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

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

SEC REGISTRATION  
SECUR

SEC FILE NUMBER  
8- 42193

FEB 28 2011

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 01/01/10 AND ENDING 12/31/10  
MM/DD/YY MM/DD/YY

A. REGISTRANT IDENTIFICATION

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

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

**641 LEXINGTON AVENUE - 30TH FLOOR**

(No. and Street)

**NEW YORK**

**NEW YORK**

**10022**

(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

INDEPENDENT PUBLIC ACCOUNTANT whose opinion is contained in this Report\*

**Habif, Arogeti & Wynne, LLP**

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

**Five Concourse Parkway, Suite 1000**

**Atlanta**

**Georgia**

**30328**

(Address)

(City)

(State)

(Zip Code)

CHECK ONE:

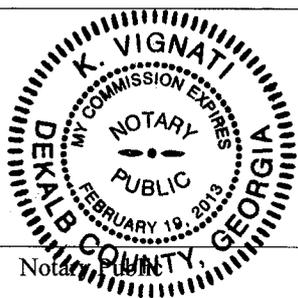
- Certified Public Accountant
- Public Accountant
- Accountant not resident in United States or any of its possessions.

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)

OATH OR AFFIRMATION

I, JAMES S. GRIEN, swear (or affirm) that, to the best of my knowledge and belief, the accompanying financial statements and supporting schedules pertaining to the firm of TM CAPITAL CORP. of DECEMBER 31, 2010, are true and correct. I further swear (or affirm) that neither the Company nor any partner, proprietor, principal officer, or director has any proprietary interest in any account classified solely as that of a customer, except as follows:



K. Vignati

[Handwritten signature]
Signature

Title

This report \* contains (check all applicable boxes)

- (a) Facing page.
(b) Statement of financial condition.
(c) Statement of income (loss).
(d) Statement of cash flows.
(e) Statement of changes in stockholders' equity or partners' or sole proprietor's capital.
(f) Statement of changes in liabilities subordinated to claims of general creditors.
(g) Computation of net capital for brokers and dealers pursuant to Rule 15c3-1.
(h) Computation for determination of reserve requirements pursuant to Rule 15c3-3.
(i) Information relating to the possession or control requirements for brokers and dealers under Rule 15c3-3.
(j) A reconciliation, including appropriate explanation, of the computation of net capital under Rule 15c3-1 and the computation for determination of the reserve requirements under exhibit A of Rule 15c3-3.
(k) A reconciliation between the audited and unaudited statements of financial condition with respect to methods of consolidation.
(l) An oath or affirmation.
(m) A copy of the SIPC supplemental report.
(n) A report describing any material inadequacies found to exist or found to have existed since the date of the previous audit.
(o) Independent auditor's report on internal control.
(p) Schedule of segregation requirements and funds in segregation - customers' regulated commodity futures account pursuant to Rule 171-5.

\*\* For conditions of confidential treatment of certain portions of this filing, see section 240.17a-5(e)(3).

**TM CAPITAL CORP.**  
**STATEMENT OF FINANCIAL CONDITION**  
**DECEMBER 31, 2010**



HABIF, AROGETI & WYNNE, LLP

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Certified Public Accountants and Business Advisors

TM CAPITAL CORP.

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TM CAPITAL CORP.

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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, 2010 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, 2010 in conformity with accounting principles generally accepted in the United States of America.

A handwritten signature in cursive script that reads "Halley, Aronoff &amp; Oppen, LLP".

Atlanta, Georgia

February 22, 2011

TM CAPITAL CORP.  
STATEMENT OF FINANCIAL CONDITION  
DECEMBER 31, 2010

ASSETS

Current assets

Cash	\$ 1,480,014
Accounts receivable, net of allowance for doubtful accounts of \$0	275,656
Note receivable	52,100
Prepaid expenses	<u>131,131</u>
Total current assets	<u>1,938,901</u>

Property and equipment

Software	38,059
Furniture and fixtures	214,693
Leasehold improvements	92,195
Computers and equipment	<u>304,188</u>
	649,135
Accumulated depreciation	<u>(456,077)</u>
	<u>193,058</u>

Other assets

Security deposits	<u>38,976</u>
Total assets	<u>\$ 2,170,935</u>

See accompanying notes

TM CAPITAL CORP.  
STATEMENT OF FINANCIAL CONDITION  
DECEMBER 31, 2010

LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities

Accounts payable and accrued liabilities	\$ 96,989
Subordinated borrowings	<u>500,000</u>

Total current liabilities	<u>596,989</u>
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Long-term liabilities

Deferred rent	<u>150,265</u>
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Stockholders' equity

Common stock, \$0.01 par value, 3,000 shares authorized; 1,779 shares issued and outstanding	18
Additional paid-in capital	1,647,283
Accumulated deficit	<u>(223,620)</u>

1,423,681

Total liabilities and stockholders' equity	<u>\$ 2,170,935</u>
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See accompanying notes

TM CAPITAL CORP.  
NOTES TO STATEMENT OF FINANCIAL CONDITION  
DECEMBER 31, 2010

**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 on 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.

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. Actual results could differ from these estimates.

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.

Accounts Receivable:

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.

TM CAPITAL CORP.  
NOTES TO STATEMENT OF FINANCIAL CONDITION  
DECEMBER 31, 2010

**Note A**  
**Summary of Significant Accounting Policies (Continued)**

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 the straight-line method over the estimated useful lives of the assets, which are as follows:

Software	3 years
Furniture and fixtures	7 years
Leasehold improvements	Lesser of estimated useful life or life of the lease
Computers and equipment	5 years

Impairment of Long-Lived Assets:

Long-lived 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.

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 corporate income taxes, the stockholders of an S corporation are taxed on their proportionate share of the Company's taxable income. The Company pays local 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. There were no unrecognized tax benefits and related tax liabilities at December 31, 2010.

The Company is no longer subject to income tax examinations for calendar years up to and including 2006.

TM CAPITAL CORP.  
NOTES TO STATEMENT OF FINANCIAL CONDITION  
DECEMBER 31, 2010

**Note A**  
**Summary of Significant Accounting Policies (Continued)**

**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, note receivable, accounts payable, accrued expenses, and subordinated debt, are carried at cost, which approximates their fair value because of the short term nature of these assets and liabilities.

**Note B**  
**Net Capital**

The Company is subject to the Securities and Exchange Commission Uniform Net Capital Rule (rule 15c3-1), which requires that minimum net capital, as defined, shall not be less than \$5,000 and the ratio of aggregate indebtedness to net capital, both as defined, shall not exceed 15 to 1. At December 31, 2010, the Company had net capital of \$1,232,760, which was \$1,216,276 in excess of its required net capital of \$16,484. The Company's net capital ratio was 0.20 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**

**Operating Leases:**

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

TM CAPITAL CORP.  
NOTES TO STATEMENT OF FINANCIAL CONDITION  
DECEMBER 31, 2010

**Note D**  
**Commitments (Continued)**

At December 31, 2010, future minimum lease payments under noncancelable operating leases were as follows:

<u>Year Ending December 31</u>	
2011	\$ 642,529
2012	628,511
2013	580,756
2014	559,163
2015	442,805
Thereafter	<u>971,412</u>
	\$ <u>3,825,176</u>

Total minimum future rental payments have not been reduced by \$128,142 of sublease rentals to be received in the future under non-cancelable subleases.

**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.

**Note F**  
**Related Party Transactions**

**Note Receivable:**

Note receivable is due from an employee and bears interest at 1.64% per annum. All interest and principal are due at maturity on June 30, 2011. The Company has agreed to forgive this note receivable at June 30, 2011 if certain employment terms are met.

**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, included in accounts payable and accrued liabilities, amounted to \$72,917 at December 31, 2010.

TM CAPITAL CORP.  
NOTES TO STATEMENT OF FINANCIAL CONDITION  
DECEMBER 31, 2010

**Note G**  
**Subsequent Events**

The Company evaluated subsequent events through February 22, 2011, when this financial statement was 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 a material impact on this financial statement.



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 December 31, 2010, 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 financial statements, 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 previously-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 financial statements 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.

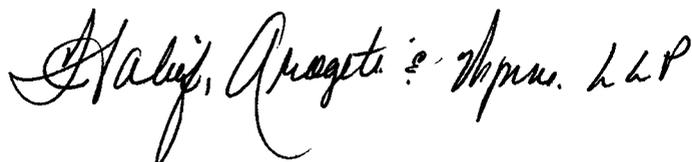
A *control deficiency* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

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

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 previously.

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, 2010, 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 22, 2011



Certified Public Accountants and Business Advisors

INDEPENDENT ACCOUNTANTS' REPORT ON APPLYING AGREED-UPON PROCEDURES RELATED TO AN ENTITY'S SIPC 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 [General Assessment Reconciliation (Form SIPC-7)] to the Securities Investor Protection Corporation ("SIPC") for the year ended December 31, 2010, 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 General Assessment Reconciliation (Form SIPC-7). 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 these 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-7 with respective cash disbursement records entries noted below, noting no differences.

<u>Payee</u>	<u>Date</u>	<u>Amount</u>
Securities Investor Protection Corp.	September 1, 2010	\$ 6,708
Securities Investor Protection Corp.	February 22, 2011	<u>6,368</u>
Total		<u>\$ 13,076</u>

- 2. Compared the amounts reported on the audited Form X-17A-5 for the year ended December 31, 2010, as applicable, with the amounts reported in Form SIPC-7 for the year December 31, 2010, noting immaterial differences.
- 3. Compared any adjustments reported in Form SIPC-7 with supporting schedules and working papers, noting no adjustments made.

4. Proved the arithmetical accuracy of the calculations reflected in Form SIPC-7 and in the related schedules and working papers supporting the adjustments, noting no adjustments and no differences.
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.

A handwritten signature in cursive script that reads "Halij, Anaghi & Anon. LLP".

Atlanta, Georgia

February 22, 2011

TM CAPITAL CORP.  
SCHEDULE OF ASSESSMENT AND PAYMENTS  
GENERAL ASSESSMENT RECONCILIATION (FORM SIPC-7)  
FOR THE YEAR ENDED DECEMBER 31, 2010

Revenues per Form X-17A-5	\$ 5,230,529
Revenues per Form SIPC-7	<u>5,230,529</u>
Difference	<u>\$ 0</u>
Assessment payments per Form SIPC-7	13,076
Overpayment on Form SIPC-7T applied to current assessment	-
Payments made during 2010	<u>6,708</u>
Remaining amount due	<u>\$ 6,368</u>

See Agreed-Upon Procedures Report