

U.S. SECURITIES AND EXCHANGE COMMISSION

2011

Report and Certification of Internal Supervisory Controls

Introduction

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"). Section 961 of the Act requires that not later than 90 days after the end of each fiscal year, the Securities and Exchange Commission ("SEC" or "Commission") shall report to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services on the supervisory controls over the conduct by the Commission of examinations of registered entities,¹ enforcement investigations, and review of corporate financial securities filings. This report is being submitted for the Commission's fiscal year ending September 30, 2011.

Background

The SEC's mission is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. Although the SEC's functional responsibilities are organized among five divisions and 18 offices, the scope of the activities covered in Section 961 fall principally under the purview of: the Office of Compliance Inspections and Examinations ("OCIE"), the Division of Enforcement ("Enforcement"), and the Division of Corporation Finance ("Corporation Finance"). Therefore, in the context of this report, references to "the Commission's internal supervisory controls" or "internal supervisory controls of the Commission" relate to the relevant internal supervisory controls of OCIE, Enforcement and Corporation Finance.

OCIE principally administers the examination program for SEC-registered entities including, among others, self-regulatory organizations, broker-dealers, transfer agents, clearing agencies, nationally recognized statistical rating organizations, investment companies, and investment advisers. The Office conducts examinations to foster

¹ References to "examinations" within this report refer to both examinations and inspections conducted by the Office of Compliance Inspections and Examinations.

compliance with the securities laws, to detect violations of the law, to identify risks and to inform policy. Enforcement is principally responsible for assisting the Commission in executing its law enforcement function by, among other things, conducting investigations of potential securities law violations; recommending, in appropriate circumstances, that the Commission institute civil actions in federal court or before an administrative law judge; and prosecuting cases on behalf of the Commission. Finally, Corporation Finance is principally responsible for selectively reviewing the disclosure documents that relate to the offer and sale of securities in registered transactions and which publicly-held companies file with the Commission. Through Corporation Finance's review process, the Division provides comments on where it believes publicly-held companies can improve or enhance their compliance with the disclosure requirements of the federal securities laws.

Staffing within OCIE and Enforcement consists of attorneys, accountants, examiners, subject matter experts, and other employees located both in the Washington, D.C. office and in 11 regional offices located throughout the country. The majority of the SEC's other offices and divisions, including Corporation Finance, are exclusively located in Washington, DC.

This report describes the scope and methodology used to evaluate the internal supervisory controls and relevant procedures applicable to the OCIE, Enforcement, and Corporation Finance staff that performs examinations of registered entities, enforcement investigations, and reviews of corporate financial securities filings, respectively. Furthermore, the report describes whether any significant deficiencies in these controls or procedures have been identified to exist as of the end of the fiscal year. The report also includes a description of the inherent limitations of procedures applicable to staff, supervisory controls, and the evaluation process. Finally, the report includes an assessment of control and procedure effectiveness, the Certification of Supervisory Controls that is required by the Act, and the status of the Comptroller General's review pursuant to Section 961(e) of the Act.

Internal Supervisory Controls and Procedures Applicable to Staff

Section 961(b)(1) of the Act requires the assessment of both the internal supervisory controls and procedures of the Commission applicable to the staff of the Commission who perform examinations of registered entities (i.e., OCIE), enforcement investigations (i.e., Enforcement), and reviews of corporate financial securities filings (i.e., Corporation Finance). Neither “internal supervisory controls” nor “procedures applicable to staff” are defined terms in the Act. For purposes of this report and the attached certification, “procedures applicable to staff” refers to the established “day-to-day” procedures to be followed by the employees charged with these functions. “Internal supervisory controls” refers to the processes established by management of each respective office or division for monitoring that the “procedures applicable to staff” are performed consistently with competence and integrity, and also remain reasonable, adequate, and current.

Scope and Methodology

1. Overview

The Directors of OCIE, Enforcement, and Corporation Finance, each with the assistance of his or her supervisory staff and other office or division personnel, evaluated the effectiveness of internal supervisory controls and relevant procedures applicable to staff during the 90-day period ending on the final day of the fiscal year ended September 30, 2011. Upon completion of the evaluation, each Director signed a certification concerning the adequacy of the Commission's internal supervisory controls with respect to his or her office or division.

To facilitate an effective, efficient, and consistent approach to the evaluations, the agency established a working group consisting of Senior Officers and staff from OCIE, Enforcement, Corporation Finance, and the Offices of the Chief Operating Officer and of the General Counsel. Additionally, the working group, as needed, obtained input from other divisions or offices within the agency. The working group met and communicated regularly to discuss the development and implementation of the project plans that were prepared by each of the relevant divisions and office.

OCIE, Enforcement, and Corporation Finance engaged in a "top-down, risk based" consideration of their functional responsibilities, focusing on assessing whether their

respective objective of conducting examinations, investigations, or reviews of corporate financial securities filings with professional competence and integrity had been consistently met during the 90-day period subject to evaluation. This approach involved identifying risks to achieving such objectives, determining whether controls exist to address those risks, and gathering information about the operation of the controls included in the evaluation. The procedures for collecting information to evaluate the effectiveness of internal supervisory controls consisted principally of interviews, observation, process walkthroughs, inspection of documents, self-assessments (including the use of sub-certifications), and through the application of judgment, as appropriate.

In addition, relevant members of the working group reviewed and considered background material that included the 2010 review of the internal supervisory controls pursuant to the requirements of Section 961 of Dodd-Frank, the Federal Manager's Financial Integrity Act (FMFIA) assurance statements for fiscal years 2010 and 2011, results of an agency-wide review of entity level controls, and recent Office of Inspector General and Government Accountability Office findings. Finally, the working group reviewed any deficiencies identified by assessing their impact on the evaluation of the design and operating effectiveness of internal supervisory controls, including making the determination of whether any such deficiencies were considered significant, either individually or in the aggregate. OCIE, Enforcement, and Corporation Finance provided summary information for such determination and for the evaluation as a whole to the respective office or division director in order to support the relevant assertions within the certification.

2. Examinations and Investigations

To assess the effectiveness of internal supervisory controls over examinations and investigations and the procedures applicable to the staff performing such functions, OCIE and Enforcement developed separate assessment teams that included members of the working group, senior managers, and other staff with extensive experience in conducting examinations or investigations. The assessment team for each function identified and evaluated the key risks and related controls that are important to the function's ability to consistently conduct examinations or investigations with professional competence and integrity, which included the identification of any control design or control implementation gaps.

The evaluation also included an identification of the information technology ("IT") systems used to track examinations and investigations. The assessment teams evaluated

how the IT systems are used to support key supervisory controls and the procedures applicable to staff.

The assessment teams for examinations and investigations coordinated their efforts and conducted structured interviews with Home and Regional Office Senior Officers² and other staff with the goal of obtaining their assistance and support in the identification and description of controls and their implementation, and the operating effectiveness of those controls. These communications afforded opportunities for Senior Officers to discuss the controls with the assessment teams and develop views about their application.

This process was closely coordinated with the annual Management Assurance statement process performed for FMFIA purposes and utilized the sub-certification prepared for the FMFIA assurance statement, due to the concurrent nature of the identified risks, controls and gaps. The sub-certifications were provided to the Directors of OCIE and Enforcement, along with key background materials, to support the assertions in the certification required by Section 961(c)(2) of the Act.

3. Reviews of Corporate Financial Securities Filings

To assess the effectiveness of internal supervisory controls over reviews of corporate financial securities filings and the procedures applicable to the staff conducting those reviews, Corporation Finance established an assessment team that included members of the working group, senior management, and other staff members. The assessment team identified and evaluated the key risks and related controls that are important to Corporation Finance's ability to consistently conduct reviews with professional competence and integrity, which included the identification of any control design or control implementation gaps.

The evaluation also included identification of the information technology systems used to track filing reviews. The assessment team evaluated how the IT systems are used to support key supervisory procedures and the procedures applicable to staff including standards for data input and access rights and privileges.

² The Regional Office Directors and Home Office Senior Officers within OCIE and Enforcement have supervisory responsibility for staff in their respective offices; accordingly, evaluations of internal supervisory controls over examinations and investigations required the coordinated participation of the Home and Regional Offices.

The evaluation included the support and assistance of the Corporation Finance Senior Officers and other staff responsible for the reviews of corporate financial securities filings. This assistance included identifying and describing controls and their implementation and the operating effectiveness of those controls. The Senior Officers discussed the controls and how they applied them with the assessment team.

This process built upon the annual Management Assurance statement process performed for FMFIA purposes. The assessment team provided the Director with key background materials to support the assertions in the certification required by Section 961 (c)(2) of the Act.

Inherent Limitations

All control systems, including internal supervisory controls, are subject to inherent limitations. No matter how well-conceived and operated, an internal control system cannot provide absolute assurance regarding the achievement of objectives, nor can an evaluation of an internal control system provide absolute assurance that significant deficiencies will be identified. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that internal supervisory controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Because of the nature, including breadth, of the Commission's examination, investigation, and review of corporate financial securities filings functions, as well as limitations on resources, management and staff within the relevant Office and Divisions must exercise judgment in conducting examinations of registered entities, enforcement investigations, and reviews of corporate financial securities filings. As such, controls are inherently designed to allow for the application of judgment in decision-making. There may be instances where judgments made in good faith are in hindsight deemed inappropriate.

The evaluations of internal supervisory controls and procedures applicable to staff covered by this report for the Commission's fiscal year ending September 30, 2011 represent the second evaluation conducted pursuant to the requirements of Section 961 of the Act. Further assessment of the approach taken in 2011 may result in improvements to the effectiveness and efficiency of the efforts in 2012.

Despite the limitations described above, it is our belief that the evaluations of the Commission's internal supervisory controls and procedures applicable to staff provide a reasonable and justifiable basis for the conclusions expressed in this report.

Significant Deficiencies

Section 961(c)(2)(D) requires each respective Director of OCIE, Enforcement, and Corporation Finance certify that he or she has disclosed to the Commission any significant deficiencies in the design or operation of internal supervisory controls that could adversely affect the ability of the Division or Office to consistently conduct inspections, or investigations, or reviews of corporate financial securities filings with professional competence and integrity. Under the terms of Reorganization Plan No. 10 of 1950, the executive and administrative functions of the Commission are transferred to the Chairman of the Commission, including, among other functions, the appointment and supervision of personnel employed under the Commission.³ Accordingly, the Director of each respective Division or Office should make any required disclosures to the Chairman of the Commission. To make this clear, the attached certification states that the respective directors have “disclosed to the Chairman of the Commission any significant deficiencies in the design or operation of internal supervisory controls....” A copy of this report is also being provided to each Commissioner.

As part of the evaluations described above, the respective OCIE, Enforcement, and Corporation Finance assessment teams evaluated their findings to determine whether any deficiencies existed as of September 30, 2011. The severity of all deficiencies identified was evaluated to determine whether any, either individually or in the aggregate, constituted a significant deficiency. Upon completion of this process, **no significant deficiencies in internal supervisory controls were identified as of September 30, 2011.**

Neither “deficiency” nor “significant deficiency” are defined terms in the Act. For purposes of making the determinations described above, a deficiency was found to exist when the design or operation of a control did not allow the respective office or division staff to consistently conduct examinations, investigations, or reviews of corporate financial securities filings. Any deficiencies, or combinations of deficiencies, in internal supervisory controls that would have been important enough to merit attention by the Chairman of the Commission would have been deemed to represent a “significant deficiency.”⁴ In this context, “important enough to merit attention by the Chairman of the

³ 15 F.R. 3175, 64 Stat. 1265, Section 1(a).

⁴ This description of a significant deficiency contemplates the requirement in the Act for significant

Commission” means a deficiency that significantly inhibits the respective office or division from achieving the overall goals established by senior management for consistently conducting examinations, investigations, or reviews of corporate financial securities filings.

Assessment of Effectiveness

Based on the results of the evaluations described above, as of September 30, 2011, the internal supervisory controls of the Commission with respect to OCIE examinations, Enforcement investigations, and Corporation Finance filing reviews are effective, and the procedures of the Commission applicable to the OCIE, Enforcement, and Corporation Finance staff who perform examinations of registered entities, enforcement investigations, and reviews of corporate financial securities filings, respectively, are effective.

Certification of Internal Supervisory Controls

See Exhibit A - Section 961(c)(2) Certification

Summary of Review by the Comptroller General

Section 961(e) of the Act requires a review by the Comptroller General of the United States of the adequacy and effectiveness of the Commission's internal supervisory control structure and procedures not less frequently than once every three years. Section 961(b)(3) of the Act requires this report to contain a summary of the Comptroller General's review. The Comptroller General did not carry out a review under Section 961(e) for fiscal year ending September 30, 2011.

deficiencies to be disclosed to the Commission and, by analogy, the definition of significant deficiency in Commission rules relative to internal control over financial reporting (i.e., a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit attention by those responsible for oversight of the registrant's financial reporting). See Rule 1-02(a)(4) of Regulation S-X [17 CFR 210.1-02(a)(4)].

Exhibit A

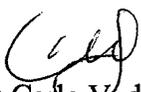
SECTION 961(c)(2) CERTIFICATION

Pursuant to the requirements of Section 961(c)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, I hereby certify that:

1. I am directly responsible for establishing and maintaining the internal supervisory controls of the Division or Office of which I am the head.
2. I am knowledgeable about the internal supervisory controls of the Division or Office of which I am the head.
3. I have evaluated the effectiveness during the 90-day period ending on the final day of the fiscal year ended September 30, 2011 of the internal supervisory controls of the Division or Office of which I am the head.
4. I have disclosed to the Commission any significant deficiencies in the design or operation of internal supervisory controls identified as a result of the evaluation described above that could adversely affect the ability to consistently conduct with professional competence and integrity, respectively:
 - (a) inspections and examinations by the Office of Compliance Inspections and Examinations,
 - (b) investigations by the Division of Enforcement, or
 - (c) reviews of corporate financial securities filings by the Division of Corporation Finance.

This certification concerning the adequacy of the Commission's internal supervisory controls is based on the review described in the accompanying report of the internal supervisory controls and procedures applicable to the staff that performs the duties described above within the Division or Office of which I am the head and is accurate to the best of my knowledge and belief. This review was performed with the assistance of my supervisory staff and other personnel within my Division or Office.

With Respect to
Inspections and
Examinations:


Name: Carlo V. di Florio
Title: Director
Office of Compliance Inspections and Examinations

Date 12/12/11

With Respect to
Investigations:


Name: Robert S. Khrizami
Title: Director Division
of Enforcement

Date 12/15/11

With Respect to
Reviews of Corp.
Financial Securities
Filings:


Name: Meredith B. Cross
Title: Director
Division of Corporation Finance

Date 12/16/11