



10026293

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

OMB APPROVAL
OMB Number: 3235-0123
Expires: February 28, 2010
Estimated average burden
hours per response..... 12.00

**ANNUAL AUDITED REPORT
FORM X-17A-5
PART III**

SEC FILE NUMBER
8-42193

FACING PAGE
Information Required of Brokers and Dealers Pursuant to Section 17 of the
Securities Exchange Act of 1934 and Rule 17a-5 Thereunder

REPORT FOR THE PERIOD BEGINNING 01/01/09 AND ENDING 12/31/09 †
MM/DD/YY MM/DD/YY

A. REGISTRANT IDENTIFICATION

NAME OF BROKER-DEALER: **TM CAPITAL CORP.**

OFFICIAL USE ONLY
FIRM I.D. NO.

ADDRESS OF PRINCIPAL PLACE OF BUSINESS: (Do not use P.O. Box No.)

ONE BATTERY PARK PLAZA - 24TH FLOOR

(No. and Street)

NEW YORK

NEW YORK

10004

(City)

(State)

(Zip Code)

NAME AND TELEPHONE NUMBER OF PERSON TO CONTACT IN REGARD TO THIS REPORT

PAUL R. SMOLEVITZ

212-809-1416

(Area Code - Telephone Number)

B. ACCOUNTANT IDENTIFICATION

SEC Mail Processing
Section

INDEPENDENT PUBLIC ACCOUNTANT whose opinion is contained in this Report*

FEB 2 6 2010

Habif, Arogeti and Wynne, LLP

(Name - if individual, state last, first, middle name)

Washington, DC
110

Five Concourse Parkway, Suite 1000

Atlanta

Georgia

30328

(Address)

(City)

(State)

(Zip Code)

CHECK ONE:

- Certified Public Accountant
- Public Accountant
- Accountant not resident in United States or any of its possessions.

FOR OFFICIAL USE ONLY

*Claims for exemption from the requirement that the annual report be covered by the opinion of an independent public accountant must be supported by a statement of facts and circumstances relied on as the basis for the exemption. See Section 240.17a-5(e)(2)

15
34

15
34

TM CAPITAL CORP.
STATEMENT OF FINANCIAL CONDITION
DECEMBER 31, 2009

SEC Mail Processing
Section

FEB 2 6 2010

Washington, DC
110



HABIF, AROGETI & WYNNE, LLP
Certified Public Accountants and Business Advisors

TM CAPITAL CORP.

TABLE OF CONTENTS

	<u>PAGE</u>
Independent auditors' report	1
Financial statements:	
Statement of financial condition	2 - 3
Notes to statement of financial condition	4 - 8
Supplementary information:	
Independent auditors' report on internal control required by SEC Rule 17a-5(g)(1) for a broker-dealer claiming an exemption from SEC Rule 15c3-3	10 - 11

SEC Mail Processing
Section

FEB 2 8 2010

Washington, DC
110



Certified Public Accountants and Business Advisors

INDEPENDENT AUDITORS' REPORT

To the Stockholders of
TM Capital Corp.

We have audited the accompanying statement of financial condition of TM CAPITAL CORP. (an S corporation) as of December 31, 2009 that you are filing pursuant to Rule 17a-5 under the Securities Exchange Act of 1934. This financial statement is the responsibility of the Company's management. Our responsibility is to express an opinion on this financial statement based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the statement of financial condition is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the statement of financial condition. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall statement of financial condition presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the statement of financial position referred to above presents fairly, in all material respects, the financial position of TM CAPITAL CORP. as of December 31, 2009 in conformity with accounting principles generally accepted in the United States of America.

Halij, Angete & Annet, LLP

Atlanta, Georgia

February 23, 2010

TM CAPITAL CORP.
STATEMENT OF FINANCIAL CONDITION
DECEMBER 31, 2009

ASSETS

Current assets

Cash and cash equivalents	\$ 1,340,801
Accounts receivable - trade, net of allowance for doubtful accounts of \$0	748,437
Notes receivable	12,843
Prepaid expenses	<u>186,947</u>
Total current assets	<u>2,289,028</u>

Property and equipment, at cost

Computer software	26,438
Furniture and fixtures	143,478
Leasehold improvements	68,363
Equipment	<u>224,563</u>
	462,842
Less accumulated depreciation	<u>(410,482)</u>
	<u>52,360</u>

Other assets

Notes receivable, net of current portion	104,200
Security deposits	<u>78,179</u>
	<u>182,379</u>
	<u>\$ 2,523,767</u>

See auditors' report and accompanying notes

TM CAPITAL CORP.
STATEMENT OF FINANCIAL CONDITION
DECEMBER 31, 2009

LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities

Accounts payable and accrued liabilities	\$ 110,508
Deferred rent liability - current	14,603
Deferred revenue	<u>100,000</u>
Total current liabilities	<u>225,111</u>

Long-term liabilities

Subordinated borrowings	500,000
Deferred rent liability - non-current	<u>14,603</u>
	<u>514,603</u>

Stockholders' equity

Common stock, \$0.01 par value, 3,000 shares authorized; 1,690 shares issued and outstanding at December 31, 2009	17
Additional paid-in capital	1,574,395
Retained earnings	<u>209,641</u>
	<u>1,784,053</u>
	<u>\$ 2,523,767</u>

See auditors' report and accompanying notes

TM CAPITAL CORP.
NOTES TO STATEMENT OF FINANCIAL CONDITION
DECEMBER 31, 2009

Note A

Summary of Significant Accounting Policies

Nature of Operations:

TM Capital Corp. (the "Company"), an S Corporation, was formed on July 26, 1989. The Company provides investment and merchant banking services to clients. The Company is a registered broker/dealer under the Securities Exchange Act of 1934, and is a member of the Financial Industry Regulatory Authority, Inc. ("FINRA") and the Securities Investor Protection Corporation ("SIPC"). The Company provides merger and acquisition advisory services to domestic and international companies and assists its clients in analyzing capitalization alternatives and arranging private placements of debt, equity and equity-related securities.

The current state of the economy and securities markets may have adverse implications to the financial services industry. The contraction of the economy and securities markets may also adversely affect the Company's future operations.

The Company does not maintain customer accounts.

Accounting Standards Codification:

The Financial Accounting Standards Board Accounting Standards Codification ("FASB ASC") became the sole authoritative source of generally accepted accounting principles in the United States for periods ending after September 15, 2009. The FASB ASC incorporates all authoritative accounting literature previously issued by a standard setter. Adoption of the FASB ASC had no effect on the Company's financial position, results from operations, stockholders' equity, or cash flows.

Use of Estimates:

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Estimates are used for, but not limited to, the accounting for accruals and other contingencies. Actual results could differ from these estimates.

Cash and Cash Equivalents:

For the purpose of the statements of cash flows, the Company considers all highly liquid instruments purchased with a maturity of three months or less to be cash equivalents.

Concentration of Credit Risk Arising From Cash Deposits in Excess of Insured Limits:

The Company maintains cash balances at several financial institutions that at times may exceed federally insured limits. The Company has not experienced any losses in such accounts. The Company believes it is not exposed to any significant risks on cash.

TM CAPITAL CORP.
NOTES TO STATEMENT OF FINANCIAL CONDITION
DECEMBER 31, 2009

Note A

Summary of Significant Accounting Principles (Continued)

Accounts Receivable - Trade:

The Company extends credit to customers located primarily throughout North America based on the size of the customer, its payment history, and other factors. The Company generally does not require collateral to support customer receivables. The Company provides an allowance for doubtful accounts based upon a review of the outstanding accounts receivable, historical collection information and existing economic conditions. The Company determines if receivables are past due based on days outstanding, and amounts are written off when determined to be uncollectible by management. The maximum accounting loss from the credit risk associated with accounts receivable is the amount of the receivable recorded, which is the face amount of the receivable, net of the allowance for doubtful accounts.

Property and Equipment:

Property and equipment are stated at cost. Expenditures for maintenance and repairs are expensed currently, while renewals and betterments that materially extend the life of an asset are capitalized. The cost of assets sold, retired, or otherwise disposed of, and the related allowance for depreciation are eliminated from the accounts, and any resulting gain or loss is recognized.

Depreciation of property and equipment is provided using both straight-line and accelerated methods over the estimated useful lives of the assets, which are as follows:

Computer software	3 years
Furniture and fixtures	7 years
Leasehold improvements	Lesser of estimated useful life or life of the lease
Equipment	5 years

Impairment of Long-Lived Assets:

Long-lived assets and intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be fully recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of the assets to their fair value, which is normally determined through analysis of the future net cash flows expected to be generated by the assets. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount that the carrying amount of the assets exceeds the fair value of the assets.

TM CAPITAL CORP.
NOTES TO STATEMENT OF FINANCIAL CONDITION
DECEMBER 31, 2009

Note A
Summary of Significant Accounting Principles (Continued)

Income Taxes:

The Company, with the consent of its stockholders, has elected under the Internal Revenue Code and similar state statutes to be an S corporation. In lieu of federal corporate income taxes, the stockholders of an S corporation are taxed on their proportionate share of the Company's taxable income. The Company pays city income taxes; therefore, a provision for income taxes has been included in the financial statements.

Due to a required change in the applicable accounting standards, the Company adopted a new recognition threshold for income tax benefits arising from uncertain income tax positions effective January 1, 2009. Upon adoption of the new standard and in all subsequent periods, a tax benefit arising from an uncertain tax position can only be recognized for financial reporting purposes if, and to the extent that, the position is more likely than not to be sustained in an audit by the applicable taxing authority. Adoption of the new standard had no impact on the Company's financial position or results of operations.

The Company is no longer subject to income tax examinations for calendar years up to and including 2005.

Fair Value of Financial Instruments:

In specific circumstances, certain assets and liabilities are reported or disclosed at fair value. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between participants at the measurement date for such transactions. If the Company has not established a place for such transactions, fair value is determined based on the most advantageous place.

Valuation inputs used to determine fair value are arranged in a hierarchy that categorizes the inputs into three broad levels which are as follows:

- Level 1 inputs are unadjusted quoted prices in active markets for identical assets or liabilities.
- Level 2 inputs are directly or indirectly observable valuation inputs for the asset or liability, excluding Level 1 inputs.
- Level 3 inputs are unobservable inputs for the asset or liability.

The fair value hierarchy gives the highest priority to Level 1 inputs and the lowest priority to Level 3 inputs.

The Company's financial instruments, including cash, accounts receivable net, accounts payable, and accrued expenses, are carried at cost, which approximates their fair value because of the short term nature of these assets and liabilities.

TM CAPITAL CORP.
NOTES TO STATEMENT OF FINANCIAL CONDITION
DECEMBER 31, 2009

Note B
Net Capital

The Company is subject to the Securities and Exchange Commission Uniform Net Capital Rule (rule 15c3-1), which requires the maintenance of minimum net capital and requires that the ratio of aggregate indebtedness to net capital, both as defined, shall not exceed 15 to 1 shall not be less than \$5,000. At December 31, 2009, the Company had net capital of \$1,101,087, which was \$1,085,105 in excess of its required net capital of \$15,982. The Company's net capital ratio was 0.22 to 1.

Note C
Exemption from Rule 15c3-3

The Company is exempt from rule 15c3-3 of the Securities and Exchange Commission and, accordingly, is not required to maintain a reserve account for the exclusive benefit of customers.

Note D
Commitments and Contingencies

Operating Leases:

The Company leases office space, office equipment, and motor vehicles under noncancelable operating lease agreements expiring on various dates through August 2018.

At December 31, 2009, future minimum lease payments under noncancelable operating leases were as follows:

<u>Year Ending December 31,</u>	
2010	\$ 491,381
2011	592,717
2012	472,121
2013	468,900
2014	472,591
Thereafter	<u>1,233,191</u>
	<u>\$ 3,730,901</u>

Note E
Employee Retirement Plans

The Company maintains a defined contribution simplified employee pension plan. The plan covers all employees who have attained the age of 21 years and have performed one year of service. Company contributions are at the discretion of management.

TM CAPITAL CORP.
NOTES TO STATEMENT OF FINANCIAL CONDITION
DECEMBER 31, 2009

Note F
Related Party Transactions

Notes Receivable:

Notes receivable are due from employees and bear interest at rates ranging from 0.82%-1.64% per annum. All interest and principal are due at maturity on February 28, 2010 and June 30, 2011.

Subordinated Borrowings:

On January 31, 2008, the Company issued promissory notes to certain shareholders totaling \$500,000 which were subordinated effective July 18, 2008. The notes bear interest at a rate of 5% per annum and mature on July 18, 2011. All interest and principal are due at maturity. The subordinated borrowings are available in computing net capital under the SEC's uniform net capital rule. To the extent that such borrowings are required for the Company's continued compliance with minimum net capital requirements, they may not be repaid. Accrued interest payable, included in accounts payable and accrued liabilities amounted to \$47,917, and interest expense amounted to \$25,000 for the year ended December 31, 2009.

Note G
Subsequent Events

The Company evaluated subsequent events through February 23, 2010, when these financial statements were available to be issued. The Company is not aware of any significant events that occurred subsequent to the balance sheet date but prior to the filing of this report that would have an material impact on the financial statements.

SUPPLEMENTARY INFORMATION



Certified Public Accountants and Business Advisors

INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL REQUIRED BY SEC RULE 17a-5(g)(1) FOR A BROKER-DEALER CLAIMING AN EXEMPTION FROM SEC RULE 15c3-3

To the Stockholders of
TM Capital Corp.

In planning and performing our audit of the statement of financial condition of TM CAPITAL CORP. (the Company) as of and for the year ended December 31, 2009, in accordance with auditing standards generally accepted in the United States of America, we considered the Company's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinion on the statement of financial condition, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, we do not express an opinion on the effectiveness of the Company's internal control.

Also, as required by Rule 17a-5(g)(1) of the Securities and Exchange Commission (SEC), we have made a study of the practices and procedures followed by the Company, including consideration of control activities for safeguarding securities. This study included tests of such practices and procedures that we considered relevant to the objectives stated in Rule 17a-5(g), in making the periodic computations of aggregate indebtedness and net capital under Rule 17a-3(a)(11) and for determining compliance with the exemptive provisions of Rule 15c3-3. Because the Company does not carry securities accounts for customers or perform custodial functions relating to customer securities, we did not review the practices and procedures followed by the Company in any of the following:

1. Making quarterly securities examinations, counts, verifications, and comparisons and recordation of differences required by Rule 17a-13
2. Complying with the requirements for prompt payment for securities under Section 8 of Federal Reserve Regulation T of the Board of Governors of the Federal Reserve System

The management of the Company is responsible for establishing and maintaining internal control and the practices and procedures referred to in the preceding paragraph. In fulfilling this responsibility, estimates and judgments made by management are required to assess the expected benefits and related costs of controls and of the practices and procedures referred to in the preceding paragraph and to assess whether those practices and procedures can be expected to achieve the SEC's above-mentioned objectives. Two of the objectives of internal control and the practices and procedures are to provide management with reasonable, but not absolute, assurance that assets for which the Company has responsibility are safeguarded against loss from unauthorized use or disposition and that transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of the statement of financial condition in conformity with generally accepted accounting principles. Rule 17a-5(g) lists additional objectives of the practices and procedures listed in the preceding paragraph.

INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL REQUIRED BY SEC RULE 17a-5(g)(1) FOR A BROKER-DEALER CLAIMING AN EXEMPTION FROM SEC RULE 15c3-3

Because of inherent limitations in internal control and the practices and procedures referred to above, error or fraud may occur and not be detected. Also, projection of any evaluation of them to future periods is subject to the risk that they may become inadequate because of changes in conditions or that the effectiveness of their design and operation may deteriorate.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's statement of financial condition that is more than inconsequential will not be prevented or detected by the entity's internal control.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the statement of financial condition will not be prevented or detected by the entity's internal control.

Our consideration of internal control was for the limited purpose described in the first and second paragraphs and would not necessarily identify all deficiencies in internal control that might be material weaknesses. We did not identify any deficiencies in internal control and control activities for safeguarding securities that we consider to be material weaknesses, as defined above.

We understand that practices and procedures that accomplish the objectives referred to in the second paragraph of this report are considered by the SEC to be adequate for its purposes in accordance with the Securities Exchange Act of 1934 and related regulations, and that practices and procedures that do not accomplish such objectives in all material respects indicate a material inadequacy for such purposes. Based on this understanding and on our study, we believe that the Company's practices and procedures, as described in the second paragraph of this report, were adequate at December 31, 2009, to meet the SEC's objectives.

This report is intended solely for the information and use of the stockholders, management, the SEC, FINRA, and other regulatory agencies that rely on Rule 17a-5(g) under the Securities Exchange Act of 1934 in their regulation of registered brokers and dealers, and is not intended to be and should not be used by anyone other than these specified parties.



Atlanta, Georgia

February 23, 2010

TM CAPITAL CORP.

**AGREED-UPON PROCEDURES REPORT RELATED
TO THE SIPC TRANSITIONAL ASSESSMENT RECONCILIATION
DECEMBER 31, 2009**

SEC Mail Processing
Section

FEB 2 6 2010

Washington, DC
110



HABIF, AROGETI & WYNNE, LLP

Certified Public Accountants and Business Advisors

TM CAPITAL CORP.

TABLE OF CONTENTS

	<u>PAGE</u>
Accountant's report	1 - 2
Schedule of assessment and payments (Transitional assessment reconciliation (Form SIPC-7T))	3

SEC Mail Processing
Section
FEB 26 2010
Washington, DC
110



Certified Public Accountants and Business Advisors

AGREED-UPON PROCEDURES REPORT RELATED
TO THE SIPC TRANSITIONAL ASSESSMENT RECONCILIATION

To the Stockholders of
TM Capital Corp.

In accordance with Rule 17a-5(e)(4) under the Securities Exchange Act of 1934, we have performed the procedures enumerated below with respect to the accompanying Schedule of Assessment and Payments (Transitional Assessment Reconciliation (Form SIPC-7T) to the Securities Investor Protection Corporation (SIPC) for the year ended December 31, 2009, which were agreed to by TM Capital Corp and the Securities and Exchange Commission, Financial Industry Regulatory Authority, Inc., and SIPC, solely to assist you and the other specified parties in evaluating TM Capital Corp.'s compliance with the applicable instructions of the Transitional Assessment Reconciliation (Form SIPC -7T). TM Capital Corp's management is responsible for TM Capital Corp's compliance with those requirements. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of those procedures is solely the responsibilities of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose. The procedures we performed and our findings are as follows:

1. Compared the listed assessment payments in Form SIPC-7T with respective cash disbursement records entries, noting no differences.
2. Compared the amounts reported on the audited Form X-17A-5 for the year ended December 31, 2009 as applicable, with the amounts reported in Form SIPC-7T for the year December 31, 2009, noting no differences;
3. Compared any adjustment reported in Form SIPC-7T with supporting schedules and working papers, noting no adjustments made.
4. Proved the arithmetical accuracy of the calculations reflected in Form SIPC-7T and in the related schedules and working papers supporting the adjustments, noting no differences; and
5. Compared the amount of any overpayment applied to the current assessment with the Form SIPC-7T on which it was originally computed, noting there was no overpayment applied.

We were not engaged to, and did not conduct an examination, the objective of which would be the expression of any opinion on compliance. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the specified parties listed above and is not intended to be and should not be used by anyone other than these specified parties.

Halim, Angeti & Assoc. LLP

Atlanta, Georgia

February 23, 2010

TM CAPITAL CORP.
SCHEDULE OF ASSESSMENT AND PAYMENTS
[TRANSITIONAL ASSESSMENT RECONCILIATION (FORM SIPC-7T)]
FOR THE YEAR ENDED DECEMBER 31, 2009

Revenues per Form X-17A-5	\$ 4,027,150
Revenues per Form SIPC-7T	<u>4,027,150</u>
Difference	<u>0</u>
Assessment payments per Form SIPC-7T	10,068
Payments made	<u>3,834</u>
Remaining amount due	<u>\$ 6,234</u>

See Agreed-Upon Procedures Report