



November 16, 2009

Kenneth A. Johnson  
Management and Program Analyst  
Securities and Exchange Commission  
100 F Street N.E.  
Washington, DC 20549-2521

Re: SEC Draft 2010 – 2015 Strategic Plan

Dear Mr. Johnson,  
Thank you for the opportunity to provide comments to the Commission related to its 2010 – 2015 draft strategic plan.

Attached are my specific comments. I would be happy to expand on these comments at a later time. If you have any questions, please let me know.

With best regards,  
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Here below are specific comments based on my experience working within an institutional asset manager and as an advisor to investors and corporate boards. (I've also run strategic planning processes and developed KPIs and metrics as well.)

### **Issue: Litigation and Filings Reviews.**

One area that is missing in the strategic plan is the need for the SEC to address the issue of the *quality of reviews* of filings. While outcome 3.1 has metrics to address the number of filings reviewed and timeliness of those reviews, *quality* is an important metric.

Clearly, private litigation is a burden to both sides in a dispute in time, money and focus. The draft strategic plan addresses the need to ascertain whether additional corporate disclosures would be helpful. It also addresses the need to ascertain whether additional guidance would be helpful. What is not addressed and is even more basic than these objectives is the pressing need for *attentive review at the SEC of the information submitted* in corporate and investment filings. Addressing the review process at the SEC itself even under existing standards could result in fewer private litigation cases and better investor/issuer relationships.

To achieve this objective, training and internal audits should be directed to improve the adequacy of SEC reviews.

**Source of valuable information:** The plaintiff's bar would be an excellent resource regarding the SEC's objectives related to additional guidance and additional disclosure. Further, they could expand on the issues they have seen where attentive review at the SEC could have prevented the need for private litigation.

**Metric:** *Decreasing the number of private litigation cases filed related to corporate disclosure which result in settlements to investors* should be a primary metric of the Commission. It would be an excellent measure of the disclosure and review process at the SEC as well as the degree to which issuers take the SEC guidance seriously. The degree to which private litigation results in settlements to investors is a direct measure of the SEC's ability/inability to protect investors (before or when they invest) and its ability to maintain fair and efficient markets.

**Broader Issue: The strategic plan should encompass more broad based measures of the SEC's effectiveness, representing a larger view of the Commission's efficacy.**

### **Issue: Who is Being Protected?**

In articulating its strategy, the SEC's definition of investor is key.

One issue in the current dialogue on proxy access and other matters relates to the mission of the SEC in protecting "investors". While the document, "The Investor's Advocate: How the SEC Protects Investors, Maintains Market Integrity, and Facilitates Capital Formation" provides valuable information about the mission and objectives of the SEC, it does not address the issue of whom the SEC is protecting. This definition is critical. Are flippers and traders the subject of protection? Are retirees? Are institutional investors? What about small versus large holders? What is meant by protection for each kind of investor? And if the protection of the different categories of investors creates a conflict, how will the Commission resolve that conflict between the different categories?

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I believe that the SEC should strive to address this vital issue in writing with clarity before providing guidance on significant issues.

For example, in the area of proxy access, by clearly articulating the meaning of the mission statement with respect to this matter and addressing the SEC's responsibilities and protections of the different investor classes, a roadmap would be in place which would make it simpler to understand the outcome of proxy access related to: who and why them?

In this strategic plan, the issue is raised also in Outcome 2.1, the first performance metric where "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 disclosures requirements". This raises the clear questions of: why them and not individual investors? Why would the input of short term financial analysts and institutional investors trump that of long term individual holders?

The Values of the SEC state that "the SEC treats investors ... fairly". Clarity and clear articulation of the implicit assumptions around who is "the investor" i.e. the assumptions which represent the SEC's operating model of decision-making would be very helpful in evaluating the SEC's proposals and strategic objectives and in strengthening and building a bridge of trust between the SEC and the public related to its own transparency and integrity.

#### **Issue: Protection**

In articulating its strategy, the SEC's definition of "protection" is key.

The Values of the SEC state that "the SEC treats investors ... fairly". Whom and what are investors being protected from? (This list could include bad disclosure, unfair solicitation practices, poor governance; it could also name the possible actors who might be involved.) Is it the same for every class of "investor"? Being explicit, here as well, will help to resolve seemingly intractable issues like proxy access more deliberately and thoughtfully. It will also help validate (or not) specific objectives in the strategic plan and the recommendations related to future disclosure requirements.

#### **Issue: Conflicts in the Mission**

In articulating its strategy, SEC articulation of how it intends to reconcile the competing elements in its mission statement is key.

"The mission of the SEC is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation." How does the SEC reconcile and evaluate its responsibilities (actions or inactions) when the different elements of the mission come into conflict. For example, when facilitating capital formation conflicts with investor protection – what trumps? How does the SEC reconcile this? A pinch of this and a pinch of that? What in other words are the governing principles?

When the SEC asks for issuer comments on the difficulty in complying with a new investor protection, the conflict between issuer requirement and investor protection comes into focus. What is not clear is how the SEC in each instance thinks strategically about how it is reconciling the different parts of its mission to the actual decision and activities it undertakes.

A similar conflict occurs when the SEC makes determinations about what may or may not be included on the proxy. How in these instances is the SEC choosing “protect investors “ vs. “maintain fair, orderly, and efficient markets “ vs. “facilitate capital formation” or something else.

Clear articulation of this decision-making process would be very helpful in evaluating the SEC’s proposals and strategic objectives and in strengthening and building a bridge of trust between the SEC and the public related to its own transparency and integrity.

**Issue: Broader outreach**

The SEC outlines the key role investors have played in enforcement. The SEC needs to look further to employees and others and in that spirit information such as the information outlined in the initiatives under Outcome 1.1 should be made readily available to the public as a whole.

**Issue: Revisit the metrics**

I wish I had more time to comment on the metrics. However, I think they deserve a careful relook and review from two perspectives (a) adequacy of capture of important elements related to the SEC’s mission statement (as clarified) and (b) unintended consequences.

Regarding unintended consequences, for example, the first couple of related indicators under Outcome 1.3 could result in unintended outcomes. For example, the percentage of high impact cases can be increased two ways – increasing the number of high impact cases and decreasing the number of total cases. Does this serve the mission?

If cases from internally-generated referrals as a percentage are down because the public is doing a great job and the SEC is listening to them, is that a bad thing? Is a higher percentage of internally generated cases necessarily good? (Think Madoff.)

Thank you for the opportunity to comment. I would be happy to expand on these comments at a later time.