEC's funding is primarily through the collection of securities transaction fees from SROs and securities registration, tender offer, merger, and other fees from registrants. The fee rates are established by the SEC in accordance with federal law and are applied to volumes of activity reported by SROs or to filings submitted by registrants. When received, the SEC records these fees as exchange revenue. The SEC is permitted by law to include these amounts in its obligational authority or to offset its expenditures and liabilities upon collection, up to authorized limits. The SEC records all amounts remitted by registrants in excess of the fees for specific filings as liabilities in deposit accounts until earned by the SEC from registrant filings or returned to the registrant pursuant to the SEC's policy, which calls for the return of registrant deposits when an account is dormant for six months.

The SEC also receives collections from proceedings that result in the assessment of disgorgement, penalties, and interest against violators of federal securities laws. When the SEC collects these funds, it transfers the funds to a SEC deposit account at Treasury. The disgorged funds may be later returned to injured investors or paid to a SEC receipt account or returned to the general fund of the Treasury. Non-exchange revenue is recognized by the SEC when the funds are moved to a receipt account, and once those funds are transferred, they are reported in the SCA. The SEC does not record amounts collected and held by another government entity, such as a court registry, or a non-government entity, such as a receiver.

#### **R. Budgets and Budgetary Accounting**

The SEC is subject to certain restrictions on its use of statutory fees. The SEC deposits all fee revenues in a designated account at Treasury. However, the SEC may use funds from this account only as authorized by Congress, made available by OMB apportionment, and upon issuance of a Treasury warrant. Revenue collected in excess of appropriated amounts is restricted for use by the SEC.

The SEC can use fees other than the restricted excess fees from its operations, subject to an annual congressional limitation, which were \$894.4 million and \$842.7 million for the budget FY 2009 and FY 2008, respectively. In addition, Congress made available approximately \$65.6 million and \$63 million for FY 2009 and FY 2008, respectively. Funds appropriated that the SEC does not use in a given fiscal year are maintained in a designated account for use in future periods in accordance with the appropriation requirements. Previously mentioned in *Note 1.E. Fund Accounting Structure*, the SEC received a supplemental appropriation for \$10 million from the general fund of the Treasury for use in FY 2009 and FY 2010. Unlike the annual appropriation, the supplemental funds are not offset by fees collected by the SEC.

Each fiscal year, the SEC receives Category A apportionments, which are quarterly distributions of budgetary resources made by OMB. The SEC also receives a small amount of Category B funds for reimbursable activity, which are exempt from quarterly apportionment.

## S. Disgorgement and Penalties

The SEC maintains non-entity assets related to disgorgements and penalties ordered pursuant to civil injunctive and administrative proceedings and which, upon collection and further order, the SEC may distribute to harmed investors. The SEC also recognizes an equal and offsetting liability for these assets as discussed in *Note 1.M. Liabilities*.

These assets consist of disgorgement, penalties, and interest assessed against securities law violators where the Commission, administrative law judge, or in some cases, a court, has determined that the SEC should return such funds to harmed investors. The SEC holds such funds as non-entity assets pending distribution to harmed investors pursuant to an approved distribution plan. The SEC does not record on its financial statements any asset amounts another government entity such as a court, or a non-governmental entity, such as a receiver, has collected or will collect. Additional details regarding disgorgement and penalties are presented in *Note 12. Earmarked, Other, Disgorgement and Penalties, and Non-Entity Funds* and *Note 18. Disgorgement and Penalties*.

**NOTE 2. Non-Entity Assets**

At September 30, non-entity assets of the SEC consisted of the following:

<i>(DOLLARS IN THOUSANDS)</i>	<b>FY 2009</b>	<b>FY 2008</b>
<b>Intragovernmental</b>		
Fund Balance with Treasury:		
Registrant Deposits	\$ 40,898	\$ 51,793
Disgorgement and Penalties (Note 18)	43,622	37,707
Investments, Net:		
Disgorgement and Penalties (Note 18)	1,959,611	2,982,542
Total Intragovernmental Non-Entity Assets	2,044,131	3,072,042
Accounts Receivable, Net:		
Disgorgement and Penalties (Note 18)	294,508	88,118
Custodial	4	2
Other Non-Entity Assets	1	—
Total Non-Entity Assets	2,338,644	3,160,162
Total Entity Assets	6,224,487	6,058,180
Total Assets (Note 12)	\$8,563,131	\$9,218,342

**NOTE 3. Fund Balance with Treasury**

FBWT by type of fund as of September 30, are as follows:

<i>(DOLLARS IN THOUSANDS)</i>	<b>FY 2009</b>	<b>FY 2008</b>
<b>Fund Balances:</b>		
General Funds	\$5,998,787	\$5,921,810
Other Funds	84,520	89,500
Total Fund Balance with Treasury	6,083,307	6,011,310
<b>Status of Fund Balance with Treasury:</b>		
Unobligated Balance		
Available	9,968	687
Unavailable	16,797	57,009
Obligated Balance not yet Disbursed	236,088	250,807
Non-Budgetary Fund Balance with Treasury	5,820,454	5,702,807
Total Fund Balance with Treasury	\$6,083,307	\$6,011,310

## NOTE 4. Investments, Net

The SEC invests funds in overnight and short-term market-based Treasury bills. Treasury bills are securities traded in the primary and secondary U.S. Treasury markets. Originally, the U.S. government auctions Treasury bills directly in the primary U.S. Treasury market and subsequently investors trade them in the secondary U.S. Treasury market. In accordance with GAAP, the SEC records the value of its investments in Treasury bills at cost and amortizes the discount on a straight-line basis through the maturity date of these securities. The market value is determined by the secondary U.S. Treasury market and represents the value an individual investor is willing to pay for these securities, at a given point in time.

At September 30, 2009, investments consisted of the following:

<i>(DOLLARS IN THOUSANDS)</i>	<b>Cost</b>	<b>Amortization Method</b>	<b>Amortized (Premium) Discount</b>	<b>Investment Net</b>	<b>Market Value Disclosure</b>
Non-Marketable Market Based Securities	\$1,959,163	S/L	\$448	\$1,959,611	\$1,959,810

At September 30, 2008, investments consisted of the following:

<i>(DOLLARS IN THOUSANDS)</i>	<b>Cost</b>	<b>Amortization Method</b>	<b>Amortized (Premium) Discount</b>	<b>Investment Net</b>	<b>Market Value Disclosure</b>
Non-Marketable Market Based Securities	\$2,976,912	S/L	\$5,630	\$2,982,542	\$2,988,672

## NOTE 5. Accounts Receivable, Net

At September 30, 2009, accounts receivable consisted of the following:

<i>(DOLLARS IN THOUSANDS)</i>	<b>Gross Receivables</b>	<b>Allowance</b>	<b>Net Receivables</b>
Intragovernmental Entity Accounts Receivable:			
Reimbursable Activity	\$ 188	\$ —	\$ 188
Subtotal Intragovernmental Accounts Receivable	188	—	188
Entity Accounts Receivable:			
Exchange Fees	138,654	—	138,654
Filing Fees	720	116	604
Other	283	21	262
Non-Entity Accounts Receivable:			
Disgorgement and Penalties (Note 18)	713,851	419,343	294,508
Other	7	2	5
Subtotal Non-Intragovernmental Accounts Receivable	853,515	419,482	434,033
<b>Total Accounts Receivable</b>	<b>\$853,703</b>	<b>\$419,482</b>	<b>\$434,221</b>

At September 30, 2008, accounts receivable consisted of the following:

<i>(DOLLARS IN THOUSANDS)</i>	<b>Gross Receivables</b>	<b>Allowance</b>	<b>Net Receivables</b>
Intragovernmental Entity Accounts Receivable:			
Reimbursable Activity	\$ 45	\$ —	\$ 45
Subtotal Intragovernmental Accounts Receivable	45	—	45
Entity Accounts Receivable:			
Exchange Fees	46,480	—	46,480
Filing Fees	569	66	503
Other	368	1	367
Non-Entity Accounts Receivable:			
Disgorgement and Penalties (Note 18)	434,193	346,075	88,118
Other	2	—	2
Subtotal Non-Intragovernmental Accounts Receivable	481,612	346,142	135,470
Total Accounts Receivable	\$481,657	\$346,142	\$135,515

The SEC writes off receivables aged two or more years by removing the debt amounts from the gross accounts receivable and any related allowance for uncollectible accounts. For the year ended September 30, 2009, the SEC enhanced the criteria used to estimate the allowance for loss on disgorgement and penalties accounts receivable. Refer to *Note 1.J. Accounts Receivable and Allowance for Uncollectible Accounts* for methods used to estimate allowances.

## NOTE 6. Property and Equipment, Net

At September 30, 2009, property and equipment consisted of the following:

<b>Class of Property</b> <i>(DOLLARS IN THOUSANDS)</i>	<b>Depreciation/ Amortization Method</b>	<b>Capitalization Threshold for Individual Purchases</b>	<b>Capitalization Threshold for Bulk Purchases</b>	<b>Service Life (Years)</b>	<b>Acquisition Cost</b>	<b>Accumulated Depreciation/ Amortization</b>	<b>Book Value</b>
Furniture and Equipment	S/L	\$ 15	\$ 50	3-5	\$ 57,399	\$ 43,358	\$14,041
Software	S/L	300	300	3-5	85,145	67,737	17,408
Leasehold Improvements	S/L	300	N/A	10	80,891	29,905	50,986
Total					\$223,435	\$141,000	\$82,435

At September 30, 2008, property and equipment consisted of the following:

<b>Class of Property</b> <i>(DOLLARS IN THOUSANDS)</i>	<b>Depreciation/ Amortization Method</b>	<b>Capitalization Threshold for Individual Purchases</b>	<b>Capitalization Threshold for Bulk Purchases</b>	<b>Service Life (Years)</b>	<b>Acquisition Cost</b>	<b>Accumulated Depreciation/ Amortization</b>	<b>Book Value</b>
Furniture and Equipment	S/L	\$ 15	\$ 50	3-5	\$ 60,844	\$ 50,534	\$10,310
Software	S/L	300	300	3-5	76,069	57,046	19,023
Leasehold Improvements	S/L	300	N/A	10	76,700	22,026	54,674
Total					\$213,613	\$129,606	\$84,007

## NOTE 7. Liabilities Not Covered by Budgetary Resources

The SEC's liabilities include amounts that will not require the use of budgetary resources. These liabilities consist of registrant deposit accounts; accounts receivable for disgorgement, penalties, and interest assessed against securities laws violators; and invested and uninvested assets held by the SEC on behalf of harmed investors.

At September 30, liabilities consisted of the following:

<i>(DOLLARS IN THOUSANDS)</i>	<b>FY 2009</b>	<b>FY 2008</b>
<b>Liabilities Not Covered by Budgetary Resources</b>		
Intragovernmental		
Unfunded FECA and Unemployment Liability	\$ 1,441	\$ 1,340
Total Intragovernmental Liabilities	1,441	1,340
Accrued Leave	42,696	38,829
Actuarial Liability	6,178	5,604
Contingent Liability	9,500	—
Other Accrued Liabilities—Recognition of Lease Liability (Note 9)	12,513	15,768
<b>Total Liabilities Not Covered by Budgetary Resources</b>	<b>72,328</b>	<b>61,541</b>
<b>Liabilities Not Requiring Budgetary Resources</b>		
Intragovernmental		
Custodial Liability	4	2
Liability for Non-Entity Assets	1	—
Total Intragovernmental Liabilities	5	2
Registrant Deposits	40,898	51,793
Liability for Disgorgement and Penalties	2,297,741	3,108,367
<b>Total Liabilities Not Requiring Budgetary Resources</b>	<b>2,338,644</b>	<b>3,160,162</b>
<b>Liabilities Covered by Budgetary Resources</b>		
Intragovernmental		
Accounts Payable	9,080	15,588
Employee Benefits	5,213	4,433
Other	157	—
Total Intragovernmental Liabilities	14,450	20,021
Accounts Payable	34,084	39,122
Accrued Payroll and Benefits	27,131	22,970
Other Accrued Liabilities	8,409	11,237
<b>Total Liabilities Covered by Budgetary Resources</b>	<b>84,074</b>	<b>93,350</b>
<b>Total Liabilities</b>	<b>\$2,495,046</b>	<b>\$3,315,053</b>



### NOTE 8. Actuarial FECA Liability

FECA provides income and medical cost protection to covered federal civilian employees harmed on the job or who have contracted an occupational disease, and dependents of employees whose death is attributable to a job-related injury or occupational disease. Claims incurred for benefits under FECA for the SEC's employees are administered by the DOL and ultimately paid by the SEC when funding becomes available.

The SEC bases its estimate for FECA actuarial liability on the DOL's FECA model. The model considers the average amount of benefit payments incurred by the SEC for the past three fiscal years, multiplied by the medical and compensation liability to benefits paid (LBP) ratio for the whole FECA program. The SEC uses the overall average percentages of the LBP ratios summarized in the table below.

For FY 2009, the LBP ratios were as follows:

LBP Category	Medical	Compensation
Highest	9.90%	12.20%
Overall Average	9.30%	11.00%
Lowest	8.40%	10.10%

For FY 2008, the LBP ratios were as follows:

LBP Category	Medical	Compensation
Highest	9.30%	12.50%
Overall Average	8.00%	11.70%
Lowest	7.10%	11.40%

For FY 2009 and FY 2008, the SEC used the overall average LBP ratios to calculate the \$6.2 million and \$5.6 million FECA actuarial liabilities for those years, respectively.

### NOTE 9. Leases

The SEC has the authority to negotiate long-term leases for office space. At September 30, 2009, the SEC leased office space at 16 locations under operating lease agreements that expire between FY 2010 and FY 2021. The SEC paid \$82.8 million and \$83.0 million for rent for FY 2009 and FY 2008, respectively. In FY 2008, the SEC signed supplemental lease agreements that led to an increase in future lease payments. Under existing

commitments, minimum lease payments through FY 2015 and thereafter are as follows:

Fiscal Year	Minimum Lease Payments
<i>(DOLLARS IN THOUSANDS)</i>	
2010	\$ 77,534
2011	77,551
2012	68,288
2013	60,563
2014	58,846
2015 and thereafter	287,580
<b>Total Future Minimum Lease Payments</b>	<b>\$630,362</b>

The total future minimum lease payments summarized includes a continuing liability, until March 31, 2012, for space leased during FY 2005 in New York. To facilitate surrender of the SEC lease obligations for the previously occupied space, the SEC and U.S. General Services Administration (GSA) entered into separate agreements with the lessor of that space whereby GSA agreed to rent the office space for the next five years of the SEC's lease, with an option to renew for an additional five years which would, unless terminated early, overlap the remaining 17 months of the SEC's lease. As part of the SEC's agreement with the previous lessor, the SEC was responsible for the estimated \$18 million difference between its annual lease liability and the annual lease liability negotiated by GSA with that lessor. The GSA exercised the 5 year renewal option in July 2009, so as of September 30, 2009, the SEC is responsible for 13 more months covered by the GSA original lease and then less than two additional years, at a reduced rate, through March 31, 2012; this liability amounts to \$6.4 million of lease payments that end in FY 2012. Required lease payments through FY 2012 are as follows:

Fiscal Year	Required Lease Payments New York
<i>(DOLLARS IN THOUSANDS)</i>	
2010	\$2,722
2011	2,469
2012	1,192
<b>Total Future Estimated Lease Payments</b>	<b>\$6,383</b>

In addition to the lease liability above, during FY 2005, the SEC moved into temporary office space in New York due to renovations in the new leased office space. This

temporary space was being provided to the SEC for only the lessor's operating costs, and therefore the SEC did not make rent payments for the New York office for five months of the fiscal year. The SEC attributed rent expense on a straight-line basis over the life of the new lease and recorded rent expense and an unfunded liability estimated at \$8 million in FY 2005 and FY 2006. Since FY 2006, the SEC has recorded a reduction in the unfunded lease liability in the amount of \$1.9 million and currently has a remaining balance of \$6.1 million. The yearly future amortization amounts are shown in the table below. Refer to *Note 7. Liabilities Not Covered by Budgetary Resources*.

Fiscal Year <i>(DOLLARS IN THOUSANDS)</i>	Future Amortization Amounts
2010	\$ 533
2011	533
2012	533
2013	533
2014	533
2015 and thereafter	3,465
Total Future Amortization Amounts	\$6,130

## NOTE 10. Imputed Financing

The SEC recognizes an imputed financing source and corresponding expense to represent its share of the cost to the federal government of providing pension and post-retirement health and life insurance benefits (Pension/ Other Retirements Benefits) to all eligible SEC employees. For September 30, 2009 and 2008, the total amount of imputed financing amounted to approximately \$26 million and \$24 million, respectively.

## NOTE 11. Commitments and Contingencies

### A. Commitments

The Securities Investor Protection Act of 1970 (SIPA), as amended, created the Securities Investor Protection Corporation (SIPC) to provide certain financial protections to customers of insolvent registered securities brokers, dealers, firms, and members of national securities exchanges for up to \$500,000 per customer. SIPA authorizes the SIPC to create a fund to maintain all monies

received and disbursed by the SIPC. SIPA also gives the SIPC the authority to borrow funds from the SEC in an amount not to exceed, in the aggregate, \$1 billion in the event that the SIPC Fund is or may appear insufficient for purposes of SIPA. For this to occur, SIPC must file with the SEC a statement of the uses of such a loan and a repayment plan, and then the SEC must certify to the Secretary of the Treasury that the loan is necessary to protect broker-dealer customers and maintain confidence in the securities markets. The Treasury would make these funds available to the SEC through the purchase of notes or other obligating instruments issued by the SEC. Such notes or other obligating instruments would bear interest at a rate determined by the Secretary of the Treasury. As of September 30, 2009, the SEC had not loaned any funds to the SIPC, and there are no outstanding notes or other obligating instruments issued by the SEC.

Based on the amounts of customer property and customer claims in the Bernard L. Madoff Investment Securities LLC and Lehman Brothers Inc. liquidations, the current size of the SIPC Fund and the SIPC's ongoing assessments on brokers would provide sufficient funds to cover payments relating to the Madoff and Lehman matters. However, depending on other losses or claims, SIPC may determine that it needs to seek a loan from the Commission.

In addition to future lease commitments discussed in *Note 9. Leases*, the SEC is obligated for the purchase of goods and services that have been ordered, but not received. As of September 30, 2009, net obligations for all of the SEC's activities were \$236.1 million, of which \$83.6 million was delivered and unpaid. As of September 30, 2008, net obligations for all of SEC's activities were \$250.8 million, of which \$93.5 million was delivered and unpaid.

### B. Contingencies

The SEC recognizes contingent liabilities when a past event or exchange transaction has occurred, a future outflow or other sacrifice of resources is probable, and the future outflow or sacrifice of resources is measurable. The SEC is party to various routine administrative proceedings, legal

actions, and claims brought against it, including threatened or pending litigation involving labor relations claims, some of which may ultimately result in settlements or decisions against the federal government. As of September 30, 2009, the SEC has accrued \$500,000 for claims of this type. In the prior fiscal year, there were no contingencies which required an accrual.

In a separate legal issue, on June 12, 2009, the Court of Appeals affirmed the decision of the Federal Labor Relations Authority (FLRA) and upheld the award on *SEC v. FLRA*, No. 08-1256, 08-1294 (D.C.Cir.). This

matter involves a complaint filed by the National Treasury Employees Union (NTEU) before FLRA. No specific amount was claimed by the NTEU. As of September 30, 2009, the SEC has estimated a range of \$9 million to \$12 million for this award liability. In accordance with the Statement of Federal Financial Accounting Standards (SFFAS) 5, *Accounting for Liabilities of the Federal Government*, the SEC accrued the minimum amount in the range, \$9 million for FY 2009, because no amount in the estimated range is considered more probable than any other amount within the range.

## NOTE 12. Earmarked, Other, Disgorgement and Penalties, and Non-Entity Funds

The SEC's earmarked funds arise from offsetting collections from securities transaction fees, registration fees, and other fees authorized by the Securities Act and the Exchange Act. As such, the SEC identified and separately displayed activity in this fund on the Statement of Changes in Net Position (SCNP) and the Balance Sheet in accordance with the provisions of SFFAS 27, *Identifying and Reporting Earmarked Funds. Note 1.F. Earmarked Funds* displays additional details regarding the SEC's earmarked funds.

As discussed in *Note 1.E. Fund Accounting Structure*, the SEC received supplemental appropriations for use in FY 2009 and FY 2010. These funds are not earmarked and are presented under Other Entity Funds. For FY 2009, the assets, liabilities, net position, and net income from operations relating to earmarked, other, disgorgement and penalties, and non-entity funds consisted of the following:

<i>(DOLLARS IN THOUSANDS)</i>	<b>Earmarked</b>	<b>Other Entity Funds</b>	<b>Disgorgement and Penalties</b>	<b>Non-Entity Funds</b>	<b>Total</b>
<b>Balance Sheet as of September 30, 2009</b>					
<b>ASSETS</b>					
Fund Balance with Treasury	\$5,988,927	\$ 9,860	\$ 43,622	\$40,898	\$6,083,307
Investments, Net	—	—	1,959,611	—	1,959,611
Accounts Receivable, Net	139,708	—	294,508	5	434,221
Advances and Prepayments	3,557	—	—	—	3,557
Property and Equipment, Net	82,435	—	—	—	82,435
<b>Total Assets (Note 2)</b>	<b>\$6,214,627</b>	<b>\$ 9,860</b>	<b>\$2,297,741</b>	<b>\$40,903</b>	<b>\$8,563,131</b>
<b>LIABILITIES</b>					
Accounts Payable	\$ 43,164	\$ —	\$ —	\$ —	\$ 43,164
Accrued Payroll and Benefits	32,344	—	—	—	32,344
FECA and Unemployment Liability	7,619	—	—	—	7,619
Accrued Leave	42,696	—	—	—	42,696
Custodial Liability	—	—	—	4	4
Liability for Non-Entity Assets	—	—	—	1	1
Registrant Deposits	—	—	—	40,898	40,898
Liability for Disgorgement and Penalties	—	—	2,297,741	—	2,297,741
Contingent Liabilities	9,500	—	—	—	9,500
Other Accrued Liabilities	20,922	—	—	—	20,922
Other	157	—	—	—	157
<b>Total Liabilities (Note 7)</b>	<b>\$ 156,402</b>	<b>\$ —</b>	<b>\$2,297,741</b>	<b>\$40,903</b>	<b>\$2,495,046</b>
<b>NET POSITION</b>					
Unexpended Appropriations	\$ —	\$ 9,860	\$ —	\$ —	\$ 9,860
Cumulative Results of Operations	6,058,225	—	—	—	6,058,225
<b>Total Net Position</b>	<b>6,058,225</b>	<b>9,860</b>	<b>—</b>	<b>—</b>	<b>6,068,085</b>
<b>Total Liabilities and Net Position</b>	<b>\$6,214,627</b>	<b>\$ 9,860</b>	<b>\$2,297,741</b>	<b>\$40,903</b>	<b>\$8,563,131</b>

Continued on next page

Continued from page 82

<i>(DOLLARS IN THOUSANDS)</i>	<b>Earmarked</b>	<b>Other Entity Funds</b>	<b>Disgorgement and Penalties</b>	<b>Non-Entity Funds</b>	<b>Total</b>
<b>Statement of Net Cost</b>					
<b>For the Year Ended September 30, 2009</b>					
Gross Program Costs	\$ 980,825	\$ 140	\$ —	\$ —	\$ 980,965
Less Earned Revenues Not Attributable to Program Costs	1,109,806	—	—	85	1,109,891
Net (Income) Cost from Operations	\$ (128,981)	\$ 140	\$ —	\$ (85)	\$ (128,926)
<b>Statement of Changes in Net Position</b>					
<b>For the Year Ended September 30, 2009</b>					
Net Position Beginning of Period	\$5,903,289	\$ —	\$ —	\$ —	\$5,903,289
Appropriations Used	—	140	—	—	140
Imputed Financing	25,955	—	—	—	25,955
Other	—	—	—	(85)	(85)
Net Income (Cost) from Operations	128,981	(140)	—	85	128,926
Net Change	154,936	—	—	—	154,936
Cumulative Results of Operations	6,058,225	—	—	—	6,058,225
Unexpended Appropriations					
Appropriations Received	—	10,000	—	—	10,000
Appropriations Used	—	(140)	—	—	(140)
Total Unexpended Appropriations	—	9,860	—	—	9,860
Net Position End of Period	\$6,058,225	\$ 9,860	\$ —	\$ —	\$6,068,085

For FY 2008, the assets, liabilities, net position, and net income from operations relating to earmarked, other, disgorgement and penalties, and non-entity funds consisted of the following:

<i>(DOLLARS IN THOUSANDS)</i>	<b>Earmarked</b>	<b>Other Entity Funds</b>	<b>Disgorgement and Penalties</b>	<b>Non-Entity Funds</b>	<b>Total</b>
<b>Balance Sheet as of September 30, 2008</b>					
<b>ASSETS</b>					
Fund Balance with Treasury	\$5,921,810	\$ —	\$ 37,707	\$51,793	\$6,011,310
Investments, Net	—	—	2,982,542	—	2,982,542
Accounts Receivable, Net	47,395	—	88,118	2	135,515
Advances and Prepayments	4,968	—	—	—	4,968
Property and Equipment, Net	84,007	—	—	—	84,007
<b>Total Assets (Note 2)</b>	<b>\$6,058,180</b>	<b>\$ —</b>	<b>\$3,108,367</b>	<b>\$51,795</b>	<b>\$9,218,342</b>
<b>LIABILITIES</b>					
Accounts Payable	\$ 54,710	\$ —	\$ —	\$ —	\$ 54,710
Accrued Payroll and Benefits	27,403	—	—	—	27,403
FECA and Unemployment Liability	6,944	—	—	—	6,944
Accrued Leave	38,829	—	—	—	38,829
Custodial Liability	—	—	—	2	2
Liability for Non-Entity Assets	—	—	—	—	—
Registrant Deposits	—	—	—	51,793	51,793
Liability for Disgorgement and Penalties	—	—	3,108,367	—	3,108,367
Contingent Liabilities	—	—	—	—	—
Other Accrued Liabilities	27,005	—	—	—	27,005
Other	—	—	—	—	—
<b>Total Liabilities (Note 7)</b>	<b>\$ 154,891</b>	<b>\$ —</b>	<b>\$3,108,367</b>	<b>\$51,795</b>	<b>\$3,315,053</b>
<b>NET POSITION</b>					
Unexpended Appropriations	\$ —	\$ —	\$ —	\$ —	\$ —
Cumulative Results of Operations	5,903,289	—	—	—	5,903,289
<b>Total Net Position</b>	<b>5,903,289</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>5,903,289</b>
<b>Total Liabilities and Net Position</b>	<b>\$6,058,180</b>	<b>\$ —</b>	<b>\$3,108,367</b>	<b>\$51,795</b>	<b>\$9,218,342</b>
<b>Statement of Net Cost</b>					
<b>For the Year Ended September 30, 2008</b>					
Gross Program Costs	\$ 930,903	\$ —	\$ —	\$ —	\$ 930,903
Less Earned Revenues Not					
Attributable to Program Costs	956,317	—	—	—	956,317
Net (Income) Cost from Operations	\$ (25,414)	\$ —	\$ —	\$ —	\$ (25,414)

Continued on next page

Continued from page 84

<i>(DOLLARS IN THOUSANDS)</i>	<b>Earmarked</b>	<b>Other Entity Funds</b>	<b>Disgorgement and Penalties</b>	<b>Non-Entity Funds</b>	<b>Total</b>
<b>Statement of Changes in Net Position</b>					
<b>For the Year Ended September 30, 2008</b>					
Net Position Beginning of Period	\$5,853,768	\$ —	\$ —	\$ —	\$5,853,768
Appropriations Used	—	—	—	—	—
Imputed Financing	24,107	—	—	—	24,107
Other	—	—	—	—	—
Net Income (Cost) from Operations	25,414	—	—	—	25,414
Net Change	49,521	—	—	—	49,521
Cumulative Results of Operations	5,903,289	—	—	—	5,903,289
Unexpended Appropriations					
Appropriations Received	—	—	—	—	—
Appropriations Used	—	—	—	—	—
Total Unexpended Appropriations	—	—	—	—	—
Net Position End of Period	\$5,903,289	\$ —	\$ —	\$ —	\$5,903,289

### NOTE 13. Intragovernmental Costs and Exchange Revenue

At the beginning of the fiscal year, each SEC reporting unit provides a percentage allocation analysis associating their activities to the SEC's strategic outcomes. The SEC strives to achieve outcomes which are identified in the Strategic Plan and tied to the SEC's four strategic goals. An Activity Based Costing (ABC) model is programmed to allocate costs based on these reported percentages. The ABC model is updated during the year as a reporting unit's activity allocations are reevaluated due to changes in mission activities. The ABC model identifies costs to each outcome and then accumulates these costs by the appropriate strategic goal in the SNC.

The SEC assigned all costs incurred for FY 2009 and FY 2008 to specific goals described in the agency's Strategic Plan, but exchange revenue is not directly assignable to a specific goal and is presented in total. Total intragovernmental and public costs for the fiscal years ended September 30, 2009 and 2008, are summarized below.

<b>Program Goals</b> <i>(DOLLARS IN THOUSANDS)</i>	<b>FY 2009</b>	<b>FY 2008</b>
<b>Enforce Compliance with Federal Securities Laws</b>		
Intragovernmental Costs	\$ 103,899	\$116,189
Public Costs	511,515	479,138
Subtotal—Enforce Compliance with Federal Securities Laws	615,414	595,327
<b>Promote Healthy Capital Markets through an Effective and Flexible Regulatory Environment</b>		
Intragovernmental Costs	15,822	20,068
Public Costs	77,894	82,754
Subtotal—Promote Healthy Capital Markets through an Effective and Flexible Regulatory Environment	93,716	102,822
<b>Foster Informed Investment Decision Making</b>		
Intragovernmental Costs	28,437	26,052
Public Costs	139,999	107,435
Subtotal—Foster Informed Investment Decision Making	168,436	133,487
<b>Maximize the Use of SEC Resources</b>		
Intragovernmental Costs	17,457	19,374
Public Costs	85,942	79,893
Subtotal—Maximize the Use of SEC Resources	103,399	99,267
Total Entity		
Intragovernmental Costs	165,615	181,683
Public Costs	815,350	749,220
Total Costs	980,965	930,903
Less: Exchange Revenues	1,109,891	956,317
Net (Income) from Operations	\$ (128,926)	\$ (25,414)

Intragovernmental costs arise from exchange transactions made between two reporting entities within the federal government in contrast with public costs which arise from exchange transactions made with a non-federal entity.



## NOTE 14. Exchange Revenues

For the fiscal years ended September 30, 2009 and 2008, exchange revenues consisted of the following:

<i>(DOLLARS IN THOUSANDS)</i>	<b>FY 2009</b>	<b>FY 2008</b>
Securities Transactions Fees	\$ 927,112	\$794,672
Securities Registration, Tender Offer, and Merger Fees	181,671	161,377
Other	1,108	268
<b>Total Exchange Revenues</b>	<b>\$1,109,891</b>	<b>\$956,317</b>

## NOTE 15. Status of Budgetary Resources

### A. Apportionment Categories of Obligations Incurred

The distinction between Category A and B funds is the time of apportionment. Category A funds are subject to quarterly apportionment by OMB. Category B funds represent budgetary resources distributed by a specified time period, activity, project, object, or a combination of these categories. The SEC's Category B funds represent amounts apportioned at the beginning of the fiscal year for the SEC's reimbursable activity. For the fiscal years ended September 30, 2009 and 2008, obligations incurred as reported on the SBR consisted of the following:

<b>Obligations Incurred</b> <i>(DOLLARS IN THOUSANDS)</i>	<b>FY 2009</b>	<b>FY 2008</b>
Direct Obligations		
Category A	\$964,640	\$915,422
Reimbursable Obligations		
Category B	1,236	403
<b>Total Obligations Incurred</b>	<b>\$965,876</b>	<b>\$915,825</b>

In addition, the amounts of budgetary resources obligated for undelivered orders include \$152.8 million and \$157.5 million as of September 30, 2009 and 2008, respectively.

### B. Explanation of Differences between the Statement of Budgetary Resources and the Budget of the U.S. Government

A comparison between the FY 2009 SBR and the actual FY 2009 data in the President's budget cannot be presented, as the FY 2011 President's budget which will contain the FY 2009 data is not yet available; the comparison will be presented in next year's financial statements.

A comparison between the FY 2008 SBR and the FY 2008 data in the FY 2010 President's budget is as follows:

<i>(DOLLARS IN MILLIONS)</i>	<b>Budgetary Resources</b>	<b>Obligations Incurred</b>	<b>Distributed Offsetting Receipts</b>	<b>Net Outlays</b>
Combined Statement of Budgetary Resources	\$974	\$916	\$ 4	\$(105)
Expired Accounts	(1)	—	—	—
Internal Fund Transfer	—	—	(62)	—
Other	—	(1)	—	—
<b>Budget of the U.S. Government</b>	<b>\$973</b>	<b>\$915</b>	<b>\$(58)</b>	<b>\$(105)</b>

The SBR reports on both expired and unexpired amounts while the budget excludes expired accounts that are no longer available for new obligations. The \$62 million difference is due to a large, one-time transfer from an SEC suspense fund to an SEC deposit fund which was not reported on the distributed offsetting receipts line of the SBR. The internal one-time transfer was not presented in the SBR in order to maintain comparability between years. Other differences are due to rounding.

**NOTE 16. Custodial Revenues**

For the fiscal years ended September 30, 2009 and 2008, the source of custodial revenues is shown below. Collections are transferred to Treasury.

<i>(DOLLARS IN THOUSANDS)</i>	<b>FY 2009</b>	<b>FY 2008</b>
Cash Collections		
Disgorgement and Penalties (Note 18)	\$815,802	\$192,958
Other	10	111
Increase/(Decrease) in Amounts to Be Collected	4	(2)
<b>Total Non-Exchange Revenues</b>	<b>\$815,816</b>	<b>\$193,067</b>

## NOTE 17. Reconciliation of Net Cost of Operations (Proprietary) to Budget (formerly the Statement of Financing)

For the fiscal years ended September 30, 2009 and 2008:

<i>(DOLLARS IN THOUSANDS)</i>	FY 2009	FY 2008
<b>RESOURCES USED TO FINANCE ACTIVITIES</b>		
Budgetary Resources Obligated:		
Obligations Incurred (Note 15)	\$ 965,876	\$ 915,825
Less: Spending Authority from Offsetting Collections and Recoveries	(1,047,046)	(1,024,548)
Net Obligations	(81,170)	(108,723)
Other Resources:		
Imputed Financing from Cost Absorbed by Others (Note 10)	25,955	24,107
<b>Total Resources Used to Finance Activities</b>	<b>(55,215)</b>	<b>(84,616)</b>
<b>RESOURCES USED TO FINANCE ITEMS NOT PART OF THE NET COST OF OPERATIONS</b>		
Change in Budgetary Resources Obligated for Goods, Services, and Benefits		
Ordered But Not Yet Provided	6,185	13,721
Resources That Finance the Acquisition of Assets Capitalized on the Balance Sheet	(24,844)	(16,520)
Net Decrease in Revenue Receivables Not Generating Resources until Collected	—	27,678
<b>Total Resources Used to Finance Items Not Part of the Net Cost of Operations</b>	<b>(18,659)</b>	<b>24,879</b>
<b>Total Resources Used to Finance the Net Cost of Operations</b>	<b>(73,874)</b>	<b>(59,737)</b>
<b>COMPONENTS OF NET COST OF OPERATIONS THAT WILL NOT REQUIRE OR GENERATE RESOURCES IN THE CURRENT PERIOD</b>		
Components Requiring or Generating Resources in Future Periods:		
Costs That Will Be Funded by Resources in Future Periods	3,867	3,533
Net Increase in Revenue Receivables Not Generating Resources until Collected	(92,169)	—
Change in Lease Liability	(3,255)	(1,097)
Change in Unfunded Liability	10,176	754
<b>Total Components of Net Cost of Operations That Will Require or Generate Resources in Future Periods</b>	<b>(81,381)</b>	<b>3,190</b>
Components Not Requiring or Generating Resources:		
Depreciation and Amortization	26,414	29,626
Revaluation of Assets or Liabilities	—	1,457
Other Costs That Will Not Require Resources	(85)	50
<b>Total Components of Net Cost of Operations That Will Not Require or Generate Resources in Future Periods</b>	<b>26,329</b>	<b>31,133</b>
<b>Total Components of Net Cost of Operations That Will Not Require or Generate Resources in the Current Period</b>	<b>(55,052)</b>	<b>34,323</b>
<b>Net (Income) from Operations</b>	<b>\$ (128,926)</b>	<b>\$ (25,414)</b>

## NOTE 18. Disgorgement and Penalties

The SEC's non-entity assets consist of disgorgement, penalties, and interest assessed against securities law violators where the Commission, administrative law judge, or in some cases, a court, has determined that the SEC should return such funds to harmed investors where practicable. The SEC also recognizes an equal and offsetting liability for these non-entity assets as discussed in *Note 1.M. Liabilities*.

When the Commission or court issues an order, the SEC establishes an account receivable due to the SEC. When collected, the SEC holds receipts in FBWT or invests in Treasury securities pending distribution to harmed investors. Disbursements related to disgorgements and penalties include distributions to harmed investors, payments to tax authorities, and fees paid to plan administrators and the Bureau of the Public Debt. When it is not practical to return funds to investors or when court orders expressly state that funds are to be remitted to the U.S. Treasury, the SEC transfers funds to Treasury. The SEC does not record on its financial statements any amounts ordered to another government entity such as a court, or a non-governmental entity such as a receiver. Additional details regarding disgorgement and penalties are presented in *Note 1.S. Disgorgement and Penalties*, *Note 2. Non-Entity Assets* and *Note 12. Earmarked, Other, Disgorgement and Penalties, and Non-Entity Funds*.

At September 30, 2009 and 2008, the net inflows and outflows for FBWT, Investments, and Accounts Receivable related to disgorgement and penalties consisted of the following:

<i>(DOLLARS IN THOUSANDS)</i>	<b>FY 2009</b>	<b>FY 2008</b>
Fund Balance with Treasury		
Beginning Balance	\$ 37,707	\$ 13,094
Collections	885,318	279,905
Purchases and Redemptions of Treasury Securities	1,032,328	709,902
Disbursements	(1,095,929)	(772,236)
Transfers to Treasury (Note 16)	(815,802)	(192,958)
<b>Total Fund Balance with Treasury</b>	<b>43,622</b>	<b>37,707</b>
Investments, Net (Note 4)		
Beginning Balance	2,982,542	3,602,666
Net Activity	(1,022,931)	(620,124)
<b>Total Investments, Net</b>	<b>1,959,611</b>	<b>2,982,542</b>
Accounts Receivable, Net (Note 5)		
Beginning Balance	88,118	63,610
Net Activity	206,390	24,508
<b>Total Accounts Receivable, Net</b>	<b>294,508</b>	<b>88,118</b>
<b>Total Disgorgement and Penalties (Notes 2 and 12)</b>	<b>\$ 2,297,741</b>	<b>\$3,108,367</b>

# Report of Independent Auditors



United States Government Accountability Office  
Washington, DC 20548

November 16, 2009

The Honorable Mary Schapiro  
Chairman  
United States Securities  
and Exchange Commission

Dear Ms. Schapiro:

The accompanying report presents the results of our audits of the financial statements of the United States Securities and Exchange Commission (SEC) as of, and for the fiscal years ending, September 30, 2009, and 2008. The Accountability of Tax Dollars Act of 2002 requires that SEC prepare and submit audited financial statements to Congress and the Office of Management and Budget (OMB). We agreed, under our audit authority, to audit SEC's financial statements.

This report contains our (1) unqualified opinions on SEC's financial statements, (2) opinion that SEC's internal control over financial reporting was not effective as of September 30, 2009, and (3) conclusion that we found no reportable compliance issues during fiscal year 2009. The accompanying report also discusses other significant issues that we identified in performing our audit that we believe warrant the attention of SEC management and users of SEC's financial statements.

We are sending copies of this report to the Chairmen and Ranking Members of the Senate Committee on Banking, Housing, and Urban Affairs; the Senate Committee on Homeland Security and Governmental Affairs; the House Committee on Financial Services; and the House Committee on Oversight and Government Reform. We are also sending copies to the Secretary of the Treasury, the Director of OMB, and other interested parties. In addition, this report will be available at no charge on our Web site at <http://www.gao.gov>.

---

If you have questions about this report, or if I can be of further assistance, please contact me at (202) 512-9406 or [dalkinj@gao.gov](mailto:dalkinj@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report.

Sincerely yours,



James R. Dalkin  
Director  
Financial Management and Assurance

---

To the Chairman of the United States Securities and Exchange Commission

In our audits of the United States Securities and Exchange Commission (SEC) for fiscal years 2009 and 2008, we found

- the financial statements as of and for the fiscal years ended September 30, 2009, and 2008, including the accompanying notes, are presented fairly, in all material respects, in conformity with U.S. generally accepted accounting principles;
- SEC's internal control over financial reporting was not effective as of September 30, 2009; and
- no reportable noncompliance with laws and regulations we tested.

SEC was able to produce financial statements that were fairly stated in all material respects for the sixth consecutive year since SEC began preparing audited financial statements. However, over these 6 years, SEC has struggled with material weaknesses<sup>1</sup> and significant deficiencies<sup>2</sup> in internal control that we have reported at various times since 2004. We have also reported that, notwithstanding the periodic efforts and significant resources SEC has expended to compensate for these deficiencies, these efforts were not always permanent effective solutions and SEC's ability to sustain effective internal control over financial reporting remained at risk. For example, in fiscal year 2008, SEC undertook a significant initiative to address previously reported weaknesses in its financial reporting process. This initiative, which included general ledger system enhancements and the implementation of new control processes, involved significant resources and an intensive focus on compensating measures from SEC to reasonably assure reliable financial reporting during 2008. However, during this year's audit, the nature of the errors and related internal control deficiencies we found in SEC's financial reporting process indicate that SEC was unable to sustain

---

<sup>1</sup>A material weakness is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

<sup>2</sup>A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

the level of effort and resources needed to compensate for these deficiencies to maintain effective internal control over financial reporting.

As discussed in more detail later in this report, the internal control deficiencies that we identified in fiscal year 2009 collectively represent a material weakness in SEC's internal control over financial reporting and give rise to significant management challenges that have (1) increased the risk that data processed by SEC's information systems are not reliable or appropriately protected, (2) impaired management's ability to prepare its financial statements without extensive manual procedures, and (3) resulted in unsupported entries and errors in the general ledger. This material weakness is primarily caused by SEC's continued reliance on processes and systems that were not designed to provide the accurate, complete, and timely transaction-level financial information that management needs to make well-informed decisions, or to accumulate and report reliable financial information without extensive manual workarounds and compensating controls. These problems are likely to continue to exist until SEC's general ledger system is either significantly enhanced or replaced, key accounting activity is fully integrated with the general ledger at the transaction level, information security controls are strengthened, and appropriate resources are dedicated to maintaining effective internal controls. In the interim, SEC will need to place greater emphasis on monitoring the current risks and vulnerabilities, along with the related compensating procedures, in order to determine whether these risks are being adequately mitigated on an ongoing basis. Successfully addressing these issues is critical to maintaining SEC's credibility given its role in the financial reporting process of SEC registrants, and is vital to achieving SEC's stated vision to be the standard against which federal agencies are measured.

The following sections discuss in more detail these conclusions as well as our conclusions on Management's Discussion and Analysis and other supplementary information. They also present information on the objectives, scope, and methodology of our audit and our discussion of SEC management's comments on a draft of this report.

---

## Opinion on Financial Statements

SEC's financial statements, including the accompanying notes, present fairly, in all material respects, in conformity with U.S. generally accepted accounting principles, SEC's assets, liabilities, and net position as of September 30, 2009, and September 30, 2008; and net costs, changes in net position, budgetary resources, and custodial activity for the fiscal years then ended.



---

**Auditor's Report**

---

**Opinion on Internal Control**

Because of the material weakness in internal control discussed below, SEC did not maintain, in all material respects, effective internal control over financial reporting as of September 30, 2009, and thus did not provide reasonable assurance that losses, misstatements, or noncompliance material in relation to the financial statements would be prevented or detected and corrected on a timely basis. Our opinion is based on criteria established under 31 U.S.C. sec. 3512(c), (d), commonly known as the Federal Managers' Financial Integrity Act of 1982 (FMFIA).

During this year's audit, we identified six significant deficiencies that collectively represent a material weakness in SEC's internal control over financial reporting. SEC's own evaluation of the effectiveness of its internal controls during fiscal year 2009 identified and reported a similar material weakness in internal control over financial reporting.<sup>3</sup> This material weakness gives rise to significant management challenges that have (1) reduced assurance that data processed by SEC's information systems are reliable and appropriately protected, (2) impaired management's ability to prepare its financial statements without extensive compensating manual procedures, and (3) resulted in unsupported entries and errors in the general ledger. The issues that we have identified and discuss further in appendix I of this report relate to SEC's control deficiencies concerning (1) ineffective controls over information security, (2) ineffective financial reporting controls and general ledger system reporting limitations, (3) the lack of timely reconciliations of its fund balance with Treasury and support for making adjusting entries to resolve differences, (4) untimely reviews and recognition of revenue in the correct period pertaining to registrant deposits, (5) ineffective processes and related documentation concerning budgetary transactions, and (6) inadequate assessment of its risks relevant to the preparation of financial statements and ineffective monitoring of its financial reporting internal controls. We reported on some of these issues last year<sup>4</sup> and in prior audits.

---

<sup>3</sup>SEC conducted an evaluation of its internal controls in accordance with the Office of Management and Budget's Circular No. A-123, *Management's Responsibility for Internal Control*, based on criteria established under FMFIA.

<sup>4</sup>GAO, *FINANCIAL AUDIT: Securities and Exchange Commission's Financial Statements for Fiscal Years 2008 and 2007*, GAO-09-173 (Washington, D.C.: Nov. 14, 2008).

---

**Auditor's Report**

---

In our last year's audit, we reported a significant deficiency in SEC's property and equipment controls. During fiscal year 2009, SEC improved its controls over the receipt and acceptance of property acquisitions and the controls for recording internal-use software projects and acquisition costs such that we no longer consider this to be a significant deficiency at September 30, 2009.

Despite its material weakness in internal control, SEC was able to prepare financial statements that were fairly stated in all material respects for fiscal years 2009 and 2008. However, the material weakness in SEC's internal control over financial reporting noted above may adversely affect any decision by SEC's management that is based, in whole or in part, on information that is inaccurate because of this weakness. In addition, unaudited financial information reported by SEC may also contain misstatements resulting from this weakness. We considered the material weakness identified above in determining the nature, timing, and extent of our audit procedures on SEC's fiscal years 2009 financial statements. We caution that misstatements may occur and not be detected by our tests and that such testing may not be sufficient for other purposes.

We will be reporting additional details concerning this material weakness separately to SEC management, along with recommendations for corrective actions. We also identified other deficiencies in SEC's system of internal control which we do not consider to be material weaknesses or significant deficiencies but which merit SEC management's attention and correction. We have communicated these matters to SEC management informally and as appropriate, will be reporting them in writing to SEC separately.

---

**Compliance with  
Laws and Regulations**

Our tests of SEC's compliance with selected provisions of laws and regulations for fiscal year 2009 disclosed no instances of noncompliance that would be reportable under U.S. generally accepted government auditing standards. The objective of our audit was not to provide an opinion on overall compliance with laws and regulations. Accordingly, we do not express such an opinion.

---

**Consistency of Other  
Information**

SEC's Management Discussion and Analysis and other accompanying information contain a wide range of data, some of which are not directly related to the financial statements. We did not audit and we do not express an opinion on this information. However, we compared this information for consistency with the financial statements and discussed the methods

---

**Auditor's Report**


---

of measurement and presentation with SEC officials. On the basis of this limited work, we found no material inconsistencies with the financial statements, U.S. generally accepted accounting principles, or the Office of Management and Budget Circular No. A-136, *Financial Reporting Requirements*.

---

**Objectives, Scope,  
and Methodology**

SEC management is responsible for (1) preparing the financial statements in conformity with U.S. generally accepted accounting principles; (2) establishing and maintaining effective internal control over financial reporting, and evaluating its effectiveness; and (3) complying with applicable laws and regulations. SEC management evaluated the effectiveness of SEC's internal control over financial reporting as of September 30, 2009, based on the criteria established under FMFIA. SEC management's assertion based on its evaluation is presented in its Management Discussion and Analysis included in this report.

We are responsible for planning and performing the audit to obtain reasonable assurance and provide our opinion about whether (1) the SEC's financial statements are presented fairly, in all material respects, in conformity with U.S. generally accepted accounting principles; and (2) SEC management maintained, in all material respects, effective internal control over financial reporting as of September 30, 2009. We are also responsible for (1) testing compliance with selected provisions of laws and regulations that have a direct and material effect on the financial statements, and (2) performing limited procedures with respect to certain other information accompanying the financial statements.

In order to fulfill these responsibilities, we

- examined, on a test basis, evidence supporting the amounts and disclosures in the financial statements;
- assessed the accounting principles used and significant estimates made by SEC management;
- evaluated the overall presentation of the financial statements;
- obtained an understanding of SEC and its operations, including its internal control over financial reporting;

---

**Auditor's Report**

---

- considered SEC's process for evaluating and reporting on internal control over financial reporting that is required by FMFIA;
- assessed the risk that a material misstatement exists in the financial statements and the risk that a material weakness exists in internal control over financial reporting;
- evaluated the design and operating effectiveness of internal control over financial reporting based on the assessed risk;
- tested relevant internal control over financial reporting;
- tested compliance with selected provisions of the following laws and regulations: the Securities Exchange Act of 1934, as amended; the Securities Act of 1933, as amended; the Antideficiency Act; laws governing the pay and allowance system for SEC employees; the Debt Collection Improvement Act of 1996; the Prompt Payment Act; the Federal Employees' Retirement System Act of 1986; the Continuing Appropriations Resolution, 2009, as amended; the Financial Services and General Government Appropriations Act, 2009; and the Supplemental Appropriations Act, 2009; and
- performed such other procedures as we considered necessary in the circumstances.

An entity's internal control over financial reporting is a process effected by those charged with governance, management, and other personnel, the objectives of which are to provide reasonable assurance that (1) transactions are properly recorded, processed, and summarized to permit the preparation of financial statements in accordance with U.S. generally accepted accounting principles, and assets are safeguarded against loss from unauthorized acquisition, use, or disposition; and (2) transactions are executed in accordance with the laws governing the use of budgetary authority and other laws and regulations that could have a direct and material effect on the financial statements.

We did not evaluate all internal controls relevant to operating objectives as broadly established under FMFIA, such as those controls relevant to preparing statistical reports and ensuring efficient operations. We limited our internal control testing to controls over financial reporting. Because of inherent limitations, internal control may not prevent or detect and correct misstatements due to error or fraud, losses, or noncompliance. We also caution that projecting any evaluation of effectiveness to future periods is

---

**Auditor's Report**

---

subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

We did not test compliance with all laws and regulations applicable to SEC. We limited our tests of compliance to selected provisions of laws and regulations that have a direct and material effect on the financial statements for the fiscal year ended September 30, 2009. We caution that noncompliance may occur and not be detected by these tests and that such testing may not be sufficient for other purposes.

We performed our audit in accordance with U.S. generally accepted government auditing standards. We believe our audit provides a reasonable basis for our opinions and other conclusions.

---

**SEC Comments and  
Our Evaluation**

In commenting on a draft of this report, SEC's Chairman stated that SEC is committed to making the resolution of the six significant control deficiencies GAO has identified a high priority, and is developing a plan to remediate the resulting aggregate material weakness over information systems and related financial controls. She also stated that, over the next couple of months, SEC will tackle the identified systems, controls, and operational issues in order to strengthen the reliability of its financial reporting. The complete text of SEC's response is reprinted in appendix II.



James R. Dalkin  
Director  
Financial Management and Assurance

November 16, 2009

---

## Appendix I: Material Weakness

---

During our audit of the Securities and Exchange Commission's (SEC's) fiscal year 2009 financial statements, we identified six significant deficiencies<sup>1</sup> that collectively represent a material weakness<sup>2</sup> in internal control over financial reporting. This material weakness gives rise to significant management challenges that have (1) increased the risk that data processed by SEC's information systems are not reliable or appropriately protected, (2) impaired management's ability to prepare its financial statements without extensive manual procedures, and (3) resulted in unsupported entries and errors in the general ledger. The significant deficiencies that we identified, and discuss in more detail in the following sections, relate to SEC's internal control over (1) information security, (2) financial reporting process, (3) fund balance with Treasury, (4) registrant deposits, (5) budgetary resources, and (6) risk assessment and monitoring processes. We reported on some of these issues last year<sup>3</sup> and in prior audits.

---

### Information Security

Since our 2004 audit of SEC's financial statements, we have consistently reported significant deficiencies in SEC's information security controls. SEC has made progress in mitigating certain control weaknesses that we have previously reported, such as (1) designating a senior agency information security officer who will be responsible for managing SEC's information security program, (2) assigning a configuration manager to manage configuration for the general ledger system, (3) completing and approving physical security standards and procedures, and (4) completing the annual testing of security controls for the general ledger application and general support system. However, during fiscal year 2009, key information security control weaknesses remain that continued to jeopardize the confidentiality, availability, and integrity of information processed by SEC's key systems, increasing the risk of material misstatement for financial reporting. For example, in some instances SEC did not adequately (1) segregate computer-related duties and functions;

---

<sup>1</sup>A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

<sup>2</sup>A material weakness is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

<sup>3</sup>GAO, *FINANCIAL AUDIT: Securities and Exchange Commission's Financial Statements for Fiscal Years 2008 and 2007*, GAO-09-173 (Washington, D.C.: Nov. 14, 2008).

---

**Appendix I: Material Weakness**

---

(2) restrict user privileges; (3) implement patches and current software versions; (4) use approved, secure means to transmit data; (5) implement configuration management; and (6) complete a certification and accreditation of its general ledger supporting processes during fiscal year 2009.

We continued to identify ineffective information system controls for the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) and Fee Momentum systems. EDGAR performs automated collection, validation, indexing, acceptance, and forwarding of submissions by companies and others who are required by law to file forms with SEC, and is the source of revenue data for material filing fee transactions. Fee Momentum is EDGAR's subsystem that maintains the accounting information related to filing fees and is integrated through an interface with SEC's general ledger system. For both EDGAR and Fee Momentum, SEC did not adequately (1) restrict user access privileges; (2) restrict remote access; (3) implement appropriate password settings; (4) implement policies and procedures for granting access; (5) verify that access requests were reviewed and approved; (6) consistently apply patches and current versions; (7) implement an audit trail showing system user activities; and (8) ensure the approved, secure transmission of data. We believe the risk of misstatements in SEC's financial reporting is heightened as a result of these weaknesses.

We also continued to find ineffective automated controls for SEC's general ledger system and supporting applications, and ineffective controls over the databases and supporting processes used to generate and maintain SEC's financial reports. For example, SEC did not adequately implement key configuration management controls over the information system components associated with the general ledger system. Specifically, SEC did not consistently implement test plans; adequately document or approve changes to system requirements, design, and commands; and establish or maintain configuration baselines of the system's hardware and software. Furthermore, the financial reporting and analysis database SEC used to prepare its financial statements did not have electronic database logging or an audit trail, and did not have the capability to track login/logout activity and/or other security-related events specified by the system's audit policy such as when records are updated, values are changed, or accounting data are inappropriately altered. Therefore, an individual could gain access and make system changes that would not be detected. During this year's audit, we discovered a discrepancy between certain general ledger account balances obtained directly from the general ledger system and the balances in SEC's financial reporting analysis

database. It took SEC several months to identify and fix the cause of this discrepancy.

We also found that SEC did not adequately develop implementation guidelines for separating incompatible functions among personnel, and reasonably assure that staff duties for the general ledger system were properly segregated and monitored. In addition, as of the end of fiscal year 2009, SEC did not complete a certification and accreditation of its processes that support the preparation of the financial statements including the processing of (1) accounts receivable data, (2) accounts payable data for payments to harmed investors, and (3) investment-related data. System certification and accreditation is important, because without it, security weaknesses may go undetected and management may not be alerted to potential vulnerabilities. Systems that are not certified and accredited have increased risk of unauthorized modification or destruction of data.

Subsequent to fiscal year end, in October 2009, SEC completed the certification and accreditation procedures for the general ledger system and supporting processes, and identified similar risks associated with its financial reporting processes. For example, SEC identified the following vulnerabilities associated with the general ledger system and the supporting processes SEC uses to prepare its financial statements:

- Unauthorized personnel can view, manipulate, or destroy data.
- The general ledger system does not protect the integrity of transmitted information.
- The general ledger system does not enforce a sufficiently restrictive set of rights/privileges or accesses needed by users for the performance of specified tasks.
- Serious unauthorized activity may remain undetected and the general ledger system security log may not be sufficient to support the investigation of a compromised system.

SEC concluded in its security accreditation decision letter dated October 8, 2009, that the risk to agency operations, agency assets, or individuals associated with these vulnerabilities was at an acceptable level, and declared that adequate security controls have been implemented and are present in the general ledger system and supporting processes. However,



---

**Appendix I: Material Weakness**


---

our work concluded that until these vulnerabilities are addressed, SEC cannot rely on the internal controls contained in its automated financial management systems to provide reasonable assurance that, in the absence of effective compensating procedures, (1) its financial statements, taken as a whole, are fairly stated; (2) the information SEC relies on to make decisions on a daily basis is accurate, complete, and timely; and (3) sensitive data and financial information are appropriately safeguarded. This risk of SEC's ineffective information security controls is mitigated to some degree through its manual compensating controls, such as reconciliations between the general ledger system and the database used to prepare the trial balance and financial statements. However, SEC's reconciliation of filing fee revenue did not compensate for deficiencies in EDGAR and Fee Momentum because the reconciliation did not reconcile to third party or external source data. Collectively, these weaknesses represent a significant deficiency in internal control over information systems that increase the potential for undetected material misstatements in SEC's financial statements and inadvertent or deliberate misuse, fraudulent use, improper disclosure, or destruction of its financial information and assets.

---

**Financial Reporting Process**

Many of SEC's key accounting applications occur manually outside the general ledger system because SEC's general ledger system and certain software applications and configurations are not designed to provide the accurate, complete, and timely transaction-level financial information needed to accumulate and readily report reliable financial information. In addition, because of weak information system security controls discussed previously, SEC is unable to rely on its general ledger system to protect the integrity of the financial data. SEC's controls to compensate for its general ledger limitations are cumbersome and largely detective in nature, increasing the risk that errors or fraud that could result in a misstatement to the financial statements would not be prevented. During fiscal year 2009, we found that SEC's controls were not always effective in detecting misstatements that could occur as a result of SEC's extensive use of databases, spreadsheets, and manual workarounds and data handling in its financial reporting process. Following are examples of concerns and limitations we identified this year in SEC's financial reporting process.

- In fiscal year 2008, SEC implemented improvements to its general ledger system in response to previously reported issues concerning its

accounting for disgorgement and penalties accounts receivable.<sup>4</sup> Specifically, SEC enhanced its general ledger to enable it to record disgorgement and penalty receivable transactions through a manual interface. This represents an improvement over its previous method of recording monthly summary-level general ledger adjustments. However, SEC has not developed an automated interface with the general ledger system for its receivables and currently has no definitive plans to do so. As a result, integration of disgorgement and penalty receivable amounts from Phoenix (the database that is the source of the disgorgement and penalty data) is still accomplished through manual processes, and significant analysis, reconciliation, and review are performed outside the system to calculate amounts for the general ledger postings of transactions, such as the allowance for loss on disgorgement and penalty accounts receivable. These manual processes are resource-intensive and prone to error, and coupled with the significant amount of data involved with disgorgement and penalty activity, increase the risk of material misstatement to the disgorgement and penalty accounts receivable. As of September 30, 2009, disgorgement and penalty receivables were comprised of 283 receivables totaling \$714 million. Errors we identified this year in SEC's quarterly reconciliation of disgorgement and penalty accounts receivable data demonstrated that this important compensating control was ineffective in ensuring the accuracy of the disgorgement and penalty accounts receivable balance. Specifically, we found that SEC reconciled data to and from the same source system and its spreadsheet used for the reconciliation did not include control totals to ensure completeness of the data.

- SEC's general ledger system does not capture detailed investment activity and disgorgement and penalty activity at the enforcement case level. SEC tracks transactions related to this activity on a large spreadsheet which is not integrated with the general ledger system. SEC uses the spreadsheet to deconstruct the summary level data in the general ledger to the case level. The ability to have the detailed data at the case level is important in order for SEC to effectively manage its investments, which at September 30, 2009, totaled \$2 billion, and the cash amounts attributable to the individual enforcement cases.

---

<sup>4</sup>A disgorgement is the repayment of illegally gained profits (or avoided losses) for distribution to harmed investors whenever feasible. A penalty is a monetary payment from a violator of securities law that SEC obtains pursuant to statutory authority. A penalty is fundamentally a punitive measure, although penalties occasionally can be used to compensate harmed investors.

---

**Appendix I: Material Weakness**

---

However, our work identified several instances of incorrect or incomplete data in the worksheet which could affect SEC's ability to properly manage its investments and cash balances. In response to our findings, SEC has stated that it is in the planning stages of implementing an automated interface with the general ledger for its investment transaction activity. However, implementation of this interface, planned for fiscal year 2010, is contingent upon the availability of resources.

- SEC's general ledger system lacks the capacity to timely and accurately generate and report information needed to both prepare financial statements and manage operations on an ongoing basis. For example, the general ledger is unable to generate an accurate consolidated trial balance. Instead, SEC employs the use of a financial reporting and analysis tool, housed in a database that does not have electronic logging or audit trails, to produce its monthly trial balances and financial statements. Use of this tool requires effective manual compensating procedures to ensure the integrity of the data reported using this tool. In addition, SEC's general ledger has several unconventional posting models and other system limitations for certain activities that require extensive recording of journal entries and subsequent adjustments, creating significant risk of error or misstatement in SEC's financial reporting. Further, the accounts receivable module of the general ledger was not designed to provide information to support activity in the related general ledger accounts. For example, the general ledger cannot produce an aging of its accounts receivable due to an incorrect system configuration. As a result, SEC manually prepares a spreadsheet to support the accounts receivable balance reported in its financial statements. The initial spreadsheet SEC prepared at September 30, 2009, contained inaccurate data requiring multiple iterative corrections. In another example, the general ledger system's property module is not configured to enable the general ledger to readily report property balances. Instead, SEC has to import property data from the general ledger into an unsecured excel spreadsheet to create a property register, perform manual calculations in the spreadsheet, and use this spreadsheet to reconcile cost in the property module to the general ledger balance. The general ledger system also cannot produce a reliable accounts payable aging report. SEC concurred with our overall assessment relative to the limitations of its general ledger system and its reporting capabilities and is in the early planning phase for evaluating long-term options relative to adopting a sustainable, streamlined financial management solution.

---

## Fund Balance with Treasury

During this year's audit, we found that SEC did not perform the required monthly reconciliation of its Fund Balance with Treasury (FBWT) for the first 8 months of fiscal year 2009. In addition, SEC did not timely research and resolve differences reported on the monthly *Statement of Differences* Treasury provides to SEC. As of June 30, 2009, these differences amounted to \$3.2 million. SEC was not able to perform its formal reconciliation or resolve Treasury differences due to an issue with the general ledger system that was not fixed until July and also to incomplete data necessary to properly record all travel-related expenses. As of September 30, 2009, SEC was still not able to determine the cause for all of the differences and recorded an unsupported journal entry of about \$840,000 to force its FBWT account to match Treasury's balance.

*The Treasury Financial Manual, Part 2 Chapter 5100 Supplement*, provides that all agencies must complete and fully document a reconciliation of FBWT monthly. The reconciliation should be approved by an authorized agency official as evidence that the reconciliation was properly completed and reviewed. Federal agencies are also required to research and resolve differences reported on the monthly *Statement of Differences* (Treasury's Financial Management Service (FMS) 6652). FMS notifies agencies of their deposit and disbursement differences on FMS 6652. The supplement states: "An agency may not arbitrarily adjust its FBWT account. Only after clearly establishing the causes of errors and properly documenting those errors, should an agency adjust its FBWT account balance. If an agency makes material adjustments, the agency must maintain supporting documentation. This will allow correct interpretation of the error and its corresponding adjustment."

SEC's failure to perform the monthly Treasury reconciliation and its recording of an unsupported journal entry to adjust its FBWT represents a significant deficiency in internal control and increases the risk that the accuracy and timeliness of deposit and disbursement data reflected in SEC's FBWT and the related accounts are misstated. Failure to implement effective processes and procedures concerning reconciliations of FBWT also could increase SEC's risk of fraud, violations of appropriations laws, and mismanagement of funds. SEC agreed with the need to timely resolve differences between SEC and Treasury reporting and has stated it plans to develop a monitoring system to ensure all reconciliations are performed and reviewed timely.

---

**Appendix I: Material Weakness**

---

**Registrant Deposits**

SEC is partially funded through the collection of securities registration, tender offer, merger, and other fees (filing fees) from registrants. SEC records the filing fees it collects as revenue. However, if registrants submit amounts to SEC in excess of the actual fee payment due for the filing, SEC records the excess payments collected in a registrant deposit liability account until earned by SEC from a future filing. SEC returns the amount in the deposit liability account to the registrant if the account has not had any activity against it for 6 months. As of September 30, 2009, SEC's liability for registrant deposits totaled \$41 million.

As in prior years, during our testing of filing fee transactions this year, we identified amounts recorded in the registrant deposit account liability that were not properly returned to registrants and amounts that were not properly recognized as revenue in the correct fiscal year. Specifically, of the \$41 million in registrant deposit accounts at September 30, 2009, \$27 million in deposit accounts had been dormant for 6 months or more. Our audit also identified amounts in the registrant deposit account liability that SEC earned in prior years and therefore should have been recognized as revenue in those years. SEC was aware that some of the liability amounts were earned. For example, as of September 30, 2009, SEC identified \$3.7 million in the liability account that should have been recognized as revenue in prior years; however, these amounts were not properly recognized as revenue due to a system configuration error. SEC acknowledged that its process for researching the deposit account activity to determine if amounts should be refunded or recognized as revenue is labor-intensive. SEC also acknowledged it does not have dedicated resources assigned to address this issue. SEC stated it has postponed materially redesigning the processes pertaining to its registrant deposit accounts in anticipation of an upcoming effort to replace EDGAR and Fee Momentum. Untimely review and recognition of revenue in the incorrect period represent a significant deficiency in SEC's internal control over the registrant deposit account balances, resulting in misstating filing fee revenue and the related registrant deposit account liability amounts in the current period.

---

**Budgetary Resources**

For fiscal year 2009, SEC incurred approximately \$966 million in obligations, which represents legal liabilities against funds available to SEC to pay for goods and services ordered. At September 30, 2009, SEC reported that the amount of budgetary resources obligated for undelivered orders was approximately \$152.8 million. Also during the year, SEC deobligated approximately \$29 million for prior year undelivered order

transactions that were either cancelled or the dollar amount of the obligation was decreased.

Since our 2007 audit of SEC, we have reported significant deficiencies in SEC's accounting for budgetary resources. During fiscal year 2009, we continued to identify weaknesses in SEC's accounting for obligations, including undelivered orders. Specifically, we continued to find numerous instances in which SEC recorded invalid obligation-related transactions as a result of incorrect posting configurations in SEC's general ledger. SEC updated some of its posting models to correctly post certain budget transactions; however, SEC was not able to correct all posting models by September 30, 2009. During fiscal year 2009, SEC made at least over \$51 million in adjusting entries to correct for transaction posting configuration limitations. We also found errors this year in several obligation-related transaction postings in the general ledger, including errors in recorded amounts and budget object classifications. Further, we found obligations that were not always recorded timely and were not always supported by documentation evidencing the obligation as having been approved by an authorized individual.

Budgetary accounting system deficiencies resulting in significant manual workarounds and the posting of a large number of general ledger adjustments increase the risk of processing errors and misstatements related to budgetary activities in SEC's Statement of Budgetary Resources. SEC relied on labor-intensive, ad hoc queries and analyses to correct system-generated erroneous entries. In addition, we continued to find that SEC did not maintain sufficient documentation demonstrating proper authorization for downward adjustments to obligations for prior year undelivered orders. As a result, documentation was not sufficient to determine (1) whether transactions were approved for deobligation, (2) the names of the officials authorizing amounts for deobligation, or (3) the date the transaction was approved. The ineffective processes and related documentation deficiencies that caused these errors constitute a significant deficiency in SEC's internal control over recording and financial reporting of its budgetary activities. Further, these deficiencies put SEC at risk of future misstatements recorded in its general ledger and reported on its Statement of Budgetary Resources if the necessary compensating adjustments are not identified and made.

---

**Appendix I: Material Weakness**

---

**Risk Assessment and Monitoring Processes**

During fiscal year 2009, SEC performed a risk assessment related to its internal controls over financial reporting and tested the operating effectiveness of controls based on the results of its assessment. The process of identifying and analyzing risk is a critical component of an effective internal control system and includes how management identifies risks relevant to the preparation of financial statements and information, assesses the likelihood of the manifestation of those risks, and decides upon actions to manage and mitigate the risks. During our audit, we identified significant risks to SEC's financial reporting that SEC did not initially identify during its own risk assessment. For example, SEC did not initially consider the risks associated with its information systems even though we have reported control deficiencies with SEC's information security controls since 2004. Based on our finding, subsequent to year end, in October 2009, SEC did identify and consider the risks associated with its information security controls. However, SEC's conclusion that the risks to its general ledger system and supporting processes were acceptable was not consistent with our conclusion. These risks were discussed previously in the information security section of this appendix.

SEC's risk assessment also did not initially consider risks related to its payroll service provider's (Department of the Interior's) Statement on Auditing Standards (SAS) 70 report,<sup>5</sup> which identifies key user controls that agencies using Department of the Interior's services should have in place to ensure effective control over payroll processing. Risks relevant to payroll transactions are important at SEC since its payroll expense is the most significant expense reported in its financial statements. Further, SEC's risk assessment did not document its evaluation, consideration, and mitigation of certain significant risks or control breakdowns identified from internal sources during the course of the year, and did not document SEC's evaluation of the design effectiveness of the key controls.

We also identified weaknesses in SEC's monitoring process which indicate a lack of effective oversight of controls. Management's monitoring of controls should include whether the controls are operating as intended

---

<sup>5</sup>SAS No. 70, *Service Organizations*, is the authoritative guidance that allows service organizations to disclose their control activities and processes to their customers and their customers' auditors in a uniform reporting format. The issuance of a service auditor's report prepared in accordance with SAS No. 70 signifies that a service organization has had its control objectives and control activities examined by an independent accounting and auditing firm. The service auditor's report includes valuable information regarding the service organization's controls and the effectiveness of those controls.

and include assessing the design and operation of controls on a timely basis and taking necessary corrective actions. As discussed previously, we found that SEC's monitoring procedures did not address all identified risks. Further, SEC management's oversight was not sufficient given the frequency and sensitivity of the control activity, and monitoring procedures were not always completed in accordance with SEC's stated testing plan. We also found that the results of SEC's monitoring procedures were not consistently documented. For example, SEC could not provide evidence that it monitored controls over its payroll exception reports to ensure payroll transactions were recorded accurately and timely. Also, SEC does not have a process that comprehensively captured the cumulative effect of correcting entries to evaluate their impact on current and prior year financial statements as a whole, nor did SEC monitor its compliance with the Prompt Payment Act.<sup>6</sup> Further, SEC's monitoring procedures were not robust enough in identifying certain control weaknesses that we found during the year and discussed previously in this report, such as issues with its registrant deposits and budgetary resources, which serves to underscore SEC's deficiency in this area.

Performing comprehensive risk assessments and monitoring procedures are key components of management's responsibility to establish and maintain internal controls on an ongoing basis. Collectively, the weaknesses we identified in these processes represent a significant deficiency in internal control, and because of their importance for ensuring reliable financial reporting, point to the need for SEC to make improvements to these processes a high priority.

---

<sup>6</sup>Under the Prompt Payment Act and implementing regulations, federal agencies are required to timely pay proper invoices submitted by vendors when applicable, pay interest penalties for late payments, and only take discounts when payments are made by the discount date. See 31 U.S.C. ch. 39; 5 C.F.R. pt. 1315.



## Management's Response to Audit Opinion



THE CHAIRMAN

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

November 16, 2009

Mr. James R. Dalkin  
Director, Financial Management and Assurance  
United States Government Accountability Office  
441 G Street, N.W.  
Washington, DC 20548

Dear Mr. Dalkin:

Thank you for the opportunity to respond to the Government Accountability Office's draft report on the Securities and Exchange Commission's fiscal year 2009 and 2008 Financial Statements (GAO-10-250). I would like to personally recognize and commend your and your staff's efforts and dedication in working with the SEC again this year to complete the required audit of the agency's financial statements.

I am pleased that the audit found that the statements and notes are presented fairly, in all material respects, and in conformity with U.S. generally accepted accounting principles. I am also pleased that there were no instances of reportable non-compliance with laws and regulations.

As you know, the SEC determined that six significant deficiencies, discussed more fully in the opinion on internal control, in the aggregate represent a material weakness over information systems and related financial controls. We are committed to making the resolution of these deficiencies a priority of the very highest order, and are developing a plan to remediate this material weakness by devoting the resources necessary to address these issues head-on. Over the coming months, we will tackle the systems and operational issues identified to enhance the SEC's controls in all areas, thereby strengthening the reliability of our financial reporting. As you and your staff noted, the issues that underlie these deficiencies have been building and accumulating for years. While some of them can – and will – be addressed quickly, others will take more time to solve. But our resolve to diligently correct all of these problems is strong.

I very much appreciate our cooperative relationship and look forward to continuing our productive dialogue on the issues addressed in this year's audit. If you have any questions or concerns, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Mary L. Schapiro".

Mary L. Schapiro  
Chairman

## Other Accompanying Information

This section provides additional information regarding the SEC's financial and performance management. It includes a statement prepared by the agency's Inspector General (IG) summarizing what the IG considers to be the most serious management and performance challenges facing the agency. The section also includes a response from the SEC's Chairman to the IG's assessment of the agency's progress in addressing the challenges.

The Summary of Financial Statement Audit and Management Assurances clearly lists each material weakness and non-conformance found and/or resolved during the GAO's audit. Additionally, this section provides a detailed explanation of any significant erroneous payments, as required by the Improper Payments Information Act of 2002.


# Inspector General's Statement on Management and Performance Challenges



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

## THE INSPECTOR GENERAL'S STATEMENT ON THE U.S. SECURITIES AND EXCHANGE COMMISSION'S MANAGEMENT AND PERFORMANCE CHALLENGES

*As required by the Reports Consolidation Act of 2000 and Office of Management and Budget guidance, I am pleased to submit the following summarizing what I consider to be the most serious management challenges facing the Securities and Exchange Commission. This statement has been compiled based on Office of Inspector General audits, investigations, evaluations, and the general knowledge of the agency's operations.*

  
H. David Kotz  
Inspector General  
September 30, 2009

### CHALLENGE                      CONDUCTING ADEQUATE ENFORCEMENT INVESTIGATIONS

The Office of Inspector General (OIG) has identified the Securities and Exchange Commission's (Commission or SEC) Enforcement function as a management challenge.

The OIG recently completed an extensive investigation into the failure of the SEC's Division of Enforcement (Enforcement), as well as its Office of Compliance Inspections and Examinations (see second challenge below), to uncover a multi-billion dollar Ponzi scheme perpetrated by Bernard L. Madoff (Madoff). The OIG's investigation found that Enforcement received multiple detailed and credible complaints regarding Madoff's financial wrongdoing, but failed to take the appropriate steps in its investigations to uncover the fraud.

As a result of the findings in the OIG investigation, we have identified several deficiencies within Enforcement that should be remedied in order to ensure that it conducts adequate Enforcement investigations and uncovers violations of securities laws and fraud. These deficiencies include:

- Enforcement staff lacking adequate guidance on how to analyze complaints appropriately;
- Enforcement staff failing to exercise due diligence in their handling of critical information;

- Inexperience of Enforcement staff conducting investigations;
- Enforcement staff failing to seek assistance from other offices and divisions as needed in their investigations;
- Lack of supervision of junior Enforcement staff;
- Enforcement staff failing to verify information provided by the subject of an investigation with independent sources;
- Enforcement staff not adequately evaluating additional information received from a complainant during the course of an investigation; and
- Enforcement staff failing to open or close its investigations in a timely manner.

Enforcement has stated that it has already taken significant steps toward creating a better organized and more effective Division and plans to engage in a restructuring effort that is the most significant in its history.

#### **CHALLENGE                      CONDUCTING ADEQUATE COMPLIANCE EXAMINATIONS**

The Office of Inspector General (OIG) has identified the Securities and Exchange Commission's (Commission or SEC) Compliance Examinations function as a management challenge.

The OIG recently completed an extensive investigation into the failure of the SEC's Office of Compliance Inspections and Examinations (OCIE), as well as its Division of Enforcement) to uncover a multi-billion dollar Ponzi scheme perpetrated by Bernard L. Madoff (Madoff). The OIG's investigation found that OCIE received multiple detailed and credible complaints regarding Madoff's financial wrongdoing, but failed to take the appropriate steps in its examinations to uncover the fraud.

As a result of the findings in the OIG investigation, we have identified several deficiencies within OCIE that should be remedied in order to ensure that it conducts adequate examinations and uncovers violations of securities laws and fraud. These deficiencies include:

- Inadequate evaluation of complaints from industry sources and failure to define the appropriate scope for an examination triggered by the complaints;
- Inadequate planning of examinations;
- Inadequate communication and information sharing among OCIE personnel;

- Failure to form examination teams with sufficient skills and experience necessary to conduct the examinations;
- Failure to contact outside entities to corroborate representations made by entities under examination and failure to seek and analyze information from outside sources to verify information found in documents produced in an examination.
- Failure to follow up on contradictions discovered during the examinations and leaving discrepancies uncovered by examiners unresolved;
- Failure to adequately track the progress of examinations; and
- Improperly closing examinations without addressing numerous issues raised in the complaints that triggered the examinations.

OCIE has indicated that it concurs with the OIG's recommendations for improvement and has already begun the process of implementing changes in its operations.

#### **CHALLENGE                      PROCUREMENT AND CONTRACTING**

Though significant improvements have been made in this area, the Commission's procurement and contracting function continues to be a management challenge. Since the Office of Inspector General (OIG) first identified the procurement and contracting function as a management challenge in the Fiscal Year 2008 Performance and Accountability Report, the Office of Acquisitions (OA) within the SEC's Office of Administrative Services has represented to the OIG that it has made significant efforts to improve performance with respect to the agency's Regional Offices. These efforts include conducting outreach visits to Regional Offices to ascertain the status of their procurements, offering staff assistance and training opportunities, partnering with the SEC University to identify training requirements and available funding to ensure Regional Office employees who perform procurement and contracting activities are sufficiently trained, and implementing a new litigation support policy in collaboration with the Office of Financial Management (OFM) to improve procurement processes for certain Enforcement needs within the Regional Offices.

OA has also represented that they have made significant progress with regard to automation of the Commission's purchasing and contracting functions. OA implemented a new automated procurement system, PRISM, on April 22, 2009, and is actively using the system as a contract writing and management tool. OA is also conducting various other activities with regard to PRISM including training and data migration, in order to implement the system. Further, until the system is fully implemented, OA represented that they are consolidating multiple contract tracking tools and manual records into a single searchable database to address the OIG's concerns regarding the failure to maintain a "single" list of all contract actions.

While the OIG acknowledges the efforts OA stated it has taken to remedy the OIG's concerns, the procurement and contracting function remains a significant challenge for the Commission due to the breadth and complexity of the issues that OA faces. During this reporting period, the OIG conducted work in the procurement area that identified a number of problems that need to be remedied, as well as areas for improvement in internal controls. The OIG issued *Management Alert-Microsoft Premiere Support Services Contracts*, Report No. 469, in August 2009 and *Audit of the Office of Acquisitions Procurement and Contract Management Function*, Report No. 471, in September 2009.

OIG Report No. 469 identified significant problems with the acquisition practices related to the award of a sole-source contract valued at approximately \$1 million. Specifically, the basis for making a sole-source award was not clearly supported, the sole-source justification was not signed by the appropriate official, the document form used to award the contract was incorrect, a modification was executed that inappropriately expanded the scope of the contract, and the price reasonableness determination cited an incorrect regulatory provision.

In addition, OIG Report No. 471 identified the following key organizational issues that management needs to address:

- OA is unable to provide complete operational data (a consolidated record of the universe of active, pending, completed and cancelled contracts, agreements, and purchase orders) to manage the procurement and contracting function and report on performance, due to years of using manual processes. Additionally, OA does not have standard operating procedures stating what information contracting officers should maintain and track.
- OA is in the process of fully automating its procurement and contracting function after two previous failed attempts to implement an automated procurement system. Data migrated to the new system must be reconciled with OFM's accounting system (Momentum), years of manual records maintained by separate contracting officers, procurement data maintained by the Regional Offices, and data contained in the previous automated procurement system (SAM).
- Select individuals in the Regional Offices have been delegated warrant authority to execute contracts without adequate procurement training, experience, or oversight by OA. Additionally, contract activities in the Regional Offices are not being reported in the Federal Procurement Data System (FPDS). FPDS is a web-based tool used by agencies to report contract data to the President, Congress, the Government Accountability Office, Federal executive agencies and the general public.

Thus, as reported in Fiscal Year 2008, comprehensive procurement and contracting policies and procedures are still needed, and OA does not yet have complete oversight over Regional Offices procurement and contracting activities.

## **CHALLENGE                      INFORMATION TECHNOLOGY MANAGEMENT**

Information Technology (IT) management continues to be a management challenge, though significant improvements have been made since the Office of Inspector General (OIG) initially identified this area as a management challenge. The 2008 Federal Information Security Management Act review revealed that additional safeguards must be implemented as the Office of Compliance Inspections and Examination (OCIE) Advisor Surveillance & Intelligence System (OASIS) system's exposure increases. The SEC must evaluate the system access controls to ensure that OASIS has an adequate formal account management process and to improve its information flow control policies and enforcement mechanisms. These issues should be addressed before the system is introduced into the agency's architecture.

Furthermore, attention is still needed in specific key IT areas, such as IT capital investment, the administration and oversight of IT contracts and IT human capital. These key initiatives remain challenges since work has not been completed to mitigate deficiencies that were identified in the past.

## **CHALLENGE                      PERFORMANCE MANAGEMENT**

In February 2007, the OIG issued an audit report on the Division of Enforcement's (Enforcement) performance management process. This audit found that Enforcement did not consistently perform all parts of the performance appraisal process. In addition, the audit report found that the Commission's performance management written policies and procedures did not provide adequate guidance in many areas, including managing employees with performance problems and implementing all phases of the performance review cycle. Further, the performance process was not aligned with the fiscal year, and did not timely reward employees for their significant, performance-based contributions.

The Commission has, however, taken numerous steps to remedy this challenge. Beginning in Fiscal Year 2008, Commission employees began transitioning to a new performance management process, which includes a five-level rating system. At present, SEC employees at the SK-17 (supervisory) level and above have migrated to the five-level rating system, and SEC employees below these levels are expected to migrate to the new process by the end of Fiscal Year 2010. As it moves forward with this new system, the SEC must also set the parameters for the merit pay process and determine how merit pay increases will be implemented.

# Management's Response to Inspector General's Statement



THE CHAIRMAN

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

November 16, 2009

Mr. H. David Kotz  
Inspector General  
U.S. Securities and Exchange Commission  
Washington, DC 20549

Dear Mr. Kotz:

Thank you for your statement on the U.S. Securities and Exchange Commission's management and performance challenges. I appreciate your views and the perspective they provide on the issues facing the agency. The entire agency is hard at work on the matters identified in your statement, as well as a number of other initiatives to reinvigorate the SEC and better protect investors.

We concur with you in the assessment of these issues as challenges. We also appreciate your acknowledgement of the significant progress that the SEC has achieved during the past year. A brief description of the actions taken or planned to address these matters is provided below.

## **Enforcement Investigations**

When I became SEC Chairman in January 2009, I made the examination and reform of the SEC's enforcement activities a top management priority. Although much work remains to be done, over the past ten months we have made significant progress in improving the efficiency and effectiveness of the Commission's enforcement program.

Within my first weeks in office, we ended the "penalty pilot" experiment, which the GAO found was delaying cases and producing fewer and smaller penalties against public companies who commit securities fraud. We also put in place procedures to provide for more rapid approval of formal orders of investigation to enable Enforcement staff to compel witness testimony and the production of documents.

In February, I hired as new Enforcement Director Robert Khuzami, a longtime federal prosecutor who served as Chief of the Southern District of New York's Securities and Commodities Fraud Task Force, and charged him with focusing our enforcement efforts on bringing meaningful, high impact cases quickly. The Division spent several months conducting a rigorous top-to-bottom self-assessment of Enforcement operations, resulting in recommendations, currently being implemented, that have been described as "the unit's biggest



Mr. H. David Kotz  
Page 2

reorganization in at least three decades.”<sup>1</sup> The reforms underway include creating five national specialized investigative groups comprised of staff with practical trading, market, and other specialized skills; adopting a flatter organizational structure by reducing current management by 40% and deploying those personnel to the mission-critical work of conducting front-line investigations; establishing structures and procedures to enhance training and supervision; eliminating needless bureaucratic approvals and process; hiring the Division’s first-ever managing executive and transferring administrative and infrastructure tasks from investigative personnel to centralized operations personnel; and seeking more resources to help achieve these goals.

In March, we commissioned a comprehensive review by the MITRE Corporation of internal procedures used to evaluate tips, complaints, and referrals. The results of this study, along with the findings from a related OIG report (“Practices Related to Naked Short Selling Complaints and Referrals,” Report No. 450, March 18, 2009), have greatly informed our understanding of how best to improve the handling of tips, complaints, and referrals within the agency. As part of these program improvements, Enforcement is creating an Office of Market Intelligence, whose functions will include, among other things, receiving, risk-weighting, and monitoring tips, complaints, and referrals in a centralized way. Our newly established Division of Risk, Strategy and Financial Innovation is also closely involved in the creation of this new Office.

### **Compliance Examinations**

Over the past year, the SEC has taken a number of steps to improve the operations of the examinations program, some of which were in response to various findings from OIG; completion of these corrective actions will be a top priority for management in FY 2010.

One of the most consequential decisions to be taken in FY 2010 is the selection of a new Director of the Office of Compliance Inspections and Examinations. Because selection of the right candidate is critical to the effective implementation of reforms necessary, I am personally devoting significant time to finding the right person for this job.

As you know, on September 29, 2009, OIG issued a report presenting the results of its review of the effectiveness of the SEC’s compliance inspections and examinations program (Report No. 468). SEC management agreed with all 37 of the report’s recommendations for improving OCIE operations.

Even prior to the report’s issuance, SEC management had begun taking action to improve the efficiency and effectiveness of the agency’s examinations program. OCIE has issued new guidance to assist examiners in identifying conflicts of interest or potential indicia of fraud and in conducting examinations resulting from complaints or tips. To enhance communication and

<sup>1</sup> David Scheer, *SEC Never Did ‘Competent’ Madoff Probe, Report Finds (Update 2)*, Bloomberg.com, Sep. 2, 2009, <http://www.bloomberg.com/apps/news?pid=20603037&sid=aBHQkUqCQppk>.

Mr. H. David Kotz  
Page 3

information sharing among examination staff and managers. OCIE has created an internal task force to evaluate specific ideas for better collaboration; has held training sessions to cross-train examiners in each others' specializations; is emphasizing better planning of examinations that involve firms jointly registered as broker-dealers and investment advisers; and is developing a quarterly review program to more nimbly determine if a particular examination could benefit from the deployment of new skills.

To increase the expertise and skills of SEC examination staff, I have also authorized the creation of new Senior Specialized Examiner staff positions to be filled by experienced industry professionals with specialized experience in trading, portfolio management, valuation, complex products, sales, compliance, and forensic accounting. OCIE has also expanded training of its current staff by industry experts on hedge funds, options trading, and credit default swaps; has conducted joint training programs with other regulators, including recent programs on uncovering potential fraud and on third-party verification of customer assets; and has increased enrollment of examiners in the Certified Fraud Examiner, Chartered Financial Analyst, and Chartered Alternative Investment Analyst certification programs.

As I stated earlier, there is much more work to be done in this area, and I expect significant changes to continue over the next year.

### **Procurement and Contracting**

I appreciate that your statement recognizes the significant improvements that the SEC has made over the past year to improve the effectiveness of procurement and contracting functions. These efforts include the April 2009 roll-out of a new automated procurement system as a contract writing and management tool; efforts to ensure proper documentation of sole source contracts; and improved outreach and training for Regional Office staff responsible for procurement of litigation support and other services to support enforcement needs.

As the agency works toward full implementation of the new system, the Office of Acquisitions (OAS) is working with the Office of Financial Management to improve the data migration plan to include strong controls to ensure accurate and complete data and to provide guidance on reconciling information in the official paper contract file against information contained in the Momentum accounting system. OAS is also developing an oversight program that will rely on periodic procurement reviews to ensure compliance with the Federal Acquisition Regulation and SEC policies.

### **Information Technology Management**

I am pleased that OIG has found that the SEC has made significant improvements since information technology was first identified as a management challenge. With regard to security controls for the OASIS system, the Office of Information Technology (OIT) has now successfully tested those in production and has verified that they meet FISMA requirements, including the implementation of a formal account management process to authorize and review

Mr. H. David Kotz  
Page 4

user access to the system. OIT submitted documentation to OIG and all recommendations for the OASIS system have now been closed. With regard to IT capital investment, contracts, and human capital, many of OIG's recommendations have been addressed and completion of corrective action on the remainder will be a priority for 2010.

Despite this progress, this is also an area in which much more work and resources are needed. Our IT infrastructure is simply not equipped to support the growing and growingly complex needs of the agency. During 2010, significant attention will be given to our technology architecture and long-term strategies.

#### **Performance Management**

I appreciate the acknowledgement in your statement that the SEC has taken numerous steps in recent years to remedy this challenge. Please know that completion of these efforts will be a key focus for management in FY 2010.

To date, all managers have been migrated to the agency's new performance management system. All other agency employees, including Senior Officers, will become part of the new system during FY 2010. Also during this fiscal year, the performance management cycle will be realigned to coincide with the fiscal year, as OIG has recommended. Finally, our Office of Human Resources (OHR) has also made progress to improve the agency's merit pay system, including reaching an agreement in principle with the National Treasury Employees Union to determine merit pay raises according to a share-based system.

#### **Conclusions**

I believe the actions outlined above will strengthen internal controls and improve the agency's performance. Thank you for your role in the effort, and I look forward to working with you to implement your recommendations.

Sincerely,

  
Mary L. Schapiro  
Chairman

# Summary of Financial Statement Audit and Management Assurances

**TABLE 4.1  
SUMMARY OF FINANCIAL STATEMENT AUDIT**

<b>Audit Opinion</b>	<b>Unqualified</b>				
Restatement	No				
<b>Material Weaknesses</b>	<b>Beginning Balance</b>	<b>New</b>	<b>Resolved</b>	<b>Consolidated</b>	<b>Ending Balance</b>
Internal Control over Financial Reporting	0	1	—	—	1
Total Material Weaknesses	0	1	—	—	1

**TABLE 4.2  
SUMMARY OF MANAGEMENT ASSURANCES**

**Effectiveness of Internal Control over Financial Reporting (FMFIA § 2)**

Statement of Assurance

<b>Material Weaknesses</b>	<b>Beginning Balance</b>	<b>New</b>	<b>Resolved</b>	<b>Consolidated</b>	<b>Reassessed</b>	<b>Ending Balance</b>
Internal Control over Financial Reporting	0	1	—	—	—	1
Total Material Weaknesses	0	1	—	—	—	1

**Effectiveness of Internal Control over Operations (FMFIA § 2)**

Statement of Assurance

<b>Material Weaknesses</b>	<b>Beginning Balance</b>	<b>New</b>	<b>Resolved</b>	<b>Consolidated</b>	<b>Reassessed</b>	<b>Ending Balance</b>
Total Material Weaknesses	0	1	—	—	—	1

**Conformance with Financial Management System Requirements (FMFIA § 4)**

Statement of Assurance

<b>Non-Conformances</b>	<b>Beginning Balance</b>	<b>New</b>	<b>Resolved</b>	<b>Consolidated</b>	<b>Reassessed</b>	<b>Ending Balance</b>
Federal Financial Management System Requirements	0	1	—	—	—	1
Total Non-Conformances	0	1	—	—	—	1

## Improper Payments Information Act Reporting Details

The Improper Payments Information Act of 2002 (Public Law No. 107-300) (IPIA) requires agencies to review all programs and activities they administer and identify those which may be susceptible to significant erroneous payments. For all programs and activities in which the risk of erroneous payments is significant, agencies are to estimate the annual amount of erroneous payments made in those programs. OMB guidance provided by Circular A-136 and Appendix C of Circular A-123 require detailed information related to IPIA, which is provided below.

### Risk Assessment

In FY 2009, the SEC reviewed its programs and activities it administers to identify those which may be susceptible to significant erroneous payments. Based on internal reviews and reliance on the internal controls in place over the payment and distribution process, the SEC determined that none of its programs are susceptible to the risk of making significant improper payments at or above the threshold levels set by OMB.

In FY 2007 and FY 2008, the SEC identified two programs as having a significant risk of improper payments: Operational Vendor Payments and Disbursements and Penalties. Testing conducted in accordance with Appendix C of Circular A-123 for these fiscal years resulted in improper payment percentages that were well below one-half percent and less than \$30,000 for each program. Applying prior year test results to an annualized amount of payments in these programs for FY 2009, the SEC has determined they are not susceptible to significant erroneous payments. In accordance with Appendix

C of Circular A-123, agencies are not required to make a statistically valid estimate of erroneous payments in a program if the potential error rate is less than 2.5 percent and the amount of potential erroneous payments in the program does not exceed \$10 million.

Since the level of risk in each program is determined to be low, and baseline estimates have been established for operational vendor payments and disgorgement and penalty distributions, the SEC was not required to conduct a formal risk assessment for these programs in FY 2009. A formal risk assessment for programs deemed not susceptible to risk is required every three years unless the program experiences a significant change in legislation and/or a significant increase in funding level. In FY 2010, the SEC will review its programs and activities to determine whether the programs have experienced any unexpected changes in legislation or funding levels. If so, the SEC will reassess the programs' risk susceptibility and make a statistically valid estimate of erroneous payments for any programs determined to be susceptible to significant erroneous payments.

### Recovery Auditing

The Recovery Auditing Act, Section 831 of the Defense Authorization Act of FY 2002, requires agencies that enter into contracts with a total value of \$500 million in a fiscal year to implement a program which identifies and recovers amounts erroneously paid to contractors. This requirement does not apply to the SEC because the agency does not have any contracts which exceed \$500 million in a fiscal year.

## Appendix A: Chairman and Commissioners



**Mary L. Schapiro**  
CHAIRMAN

Mary L. Schapiro is the 29th Chairman of the U.S. Securities and Exchange Commission. Chairman Schapiro was appointed by President Barack Obama on January 20, 2009, unanimously confirmed by the U.S. Senate, and sworn in on January 27, 2009. She is the first woman to serve as the agency's permanent Chairman.

Since arriving at the SEC, Chairman Schapiro has sought to restore investor confidence and refocus the agency on its core mission of protecting investors. She has helped to streamline enforcement procedures, reduce unnecessary bureaucracy, revamp the system for handling tips and complaints, hire new skill sets, bolster training, and improve the risk-based approaches employed by agency staff. Additionally, she has overseen one of the most significant rulemaking agendas in the agency's history in an effort to ensure greater accountability, transparency, and disclosure. Finally, she has been actively engaged in efforts to transform the financial regulatory system.

Prior to becoming the SEC Chairman, she was CEO of FINRA—the largest non-governmental regulator for all securities firms doing business with the U.S. public. Chairman Schapiro joined

the organization in 1996 as President of NASD Regulation, and was named Vice Chairman in 2002. In 2006, she was named NASD's Chairman and CEO. The following year, she led the organization's consolidation with NYSE Member Regulation to form FINRA.

Chairman Schapiro previously served as a Commissioner of the SEC from December 1988 to October 1994. She was appointed by President Ronald Reagan, reappointed by President George H.W. Bush in 1989, and named Acting Chairman by President Bill Clinton in 1993. She left the SEC when President Clinton appointed her Chairman of the Commodity Futures Trading Commission, where she served until 1996.

A 1977 graduate of Franklin and Marshall College in Lancaster, Pennsylvania, Chairman Schapiro earned a Juris Doctor degree (with honors) from George Washington University in 1980. Chairman Schapiro was named the Financial Women's Association Public Sector Woman of the Year in 2000. She received a Visionary Award from the National Council on Economic Education in 2008, honoring her as a "champion of economic empowerment."



**Kathleen L. Casey**  
COMMISSIONER

Kathleen L. Casey was appointed by President George W. Bush to the U.S. Securities and Exchange Commission and sworn in on July 17, 2006.

Prior to being appointed Commissioner, Ms. Casey spent 13 years on Capitol Hill, ultimately serving as Staff Director and Counsel to the U.S. Senate Banking, Housing, and Urban Affairs Committee. Significant issues the Committee considered under Ms. Casey's direction include: Government Sponsored Enterprises reform, Terrorism Risk Insurance Act reauthorization, deposit insurance reform, insurance regulation, Committee on Foreign Investment in the United States regulation, Sarbanes-Oxley Act implementation, and credit rating agencies oversight.

Commissioner Casey served as Legislative Director and Chief of Staff for U.S. Senator Richard Shelby (R-AL). As Chief of Staff from 2002–2003, Ms. Casey acted as a key advisor on all policy and political matters. As Legislative Director from 1996–2002, Commissioner Casey was instrumental in the drafting and passage of several laws.

From 1994–1996, Ms. Casey served as Staff Director of the Subcommittee on Financial Institutions and Regulatory Relief of the Senate Banking Committee. She was responsible for advising and staffing Senator Shelby on all committee issues, including the Private Securities Litigation Reform Act, the Whitewater special investigation, and financial services regulatory relief legislation. Commissioner Casey also served the Senator as Legislative Assistant from 1993–1994.

A member of the Virginia and District of Columbia bars, Commissioner Casey received her J.D. from George Mason University School of Law. She received her B.A. in international politics from Pennsylvania State University.



**Elisse B. Walter**  
COMMISSIONER

Elisse B. Walter was appointed by President George W. Bush to the U.S. Securities and Exchange Commission and sworn in on July 9, 2008. Under designation by President Barack Obama, she served as Acting Chairman during January 2009.

Prior to her appointment as an SEC Commissioner, Ms. Walter served as Senior Executive Vice President, Regulatory Policy & Programs, for FINRA. She held the same position at NASD before its 2007 consolidation with NYSE Member Regulation.

Ms. Walter coordinated policy issues across FINRA and oversaw a number of departments including Investment Company Regulation, Member Education and Training, Investor Education, and Emerging Regulatory Issues. She also served on the Board of Directors of the FINRA Investor Education Foundation.

Prior to joining NASD, Ms. Walter served as the General Counsel of the Commodity Futures Trading Commission. Before joining the CFTC in 1994, Ms. Walter was the Deputy Director of the Division of Corporation Finance of the Securities and Exchange Commission. She served on the SEC's staff beginning in 1977, both in that division and in the Office of the General Counsel. Before joining the SEC, Ms. Walter was an attorney with a private law firm.

Ms. Walter is a member of the Academy of Women Achievers of the YWCA of the City of New York and the inaugural class of the ABA's DirectWomen Institute. She also has received, among other honors, the Presidential Rank Award (Distinguished), the SEC Chairman's Award for Excellence, the SEC's Distinguished Service Award, and the Federal Bar Association's Philip Loomis and Manuel F. Cohen Younger Lawyer Awards.

She graduated from Yale University with a B.A., cum laude, in mathematics and received her J.D. degree, cum laude, from Harvard Law School. Ms. Walter is married to Ronald Alan Stern, and they have two sons, Jonathan and Evan.



**Luis A. Aguilar**  
COMMISSIONER

Luis A. Aguilar was appointed by President George W. Bush to the U.S. Securities and Exchange Commission and sworn in on July 31, 2008.

Prior to his appointment as an SEC Commissioner, Mr. Aguilar was a partner with the international law firm of McKenna Long & Aldridge, LLP, specializing in securities law.

Commissioner Aguilar's previous experience includes serving as the General Counsel, Executive Vice President, and Corporate Secretary of INVESCO. He also was INVESCO's Managing Director for Latin America in the late 1990s. His career also includes tenure as a partner at several prominent national law firms and as an attorney at the U.S. Securities and Exchange Commission.

Commissioner Aguilar has been listed in the 2005, 2006, 2007, and 2008 editions of the *Best Lawyers in America* and was named by *Hispanic Business Magazine* in 2006 as one of the "100 Influential" Hispanics in the United States. Additionally, he was named Member of the Year in 2005 and the Atlanta Hispanic Businessman of the Year in 1994 by Georgia Hispanic Chamber of Commerce. He received the Mexican American Legal Defense and Educational Fund's "Excellence in Leadership" Award in April 2005. He was also named the 2005 Latino Attorney of the Year by the Hispanic National Bar Association.

He has been active in numerous civic and business associations. From May 2005 to May 2007, he chaired the Latin American Association. He has served on various Boards, including the Mexican American Legal Defense and Education Fund, Girl Scouts Council of Northwest Georgia, Inc., Georgia Hispanic Bar Association, United States Fund for UNICEF Southeast Regional Chapter, and CIFAL Atlanta, Inc.

Commissioner Aguilar is a graduate of the University of Georgia School of Law, and also received a master of laws degree in taxation from Emory University.



**Troy A. Paredes**  
COMMISSIONER

Commissioner Paredes was appointed by President George W. Bush to the U.S. Securities and Exchange Commission and sworn in on August 1, 2008.

Before joining the SEC, Commissioner Paredes was a tenured professor at Washington University School of Law in St. Louis, Missouri. He also held a courtesy appointment at Washington University's Olin Business School.

While a professor, Commissioner Paredes made presentations around the country on securities law and corporate governance, and he served as an expert on various legal matters. In addition, he has researched numerous topics such as executive compensation; hedge funds; private placements; the allocation of control within firms among directors, officers, and shareholders; the psychology of corporate and regulatory decision making; behavioral finance; alternative methods of regulation and market-based approaches to corporate accountability and securities regulation; comparative corporate governance, including the development of corporate governance and securities law systems in emerging markets; and the law and business of commercializing innovation. His scholarly work, among other things, has advocated for rigorous cost-benefit analysis when regulating and emphasized the need for accessible and understandable disclosures that investors can use effectively.

As a professor, Commissioner Paredes has authored many articles, and he is also a co-author (beginning with the 4th edition) of a multi-volume securities regulation treatise with Louis Loss and Joel Seligman, entitled *Securities Regulation*.

Before joining the Washington University faculty in 2001, Commissioner Paredes practiced law at prominent national law firms. As a practicing lawyer, he worked on a variety of transactions and legal matters involving financings, mergers and acquisitions, and corporate governance.

He graduated from the University of California at Berkeley with a bachelor's degree in economics in 1992. He went on to graduate from Yale Law School in 1996.



## Appendix B: Major Enforcement Cases

The SEC works to protect investors by bringing hundreds of civil enforcement actions for securities laws violations each year. When potential violations occur, the Commission authorizes the SEC's Division of Enforcement to take prompt action to halt misconduct, seek effective sanction against wrongdoers, and return funds to harmed investors. This section outlines the major enforcement cases of FY 2009. For further information on selected enforcement cases, please see "Litigation Releases" at <http://www.sec.gov/litigation/litreleases.shtml>.

### Actions Involving Subprime-Related Securities

The subprime mortgage crisis continues to be a high priority in the Division of Enforcement. The division formed a Subprime Working Group in 2007 to coordinate enforcement efforts nationwide. In FY 2009, the SEC charged former Countrywide Financial CEO Angelo Mozilo and two of Countrywide's former executives with fraud for allegedly misleading investors about the significant risks the company was undertaking.<sup>1</sup> The Commission alleged that in its annual reports, Countrywide portrayed itself as underwriting mainly prime quality mortgages, while concealing that the loans it actually was taking on were so risky that Mozilo privately described them as "toxic." Mozilo was also charged with insider trading for allegedly selling his Countrywide stock based on non-public information for nearly \$140 million in profits.

The Commission also charged Evergreen Investment Management Company<sup>2</sup> with overstating the value of a mutual fund that invested primarily in mortgage-backed securities, and then only selectively telling shareholders about the fund's valuation problems. Evergreen agreed to pay more than \$40 million to settle the SEC's charges. In another mortgage-related case, the SEC brought a case against former mortgage lending company executives of American Home Mortgage for accounting fraud and allegedly making false and misleading disclosures relating to the riskiness of the mortgages originated and held by the company as the credit crisis began to unfold.<sup>3</sup> The former chairman and CEO agreed to settle charges and pay \$2.2 million in disgorgement and prejudgment interest, a

\$250,000 penalty, and a five-year officer and director bar. The Commission is in litigation regarding the remaining defendants. The SEC also sued registered representatives of Brookstreet Securities Corp., a now defunct broker-dealer, for allegedly representing to their customers that mortgage-backed securities were safe and suitable for retirees and others with conservative investment goals, when in fact they were not. The Commission is litigating this case as well.<sup>4</sup>

### Actions Involving Auction Rate Securities

The SEC has aggressively investigated whether broker-dealers and individuals failed to disclose to investors material risks about ARS that they marketed and sold. In FY 2009, the Commission entered into final settlements with numerous firms which misrepresented to customers that ARS were safe, highly liquid investments that were comparable to money markets. According to the complaints, in late 2007 and early 2008, the firms knew that the ARS market was deteriorating, causing the firms to have to purchase additional inventory to prevent failed auctions. At the same time, however, the firms knew that their ability to support auctions by purchasing more ARS had been reduced, as the credit crisis stressed the firms' balance sheets. In mid-February 2008, the firms decided to stop supporting the ARS market, leaving tens of thousands of customers holding tens of billions of dollars in illiquid ARS. Through historic settlements with Citigroup,<sup>5</sup> UBS,<sup>6</sup> Wachovia,<sup>7</sup> Bank of America,<sup>8</sup> RBC

<sup>1</sup> SEC v. Angelo Mozilo, David Sambol, and Eric Sieracki, Lit. Rel. No. 21068A (Jun. 4, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr21068a.htm>

<sup>2</sup> In the Matter of Evergreen Investment Management Company, LLC and Evergreen Investment Services, Inc., Exchange Act Rel. No. 60059 (Jun. 8, 2009) <http://www.sec.gov/litigation/admin/2009/34-60059.pdf>

<sup>3</sup> SEC v. Michael Strauss, Stephen Hozie and Robert Bernstein, Lit. Rel. No. 21014 (Apr. 28, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr21014.htm>

<sup>4</sup> SEC v. William Betta, Jr., et al., Lit. Rel. No. 21061 (May 28, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr21061.htm>

<sup>5</sup> SEC v. Citigroup Global Markets, Inc., Lit. Rel. No. 20824 (Dec. 11, 2008) <http://www.sec.gov/litigation/litreleases/2008/lr20824.htm>

<sup>6</sup> SEC v. UBS Securities, LLC and UBS Financial Services, Inc., Lit. Rel. No. 20824 (Dec. 11, 2008) <http://www.sec.gov/litigation/litreleases/2008/lr20824.htm>

<sup>7</sup> SEC v. Wachovia Securities, LLC, Lit. Rel. No. 20885 (Feb. 5, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr20885.htm>

<sup>8</sup> SEC v. Banc of America Securities, LLC and Banc of America Investment Services, Inc., Lit. Rel. No. 21066 (Jun. 3, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr21066.htm>

Capital Markets,<sup>9</sup> and Deutsche Bank,<sup>10</sup> the SEC has brought unprecedented relief to tens of thousands of investors. ARS customers of these firms can get back all of the money they invested in auction rate securities, as more than \$43 billion in liquidity is being made available to them through these settlements.

### **Actions Involving Offering Frauds/Ponzi Schemes**

Offering frauds have always been a priority with the Commission. In recent months, offering frauds, particularly Ponzi schemes, have become an even greater priority, comprising over 20 percent of the cases brought in FY 2009 largely due to the financial crisis. Ponzi schemes rely on a steady stream of cash from new investors to pay returns to old investors. However, during a financial crisis, new investors become difficult to find and the schemes collapse. The majority of the cases in FY 2009 were emergency actions seeking a temporary restraining order (TRO) and an asset freeze to prevent new victims from being harmed and to maximize the recovery of assets to investors. In December 2008, the SEC charged Bernard L. Madoff and his investment firm with securities fraud for a \$50 billion Ponzi scheme that he perpetrated on advisory clients of his firm for many years.<sup>11</sup> The Commission obtained emergency relief in the form of a preliminary injunction, asset freeze, and the appointment of a receiver. The SEC has continued to investigate this fraud and brought numerous other actions against other key players of this fraud, including Madoff's CFO,<sup>12</sup> auditors of Madoff's broker-dealer firm,<sup>13</sup> and others.<sup>14</sup> The Commission is seeking permanent injunctions, disgorgement, and civil penalties in these actions.

In another action, the SEC obtained a TRO against Robert Allen Stanford, three of his companies, and several officers for allegedly orchestrating a fraudulent, multibillion dollar investment scheme centering on an \$8 billion certificates of deposit (CD) program.<sup>15</sup> According to the complaint, the defendants have allegedly misrepresented to CD purchasers that their deposits are safe, falsely claiming that the bank reinvests clients' funds primarily in "liquid" financial instruments; monitors the portfolio through a team of 20-plus analysts; and is subject to yearly audits by Antiguan regulators. The court also froze all of the defendants' assets, ordered that assets outside the United States be returned to the court's jurisdiction, appointed a receiver to marshal the defendants' assets, and granted other relief. The Commission continues to seek permanent injunctions, disgorgement, and civil money penalties.

In *SEC v. Thomas J. Petters, et al.*,<sup>16</sup> the SEC charged a hedge fund manager and his firm with allegedly facilitating a multibillion dollar Ponzi scheme operated by Minnesota businessman Thomas Petters. The SEC's complaint alleged that Gregory Bell and his firm invested more than \$2 billion in hedge fund assets with Petters, and pocketed millions in fraudulent fees at the expense of investors in the funds. The SEC's complaint also charges Petters with fraud for allegedly perpetrating the massive Ponzi scheme through the sale of notes related to consumer electronics. The SEC has obtained asset freezes in this case and is seeking injunctive relief, disgorgement, and civil penalties.

In *SEC v. Provident Royalties, LLC, et al.*,<sup>17</sup> the SEC obtained an emergency asset freeze in an alleged \$485 million offering fraud and Ponzi scheme orchestrated by three Dallas businessmen through a company they owned and controlled. The SEC alleged that over a three-year period

9 *SEC v. RBC Capital Markets Corporation, Lit. Rel. No. 21066 (Jun. 3, 2009)*  
<http://www.sec.gov/litigation/litreleases/2009/lr21066.htm>

10 *SEC v. Deutsche Bank Securities Inc., Lit. Rel. No. 21066 (Jun. 3, 2009)*  
<http://www.sec.gov/litigation/litreleases/2009/lr21066.htm>

11 *SEC v. Bernard L. Madoff, et al., Lit. Rel. No. 20834 (Dec. 19, 2008)*  
<http://www.sec.gov/litigation/litreleases/2008/lr20834.htm>

12 *SEC v. Frank DiPascali, Jr., Lit. Rel. No. 21174 (Aug. 11, 2009)*  
<http://www.sec.gov/litigation/litreleases/2009/lr21174.htm>

13 *SEC v. David G. Friehling, C.P.A. and Friehling & Horowitz, CPA's, P.C., Lit. Rel. No. 20959 (March 18, 2009)* <http://www.sec.gov/litigation/litreleases/2009/lr20959.htm>

14 *SEC v. Cohmad Securities Corp. et al., Lit. Rel. No. 21095 (Jun. 22, 2009)*  
<http://www.sec.gov/litigation/litreleases/2009/lr21095.htm>; *SEC v. Stanley Chais, Lit. Rel. No. 21096 (Jun. 22, 2009)* <http://www.sec.gov/litigation/litreleases/2009/lr21096.htm>

15 *SEC v. Stanford International Bank, et al., Lit. Rel. No. 20901 (Feb. 17, 2009)*  
<http://www.sec.gov/litigation/litreleases/2009/lr20901.htm>; *SEC v. Stanford International Bank, Ltd, et al., Lit. Rel. No. 21092 (Jun. 19, 2009)*

<http://www.sec.gov/litigation/litreleases/2009/lr21092.htm>

16 *SEC v. Thomas J. Petters, et al., Lit. Rel. No. 21124 (Jul. 10, 2009)*  
<http://www.sec.gov/litigation/litreleases/2009/lr21124.htm>

17 *SEC v. Provident Royalties, LLC, et al., Lit. Rel. No. 21118 (Jul. 7, 2009)*  
<http://www.sec.gov/litigation/litreleases/2009/lr21118.htm>

Provident made a series of fraudulent securities offerings involving oil and gas assets through 21 affiliated entities to more than 7,700 investors throughout the United States. In *SEC v. John J. Bravata, et al.*,<sup>18</sup> the SEC obtained a TRO and asset freeze to stop an alleged \$50 million Ponzi scheme involving at least 440 investors. Additionally, the SEC charged two California men and two companies they control with allegedly conducting an \$80 million Ponzi scheme that targeted Korean-American investors with false promises of extraordinarily high returns from foreign currency trading.<sup>19</sup> The SEC also is seeking injunctive relief and disgorgement and civil penalties in each of these cases.

### **Actions Involving Mutual Funds and Investment Advisers**

In FY 2009, the Commission took a variety of actions against mutual funds and investment advisers. In *SEC v. Reserve Management Company*,<sup>20</sup> the SEC charged with fraud the managers of a \$62 billion money market fund whose net asset value fell below \$1.00, or “broke the buck.” The managers allegedly failed to provide key material facts to investors and trustees about the fund’s vulnerability as Lehman Brothers Holdings, Inc. sought bankruptcy protection. The SEC is in litigation and seeking an injunction, disgorgement, and civil penalties. In another case, the SEC charged New York’s former Deputy Comptroller, a top political adviser, and others for allegedly extracting millions of dollars in kickbacks over a three-year period from investment management firms seeking to manage the assets of New York’s largest pension fund, the New York State Common Retirement Fund. The Commission is seeking injunctive action, disgorgement, and civil penalties.<sup>21</sup>

18 *SEC v. John J. Bravata, et al.*, Lit. Rel. No. 21155 (Jul. 28, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr21155.htm>

19 *SEC v. Peter C. Son, et al.*, Lit. Rel. No. 21076 (Jun. 9, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr21076.htm>

20 *SEC v. Reserve Management Company, et al.*, Lit. Rel. No. 21025 (May 5, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr21025.htm>

21 *SEC v. Henry Morris, et al.*, Lit. Rel. No. 20963 (Mar. 19, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr20963.htm>; and the following three amended complaints Lit. Rel. No. 21001 (Apr. 15, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr21001.htm>; Lit. Rel. No. 21018 (Apr. 30, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr21018.htm>; Lit. Rel. No. 21036 (May 12, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr21036.htm>

### **Actions Involving Broker-Dealers**

The Commission brought numerous actions against broker-dealers in FY 2009. The Commission charged 14 specialist firms with unscrupulous trading practices on the American Stock Exchange, the Chicago Board Options Exchange, and the Philadelphia Stock Exchange. These firms violated their fundamental obligation to serve public customers over their own proprietary interests by “trading ahead” of customer orders, or by filling the firm’s proprietary account orders before customer orders. The firms agreed to settle the SEC’s charges by collectively paying nearly \$70 million in disgorgement and penalties.<sup>22</sup>

In February, the Commission also filed a settled action against UBS, AG, which charged the firm with acting as an unregistered broker-dealer and investment adviser. The SEC’s complaint further charged that UBS’s conduct facilitated the ability of certain U.S. clients to maintain undisclosed accounts in Switzerland and other foreign countries, which enabled those clients to avoid paying taxes related to the assets in those accounts. UBS agreed to disgorge \$200 million in its settlement.<sup>23</sup>

Furthermore, in FY 2009, the Commission filed its first enforcement actions for violations of the Commission’s rules to prevent abusive “naked” short selling. “Naked” short selling is the act of short selling without actually confirming that shares have been borrowed. The SEC charged two options traders and their broker-dealers with violating the locate and close-out requirements of Regulation SHO. Regulation SHO requires broker-dealers to locate a source of borrowable shares prior to selling short, and to deliver securities sold short by a specified date. The SEC settled both actions for over \$3.5 million in disgorgement and provided that the payment obligations were deemed satisfied by defendants’ payments of disgorgement to the other regulatory bodies pursuing the Regulation SHO violations.<sup>24</sup>

22 <http://www.sec.gov/news/press/2009/2009-42.htm>

23 *SEC v. UBS, AG*, Lit. Rel. No. 20905 (Feb. 18, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr20905.htm>

24 *In the Matter of Hazan Capital Management, LLC and Steven M. Hazan, Exchange Act Rel. No. 60441* (Aug. 5, 2009) <http://www.sec.gov/litigation/admin/2009/34-60441.pdf> and *In the Matter of TJM Proprietary Trading, LLC, Michael R. Benson, and John T. Burke, Exchange Act Rel. No. 60440* (Aug. 5, 2009) <http://www.sec.gov/litigation/admin/2009/34-60440.pdf>

## Actions Involving Financial Fraud and Issuer Disclosure

The Commission brought numerous cases in FY 2009 involving financial fraud, issuer disclosure, and reporting violations at public companies. The Commission filed an action against GE<sup>25</sup> charging that it misled investors by reporting materially false and misleading results in its financial statements. The complaint states that GE used improper accounting methods to increase its reported earnings or revenues and avoid reporting negative financial results. GE has agreed to pay a \$50 million penalty to settle the SEC's charges. Additionally, the Commission filed an action against Zurich Financial Services.<sup>26</sup> The SEC charged Zurich with aiding and abetting a fraud by Converium Holding AG involving the use of finite reinsurance transactions to improperly inflate Converium's financial performance. Without admitting or denying the allegations, Zurich consented to a final judgment directing it to pay a \$25 million penalty.

The Commission holds executives who are responsible for financial reporting and controls accountable when they or their companies arrange fraudulent transactions to mislead investors. For example, in FY 2009, the Commission filed its first action under the Sarbanes-Oxley Act Section 304 "clawback" provision seeking reimbursement from an individual who is not alleged to have otherwise violated the securities laws. Section 304 deprives corporate executives of money that they earned while their companies were misleading investors. In *SEC v. Maynard L. Jenkins*,<sup>27</sup> the Commission filed an action seeking to order Jenkins, the CEO of CSK Auto Corporation at the time that CSK was committing accounting fraud, to reimburse the company and its shareholders more than \$4 million in bonuses and stock sale profits. This case is currently in litigation. Additionally, in August 2009, the SEC charged the

CEO and CFO of AIG<sup>28</sup> for their involvement in numerous improper accounting transactions that inflated AIG's reported financial results over a period of five years. The CEO and CFO agreed to settle and pay disgorgement and penalties totaling \$15 million and \$1.5 million, respectively.

The SEC also continues to vigorously enforce the anti-bribery provision of the FCPA. In December, the Commission simultaneously filed and obtained the largest settlement in the history of the FCPA since it became law in 1977. This settlement with Siemens resolved SEC charges that the German-based manufacturer violated the FCPA by creating elaborate payment schemes to conceal a systematic practice of paying bribes to foreign government officials to obtain business.<sup>29</sup> The misconduct involved employees at all levels, including former senior management, and the company's inadequate internal controls allowed the conduct to flourish. In this settlement, Siemens agreed to pay \$350 million in disgorgement to settle the SEC's charges. Siemens also simultaneously settled actions brought by the U.S. Department of Justice and the Office of the Prosecutor General in Munich with payment to all three law enforcement groups totaling more than \$1.6 billion in combined sanctions.

Similarly, the Commission settled an FCPA case in February with KBR and Halliburton where the Commission claimed that a KBR subsidiary bribed Nigerian government officials over a 10-year period in order to obtain construction contracts.<sup>30</sup> KBR and Halliburton have agreed to pay \$177 million in disgorgement in addition to a \$402 million fine to settle parallel criminal charges brought by the U.S. Department of Justice. Both FCPA cases demonstrate the close and cooperative working relationship that has developed in FCPA investigations among the SEC, the U.S. Department of Justice, and foreign law enforcement agencies and securities regulators.

25 *SEC v. General Electric Company*, Lit. Rel. No. 21166 (Aug. 4, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr21166.htm>

26 *SEC v. Zurich Financial Services*, Lit. Rel. No. 20825 (Dec. 11, 2008) <http://www.sec.gov/litigation/litreleases/2008/lr20825.htm>

27 *SEC v. Maynard L. Jenkins*, Lit. Rel. No. 21149A (Jul. 23, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr21149a.htm>

28 *SEC v. Maurice R. Greenberg and Howard I. Smith*, Lit. Rel. No. 21170 (Aug. 6, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr21170.htm>

29 *SEC v. Siemens Aktiengesellschaft*, Lit. Rel. No. 20829 (Dec. 15, 2008) <http://www.sec.gov/litigation/litreleases/2008/lr20829.htm>

30 *SEC v. Halliburton Company and KBR, Inc.*, Lit. Rel. No. 20897A (Feb. 11, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr20897a.htm>

## Actions Involving Insider Trading

The SEC conducted many significant insider trading cases in FY 2009. In May, the SEC filed its first insider trading case regarding CDS. In this case, the SEC charged Renato Negrin, a former portfolio manager at hedge fund investment adviser Millennium Partners, and Jon-Paul Rorech, a salesman at Deutsche Bank, with insider trading in the CDS of international holding company VNU.<sup>31</sup> According to the complaint, Rorech allegedly illegally tipped Negrin about an anticipated change in VNU's underlying bond structure which was expected to increase the price of the CDS on VNU bonds. Negrin allegedly purchased CDS on VNU for a Millennium hedge fund. When news of the restructured bond offering became public, the price of VNU CDS substantially increased, and Negrin allegedly closed Millennium's VNU CDS position at a profit of approximately \$1.2 million. The Commission's complaint is seeking penalties, disgorgement, and permanent injunctions against the two defendants.

In addition, the SEC brought an action against Merrill Lynch because its retail brokers allowed day traders to hear confidential information regarding Merrill Lynch institutional customers' unexecuted orders as they were transmitted over Merrill Lynch's squawk box system. The day traders used the customer order information to "trade ahead" of the institutional customer orders and, in many instances, profited from price movements that were caused by the market impact of the institutional customer order. The day traders compensated the brokers for access to this material, nonpublic information through commissions and cash payments. Merrill Lynch settled to a censure, a cease and desist order, and a \$7 million civil money penalty.<sup>32</sup>

In September, the Commission charged Reza Saleh with insider trading around the public announcement of Dell Inc.'s tender offer for Perot Systems. Saleh allegedly learned of the tender offer during the course of his employment for Perot-related private companies. Saleh allegedly reaped approximately \$8.6 million in illicit profits when he sold his call option contracts immediately following the tender offer announcement. The SEC is seeking emergency relief, injunctions, penalties, and disgorgement.<sup>33</sup>

In three additional cases, the SEC charged Wall Street professionals in widespread insider trading schemes which allegedly collectively earned defendants approximately \$21.6 million in illegal trading profits. The Commission is determined to pursue illegal insider trading by securities professionals, lawyers, and others who traded on confidential information that they knew was obtained improperly. In the first case, a registered representative at Lehman Brothers allegedly misappropriated confidential nonpublic information from his wife. The registered representative allegedly traded on and tipped at least four of his clients and friends regarding 13 impending corporate transactions that resulted in more than \$4.8 million in illegal trading profits. In return, the registered representative's clients and friends allegedly rewarded him with cash and luxury items.<sup>34</sup> In the second case, a Citigroup investment banker allegedly repeatedly tipped his brother about upcoming merger deals, which resulted in nearly \$5.2 million in illegal insider trading profits for the investment banker and his tippees.<sup>35</sup> In the third case, seven individuals, including two mergers and acquisitions professionals, allegedly engaged in insider trading which generated a combined total of over \$11.6 million in illegal profits and losses avoided.<sup>36</sup> The SEC is seeking injunctive relief, disgorgement of illicit profits, and civil penalties against the defendants in these three cases.

31 *SEC v. Jon-Paul Rorech, et al.*, Lit. Rel. No. 21023 (May 5, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr21023.htm>

32 *In the Matter of Merrill Lynch, Pierce, Fenner, & Smith Inc., Exchange Act Rel. No. 59555* (Mar. 11, 2009) <http://www.sec.gov/litigation/admin/2009/34-59555.pdf>

33 *SEC v. Reza Saleh and Amir Saleh*, Lit. Rel. No. 21221 (Sep. 24, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr21221.htm>

34 *SEC v. Matthew C. Devlin, et al.*, Lit. Rel. No. 20831 (Dec. 18, 2008) <http://www.sec.gov/litigation/litreleases/2008/lr20831.htm>

35 *SEC v. Maher F. Kara, et al.*, Lit. Rel. No. 21020 (Apr. 30, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr21020.htm>

36 *SEC v. Nicos Achilleas Stephanou, et al.*, Lit. Rel. No. 20884 (Feb. 5, 2009) <http://www.sec.gov/litigation/litreleases/2009/lr20884.htm>

# Appendix C: SEC Divisions and Offices

## Headquarters Offices

### DIVISION OF CORPORATION FINANCE

Meredith B. Cross, Director  
(202) 551-3110

### DIVISION OF ENFORCEMENT

Robert S. Khuzami, Director  
(202) 551-4500

### DIVISION OF INVESTMENT MANAGEMENT

Andrew J. Donohue, Director  
(202) 551-6720

### DIVISION OF TRADING AND MARKETS

Robert W. Cook, Director  
(appointment announced 11/10/09)  
(202) 551-5500

### DIVISION OF RISK, STRATEGY, AND FINANCIAL INNOVATION

Henry Hu, Director  
(202) 551-4363

### OFFICE OF THE EXECUTIVE DIRECTOR

Diego T. Ruiz, Executive Director  
(202) 551-4300

### OFFICE OF COMPLIANCE INSPECTIONS AND EXAMINATIONS

John Walsh, Acting Director  
(202) 551-6200

### OFFICE OF GENERAL COUNSEL

David Becker, General Counsel  
(202) 551-5100

### OFFICE OF THE CHIEF ACCOUNTANT

James Kroeker, Chief Accountant  
(202) 551-5300

### OFFICE OF INVESTOR EDUCATION AND ADVOCACY

Lori Schock, Director  
(202) 551-6500

### OFFICE OF INTERNATIONAL AFFAIRS

Ethiopsis Tafara, Director  
(202) 551-6690

### OFFICE OF FREEDOM OF INFORMATION ACT AND PRIVACY ACT OPERATIONS

Barry Walters, Chief FOIA Officer  
(202) 551-8300

### OFFICE OF ADMINISTRATIVE LAW JUDGES

Brenda P. Murray,  
Chief Administrative Law Judge  
(202) 551-6030

### OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS

Eric J. Spittler, Director  
(202) 551-2010

### OFFICE OF PUBLIC AFFAIRS

John Nester, Director  
(202) 551-4120

### OFFICE OF THE SECRETARY

Elizabeth M. Murphy, Secretary  
(202) 551-5400

### OFFICE OF FINANCIAL MANAGEMENT

Kristine M. Chadwick,  
Chief Financial Officer and  
Associate Executive Director  
(202) 551-7840

### OFFICE OF HUMAN RESOURCES

Jeffrey A. Risinger,  
Associate Executive Director  
(202) 551-7500

### OFFICE OF ADMINISTRATIVE SERVICES

Sharon Sheehan,  
Associate Executive Director  
(202) 551-7400

### OFFICE OF INFORMATION TECHNOLOGY

Charles Boucher,  
Chief Information Officer  
(202) 551-8802

### OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

Alta G. Rodriguez, Acting Director  
(202) 551-6040

### OFFICE OF INSPECTOR GENERAL

H. David Kotz, Inspector General  
(202) 551-6061

## Regional and District Offices

### NEW YORK REGIONAL OFFICE

George Canellos, Regional Director  
3 World Financial Center,  
Room 4-300  
New York, NY 10281-1022  
(212) 336-1100  
e-mail: newyork@sec.gov

### BOSTON REGIONAL OFFICE

David P. Bergers, Regional Director  
33 Arch Street, Floor 23  
Boston, MA 02110-1424  
(617) 573-8900  
e-mail: boston@sec.gov

### PHILADELPHIA REGIONAL OFFICE

Daniel M. Hawke, Regional Director  
The Mellon Independence Center  
701 Market Street  
Philadelphia, PA 19106-1532  
(215) 597-3100  
e-mail: philadelphia@sec.gov

### MIAMI REGIONAL OFFICE

Glenn Gordon, Acting Director  
801 Brickell Avenue, Suite 1800  
Miami, FL 33131  
(305) 982-6300  
e-mail: miami@sec.gov

### ATLANTA REGIONAL OFFICE

James L. Carley  
William P. Hicks  
Co-Acting Regional Directors  
3475 Lenox Road, N.E., Suite 1000  
Atlanta, GA 30326-1232  
(404) 842-7600  
e-mail: atlanta@sec.gov

### CHICAGO REGIONAL OFFICE

Merri Jo Gillette, Regional Director  
175 W. Jackson Boulevard,  
Suite 900  
Chicago, IL 60604  
(312) 353-7390  
e-mail: chicago@sec.gov

### DENVER REGIONAL OFFICE

Donald M. Hoerl, Regional Director  
1801 California Street, Suite 1500  
Denver, CO 80202-2656  
(303) 844-1000  
e-mail: denver@sec.gov

### FORT WORTH REGIONAL OFFICE

Rose L. Romero, Regional Director  
Burnett Plaza, 19th Floor  
801 Cherry Street, Unit 18  
Fort Worth, TX 76102  
(817) 978-3821  
e-mail: dfw@sec.gov

### SALT LAKE REGIONAL OFFICE

Kenneth D. Israel, Jr.,  
Regional Director  
15 W. South Temple Street  
Suite 1800  
Salt Lake City, UT 84101  
(801) 524-5796  
e-mail: saltlake@sec.gov

### LOS ANGELES REGIONAL OFFICE

Rosalind R. Tyson, Regional Director  
5670 Wilshire Boulevard, 11th Floor  
Los Angeles, CA 90036-3648  
(323) 965-3998  
e-mail: losangeles@sec.gov

### SAN FRANCISCO REGIONAL OFFICE

Marc J. Fagel, Regional Director  
44 Montgomery Street, Suite 2600  
San Francisco, CA 94104  
(415) 705-2500  
e-mail: sanfrancisco@sec.gov

## Appendix D: Acronyms

Activity Based Costing	ABC	Limited Liability Corporation	LLC
American International Group	AIG	Management's Discussion and Analysis	MD&A
Auction Rate Securities	ARS	National Association of Securities Dealers	NASD
Certificate of Deposit	CD	National Treasury Employees Union	NTEU
Chief Compliance Officer	CCO	Nationally Recognized Statistical Rating Organization	NRSRO
Chief Executive Officer	CEO	New York Stock Exchange	NYSE
Chief Financial Officer	CFO	Not Applicable	N/A
Civil Service Retirement System	CSRS	Office of Compliance Inspections and Examinations	OCIE
Commodity Futures Trading Commission	CFTC	Office of Information Technology	OIT
Credit Default Swaps	CDS	Office of Investor Education and Advocacy	OIEA
Electronic Communications Network	ECN	Office of Management and Budget	OMB
Electronic Data Gathering, Analysis, and Retrieval system	EDGAR	Office of Inspector General	OIG
Extensible Business Reporting Language	XBRL	Public Company Accounting Oversight Board	PCAOB
Federal Employees Retirement System	FERS	Securities Act of 1933	Securities Act
Federal Employees' Compensation Act	FECA	Securities Exchange Act of 1934	Exchange Act
Federal Information Security Management Act	FISMA	Securities Investor Protection Act of 1970	SIPA
Federal Labor Relations Authority	FLRA	Securities Investor Protection Corporation	SIPC
Federal Managers' Financial Integrity Act	FMFIA	Self-Regulatory Organization	SRO
Financial Industry Regulatory Authority	FINRA	Siemens Aktiengesellschaft	Siemens
Financial Management Oversight Committee	FMOC	Statement of Budgetary Resources	SBR
Financial Management Service	FMS	Statement of Changes in Net Position	SCNP
Financial System Integration Office	FSIO	Statement of Custodial Activity	SCA
Fiscal Year	FY	Statement of Net Cost	SNC
Foreign Corrupt Practices Act	FCPA	Statements of Federal Financial Accounting Standards	SFFAS
Freedom of Information Act	FOIA	Straight Line Basis	S/L
Full-Time Equivalent	FTE	Temporary Restraining Order	TRO
Fund Balance with Treasury	FBWT	Treasury Appropriation Fund Symbol	TAFS
General Electric Company	GE	U.S. Department of Labor	DOL
Generally Accepted Accounting Principles	GAAP	U.S. Department of the Treasury	Treasury
Improper Payments Information Act of 2002	IPIA	U.S. General Services Administration	GSA
Inspector General	IG	U.S. Government Accountability Office	GAO
Juris Doctor	J.D.	U.S. Securities and Exchange Commission	SEC
Liability to Benefits Paid	LBP		







U.S. Securities and Exchange Commission

100 F Street, NE, Washington, DC 20549