

## VIII. *Improvements to SEC Management*

### A. Introduction

The financial crisis of 2008 left policymakers scrambling to find parties to blame, ultimately targeting both the private financial sector and public regulatory bodies.<sup>1</sup> Even while lawmakers deflected responsibility, the public widely perceived the crisis as a failure by governmental agencies like the Securities and Exchange Commission (“SEC”) to properly regulate the financial sector.<sup>2</sup> Congress recently released a report on the causes of the financial crisis which confirmed this perception that regulatory failures, by the SEC and other regulatory bodies, did indeed play a significant role.<sup>3</sup> Congress signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) into law on July 21, 2010 in response to such criticisms, as evidenced by Title IX, Investor Protections and Improvements to the Regulation of Securities.<sup>4</sup> Title IX encompasses

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<sup>1</sup> See, e.g., Sewell Chan, *Financial Crisis Was Avoidable, Inquiry Finds*, N.Y. TIMES, Jan. 25, 2011, [http://www.nytimes.com/2011/01/26/business/economy/26inquiry.html?\\_r=1](http://www.nytimes.com/2011/01/26/business/economy/26inquiry.html?_r=1) (“The 2008 financial crisis was an ‘avoidable’ disaster caused by widespread failures in government regulation, corporate mismanagement and heedless risk-taking by Wall Street, according to the conclusions of a federal inquiry.”); John D. McKinnon, *Financial Crisis Hearing Puts Former SEC Chiefs in the Hot Seat*, WALL ST. J. (Apr. 30, 2010), <http://blogs.wsj.com/washwire/2010/04/30/financial-crisis-hearing-puts-former-sec-chiefs-in-hot-seat> (“Another week, another congressional hearing into the financial meltdown—and more bankers and regulators in the hot seat.”).

<sup>2</sup> See, e.g., Theo Francis, *SEC’s Cox Catches Blame for Financial Crisis*, BUS. WK. (Sept. 19, 2008), [http://www.businessweek.com/bwdaily/dnflash/content/sep2008/db20080918\\_764469.htm](http://www.businessweek.com/bwdaily/dnflash/content/sep2008/db20080918_764469.htm) (observing that John McCain’s criticism of the SEC chairman “sharply escalate[d] public criticism of the SEC’s role in the unfolding financial crisis”).

<sup>3</sup> Chan, *supra* note 1 (observing that the report on the crisis “finds that the Securities and Exchange Commission failed to require big banks to hold more capital to cushion potential losses and halt risky practices”).

<sup>4</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) [hereinafter Dodd-Frank Act] (“An Act To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.”).

ten subtitles, including Subtitle F: Improvements to the Management of the Securities and Exchange Commission. This subtitle represents an effort to demand greater transparency and accountability from the SEC through increased reporting and other measures.<sup>5</sup>

Subtitle F lays out eight specific mandates for improving SEC management.<sup>6</sup> First, Sections 961-64 call for the SEC to submit internal reports to Congress on a regular basis, and for the Comptroller General to submit reports evaluating SEC activities and policies.<sup>7</sup> Specifically, the SEC must provide Congress with annual reports on internal supervisory controls, triennial reports on personnel management, annual financial control audits, and triennial reports on the oversight of national securities associations.<sup>8</sup> Further, this Subtitle calls for the employment of SEC examiners in the Trading and Markets Division and the Investment Management Division; greater SEC employee input on internal operations, soliciting both suggestions for improvement and allegations of abuse; an externally-conducted evaluation of the SEC's organizational structure; and an investigation into the SEC's so-called "revolving door" problem, characterized by employees leaving the SEC to take positions at companies that are under investigation.<sup>9</sup>

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<sup>5</sup> *Id.* §§ 961-68 ("Subtitle F—Improvements to the Management of the Securities and Exchange Commission").

<sup>6</sup> *Id.* (1) Section 961: Report and certification of internal supervisory controls; (2) Section 962: Triennial report on personnel management; (3) Section 963: Annual financial controls audit; (4) Section 964: Report on oversight of national securities associations; (5) Section 965: Compliance examiners; (6) Section 966: Suggestion program for employees of the Commission; (7) Section 967: Commission organizational study and reform; and (8) Section 968: Study on SEC revolving door).

<sup>7</sup> *Id.* §§ 961-64 (Section 961: Report and certification of internal supervisory controls; Section 962: Triennial report on personnel management; Section 963: Annual financial controls audit; Section 964: Report on oversight of national securities associations).

<sup>8</sup> *Id.* (Section 961: Report and certification of internal supervisory controls; Section 962: Triennial report on personnel management; Section 963: Annual financial controls audit; Section 964: Report on oversight of national securities associations).

<sup>9</sup> *Id.* §§ 965-68. (Section 965: Compliance examiners; Section 966: Suggestion program for employees of the Commission; Section 967: Commission organizational study and reform; and Section 968: Study on SEC revolving door).

Due to the recent nature of the implementation of these measures, there has been little reaction thus far to most of the provisions in Subtitle F. The study that the SEC is required to launch regarding its revolving door problem is likely to attract significant attention once it is released, however, as this practice has been widely criticized in recent months by both the media and lawmakers.<sup>10</sup>

### **B. Dodd-Frank's Congressional Mandate for Improvement through Four SEC Reports**

Dodd-Frank mandates that the SEC begin submitting four specific reports to Congress to improve its management.<sup>11</sup> First, Section 961 calls for the SEC to submit an annual report on internal supervisory controls.<sup>12</sup> The report shall be submitted no later than 90 days after the end of the SEC's fiscal year,<sup>13</sup> which terminates on September 30.<sup>14</sup> In its report, the SEC will evaluate the efficacy of its internal supervisory controls and its procedures regarding staff members who perform "examinations of registered entities, enforcement investigations, and reviews of corporate financial securities filings."<sup>15</sup> Along with this report, the SEC has to certify

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<sup>10</sup> See, e.g., Tom McGinty, *SEC 'Revolving Door' Under Review*, WALL ST. J. (June 16, 2010), <http://online.wsj.com/article/SB10001424052748703280004575309061471494980.html> ("[W]e are currently conducting an investigation of allegations very recently brought to our attention that a prominent law firm's significant ties with the SEC . . . led to the SEC's failure to take appropriate action in a matter involving the law firm.") (quoting Inspector General David Kotz).

<sup>11</sup> Dodd-Frank Act §§ 961-64 (Section 961: Report and certification of internal supervisory controls; Section 962: Triennial report on personnel management; Section 963: Annual financial controls audit; Section 964: Report on oversight of national securities associations).

<sup>12</sup> *Id.* § 961(a) (requiring annual reports).

<sup>13</sup> *Id.* (requiring annual reports to be submitted no later than 90 days after the end of the SEC's fiscal year).

<sup>14</sup> U.S. Sec. and Exch. Comm'n, *Report and Certification of Internal Supervisory Controls* 1 (2010), available at <http://www.sec.gov/about/internalcontrols961.pdf> ("This report represents the SEC's first Section 961 Report, for the fiscal year ending September 30, 2010.") [hereinafter *SEC, Report and Certification*].

<sup>15</sup> Dodd-Frank Act § 961(b)(1)(B) ("[T]he procedures of the Commission applicable to the staff of the Commission who perform examinations of

that it “has adequate internal supervisory controls to carry out the duties of the Commission.”<sup>16</sup> Finally, as part of this report, the SEC must submit a summary of its review provided by the Comptroller General.<sup>17</sup> The SEC released its first Report of Internal Supervisory Controls to Congress on December 21, 2010.<sup>18</sup> The Commission stated that its evaluation turned up no significant deficiencies.<sup>19</sup> Dodd-Frank did not define “significant deficiency,” but the SEC provided its own definition within the report: “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.’”<sup>20</sup>

Second, Dodd-Frank requires the Comptroller General to provide a triennial report on personnel management to the Senate Committee on Banking, Housing, and Urban Affairs and the House of Representatives Committee on Financial Services.<sup>21</sup> This report will include (1) an evaluation of staff efficiency and competence; (2) promotion criteria; (3) efficiency of inter-divisional communications; (4) turnover rates; (5) management redundancies; (6) initiatives to enhance staff competence; (7) handling of under-performing employees; and (8) circumstances surrounding employee termination.<sup>22</sup> This report must also include improvements to the evaluation process of these areas made since the previous report was

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registered entities, enforcement investigations, and reviews of corporate financial securities filings.”).

<sup>16</sup> *Id.* § 961(b)(2) (“[A] certification that the Commission has adequate internal supervisory controls to carry out the duties of the Commission.”).

<sup>17</sup> *Id.* § 961(e) (requiring a review by the Comptroller General).

<sup>18</sup> SEC, *Report and Certification*, *supra* note 7 (citing Letter from Mary L. Schapiro, Chairman, U.S. Sec. and Exch. Comm’n, to Christopher J. Dodd, Chairman, Comm. on Banking, Housing, and Urban Affairs, U.S. Sec. and Exch. Comm’n (Dec. 21, 2010)).

<sup>19</sup> *Id.* at 9-10.

<sup>20</sup> *Id.* at 10 (defining a significant deficiency for purposes of the Report).

<sup>21</sup> Dodd-Frank Act § 962(a) (requiring the Comptroller General to provide a triennial reports every three years to the Senate Committee on Banking, Housing, and Urban Affairs and the House of Representatives Committee on Financial Services).

<sup>22</sup> *Id.* § 962(b)(1) (listing evaluation criteria considered relating to SEC management).

submitted.<sup>23</sup> Additionally, the report shall contain recommendations regarding more effective ways to employ human resources staff.<sup>24</sup> In crafting this report, the SEC is instructed to solicit feedback from former and retired employees, stakeholders in the SEC, and academics and other experts.<sup>25</sup> This section also stipulates that the SEC reimburse the Government Accountability Office (“GAO”) for the Comptroller General’s full reporting expenses.<sup>26</sup>

Third, Section 963 mandates that the SEC submit to Congress an annual financial controls audit.<sup>27</sup> This report “describes the responsibility of the management . . . for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and contains an assessment of the effectiveness of the internal control structure and procedures for financial reporting of the Commission during that fiscal year.”<sup>28</sup> The SEC’s Chairman and CFO have to attest to this report.<sup>29</sup> Additionally, the Comptroller General has to submit a report evaluating the SEC’s financial reporting structure and confirming the SEC’s report.<sup>30</sup> Additionally, the SEC must reimburse the GAO for the Comptroller General’s

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<sup>23</sup> *Id.* § 962(b)(2) (“[A]n evaluation of any improvements made with respect to the areas described in paragraph (1) since the date of submission of the previous report.”).

<sup>24</sup> *Id.* § 962(b)(3) (“[R]ecommendations for how the Commission can use the human resources of the Commission more effectively and efficiently to carry out the mission of the Commission.”).

<sup>25</sup> *Id.* § 962(c) (requiring consultation with former employees, the Inspector General, SEC stakeholders and other experts).

<sup>26</sup> *Id.* § 962(e) (requiring reimbursements for report costs).

<sup>27</sup> *Id.* § 963(a)(1) (requiring Annual Reports to be submitted to Congress, no later than six months after each fiscal year).

<sup>28</sup> *Id.* § 963(a)(1)(A-B) (requiring the Annual Report to “describe the responsibility of the management of the Commission for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and contain[n] an assessment of the effectiveness of the internal control structure and procedures for financial reporting of the Commission during that fiscal year”).

<sup>29</sup> *Id.* § 963(a)(2) (requiring the SEC’s Chairman and CFO to attest to the Annual Report).

<sup>30</sup> *Id.* § 963(b) (requiring the Comptroller General to submit a report to Congress assessing “the effectiveness of the internal control structure and procedures of the Commission for financial reporting; and the assessment of the Commission under subsection (a)(1)(B”).

expenses for the report.<sup>31</sup> The SEC issued its first financial controls audit on November 15, 2010.<sup>32</sup>

Finally, the Comptroller General is required to submit a triennial report providing an evaluation of the SEC's oversight of national securities associations to the Senate Committee on Banking, Housing, and the House of Representatives Urban Affairs and the Committee on Financial Services.<sup>33</sup> This report assesses a variety of aspects of this oversight, including (1) governance of these associations; (2) examinations carried about by them; (3) compensation practices; (4) arbitration services; (5) advertising supervision; (6) cooperation with the state; (7) funding; (8) employment monitoring; (9) effectiveness of rules; and (10) transparency of activities.<sup>34</sup> As with the other reports, the SEC is to reimburse the GAO for the costs associated with this report.<sup>35</sup> The first of these reports will be released prior to July 21, 2012.<sup>36</sup>

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<sup>31</sup> *Id.* § 963(c) (requiring the SEC to reimburse the GAO for the full cost of making the reports issued by the Comptroller General).

<sup>32</sup> *See* U.S. SEC. AND EXCH. COMM'N, U.S. Securities and Exchange Commission: FY 2010 Performance and Accountability Report B (2010), available at <http://www.sec.gov/about/secpar/secpar2010.pdf> (stating that the report "provides information that satisfies the requirements contained in the . . . Dodd-Frank Wall Street Reform and Consumer Protection Act, Subtitle F, Sec. 963, Annual Financial Controls Audit").

<sup>33</sup> *Id.* § 964(a) (requiring the Comptroller General to submit a Report on Oversight of the National Securities Association to the Senate Committee on Banking, Housing, and Urban Affairs and the House of Representatives Committee on Financial Services, no later than two years after the date of the Dodd-Frank Act, and every three years thereafter).

<sup>34</sup> *Id.* § 964(a)(1)-(10) (stating various aspects of the Comptroller's report on national securities association oversight).

<sup>35</sup> *Id.* § 964(b) (requiring the SEC to reimburse the GAO for the cost of making the reports on national securities associations).

<sup>36</sup> *Id.* § 964(a) (mandating that the first report must be submitted "[n]ot later than 2 years after the date of enactment of [Dodd-Frank]").

### C. Additional Improvements to SEC Management Stipulated by Dodd-Frank

Dodd-Frank outlines four additional steps for improving SEC management.<sup>37</sup> First, Section 965 requires the Trading and Markets Division and the Investment Management Division to employ a staff of compliance examiners.<sup>38</sup> The examiners in each division are to “perform compliance inspections and examinations of entities under the jurisdiction of that Division; and report to the Director of that Division.”<sup>39</sup> This provision serves to amend Section 4 of the Securities Exchange Act of 1934.<sup>40</sup>

Second, the SEC must implement an employee suggestion program.<sup>41</sup> The SEC will create a hotline through which employees can confidentially submit both suggestions for improvements and allegations of “waste, abuse, misconduct, or mismanagement within the Commission.”<sup>42</sup> The SEC shall keep the employee’s identity confidential, unless the employee requests otherwise in writing.<sup>43</sup> The Inspector General has to review the suggestions and allegations and make appropriate recommendations.<sup>44</sup> Further, “[t]he Inspector General may recognize any employee who makes a suggestion . . . that would or does increase the work efficiency, effectiveness, or

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<sup>37</sup> *Id.* §§ 965-68 (Section 965: Compliance Examiners; Section 966: Suggestion Program for Employees of the Commission; Section 967: Commission Organizational Study and Reform; and Section 968: Study on SEC Revolving Door).

<sup>38</sup> *Id.* § 965 (codified at 15 U.S.C.A. § 78d) (amending the Securities and Exchange Act of 1934 Section 4 to require the Trading and Markets Division and the Investment Management Division to hire examiners).

<sup>39</sup> *Id.* (codified at 15 U.S.C.A. § 78d(h)(1)-(2)).

<sup>40</sup> *Id.* (codifying the amendment to Securities and Exchange Act of 1934 Section 4).

<sup>41</sup> *Id.* § 966 (amending the Securities and Exchange Act of 1934 Section 4 to require the SEC to implement an employee suggestion program).

<sup>42</sup> *Id.* (codified at 15 U.S.C.A. § 78d-4(a)(1)(A)-(B)) (amending the Securities and Exchange Act of 1934 Section 4 to require the SEC to implement an employee suggestion program).

<sup>43</sup> *Id.* (codified at 15 U.S.C.A. § 78d-4(a)(2)(A) (“[T]he identity of any individual who provides information by the means established . . . unless the individual requests otherwise, in writing.”)).

<sup>44</sup> *Id.* (codified at 15 U.S.C.A. § 78d-4(b)) (“The Inspector General shall consider any suggestions or allegations received . . . and shall recommend appropriate action in relation to such suggestions or allegations.”).

productivity of the Commission; or reduce waste, abuse, misconduct, or mismanagement within the Commission.”<sup>45</sup> The SEC must report to Congress annually on the suggestion program, detailing the “nature and number” of suggestions and allegations received through the hotline, and the recommendations and actions the Commission has made in response to them.<sup>46</sup> The SEC Investor Protection Fund will finance this program.<sup>47</sup> In accordance with this section, the SEC established an employee suggestion hotline and email account on September 27, 2010.<sup>48</sup>

Third, the SEC must retain an outside consultant “of high caliber and with expertise in organizational restructuring.”<sup>49</sup> This consultant will evaluate the Commission’s “internal operations, structure, funding, and the need for comprehensive reform of the SEC, as well as the SEC’s relationship with and the reliance on self-regulatory organizations and other entities relevant to . . . the protection of securities investors that are under the SEC’s oversight.”<sup>50</sup> The consultant will specifically outline recommendations for reducing employment redundancies and improving communications and the chain-of-command structure.<sup>51</sup> Additionally, the consultant has to study “the effect of high-frequency trading and other technological advances on the market and what the SEC requires to monitor the

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<sup>45</sup> *Id.* (codified at 15 U.S.C.A. § 78d-4(c) (permitting the Inspector General to recognize employee suggestions that improve SEC efficiency or reduce waste).

<sup>46</sup> *Id.* (codified at 15 U.S.C.A. § 78d-4(d)(1)-(4)) (specifying four items that must be included in the Inspector General’s annual report).

<sup>47</sup> *Id.* (codified at 15 U.S.C.A. § 78d-4(e)) (“The activities of the Inspector General . . . shall be funded by the Securities and Exchange Commission Investor Protection Fund.”).

<sup>48</sup> U.S. SEC. AND EXCH. COMM’N, *Implementing Dodd-Frank Wall Street Reform and Consumer Protection Act—Accomplishments*, <http://www.sec.gov/spotlight/dodd-frank/accomplishments.shtml> (last visited Mar. 11, 2011) [hereinafter SEC, *Implementing Dodd-Frank*].

<sup>49</sup> Dodd-Frank Act § 967(a)(1) (requiring the SEC to hire a well-qualified independent consultant).

<sup>50</sup> *Id.* (detailing areas of the SEC for the independent consultant to examine).

<sup>51</sup> *Id.* § 967(a)(2)(A)-(C) (stating that areas of study include: possibly eliminating superfluous SEC units, improving intra-SEC communications and implementing a chain-of-command structure).



effect of such trading and advances on the market.”<sup>52</sup> The consultant will also evaluate the Commission’s hiring practices, including the need for pay reforms and the diversity of skill sets.<sup>53</sup> Finally, the consultant must study “whether the SEC’s oversight and reliance on self-regulatory organizations promotes efficient and effective governance . . . and whether adjusting the SEC’s reliance on self-regulatory organizations is necessary to promote more efficient and effective governance for the securities markets.”<sup>54</sup>

The SEC must hire this consultant no later than 90 days after the enactment of Dodd-Frank,<sup>55</sup> and the consultant shall issue the report to the SEC and to Congress within 150 days after being retained.<sup>56</sup> The consultant’s final report must contain both a description of current practices and recommendations for change.<sup>57</sup> The SEC will issue reports on how it is complying with the consultant’s recommendations “[n]ot later than the end of the 6-month period beginning on the date the consultant issues the report under subsection (b), and every 6-months thereafter during the 2-year period following the date on which the consultant issues such report.”<sup>58</sup> The Commission solicited bids from prospective consultants on August 3, 2010, and awarded the contract to an independent consultant on October 15, 2010.<sup>59</sup>

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<sup>52</sup> *Id.* § 967(a)(2)(D) (“[T]he effect of high-frequency trading and other technological advances on the market and what the SEC requires to monitor the effect of such trading and advances on the market.”).

<sup>53</sup> *Id.* § 967(a)(2)(E) (requiring the consultant to also evaluate the SEC hiring procedures).

<sup>54</sup> *Id.* § 967(a)(2)(F)-(G) (“[W]hether the SEC’s oversight and reliance on self-regulatory organizations promotes efficient and effective governance for the securities markets; and whether adjusting the SEC’s reliance on self-regulatory organizations is necessary to promote more efficient and effective governance for the securities markets.”).

<sup>55</sup> *Id.* § 967(a)(1) (requiring the SEC to hire the independent consultant within 90 days after Dodd-Frank’s enactment).

<sup>56</sup> *Id.* § 967(b) (requiring the consultant to issue a report within 150 days after being hired).

<sup>57</sup> *Id.* § 967(b)(1)-(2) (requiring the consultant’s report to describe findings while conducting the study and recommendations for the future).

<sup>58</sup> *Id.* § 967(c) (“Not later than the end of the 6-month period beginning on the date the consultant issues the report under subsection (b), and every 6-months thereafter during the 2-year period following the date on which the consultant issues such report.”).

<sup>59</sup> SEC, *Implementing Dodd-Frank*, *supra* note 48.

Finally, the Comptroller General must submit a report on the SEC's revolving door problem.<sup>60</sup> This study must examine "the number of employees who leave the Securities and Exchange Commission to work for financial institutions regulated by such Commission . . . and worked on cases that involved financial institutions regulated by such Commission."<sup>61</sup> Additionally, the study has to identify how many years employees worked at the Commission before moving on to work for regulated institutions.<sup>62</sup> Specifically, the Comptroller shall evaluate whether any former Commission employees assisted the financial companies that hired them in violating the Commission's regulations.<sup>63</sup> The Comptroller shall also include recommendations regarding whether new employment policies are needed to insure against the revolving door problem, and whether financial firms' employment of former SEC employees has had a negative impact on SEC enforcement mechanisms.<sup>64</sup> The Comptroller must then determine if employees of the Securities and Exchange Commission who are later employed by financial institutions assisted such institutions in circumventing Federal rules and regulations while employed by such Commission; [and] review any information that may address the volume of employees of the Securities and Exchange Commission who are later employed by financial institutions, and make recommendations to

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<sup>60</sup> Dodd-Frank Act § 968 (requiring a study on the SEC's revolving door problem).

<sup>61</sup> *Id.* § 968(a)(1)-(2) (including in the study a review of former SEC employees who left to work for SEC-regulated financial institutions and a determination of former SEC employees who left worked on cases involving SEC-regulated financial institutions).

<sup>62</sup> *Id.* § 968(a)(3) ("[R]eview the length of time employees work for the [SEC] before leaving to be employed by financial institutions regulated by such Commission).

<sup>63</sup> *Id.* § 968(a)(4) ("[R]eview existing internal controls and make recommendations on strengthening such controls to ensure that employees of the [SEC] who are later employed by financial institutions did not assist such institutions in violating any rules or regulations of the Commission during the course of their employment with such Commission.").

<sup>64</sup> *Id.* § 968(a)(5)-(6) ("[D]etermine if greater post-employment restrictions are necessary to prevent employees of the [SEC] from being employed by financial institutions after employment with such Commission; [and] determine if the volume of employees of the [SEC] who are later employed by financial institutions has led to inefficiencies in enforcement.").

Congress.<sup>65</sup> The Comptroller has to submit the first report within one year of the enactment of Subtitle F.<sup>66</sup>

#### **D. Present Interest in Improvements to SEC Management**

Due to the recent nature of the implementation of these measures, there has been little reaction thus far to most of the provisions in Subtitle F. For example, the recommendations by the outside consultant will surely receive scholarly and media attention once released, but little has been said thus far because the consultant has not yet issued its findings. Similarly, the Comptroller General's office has yet to release its first reports evaluating the SEC's oversight of national securities associations and assessing the Commission's personnel management policies.<sup>67</sup>

The measures that have already been implemented have not generated significant interest. For example, while the SEC has released its first Dodd-Frank mandated Report of Internal Supervisory Controls, its finding that "no significant deficiencies in internal supervisory controls were identified"<sup>68</sup> is not the type of finding that would engender significant public discussion. Additionally, while the employee suggestion program was initiated on September 27, 2010, the first annual report based on this program has not yet been released.<sup>69</sup> With no data or results yet available from the program, it is not surprising that the suggestion program has not received significant media attention.

The exception to this muted public reaction involves the revolving door problem which Section 968 addresses. Media sources such as *The New York Times* and *The Wall Street Journal* have

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<sup>65</sup> *Id.* § 968(a)(7)-(8).

<sup>66</sup> *Id.* § 968(b) (requiring the Comptroller General to submit a report within one year after Subtitle F is enacted).

<sup>67</sup> See SEC, *Implementing Dodd-Frank*, *supra* note 48 (containing a complete and up-to-date listing of the SEC's accomplishment of the Dodd-Frank mandates).

<sup>68</sup> SEC, *Report and Certification*, *supra* note 7, at 9-10 ("Upon completion of this process, no significant deficiencies in internal supervisory controls were identified as of September 30, 2010.").

<sup>69</sup> SEC, *Implementing Dodd-Frank*, *supra* note 48 (stating that the SEC established an employee hotline to the Inspector General's Office on September 27, 2010).

roundly criticized this practice.<sup>70</sup> The media attention has focused on high-profile individual instances in which the revolving door incident was particularly egregious. For example, in 2010, in an article entitled “SEC Lawyer One Day, Opponent the Next,” *The Wall Street Journal* reported, “Steven Richards left the SEC in July 2008 as a top accountant in the enforcement division to join the global business advisory firm FTI Consulting. Five days later, he signed on to represent a client involved in a ‘nonpublic investigation’ by his old division.”<sup>71</sup> Similarly, *The New York Times* reported in June 2010 on an investigation by the Inspector General regarding whether “the prevalence of S.E.C. attorneys leaving the agency to join [a] particular firm, led to the S.E.C.’s failure to appropriate actions in a matter involving the firm.”<sup>72</sup> The SEC has not yet issued its report on its internal study of revolving door problems, but the results of its inquiry are likely to receive significant attention from the media.

### E. Conclusion

Policymakers are currently focused on regulatory reform to ensure that such a crisis does not happen again, particularly in light of the 2011 Congressional inquiry panel confirming that the financial crisis was indeed avoidable.<sup>73</sup> The investigatory panel observed in its report that “[t]he greatest tragedy would be to accept the refrain that no one could have seen this coming and thus nothing could have been done. . . . If we accept this notion, it will happen again.”<sup>74</sup> This emphasis on regulators’ ability to foresee and prevent similar financial crises is reflected in Dodd-Frank’s provisions regarding improvements to the Commission’s management, which attempt to

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<sup>70</sup> See, e.g., McGinty, *supra* note 10 (criticizing the SEC for its revolving door problem); Peter J. Henning, *S.E.C.’s Revolving Door Draws More Scrutiny*, N. Y. TIMES (June 18, 2010), <http://dealbook.nytimes.com/2010/06/18/s-e-c-s-revolving-door-draws-more-scrutiny> (commenting on the SEC’s revolving door problem).

<sup>71</sup> Tom McGinty, *SEC Lawyer One Day, Opponent the Next*, WALL ST. J. (Apr. 5, 2010), <http://online.wsj.com/article/SB10001424052702303450704575160043010579272.html> (discussing the SEC’s revolving door problem).

<sup>72</sup> Henning, *supra* note 70 (quoting a letter from SEC Inspector General Kotz to Senator Charles E. Grassley).

<sup>73</sup> Chan, *supra* note 1 (suggesting that the 2008 financial crisis was avoidable).

<sup>74</sup> *Id.* (quoting the Financial Crisis Inquiry Commission).

increase the transparency and accountability of the SEC through additional reports to Congress and other mechanisms. This report further notes that “regulators ‘lacked the political will’ to scrutinize and hold accountable the institutions they were supposed to oversee.”<sup>75</sup> This finding suggests that the efficacy of the mechanisms Dodd-Frank mandates for improving SEC management will receive considerable scrutiny in the coming months.

Amber Kopp<sup>76</sup>

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<sup>75</sup> *Id.* (quoting the Financial Crisis Inquiry Commission).

<sup>76</sup> Student, Boston University School of Law (J.D. 2012).