
Annual Report on Whistleblower Program

**As Required by Section 21F(g)(5) of
the Securities Exchange Act of 1934**



**This is a Report of the Staff of the
U.S. Securities and Exchange Commission**

October 2010

ANNUAL REPORT ON WHISTLEBLOWER PROGRAM

As Required by Section 21F(g)(5) of the Securities Exchange Act of 1934

I. INTRODUCTION

The staff of the U.S. Securities and Exchange Commission (“Commission”) is providing this report pursuant to Section 21F(g)(5) of the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq. (“Exchange Act”). Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“the Dodd-Frank Act”) amended the Exchange Act by adding Section 21F, entitled “Securities Whistleblower Incentives and Protection.” Among other things, Section 21F establishes a whistleblower program that requires the Commission to pay an award, under regulations prescribed by the Commission and subject to certain limitations, to eligible whistleblowers who voluntarily provide the Commission with original information about a violation of the federal securities laws that leads to the successful enforcement of a covered judicial or administrative action, or a related action.

Section 21F(g)(5) requires the Commission to submit an annual report to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the whistleblower award program, including:

- A description of the number of awards granted and the types of cases in which the awards were granted during the preceding fiscal year;
- The balance of the Securities and Exchange Commission Investor Protection Fund (“Fund”) at the beginning of the preceding fiscal year;
- The amounts deposited into or credited to the Fund during the preceding fiscal year;
- The amount of earnings on investments made under Section 21F(g)(4) during the preceding fiscal year;

- The amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to Section 21F(b);
- The balance of the Fund at the end of the preceding fiscal year; and
- A complete set of audited financial statements, including a balance sheet, income statement and cash flow analysis.

This report covers the period July 22, 2010 (the effective date of The Dodd-Frank Act) through September 30, 2010.¹

As part of the Dodd-Frank Act, Congress substantially expanded the Commission's authority to pay whistleblower awards and enhanced the anti-retaliation protections available to whistleblowers. Section 922 of the Dodd-Frank Act added new Section 21F to the Exchange Act.”² Under new Section 21F, the Commission must pay awards, in the aggregate amount of at least 10 but not more than 30 percent to eligible whistleblowers who voluntarily provide the Commission with original information about a violation of the securities laws that leads to successful enforcement of an action brought by the Commission that results in monetary sanctions exceeding \$1,000,000, and of certain related actions. The awards amounts are based on the monetary sanctions actually collected in the Commission action or related action. The legislative history states that the purpose of this provision was to elicit high-quality tips by motivating persons with inside knowledge “to come forward and assist the Government to identify and prosecute persons who have violated the securities laws”³

¹ Section 924(d) of the Dodd-Frank Act separately requires the Commission's Whistleblower Office to report annually to Congress on its activities, whistleblower complaints and the response of the Commission to such complaints. As described below, the Commission is still in the process of establishing and staffing the Whistleblower Office. Accordingly, no separate report from that Office will be provided for fiscal year 2010. The first annual report by the Whistleblower Office will be provided following fiscal year 2011.

² Pub. L. No. 111-203, § 922(a), 124 Stat 1841 (2010).

³ See S. Rep. No. 111-176 at 110 (2010).

II. IMPLEMENTATION OF THE WHISTLEBLOWER AWARD PROGRAM

A. Commission Regulations

Section 21F(b) of the Exchange Act provides that whistleblower awards shall be paid under regulations prescribed by the Commission. Thus, an important prerequisite to implementation of the whistleblower award program is the issuance of rules and regulations describing its scope and procedures. Section 924(a) of the Dodd-Frank Act requires the final implementing regulations to be issued within 270 days of the Act's enactment (i.e., by April 21, 2011).

The Commission has formed a cross-disciplinary working group that is in the process of drafting proposed rules to implement the whistleblower provisions of the Dodd-Frank Act. During this process, even before beginning notice-and-comment rulemaking regarding the implementing rules, the Commission has been soliciting comments from the public about the whistleblower award program on its website and through staff meetings.⁴

B. Establishment of Whistleblower Office

Section 924(a) of the Dodd-Frank Act directs the Commission to establish a separate office within the Commission to administer and enforce the provisions of Section 21F of the Exchange Act. The Commission's Division of Enforcement is in the process of establishing a Whistleblower Office. The Commission posted a vacancy announcement for a Senior Officer to serve as head of the office and is in the process of evaluating applicants, with a selection expected in the near future. Staffing of the Office will proceed after the Office head is selected.

C. Complaints and Awards

Sections 21F(g)(5)(A)(i) and (ii) of the Exchange Act provide that the report to Congress shall include a description of the number of whistleblower awards granted and the types of cases

⁴ See <http://www.sec.gov/spotlight/regreformcomments.shtml>.

in which the awards were granted during the preceding fiscal year. Although the Commission has received tips and complaints from potential whistleblowers following the effective date of the Dodd-Frank Act, the predicate for an award to any whistleblower (in addition to compliance with the Commission's implementing regulations) is that the information provided by the whistleblower led to the successful enforcement by the Commission of an action resulting in the imposition of more than \$1 million in monetary sanctions. See Exchange Act §21F(b)(1). As of September 30, 2010, the Commission had not completed any actions based on information provided by a whistleblower after enactment of the Dodd-Frank Act resulting in the imposition of monetary sanctions exceeding \$1 million. Accordingly, the Commission did not pay any whistleblower awards pursuant to Section 21F of the Exchange Act during the two months of fiscal year 2010 in which the statute was in effect.

III. SECURITIES AND EXCHANGE COMMISSION INVESTOR PROTECTION FUND

Section 922 of the Dodd-Frank Act established the Securities and Exchange Commission Investor Protection Fund ("Fund") to provide funding for the Commission's whistleblower award program, including the payment of awards in related actions. See Exchange Act §21F(g)(2)(A). In addition, the Fund will be used to finance the operations of the SEC Office of the Inspector General's suggestion program. See Exchange Act §21F(g)(2)(B).⁵ The suggestion program is intended for the receipt of suggestions by SEC employees for improvements in the work efficiency, effectiveness, and productivity, and the use of the resources at the SEC as well as allegations by SEC employees of waste, abuse, misconduct, or mismanagement within the SEC. See Exchange Act §4D(a).

⁵ Section 21F(g)(2)(B) provides that the Fund shall be available to the Commission for "funding the activities of the Inspector General of the Commission under section 4(i)." The Office of the General Counsel has interpreted section 21F(g)(2)(B) to refer to Section 4D of the Exchange Act, which establishes the Inspector General's suggestion program. Subsection (e) of that section provides that the "activities of the Inspector General under this subsection shall be funded by the Securities and Exchange Commission Investor Protection Fund established under section 21F."

As of September 30, 2010, the Fund was fully funded, with an ending balance of \$451,909,854.07:

| | FY 2010 | FY 2009 |
|---|------------------|----------------|
| Balance of Fund at beginning of preceding fiscal year | \$0.00 | \$0.00 |
| Amounts deposited into or credited to Fund during preceding fiscal year | \$451,909,854.07 | \$0.00 |
| Amount of earnings on investments during preceding fiscal year | \$0.00 | \$0.00 |
| Amount paid from Fund during preceding fiscal year to whistleblowers | \$0.00 | \$0.00 |
| Balance of Fund at end of the preceding fiscal year | \$451,909,854.07 | \$0.00 |

Attached as an Appendix to this report are the audited financial statements for the Fund, including a balance sheet, income statement and cash flow analysis.

U.S. Securities and Exchange Commission

Investor Protection Fund



Fiscal Year 2010

Report to Congress: Financials

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Financial Statements

U.S. Securities and Exchange Commission
Investor Protection Fund

Balance Sheet

As of September 30, 2010

| <i>(DOLLARS IN THOUSANDS)</i> | FY 2010 |
|--|-------------------|
| ASSETS: | |
| Intragovernmental: | |
| Fund Balance with Treasury (Note 2) | \$ 451,910 |
| Total Assets | <u>\$ 451,910</u> |
| LIABILITIES AND NET POSITION: | |
| Cumulative Results of Operations - Earmarked Funds | 451,910 |
| Total Liabilities and Net Position | <u>\$ 451,910</u> |

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

U.S. Securities and Exchange Commission
Investor Protection Fund

Statement of Changes in Net Position

For the year ended September 30, 2010

| <i>(DOLLARS IN THOUSANDS)</i> | FY 2010 |
|--|-------------------|
| EARMARKED FUNDS: | |
| CUMULATIVE RESULTS OF OPERATIONS: | |
| Budgetary Financing Sources: | |
| Non-Exchange Revenue | \$ 451,910 |
| Cumulative Results of Operations | <u>451,910</u> |
| Net Position, End of Period | <u>\$ 451,910</u> |

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

U.S. Securities and Exchange Commission
Investor Protection Fund
Statement of Budgetary Resources
For the year ended September 30, 2010

(DOLLARS IN THOUSANDS) FY 2010

BUDGETARY RESOURCES:

| | |
|----------------------------------|-------------------|
| Budget Authority: | |
| Appropriation | \$ 451,910 |
| Total Budgetary Resources | \$ 451,910 |

STATUS OF BUDGETARY RESOURCES:

| | |
|--|-------------------|
| Unobligated Balance Not Available | 451,910 |
| Total Status of Budgetary Resources | \$ 451,910 |

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

U.S. Securities and Exchange Commission
Investor Protection Fund
Cash Flow Analysis
For the year ended September 30, 2010

(DOLLARS IN THOUSANDS) FY 2010

CASH FLOWS FROM FINANCING ACTIVITIES:

| | |
|--|-------------------|
| Transfers In (From Disgorgement and Penalties) | \$ 451,910 |
| Net cash provided by financing activities | 451,910 |
| Net increase in cash | 451,910 |
| Cash, end of year | \$ 451,910 |

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

Notes to Financial Statements

NOTE 1. Summary of Significant Accounting Policies

A. Reporting Structure

The United States Securities and Exchange Commission (“SEC”) is an independent agency of the United States Government established pursuant to the Securities Exchange Act of 1934 (“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 agency’s programs protect investors and promote the public interest by fostering and enforcing compliance with the federal securities laws, establishing an effective regulatory environment, and facilitating access to the information investors need to make informed investment decisions.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“the Dodd-Frank Act”), signed into law on July 21, 2010, established the Securities and Exchange Commission Investor Protection Fund (“Investor Protection Fund”). Among other things, the Dodd-Frank Act amended the Exchange Act by adding Section 21F, entitled “Securities Whistleblower Incentives and Protections” and Section 4D, entitled “Additional Duties of the Inspector General.” The Investor Protection Fund provides funding for a whistleblower award program pursuant to which eligible persons can receive award payments, under regulations prescribed by the Commission and subject to certain limitations, if they voluntarily provide original information to the SEC that leads to successful enforcement by the SEC of a judicial or administrative action in which monetary sanctions exceeding \$1 million are imposed. The Investor Protection Fund will also be used to pay awards in related actions that are based upon the original information provided by the whistleblower that leads to the successful enforcement of the SEC action. Whistleblowers will receive between 10 and 30 percent of the actual monetary sanctions collected in the covered action or related action. In addition, the Investor Protection Fund will be used to finance the operations of the SEC Office of the Inspector General’s suggestion program. The suggestion program is intended for the receipt of suggestions by SEC employees for improvements in the work efficiency, effectiveness, and productivity, and the use of the resources at the SEC as well as allegations by SEC employees of waste, abuse, misconduct, or mismanagement within the SEC.

B. Basis of Presentation and Accounting

The accompanying financial statements present the financial position of the Investor Protection Fund as required by Exchange Act Section 21F(g)(5). The Act requires a complete set of financial statements that includes a Balance Sheet, Income Statement, and Cash Flow Analysis. 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, including those activities within the SEC.

The Investor Protection Fund financial statements have been prepared on the accrual basis of accounting, in conformity with U.S. Generally Accepted Accounting Principles (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. The Investor Protection Fund was established in July 2010 and funded by transfers from SEC's Disgorgement and Penalty Amounts Held for Investors (Treasury Account Fund Symbol 50X6563) deposit account. These transfers do not meet the criteria of reportable revenue on the Income Statement as defined in the Statement of Financial Accounting Concepts Number 5 "Recognition and Measurement in Financial Statements of Business Enterprises," or Statement of Federal Financial Accounting Standards (SFFAS) Number 7, "Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting." Additionally, from the date the Investor Protection Fund was established through September 30, 2010, no fund-related revenue or expense transactions occurred, and there were no balances to report for the Income Statement for the Investor Protection Fund. Accordingly, an Income Statement was not prepared. Since this is the first reporting year of the Investor Protection Fund, no prior year information was available to produce comparative financial statements.

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.

D. Intra- and Inter-Agency Relationships

The SEC is comprised of a single federal bureau. The Investor Protection Fund is a fund within the SEC, and these financial statements present a segment of the SEC financial activity. These financial statements include activity with other SEC components. When the SEC prepares its annual consolidated financial statements, the financial events of the Investor Protection Fund will be consolidated into the overall SEC financial statements. Whistleblower payments may be made from the Investor Protection Fund as a result of monetary sanctions paid to other agencies in related actions. In those instances, the SEC remains liable for paying the whistleblower.

E. 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 the SEC is required to use for designated activities, benefits or purposes, and to account for separately from the Government's general revenues. All funds maintained by the Investor Protection Fund are considered earmarked funds.

F. Entity Assets

Assets that an agency is authorized to use in its operations are entity assets. The SEC is authorized to use all funds in the Investor Protection Fund for its operations. Accordingly, all assets are recorded as entity assets.

G. Fund Balance with Treasury

The SEC conducts all of its banking activity in accordance with directives issued by the United States Department of the Treasury's ("Treasury") Financial Management Service ("FMS"). Treasury processes all disbursements made by the SEC. Fund Balance with Treasury represents the aggregate amount of funds on deposit with Treasury.

H. Investments

As of September 30, 2010, there are no investments made from the Investor Protection Fund. The SEC plans to invest the Investor Protection Funds in short-term Treasury securities, whenever practicable. As the funds are collected, the SEC will hold them in a special receipt 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 ("BPD"), pending their distribution. The interest earned on the investments is a component of the SEC fund balance and available to be used for expenses of the Investor Protection Fund. The SEC is working with BPD in establishing an account and process to invest these funds in FY 2011.

I. Liabilities

The SEC records liabilities for amounts likely to be paid as a result of events that have occurred as of the relevant balance sheet date. The Investor Protection Fund liabilities will consist of payables to whistleblowers and reimbursable expenses that the Inspector General incurs to operate the suggestion program. As of September 30, 2010, there are no liabilities related to the Investor Protection Fund.

J. Revenue and Other Financing Sources

The Investor Protection Fund will support payments to whistleblowers under Section 21F of the Exchange Act and reimburse expenses of the SEC Office of the Inspector General's employee suggestion program. The Investor Protection Fund will be financed by receiving a portion of monetary sanctions collected by the SEC in judicial or administrative actions brought by the SEC under the securities laws that are not added to the disgorgement fund or other fund under section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) or otherwise distributed to victims of a violation of the securities laws. These funds are considered financing sources. No sanction collected by the Commission can be deposited into the fund if its balance exceeds \$300 million. The SEC may request the Secretary of the Treasury to invest Investor Protection Fund amounts in Treasury obligations. While collections were made into this new fund in FY 2010, payments to whistleblowers will not be made until the SEC establishes appropriate rules and regulations necessary to implement the provisions of the law.

K. 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 Investor Protection Fund, pursuant to the requirements of Exchange Act Section 21F(g)(5). While the statements have been prepared from the books and records of the SEC in accordance with GAAP for federal entities, the statements are in addition to the reports used to monitor and control the financial activity of the SEC, which are prepared from the same books and

records. The statements should be read with the understanding that they are for the Investor Protection Fund (TAFS 50X5567), a single fund within the SEC.

NOTE 2. Fund Balance with Treasury

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

| <i>(DOLLARS IN THOUSANDS)</i> | FY 2010 |
|--|-------------------|
| Fund Balances: | |
| Special Fund | \$ 451,910 |
| Total Fund Balance with Treasury | <u>451,910</u> |
| Status of Fund Balance with Treasury: | |
| Unobligated Balance | |
| Unavailable | 451,910 |
| Total Fund Balance with Treasury | <u>\$ 451,910</u> |

NOTE 3. Commitments and Contingencies

A. Commitments

As mentioned in Note 1.A. Reporting Structure, the Investor Protection Fund will be used to pay awards to whistleblowers if they voluntarily provide original information to the SEC that leads to the successful enforcement by the SEC of a covered judicial or administrative action in which monetary sanctions exceeding \$1 million are imposed. The legislation allows whistleblowers to receive between 10 and 30 percent of the monetary sanctions collected in the covered action or in a related action, with the actual percentage being determined at the discretion of the SEC using criteria provided in the legislation. The statutory criteria require the SEC to consider the significance of the information to the success of the covered judicial or administrative action, the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action, the programmatic interest of the SEC in deterring violations of the securities laws by making awards to whistleblowers who provide information that lead to the successful enforcement of such laws, and such additional relevant factors as the Commission may establish by rule or regulation. Section 924(a) of the Dodd-Frank Act requires the SEC to issue regulations to implement the program by April 2011. Among other things, these regulations will delineate eligibility for a whistleblower award and the procedures for applying for an award in SEC actions and related actions. All potential whistleblowers, including those submitting information before adoption of the SEC regulation, will be required to comply with the procedures specified in the regulation in order to be eligible for an award. The SEC will not pay whistleblower claims until the final regulations are adopted by the Commission.

As of September 30, 2010, there are no submitted claims against the Investor Protection Fund, and the SEC has not recognized any liabilities associated with the fund.

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. The SEC has not recognized a contingent liability in regards to potential whistleblower claims because they cannot be reasonably estimated as required for recognition in accordance with SFFAS 5, "Accounting for Liabilities of the Federal Government" as amended by SFFAS 12, "Recognition of Contingent Liabilities Arising from Litigation: An Amendment of SFFAS 5, Accounting for Liabilities of the Federal Government."

Auditor's Opinion in Financial Statements

See attached.



OFFICE OF
INSPECTOR GENERAL

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

October 26, 2010

Opinion on the Investor Protection Fund's Financial Statements

The Honorable Mary Schapiro
Chairman
U.S. Securities and Exchange Commission

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act) was signed into law on July 21, 2010 and established the U.S. Securities and Exchange Commission's (SEC or Commission) Investor Protection Fund. The Act added Section 21F, entitled "Securities Whistleblower Incentives and Protections" to the Securities Exchange Act of 1934. Section 21F requires the SEC to establish a whistleblower award program pursuant to which eligible persons may receive award payments, under regulations prescribed by the Commission and subject to certain limitations, if they voluntarily provide original information to the SEC that led to successful enforcement by the SEC, of a covered judicial or administrative action or a related action.

We have audited the accompanying balance sheet of the Investor Protection Fund as of September 30, 2010, and the related statement of changes in net position, budgetary resources and cash flow analysis for the year then ended. These financial statements are the responsibility of the Commission's management. Our responsibility is to express an opinion on the Investor Protection Fund's financial statements based on our audit.

We conducted our audit in accordance with the generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control over financial reporting. The U.S. Government Accountability Office (GAO) is performing an audit of the Commission's consolidated financial statements as of and for the year ended September 30, 2010 which will include an opinion on the Commission's internal control over financial reporting. We relied on the GAO's work on the Commission's internal control over financial reporting as the Investor Protection Fund's financial reporting is part of the Commission's overall financial reporting and the Investor Protection Fund will be included in the Commission's consolidated financial statements. We also relied on a contractor's audit of internal controls of the Investor Protection Fund's financial reporting process, covering the period from July 22, 2010 to September 30, 2010. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the Investor Protection Fund's financial statements, assets, liabilities, net position, the changes in net position, budgetary resources and cash flow analysis, and the accompanying notes for the year ended September 30, 2010, are presented fairly, in all material respects, in conformity with U.S. generally accepted accounting principles.



H. David Kotz
Inspector General
Office of Inspector General
U.S. Securities and Exchange Commission