

## SEC Publishes Five-Year Strategic Plan for Changes in Regulatory, Disclosure, Examination, and Enforcement Approaches

By [Scot E. Draeger](#), Shareholder; and [Caleb C. B. DuBois](#), Associate | October 16, 2009

On October 8, 2009, the U.S. Securities and Exchange Commission (the “SEC” or the “Commission”) published for public comment its Draft Strategic Plan (the “Strategic Plan”) that outlines the SEC’s strategic goals for fiscal years 2010 through 2015. Among other things, the Strategic Plan seeks to overhaul the way the SEC inspects investment advisers and seeks to improve registration and disclosure requirements. The Commission is seeking public comments on the Strategic Plan through November 16, 2009.

### Overview:

The initiatives outlined in the Strategic Plan are designed to address specific problems brought to light by the recent global financial crisis. In the Strategic Plan, the SEC establishes four major strategic goals: 1) to foster and enforce compliance with the federal securities laws; 2) to establish an effective regulatory environment; 3) to facilitate access to the information investors need to make informed investment decisions; and 4) to enhance the Commission’s performance through effective alignment and management of human, information, and financial capital. While the plan is quite extensive and establishes over seventy initiatives, below we have outlined the major goals and the pertinent subcomponents of each goal.

### Strategic Goal 1: Foster and enforce compliance with the federal securities laws

In order to address issues raised by the Commission’s failure to detect, among other things, the ponzi scheme operated by Bernie Madoff, the SEC is proposing extensive reforms of its programs to foster and enforce compliance with the federal securities laws. These reforms include expanding the SEC Staff’s training programs, improving coordination and cooperation with other domestic and foreign law enforcement agencies, organizing a culture of compliance, and improving the quality, quantity, and means of communicating important information resulting from high impact Commission actions.

The Strategic Plan seeks to strengthen the SEC’s oversight of registrants by focusing resources on the areas most at risk for fraud or other serious violations that could harm investors. The Commission has several initiatives underway to enhance its detection efforts such as centralizing the process for receiving, processing, and acting upon tips and complaints. Specifically, the Commission is planning to conduct a top-to-bottom review of the effectiveness of its examination process in response to systemic failures identified by the SEC’s Office of Inspector General. This review will focus not only on enhanced training, examination planning, recognition of and follow up regarding red flags, complaint evaluation, and third party verification procedures, but also the structural issues that have impaired communication both among examination staff and across divisions. The SEC also intends to seek legislation from Congress to establish a whistleblower compensation program for all productive tips (currently only insider trading matters offer whistleblower compensation).

### Strategic Goal 2: Establish an effective regulatory environment

In order to establish a more effective regulatory environment, the Commission plans to promulgate rules that are clearly written, easily understood, and tailored toward specific regulatory ends. In addition, the SEC anticipates developing regulations that promote and strengthen corporate and

fund governance and regularly reviewing its regulations and its rulemaking processes to confirm that the intended results are being achieved.

To achieve this goal, the SEC intends to evaluate and amend disclosure requirements to improve the quality and usefulness of registrant's disclosures to investors, including disclosures regarding risk management, executive compensation, nomination of directors, registrant's business practices, conflicts of interest, backgrounds, and analysis of the results of operations and financial conditions. Beneficial ownership reporting requirements are also scheduled to be updated so as to address the disclosure obligations relating to the use of equity swaps and other derivative instruments.

The Commission will continue to enhance its oversight of investment advisers and broker-dealers and is considering adopting rules designed to prevent political contributions from influencing the selection of investment advisers to the detriment of public pension plan clients, to provide additional safeguards to investors when an adviser has custody of client assets, and to improve registration and disclosure requirements for asset-backed securities. In order to ensure that investors have fair access to securities markets and the necessary information to make investment decisions, the SEC anticipates pursuing initiatives that enhance price transparency and ensure fair access to trading systems. Additionally, the SEC plans to enhance its oversight over the over-the-counter derivatives market, including the market for credit default swaps. The Strategic Plan further envisions the SEC working jointly with the CFTC to harmonize futures and securities laws. Furthermore, the Strategic Plan seeks to enhance the program for registration and oversight of credit rating agencies by increasing the transparency of ratings methodologies and performance and addressing the conflicts of interest inherent in the credit rating industry.

### **Strategic Goal 3: Facilitate access to the information investors need to make informed investment decisions**

In order to facilitate access to information, the SEC proposes to modify disclosure requirements so that investors are armed with timely and meaningful information they need to make appropriate investment decisions.

The SEC plans to undertake a number of initiatives designed to enhance disclosure requirements for the benefit of investors, including reassessing current core corporate disclosure requirements and implementing a new mutual fund summary prospectus regime. In proposing changes for the Commission to consider, the staff will seek to modernize disclosure requirements and eliminate redundant reporting requirements. The Strategic Plan also envisions implementing new disclosure requirements for specialized categories of issuers such as securitized financial products and other complex financial instruments. Additionally, the SEC intends to streamline its complaint investigation process by utilizing an automated complaint tracking tool to centralize information and identify emerging investor concerns.

### **Strategic Goal 4: Enhance the Commission's performance through effective alignment and management of human, information, and financial capital**

In order to further improve its performance going forward, the SEC plans to continue enhancing its human capital by rewarding high performance, promoting employee satisfaction, and updating staff skills for the effective oversight of the securities markets. The SEC will continue to focus on employee engagement and retention and invest in training and development. Moreover, the increasing size and complexity of the U.S. markets requires that the SEC leverage technology to improve its productivity and identify the most significant threats to investors. The Strategic Plan seeks to expand the SEC's information technology infrastructure and build systems that will allow more information to be quickly shared, analyzed and joined with other information in an efficient manner. Specifically, the SEC intends to identify ways to optimize the use of technology to improve

the way disclosure documents are constructed and submitted, ultimately leading to the replacement of the EDGAR system.

In addition, the SEC is currently in discussions with Congress about moving to a self-funding structure, with the hopes that a self-funding structure would provide the SEC with a stable, long-term funding source as well as the ability to plan strategically several years out.

**Conclusion:**

The SEC has outlined several goals in the Strategic Plan that are designed to bring greater amounts of fairness and transparency to the market. While it is not yet clear which goals will take priority under the plan, it is clear that the SEC is planning to take extensive action to remedy the problems in the functioning of the securities market brought to light by the recent global financial crisis.

For further information or assistance, please contact Scot E. Draeger at (207) 228-7336 or [sdraeger@bernsteinshur.com](mailto:sdraeger@bernsteinshur.com); or Caleb C. B. DuBois at (207) 228-7378 or [cdubois@bernsteinshur.com](mailto:cdubois@bernsteinshur.com).