

January 5, 2010

Elizabeth Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: SEC Draft Strategic Plan**

Dear Ms. Murphy:

The CFA Institute Centre for Financial Market Integrity (the “CFA Institute Centre”)<sup>1</sup> appreciates the opportunity to comment on the U.S. Securities and Exchange Commission’s proposed Strategic Plan for Fiscal Years 2010-2015. We provide comments on certain aspects of the Plan below.

**SEC Resources**

We share the concern that the SEC has not consistently received the financial resources it has needed to oversee the growing and increasingly complex securities landscape. Part of this problem has resulted from the funding arrangement under which the agency has labored—a dependence upon the appropriations process, and continuing resolutions. This contingency has not allowed the SEC an ability to keep pace with the demands of an increasing workload, much less make investments for future needs.

We share a belief with other organizations that the lack of an independent funding process has at times subjected the SEC to political influences. While it is understandable that a federal agency is held accountable to Congress, its need to appeal to Congress for a yearly allowance makes it subject, at the very least, to the appearance of undue influence by Congressional demands.

For both of these reasons, we strongly support a self-funding mechanism whereby the SEC can use regulatory fees to undergird its current structure and allow it to sufficiently plan for future needs.

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<sup>1</sup> The CFA Institute Centre for Financial Market Integrity is part of CFA Institute, a global, not-for-profit professional association of 97,152 investment analysts, advisers, portfolio managers, and other investment professionals in 136 countries, of whom 85,841 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 136 member societies in 57 countries and territories.

## **Strategic Goal 1: Foster and Enforce Compliance with the Federal Securities Laws**

### **Outcome 1.1: The SEC fosters compliance with the federal securities laws.**

- We support the goal to encourage a strong “culture of compliance” within organizations but encourage more detailed analyses of how the SEC plans to increase deterrence through enhanced communication strategies.

### **Outcome 1.2: The SEC promptly detects violations of the federal securities laws.**

- We strongly support the plan to develop broader and more advanced technological systems for use within the SEC in order to access and analyze information on registrants and related entities. A more sophisticated and integrated system is critical to capturing and sharing internally within the different SEC divisions, the information that will trigger concern and lead to more coordinated investigations.
- We support efforts by the SEC to secure legislation enabling the establishment of a whistle-blower program that will reward individuals and entities beyond just the scope of insider trading.
- We believe that SEC enforcement staff has suffered from a lack of experience generally and a lack of subject expertise in the past. Therefore, we strongly support efforts to raise the level of knowledge among examiners through added training, including the work towards achieving the Chartered Financial Analyst (CFA®) designation. (Please note the reference on page 14 of the draft Strategic Plan that erroneously refers to “‘Certified’ Financial Analysts.”)
- We question the metrics the SEC will use to measure the increase in expertise of SEC staff, and encourage the use of specific target criteria. We believe the metric could include years of industry experience, attainment of the CFA designation, evidence of relevant advanced degrees, etc.

### **Outcome 1.3: The SEC prosecutes violations of federal securities laws and holds violators accountable.**

- We question the approach the SEC will take in reviewing its penalties framework “so that penalties have the appropriate punitive and deterrent effect.” The proposed approach raises without resolving, long-standing concerns about who is actually being penalized in many of these enforcement actions. As currently situated, it is more often the shareholders, through assessments on the companies that are left footing the bill for “company” infractions that are actually the doing of various company agents/employees. We encourage an approach that seeks less financial penalty on the entity and metes out stricter sanctions to the individuals involved.

## **Strategic Goal 2: Establish an Effective Regulatory Environment**

### **Outcome 2.1: The SEC establishes and maintains a regulatory environment that promotes high-quality disclosure, financial reporting, and governance, and prevents abusive practices by registrants, financial intermediaries, and other market participants.**

- We strongly support identified initiatives to improve the quality and usefulness of disclosure, and strengthen proxy infrastructure. We note that as part of its performance metrics, the SEC plans to

“conduct a survey of financial analysts and institutional investors to elicit feedback on the quality of disclosures and the Commission’s disclosure requirements”. The CFA Institute Centre supports this survey.

- While we understand the end purpose in using the indicator related to Outcome 2.1 that focuses on the average cost of capital in the U.S. relative to the rest of the world, we recommend clarifying the intended role of this metric and making it clearer how the Commission will develop and use this indicator.
- We are concerned that the role and responsibilities of the PCAOB are in constitutional limbo. We would support the SEC working to introduce legislation that would presumably correct any constitutional flaws now, to allow the organization to remain focused and progress. We are concerned that a six-month wait for judicial ruling, followed by the potential for significant legislative debate and action on constitutional repairs, places this important body in an extremely difficult environment to carry on important standard setting, inspection and enforcement initiatives.

**Outcome 2.2: The U.S. capital markets operate in a fair, efficient, transparent, and competitive manner, fostering capital formation and useful innovation.**

- We support the specific initiative to strengthen the viability of self-regulation. As we noted in our “Self-Regulation in Today’s Securities Markets”, the CFA Institute Centre has historically supported self-regulation in lieu of government-imposed regulation. However, we recognize that an effective self-regulatory system must be based on the preservation of important investor protections. As noted in the SEC initiative, the demutualization of exchanges has made attention to the resultant conflicts of interest all the more important.
- We also support the initiative to enhance oversight of derivatives, including the goal to seek changes in the law to address regulatory gaps in the oversight of OTC derivatives. We encourage further and specific steps to address these gaps by limiting trading in OTC derivatives to customized contracts between highly sophisticated parties and when at least one of the parties requires the customized contract to hedge business risk. We also encourage changes that will require OTC derivatives dealers to register with the regulator and to meet adequate capital requirements, and business conduct standards.
- In addition, we support the SEC’s initiative to strengthen the oversight of credit rating agencies, particularly with the goal of increasing the transparency of ratings methodologies, addressing the inherent conflicts of interest in that industry, and reducing—even eliminating—references to credit ratings in the Commission’s regulations.

**Outcome 2.3: The SEC adopts and administers rules and regulations that enable market participants to understand clearly their obligations under the securities laws.**

- We suggest that the performance metric to respond to no-action requests within 60 days be increased to 100% (from 85%).
- In a recent report sponsored by CFA Institute and others on regulatory reform, concerns were raised about the antiquated and overlapping array of current securities and market regulations. Developed over 70 years ago, many of these rules have been patched and amended in an effort to keep up with changing practice and markets. The resulting complexity, organization and clarity could be improved

greatly. We encourage the SEC to consider a major program to rework the regulatory framework. We believe this will make compliance more efficient, less costly and our markets more competitive, without sacrificing investor protection.

### **Strategic Goal 3: Facilitate Access to Information Investors Need to Make Informed Investment Decisions**

#### **Outcome 3.1: Investors have access to high-quality disclosure materials that are useful to investment decision making.**

- While we strongly support efforts to provide investors with the information they need for informed decision making, we question how the SEC will determine what new or revised disclosures are needed. We recommend that this Outcome include detailed plans for ways to gauge investors' needs and current understandings, and suggest, at the least, increased survey efforts. We also recommend that performance metrics include mechanisms for providing investor education relating to new disclosure regimes, in keeping with Outcome 3.2.
- One specific area in need of reconsideration are the disclosure rules around executive compensation. Item 402 of Regulation S-K was developed and expanded with the goal of providing clear, concise and understandable disclosures regarding executive pay practice. The resulting Compensation Discussion and Analysis (CD&A) has utterly failed in this regard. The volume and complexity of Item 402 has defeated its purpose. The nearly forty pages of Item 402 directions have engaged issuers and an army of lawyers in countless hours of review, drafting and the development of disclosures that are often incomprehensible to all but a few experts. The resulting circumstance is a regulation that is a nightmare to enforce, one that drains extensive corporate resources for a disclosure that is either purposely or because of complex rules, beyond the comprehension of the intended audience. In the context of ushering a "say on pay" vote for investors, a project should be undertaken to refocus this disclosure on its intended mission -- to be clear, concise and understandable.

#### **Outcome 3.2: Agency rulemaking and investor education programs are informed by an understanding of the wide range of investor needs.**

- We support the initiative to consider Investor Advisory Committee input as a direct and important means of gauging investor needs. If the creation of this committee is not permanent, we recommend that the SEC take measures to ensure that it will be, so that this mechanism for receiving investor input is ongoing.

### **Strategic Goal 4: Enhance the Commission's Performance through Effective Alignment and Management of Human, Information, and Financial Capital**

#### **Outcome 4.1: The SEC maintains a work environment that attracts, engages, and retains a technically proficient and diverse workforce that can excel and meet the dynamic challenges of market oversight.**

- In keeping with initiatives to enhance the employee development program and promote a diverse talent pipeline, we recommend active promotion of skill sets that will contribute to an employee's in-depth knowledge base. While the Performance Metric for expanding staff expertise notes that the

SEC will monitor staff that has received certain status, including the “Certified (sic) Financial Analyst” designation, we recommend that the SEC actively promote, rather than “monitor” the attainment of relevant designations that require in-depth knowledge, including the Chartered Financial Analyst designation.

**Outcome 4.2: The SEC retains a diverse team of world-class leaders who provide motivation and strategic direction to the SEC workforce.**

- To fully realize this Outcome, we recommend adding a performance metric relating to providing competitive initial and ongoing salaries for SEC staff.

**Conclusion**

We appreciate the opportunity to offer comments on the SEC’s Draft Strategic Plan. Should you have any questions, please do not hesitate to contact James C. Allen, CFA at [james.allen@cfainstitute.org](mailto:james.allen@cfainstitute.org) (434.951.5558); or Linda L. Rittenhouse at [linda.rittenhouse@cfainstitute.org](mailto:linda.rittenhouse@cfainstitute.org) (434.951.5333).

Sincerely,

*/s/ James C. Allen*

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