

2023 Report and Certification of Internal Supervisory Controls

Introduction

Section 961 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”)¹ 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 U.S. Senate Committee on Banking, Housing, and Urban Affairs and the U.S. House Committee on Financial Services on the conduct by the Commission of enforcement investigations, reviews of corporate financial securities filings, and examinations of registered entities.² This report is being submitted for the Commission’s fiscal year ending September 30, 2023.

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 six divisions and 24 offices, the scope of the activities covered in Section 961 fall principally under the purview of: the Division of Enforcement (“Enforcement”), the Division of Corporation Finance (“Corporation Finance”), the Division of Examinations (“EXAMS”),³ and the Office of Credit Ratings (“OCR”).⁴ 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 Enforcement, Corporation Finance, EXAMS, and OCR.

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. Corporation Finance is principally responsible for selectively reviewing disclosure documents that securities issuers (other than investment companies) file with the Commission. Through Corporation Finance’s review process, the Division provides comments where it believes filers can improve or enhance their compliance with the disclosure requirements of the federal securities laws. EXAMS principally administers the examination program for SEC-registered entities including, among others, self-regulatory organizations, broker-dealers, transfer agents, clearing agencies, municipal advisors, investment companies, and investment advisers. EXAMS conducts examinations to improve compliance with the securities laws, prevent fraud, monitor risks, and inform policy. Finally, OCR is responsible for conducting examinations

¹ 15 U.S.C. § 78d-6

² References to “examinations” within this report refer to both examinations and inspections conducted by either the Division of Examinations or the Office of Credit Ratings.

³ In December 2020, the Office of Compliance Inspections and Examinations was renamed the Division of Examinations.

⁴ OCR was created in June 2012 and assumed from the Office of Compliance Inspections and Examinations the responsibility for conducting examinations of entities that are registered as nationally recognized statistical rating organizations (NRSROs). Consequently, OCR, as a successor office to EXAMS, is required to provide a certification under Section 961(c)(1).

and monitoring the activities of nationally recognized statistical rating organizations to assess and promote compliance with statutory and Commission requirements.

This report describes the scope and methodology used to evaluate the internal supervisory controls and relevant procedures applicable to the Enforcement, Corporation Finance, EXAMS, and OCR staff who perform enforcement investigations, reviews of corporate financial securities filings, and examinations of registered entities. Furthermore, this report describes the assessments performed and whether those assessments identified any significant deficiencies in the internal supervisory controls under Section 961 as of the end of the fiscal year. This report also includes a description of the inherent limitations of procedures applicable to staff, internal supervisory controls, and the evaluation process. Finally, this report includes the Certification of Supervisory Controls that is required by the Act and a summary 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 Commission’s internal supervisory controls and procedures applicable to the Commission staff who perform enforcement investigations (*i.e.*, Enforcement), reviews of corporate financial securities filings (*i.e.*, Corporation Finance), and examinations of registered entities (*i.e.*, EXAMS and OCR). The terms “internal supervisory controls” and “procedures applicable to staff” are not defined in the Act. Consistent with the scope of Section 961(b)(1)(B), “procedures applicable to staff” refer to the established “day-to-day” procedures to be followed by the employees’ performing examinations, investigations, and reviews. “Internal supervisory controls” refer to those actions established by Enforcement, Corporation Finance, EXAMS, and OCR to monitor that the procedures applicable to staff are consistently being performed according to policy and procedures, and also remain reasonable, adequate and current. This definition of “internal supervisory controls” is linked to procedures applicable to the staff. Therefore, for purposes of this report and certification, internal supervisory controls are those that are supervisory in nature and directly related to the consistent and complete execution of activities within the scope of Section 961(b)(1)(B): investigations, reviews, and examinations. The evaluations of internal supervisory controls and procedures applicable to staff covered by this report for the Commission’s fiscal year ending September 30, 2023, represent the 14th time such evaluations have been conducted pursuant to the requirements of Section 961 of the Act.

Scope and Methodology

The Directors of Enforcement, Corporation Finance, EXAMS, and OCR, each with the assistance of their supervisory staff and other office or division personnel, evaluated the effectiveness of internal supervisory controls and relevant procedures applicable to staff. Consistent with Section 961(c)(2)(C), the internal supervisory control assessment encompassed controls in place during the final quarter of the fiscal year ending on September 30, 2023, and the evaluation of the effectiveness of those controls encompassed

the 90-day period ending on the final day of the fiscal year. Upon completion of the evaluation, each Director signed a certification concerning the adequacy of the Commission's internal supervisory controls with respect to their office or division. Assessments of the effectiveness of the relevant procedures applicable to the staff were conducted throughout the year as part of on-going monitoring activities, specific procedure assessments, or through other assessments. The conclusion regarding the effectiveness of those procedures was made as of the end of the fiscal year.

To facilitate an effective, efficient, and consistent approach to the evaluations, the agency established a working group consisting of staff from Enforcement, Corporation Finance, EXAMS, OCR, and the Office of the Chief Risk Officer. The working group met and communicated regularly to discuss the execution of each division's or office's assessment and to ensure a consistent methodology for conducting the Section 961 assessment corresponding with relevant government-wide internal controls standards and guidance.

Enforcement, Corporation Finance, EXAMS, and OCR engaged in a "top-down, risk-based" consideration of their functional responsibilities, focusing on assessing their respective objectives of consistently conducting investigations, reviews of corporate financial securities filings, or examinations in accordance with adopted policies and procedures. This approach involved identifying risks to achieving such objectives, determining whether controls exist (or should exist) to address those risks, and evaluating the design and operating effectiveness 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, and through the application of judgment, as appropriate. The approach of Enforcement, Corporation Finance, EXAMS, and OCR in assessing the effectiveness of the procedures applicable to the staff who perform enforcement investigations, reviews of corporate financial securities filings, and examinations of registered entities generally involved identifying the relevant procedures applicable to the staff, determining the objective of those procedures, and assessing whether those procedures effectively achieve the identified objectives.

In addition, relevant members of the working group reviewed and considered background material that included the review of the internal supervisory controls pursuant to the requirements of Section 961 of the Act, the Federal Managers' Financial Integrity Act ("FMFIA") assurance statements for fiscal year 2023 and recent Office of Inspector General ("OIG") and Government Accountability Office ("GAO") findings.

Finally, Enforcement, Corporation Finance, EXAMS, and OCR reviewed any deficiencies identified in the design or operation of internal supervisory controls to determine whether such deficiencies were considered significant, either individually or in the aggregate. Enforcement, Corporation Finance, EXAMS, and OCR 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 effectiveness conclusions and the assertions within the certification.

The SEC will continue to enhance the approach taken in 2023 to improve the effectiveness and efficiency of the efforts going forward. The results of GAO’s reviews under Section 961(e) of the Act may also result in adjustments to the process in future years.

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 or procedures applicable to staff 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 investigation, review of corporate financial securities filings, and examination functions, as well as limitations on resources, management and staff must exercise judgment in conducting enforcement investigations, reviews of corporate financial securities filings, and examinations of registered entities. As such, staff procedures 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. Despite the limitations described above, the evaluations of the Commission’s internal supervisory controls and procedures applicable to staff are designed to provide a reasonable and justifiable basis for the conclusions expressed in this report, see Summary of FY 2023 Assessment Results below.

Certification and Reporting

Section 961(c)(2)(D) requires each respective Director of Enforcement, Corporation Finance, EXAMS, and any successor offices (*e.g.*, OCR) to certify that they have disclosed to the Commission any significant deficiencies in the design or operation of internal supervisory controls that could adversely affect the ability of the applicable division or office to consistently conduct enforcement investigations, reviews of corporate financial securities filings, or examinations of registered entities 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 Chair of the Commission, including, among other functions, the appointment and supervision of personnel employed under the Commission.⁵ Accordingly, the Director of each respective division or office should make any required disclosures to the Chair of the Commission. To make this clear, the attached certification states that the respective Directors have “disclosed to the Chair of the

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

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 evaluation process described above, the respective Enforcement, Corporation Finance, EXAMS, and OCR assessment teams evaluated their findings to determine whether any deficiencies in the design or operation of internal supervisory controls existed as of the end of the fiscal year. For any such deficiencies, the severity was evaluated to determine whether any, either individually or in the aggregate, constituted a significant deficiency.

For purposes of making the determinations described above, a “significant deficiency” meriting the attention by the Chair of the Commission, is any deficiency, or combination of deficiencies, in internal supervisory controls that inhibits the respective office or division from achieving the overall goals established by senior management for consistently conducting enforcement investigations, reviews of corporate financial securities filings, or examinations of registered entities with professional competence and integrity.

Summary of FY 2023 Assessment Results

Following the process and methodology described above, Enforcement, Corporation Finance, EXAMS, and OCR evaluated the effectiveness of the applicable internal supervisory controls and staff procedures with respect to the fiscal year ending September 30, 2023. The results of these evaluations provide reasonable assurance that the internal supervisory controls and staff procedures applicable to Enforcement investigations, Corporation Finance reviews of corporate financial securities filings, and EXAMS and OCR examinations of registered entities were effective as of September 30, 2023. No significant deficiencies in the internal supervisory controls with respect to Enforcement investigations, Corporation Finance reviews of corporate financial securities filings, and EXAMS and OCR examinations of registered entities were identified.

Certification of Internal Supervisory Controls

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

Summary of Reviews by the GAO

Section 961(e) of the Act requires a triennial review by the Comptroller General of the United States of the adequacy and effectiveness of the Commission's internal supervisory control structure and procedures. Section 961(b)(3) of the Act requires this report to contain a summary of the GAO's review. The SEC staff appreciates the benefit of these regular GAO reviews, which have enabled the SEC to improve its internal supervisory control systems and procedures over the past decade:

- In April 2013, the GAO completed its first triennial review under Section 961(e). This report (GAO-13-314) contained one recommendation for SEC action, which the SEC implemented. The GAO considers this recommendation closed, indicating on its website that it found in a subsequent review that the “SEC has improved the design, operation, and documentation of its internal supervisory controls since the issuance of GAO-13-314.”
- In October 2016, the GAO completed its second triennial review. This report (GAO-17-16) contained one recommendation for SEC action, which the SEC implemented. The GAO considers this recommendation closed, indicating on its web site that the actions taken by the SEC were a “critical step to streamline their 961 supervisory control documentation, and increase the operating efficiency and effectiveness within and across the divisions and offices.”
- In December 2019, the GAO completed its third triennial review. This report (GAO-20-115) contained five recommendations for SEC action, which the SEC implemented. In September 2021, the GAO updated its website to indicate that all five recommendations have been implemented and are now closed.
- In November 2022, the GAO completed its fourth triennial review. This report (GAO-23-105465) contained three recommendations for SEC action, which the SEC implemented. In May 2023, the GAO updated its website to indicate that all three recommendations have been implemented and are now closed.

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, 2023 of the internal supervisory controls relevant to section 961 of the division or office of which I am the head.
4. I have disclosed to the Chair of 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) Enforcement investigations by the Division of Enforcement;
 - (b) Reviews of corporate financial securities filings by the Division of Corporation Finance; or
 - (c) Examinations of registered entities by the Division of Examinations and the Office of Credit Ratings.

This certification concerning the adequacy of the Commission's internal supervisory controls relevant to Section 961 is based on the review described in the accompanying report of the internal supervisory controls and procedures applicable to the staff who perform 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 Enforcement Investigations:

Division of Enforcement

Name: Gurbir Grewal

Title: Director

Date: GURBIR

Signature: GREWAL

Digitally signed by
GURBIR GREWAL
Date: 2023.12.11
17:21:50 -05'00'

With Respect to Reviews of Corporate Financial Securities Filings:

Division of Corporation Finance

Name: Erik Gerding

Title: Director

Date:

Signature:

Gerding,
Erik

Digitally signed
by Gerding, Erik
Date: 2023.12.11
16:09:44 -05'00'

With Respect to Examinations of Registered Entities:

Division of Examinations

Name: Richard Best

Title: Director

Date:

Signature:

Best, Richard

Digitally signed by Best,
Richard
Date: 2023.12.11 17:04:04
-05'00'

Office of Credit Ratings

Name: Lori Price

Title: Director

Date:

Signature:

Price, Lori H.

Digitally signed by Price, Lori
H.
Date: 2023.12.11 10:14:49
-05'00'