



U.S. Securities and Exchange Commission  
Office of Inspector General  
Office of Audits

Audit of the Division of Corporation Finance's  
Management of Requests for No-Action and  
Interpretive Letters, Exemptions, and Waivers





OFFICE OF  
INSPECTOR GENERAL

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

**M E M O R A N D U M**

March 27, 2017

**TO:** Shelley Parratt, Acting Director, Division of Corporation Finance  
David Fredrickson, Chief Counsel, Division of Corporation Finance

**FROM:** Carl W. Hoecker, Inspector General 

**SUBJECT:** *Audit of the Division of Corporation Finance's Management of Requests for No-Action and Interpretive Letters, Exemptions, and Waivers, Report No. 540*

Attached is the Office of the Inspector General (OIG) final report detailing the results of our audit of the Division of Corporation Finance's (Division) management of requests for no-action and interpretive letters, exemptions, and waivers. The report contains two recommendations for corrective action that, if fully implemented, should improve the Division's management of requests for no-action and interpretive letters, exemptions, and waivers.

On March 16, 2017, we provided management with a draft of our report for review and comment. In its March 23, 2017, response, management concurred with our recommendations. We have included management's response as Appendix II in the final report.

Within the next 45 days, please provide the OIG with a written corrective action plan that addresses the recommendations. The corrective action plan should include information such as the responsible official/point of contact, timeframe for completing required actions, and milestones identifying how the agency will address the recommendations.

We appreciate the courtesies and cooperation extended to us during the audit. If you have questions, please contact me or Rebecca L. Sharek, Deputy Inspector General for Audits, Evaluations, and Special Projects.

Attachment

cc: Michael S. Piwowar, Acting Chairman  
Jaime Klima, Co-Chief of Staff, Office of Acting Chairman  
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Ms. Parratt and Mr. Fredrickson

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# Executive Summary

## Audit of the Division of Corporation Finance's Management of Requests for No-Action and Interpretive Letters, Exemptions, and Waivers Report No. 540 March 27, 2017

### Why We Did This Audit

The U.S. Securities and Exchange Commission's (SEC) Division of Corporation Finance (CF or the Division) responds to requests for guidance from individuals and other market participants about specific provisions of Federal securities laws. Requestors may seek (1) interpretations of Federal securities laws or regulations, (2) assurances that CF would not recommend enforcement action if the individual or market participant engages in a specified activity, or (3) exemptions from securities laws. CF's response letters provide a current statement of the staff's views concerning the application of the securities laws to a particular set of facts. Although CF generally makes written responses publicly available, there is no statutory requirement for how quickly CF must process requests. We initiated this audit to assess CF's effectiveness in managing requests it receives. We sought to determine whether CF timely responds to requests using a consistent process, and makes written responses publicly available.

### What We Recommended

We recommend that CF (1) update or develop, as necessary, standardized policies and procedures for receiving, recording, and responding to requests, and communicate those policies and procedures to staff; and (2) perform periodic validations of data recorded in the no-action letter database to ensure the data's accuracy and completeness. Management concurred with the recommendations, which will be closed upon completion and verification of corrective action.

### What We Found

CF's informal guidance and administrative interpretations of Federal securities laws and SEC rules are a key component to the SEC's strategic objective of helping market participants understand their obligations under securities laws. The Government Accountability Office (GAO) published *Standards for Internal Control in the Federal Government* to help Federal agencies, including the SEC, establish an effective internal control system to achieve stated objectives. To do so, management should document in policies the internal control responsibilities of the organization and communicate to personnel the policies and procedures. Additionally, GAO has stated that monitoring is a component of internal control to help ensure organizational goals and objectives are met.

CF legal policy and accounting offices received almost 2,000 requests for no-action and interpretive letters, exemptions, and waivers between January 1, 2014, and June 30, 2016. We found that CF has sought ways to improve the efficiency and effectiveness of its processes and procedures for responding to requests. During the last 5 years, the Division has met or surpassed its internal performance goal for how quickly it initially responds to requests. However, CF can make further improvements to strengthen its management of requests. Specifically, we found that:

- (1) some legal policy and accounting office policies and procedures were outdated or did not exist; and
- (2) the database CF used to track requests for no-action and interpretive letters and produce externally-reported performance metrics may be incomplete.

In fiscal year 2016, three long-tenured CF office chiefs retired or assumed new positions at the SEC. CF described these transitions as demanding on its senior officers. To mitigate the Division's vulnerability to a loss of institutional knowledge, CF legal policy and accounting offices should develop and maintain current, written policies and procedures outlining the process for responding to requests. In addition, management should ensure that CF's data are accurate and complete so that management can assess CF's performance in responding to requests.

For additional information, contact the Office of Inspector General at (202) 551-6061 or <http://www.sec.gov/oig>.

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## ABBREVIATIONS

CF	Division of Corporation Finance
CF-OCA	CF Office of the Chief Accountant
OCC	CF Office of Chief Counsel
OEL	CF Office of Enforcement Liaison
OICF	CF Office of International Corporate Finance
OMA	CF Office of Mergers and Acquisitions
OSBP	CF Office of Small Business Policy
OSF	CF Office of Structured Finance
FY	Fiscal Year
GAO	Government Accountability Office
MS	Microsoft
SEC	U.S. Securities and Exchange Commission
WKSI	Well-Known Seasoned Issuer

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## Background and Objectives

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### Background

The Division of Corporation Finance (CF or the Division) responds to requests for no-action and interpretive letters, exemptions, and waivers (hereafter referred to collectively as “requests”). No-action letters provide the public with assurances that CF would not recommend enforcement action under the Federal securities laws as a result of proposed transactions or actions. Interpretive letters from CF staff provide informal interpretations of those laws and of U.S. Securities and Exchange Commission (SEC) rules.<sup>1</sup> CF staff are also authorized to exercise Commission authority (which has been formally delegated) to use exemptions and waivers to change the legal status of a person or transaction or the need to comply with a particular requirement of a rule or statutory provision. For example, under Securities Act Rule 405, the Commission may grant waivers of ineligible issuer status “upon showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.”<sup>2</sup>

Between January 1, 2014, and June 30, 2016, CF received almost 2,000 requests, which were processed by CF’s seven legal policy and accounting offices,<sup>3</sup> as shown in the following table. Entities and individuals submit requests to CF through the SEC’s website, e-mail, or mail delivery. CF staff record requests in a database or tracking tool,<sup>4</sup> analyze each request, and recommend a response. Generally, at least one level of management reviews the staff’s recommendation and either concurs or nonconcur.<sup>5</sup> Management reviews may be documented in hand-written notes, e-mails, track changes, or a formal sign-off checklist. If OEL or OSBP intend to issue a waiver, OEL

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<sup>1</sup> CF’s informal guidance and administrative interpretations of Federal securities laws are a key component to the SEC’s strategic objective of helping market participants understand their obligations under securities laws. Although these letters are monitored closely by many issuers, members of the bar, and the public, these letters are not binding on the Commission.

<sup>2</sup> 17 C.F.R. § 230.405.

<sup>3</sup> The seven CF legal policy and accounting offices are as follows: Office of the Chief Counsel (OCC), Office of the Chief Accountant (CF-OCA), Office of Small Business Policy (OSBP), Office of Enforcement Liaison (OEL), Office of Mergers and Acquisitions (OMA), Office of International Corporate Finance (OICF), and Office of Structured Finance (OSF).

<sup>4</sup> Collectively, the seven CF offices use three Microsoft (MS) Access databases and two MS Excel spreadsheets to record and track requests. The offices record data such as the request receipt date, type of request, assigned staff, action taken, and action date. Accurate and timely recording of requests is important because management and staff use this data to monitor the status of outstanding requests and to calculate the Division’s performance in meeting its metric for length of time to provide initial comments to written requests.

<sup>5</sup> This process differs for shareholder proposal requests for which the Task Force Leader, a designated senior special counsel, generally provides the final approval.

or OSBP seek confirmation from the Commissioners' offices that the Commissioners do not object to CF exercising its delegated authority

**Table. Requests Received by CF Between January 1, 2014, and June 30, 2016**

CF Office	No-Action and Interpretive Letters	Shareholder Proposals <sup>6</sup>	Exemptions	Waivers	Other Delegated Authority	TOTAL
OCC	124	835	1	0	0	<b>960</b>
CF-OCA	291	0	0	0	396	<b>687</b>
OSBP	1	0	0	57	0	<b>58</b>
OEL	0	0	0	47	0	<b>47</b>
OMA	17	0	29	0	0	<b>46</b>
OICF	17	0	0	0	0	<b>17</b>
OSF	4	0	0	0	0	<b>4</b>
<b>TOTAL</b>	<b>454</b>	<b>835</b>	<b>30</b>	<b>104</b>	<b>396</b>	<b>1,819</b>

Source: OIG-created using data from CF databases and spreadsheets.

Pursuant to 17 C.F.R. § 200.81(a), the SEC (and thereby, CF) is required to make available any written responses to requests for interpretive and no-action letters and exemptions “as soon as practicable after the response has been sent or given to the person requesting it.”<sup>7</sup> Under SEC Performance Goal 1.3.1, *Length of time to respond to written requests for no-action letters (NAL), exemptive applications, and written interpretive requests*, CF has set targets to: (1) provide initial comments to requests for no-action and interpretive letters within 30 days of receiving requests, and (2) respond to 100 percent of shareholder proposal requests before the company’s proxy filing date. The 30-day target applies to requests to which OCC, OMA, OICF, OSBP, and OSF respond, and the target for shareholder proposals applies only to OCC. CF-OCA established in its policies and procedures a target of 10 days for providing initial comments to requests. Neither OSBP nor OEL have established timeframes for providing initial comments to requests for waivers. However, in most cases, a Division of Enforcement action triggers waiver requests. Therefore, because the Division of Enforcement is usually preparing to present its action to the Commission at the time of the initial request, OSBP and OEL must act quickly to process requests.

<sup>6</sup> Rule 14a-8 (17 C.F.R. § 240.14a-8), under the Securities Exchange Act of 1934, allows shareholders to have their proposals placed alongside management’s proposals in the company’s proxy materials for presentation at annual and special shareholder meetings. However, 14a-8(i) permits companies to exclude shareholder proposals for various specified reasons. To do so, companies must submit to the SEC no-action letter requests, which CF refers to as “shareholder proposals.” For shareholder proposals, we extended the beginning of the audit scope to November 2013. Doing so allowed us to review three full cycles of the shareholder proposal process as each cycle lasts approximately from November to March.

<sup>7</sup> 17 C.F.R. § 200.81(a).

## Objectives

Our objective was to assess CF's effectiveness in managing requests it receives. Specifically, we sought to:

- determine whether CF has developed and implemented policies and procedures to manage requests in compliance with applicable laws and regulations; and
- evaluate CF's processes for managing requests and the internal controls related to consistency, timeliness, and public availability.

We conducted our fieldwork at the SEC's Headquarters in Washington, DC. To address our audit objective, we interviewed the former CF Director and current Acting Director, Managing Executive, office chiefs, and personnel from each of CF's seven legal policy and accounting offices to gain an understanding of the program and related processes. We obtained and reviewed policies and procedures, management's risk assessments for fiscal years (FYs) 2015 and 2016, and internal documentation related to requests. Additionally, we accessed CF's databases and tracking tools used to analyze data for requests received and processed during the period under review.

Appendix I includes additional information on our scope and methodology, our review of internal controls, and prior audit coverage.

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## Results

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### **Further Improvements Can Strengthen CF's Management of Requests for No-Action and Interpretive Letters, Exemptions, and Waivers**

Over the last several years, CF has undertaken initiatives to improve its processes for responding to requests. Specifically, CF sought to improve how it receives and disseminates information related to requests, how it responds to requests, and the timeliness of its request processes. Consequently, CF has met or exceeded its response rate targets for written requests for legal and interpretive guidance in the last 5 years. However, we determined that CF can further improve its management of requests by (1) updating or documenting policies and procedures, and (2) strengthening internal controls for complete and accurate metric reporting. Standards for internal control in the Federal Government emphasize the role that documented policies and procedures and reliable and complete data play in ensuring organizations meet their goals and objectives. Without up-to-date, written policies and procedures for responding to requests and complete request tracking data, CF may face difficulties managing its institutional knowledge and assessing and reporting its performance.

### **Some Policies and Procedures Were Outdated or Did Not Exist**

CF has not developed Division-wide policies and procedures for processing requests. Instead, each of the seven legal policy and accounting offices employs its own process. This is due, in part, to differences in the types of requests to which each office responds. OCC and CF-OCA – the two offices that responded to about 91 percent of all requests during the period we reviewed – had documented procedures that detailed the end-to-end process for responding to requests.

However, we determined that the written procedures did not always reflect the offices' current process. For example, OCC's procedures included an e-mail address that OCC no longer uses as a method of receiving requests. The procedures also included outdated information about OCC's organizational structure. Similarly, CF-OCA's procedures had not been updated to reflect the new method of assigning requests to staff. Previously, staff responded to requests corresponding to their assigned Associate Director office. Under the new method, CF-OCA staff respond to requests that correspond to an assigned topic area.

Regarding shareholder proposals, we noted that OCC has separate, thorough, and current procedural manuals for management and staff involved with that process. OCC updates those manuals as necessary and uses them to conduct annual kick-off meetings that serve as training for staff.

OEL and OSBP – two offices that respond to requests for waivers – did not document procedures outlining their end-to-end processes for responding to requests. These offices use publicly available CF policy statements as frameworks when evaluating requests for waivers. Specifically, OEL uses CF’s April 2014 *Revised Statement on Well-Known Seasoned Issuer Waivers* to assess whether an issuer has shown good cause that ineligible issuer status is not necessary for the public interest or the protection of investors.<sup>8</sup> As part of the determination process, OEL considers the responsible party, the duration of the misconduct, any remedial steps the issuer has taken, and the impact of denying the waiver.

Similarly, OSBP considers the factors outlined in CF’s March 2015 *Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D*<sup>9</sup> when considering waiver requests under those regulations and rules. Although the frameworks include factors that OEL and OSBP consider in their evaluation of waiver requests, there is no documentation of the end-to-end process that either office follows. For example, we determined that OEL’s and OSBP’s processes for handling waiver requests consist of multiple decision points, including coordinating with the Division of Enforcement and SEC Commissioners, which is not documented.

We also determined that OMA had limited written procedures that did not describe its full process for responding to requests. In addition, OICF and OSF, which processed just 1 percent of requests during the period we reviewed, did not have written procedures for responding to requests.

According to the Government Accountability Office’s (GAO) *Standards for Internal Control in the Federal Government*,<sup>10</sup> management documents in policies the internal control responsibilities of the organization and communicates to personnel the policies and procedures. Moreover, management should periodically review policies, procedures, and related control activities for continued relevance and effectiveness in achieving objectives or addressing related risks. In accordance with these principles, if an entity’s process significantly changes, management should review the process in a

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<sup>8</sup> A well-known seasoned issuer, or WKSI, is a category of issuer that is eligible for certain communications and registration flexibilities provided by the SEC. Under Rule 405 of the Securities Act, if certain conditions are met, an issuer becomes an “ineligible issuer” and thus unable to avail itself of WKSI status. Under Rule 405, the SEC may grant waivers of ineligible issuer status “...upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.” 17 C.F.R. § 230.405.

<sup>9</sup> The disqualification provisions of Rules 262 and 505 under the Securities Act make the exemptions from registration under Regulation A and Rule 505 of Regulation D unavailable for specified reasons. Rule 506 of Regulation D under the Securities Act has disqualification provisions that are similar to those in Regulation A and Rule 505. The SEC may waive Regulation A and Regulation D disqualifications upon a showing of good cause that it is not necessary under the circumstances that the exemptions be denied.

<sup>10</sup> U.S. Government Accountability Office, *Standards for Internal Control in the Federal Government* (GAO-14-704G, September 2014).

timely manner after the change to determine whether the control activities are designed and implemented properly.

According to CF personnel, CF legal policy and accounting offices' lack of updated or complete policies and procedures is likely due to several factors. These factors include different management styles with varying reliance on policies and procedures and the types and amounts of requests each office processes. For example, larger offices have processes that are more formal while smaller offices tend to be more informal.

Overall, we found that CF staff and management responsible for managing requests possess extensive institutional and subject matter knowledge. In some instances, employees have worked in their current roles for almost 20 years. In one of the offices we reviewed, 90 percent of requests were processed by one employee (the office received and responded to 3 percent of the total requests CF received during the period we reviewed). Similarly, in another office, one individual was primarily responsible for initially analyzing requests and serving as the point-of-contact to the entity seeking a waiver (the office received and responded to another 3 percent of the total requests CF received during the period we reviewed).

The combination of CF personnel's institutional knowledge, years of experience, and familiarity with processes minimizes the risk that CF is unable to respond to requests timely and in a consistent manner. However, the lack of current, written policies and procedures may pose a risk. In its FY 2016 management assurance statement, CF noted that the Division faced transition challenges resulting from the turnover of three long-tenured office chiefs. The former office chiefs for OICF and OEL served in those roles for 22 and 20 years, respectively. The FY 2016 management assurance statement went on to say that such transitions have been demanding on the senior officers who oversee those groups. Without written, detailed policies and procedures, CF may face difficulties responding to requests when seasoned employees depart their positions.

### **Database Used To Track Requests and Produce Externally-Reported Performance Metrics May Be Incomplete**

CF captures information about no-action and interpretive letter requests in an MS Access database. Specifically, management uses the database to track requests from the time of receipt to the point of final resolution. CF relies on the information manually entered in the database to calculate the length of time to provide initial comments to written requests. In its risk assessments for FYs 2015 and 2016, CF noted, "If the Division's performance metrics are not accurately reported, then the Chair and Congress may be unable to assess the Division's success in meeting its strategic goal objectives."

During our audit, CF identified missing records in the database it uses to record requests for no-action and interpretive letters sent to OCC, OMA, OICF, and OSF. Specifically, OICF determined that staff had not entered into the database 6 of the 22 requests (or 27 percent) it received since January 2014. During the course of

validating data for CF's year-end review, OMA also determined that staff had not entered into the database 1 of the 17 requests for no-action and interpretive letters (or 6 percent) it received during the same period.<sup>11</sup> In its FY 2016 management assurance statement, CF acknowledged the error related to OICF and referenced planned supplemental action to ensure the completeness of the database before its year-end reporting. According to CF, a senior manager reviews and approves metrics compiled and calculated by staff. CF intends to improve the design of this control in FY 2017.

According to GAO's *Standards for Internal Control in the Federal Government*, monitoring is a component of internal control to help ensure organizational goals and objectives are met. However, for monitoring to be effective, data used should be reliable (that is, reasonably free from error). Furthermore, the GPRA Modernization Act of 2010<sup>12</sup> requires agencies to determine how they will ensure the accuracy and reliability of the data used to measure progress toward performance goals. This includes documenting and disclosing verification and validation measures, data sources, data limitations, and compensation measures for the data limitations.

Because entering requests in the database is a manual process, the omission of requests was because of human error. CF acknowledged this error in its FY 2016 management assurance statement but concluded that the error did not cause significant or material errors in CF's previously-reported results. However, if CF does not maintain complete data, CF may not be able to accurately assess the timeliness of CF's initial responses to requests and take corrective actions to reduce delays, as needed.

## Recommendations, Management's Response, and Evaluation of Management's Response

To improve the Division of Corporation Finance's management of requests for no-action and interpretive letters, exemptions, and waivers, we recommend that CF:

**Recommendation 1:** Update or develop, as necessary, policies and procedures for receiving, recording, and responding to requests, and communicate those policies and procedures to staff.

**Management's Response.** The Acting Director and Chief Counsel concurred with the recommendation. The Division has begun to document current processes for no-action and interpretive letters, exemptions, and waivers in all seven of the offices that handle these requests. CF is reviewing each of these processes to ensure that they are efficient and up-to-date. The ongoing review will result in documented

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<sup>11</sup> We found that CF responded to and otherwise properly managed these requests.

<sup>12</sup> Pub. L. 111-352, 124 Stat. 3866 (2011). GPRA is the Government Performance and Results Act of 1993, which was updated in 2010 by the GPRA Modernization Act of 2010.

procedures that will be communicated broadly to the staff. Management's complete response is reprinted in Appendix II.

**OIG's Evaluation of Management's Response.** Management's proposed actions are responsive; therefore, the recommendation is resolved and will be closed upon verification of the action taken.

**Recommendation 2:** Perform periodic validations of data used to track requests for no-action and interpretive letters, exemptions, and waivers to ensure the data's accuracy and completeness and to correctly calculate the Division's annual performance metric.

**Management's Response.** The Acting Director and Chief Counsel concurred with the recommendation. The Division has implemented new procedures to perform periodic validations of data used to track requests for no-action and interpretive letters. As part of the new procedures, Senior Officers are now responsible for verifying the completeness and accuracy of the data used to track these requests on a quarterly basis. Management's complete response is reprinted in Appendix II.

**OIG's Evaluation of Management's Response.** Management's proposed actions are responsive; therefore, the recommendation is resolved and will be closed upon verifications of the action taken.

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## Appendix I. Scope and Methodology

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We conducted this performance audit from August 2016 through March 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

**Scope.** The audit covered the period of January 1, 2014, through June 30, 2016.<sup>13</sup> Our objective was to assess CF's management of requests the Division receives. Specifically, we sought to:

- determine whether CF has developed and implemented policies and procedures to manage requests for no-action and interpretive letters, exemptions, and waivers, in compliance with applicable laws and regulations; and
- evaluate CF's processes for managing requests for no-action and interpretive letters, exemptions, and waivers and the internal controls related to consistency, timeliness, and public availability.

We performed fieldwork at the SEC's Headquarters in Washington, DC.

**Methodology.** We interviewed management and staff from CF's seven legal policy and accounting offices to gain an understanding of their responsibilities and processes for managing requests. We interviewed CF's former Director and Acting Director, Managing Executive, office chiefs, and other personnel to determine whether CF developed and implemented policies and procedures in accordance with Federal laws and regulations and internally developed metrics. We determined that there are no legal mandates for how quickly the SEC must respond to requests or resolve a matter. Instead, CF has established an internally developed target of providing initial comments to requests for no-action and interpretive letters within 30 days of receiving such requests.

To assess CF's use of information technology, we met with the CF Information Technology and Disclosure Support branch chief and gained an understanding of the databases CF uses to track and manage requests. We obtained access to each database, reviewed design and requirement documents, and conducted walkthroughs with end-users.

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<sup>13</sup> For Rule 14a-8 (17 C.F.R. 240.14a-8) no-action letters, also known as "shareholder proposals," we extended the beginning of our scope period to November 2013. Doing so allowed us to review three full cycles of the shareholder proposal process, as each cycle lasts approximately from November to March.

**Internal Controls.** To assess internal controls relative to our objective, we obtained CF's management assurance statements and risk assessments for FYs 2015 and 2016. In its FY 2015 statement, CF did not report any significant deficiencies or material weaknesses but did report taking corrective action to address a control deficiency related to performance metric reporting accuracy. Additionally, in FY 2016, CF learned of an error in completeness of a database used to generate one of the Division's performance metrics. CF stated that it did not believe that the omission caused any significant or material error in the Division's previously-reported results. CF noted that it planned to take action to ensure completeness for the year-end FY 2016 reporting and to improve the design of the control in FY 2017.

We also assessed the design and implementation of internal controls and identified and tested key internal controls. Specifically, we assessed CF's (1) accuracy and timeliness in recording requests, (2) timeliness in providing initial comments to written requests, (3) supervisory review and approval process, and (4) publication of written responses, as appropriate. To do so, we obtained and reviewed a non-statistical sample of 30 completed requests, including all relevant documents associated with the initial request through resolution. We found that CF generally entered information into databases accurately and timely, provided initial comments timely, ensured supervisory review of the work conducted by staff, processed similar requests in a consistent manner, and made response letters publicly available on the SEC's website. However, as stated in this report, we identified opportunities for CF to further improve its management of requests. Specifically, we found that policies and procedures were outdated or did not exist, and that the database used to track no-action and interpretive letter requests and produce externally-reported performance metrics may be incomplete. Our recommendations, if implemented, should improve CF's management of requests.

**Computer-processed Data.** GAO's *Assessing the Reliability of Computer-Processed Data* (GAO-09-680G, July 2009) states that "data reliability refers to the accuracy and completeness of computer-processed data, given the uses they are intended for. Computer-processed data may be data (1) entered into a computer system or (2) resulting from computer processing." Furthermore, GAO-09-680G defines "reliability," "completeness," and "accuracy" as follows:

- "Reliability" means that data are reasonably complete and accurate, meet your intended purposes, and are not subject to inappropriate alteration.
- "Completeness" refers to the extent that relevant records are present and the fields in each record are appropriately populated.
- "Accuracy" refers to the extent that recorded data reflect the actual underlying information.

To address our objective, we relied on request data from CF's MS Access databases. To assess the reliability, completeness, and accuracy of the data, we interviewed CF personnel, obtained access to the databases, and conducted walk-throughs to

determine the databases' capabilities. We used reports from the databases to perform limited reliability testing. Specifically, we compared the number of requests CF responded to during the period we reviewed (as reported by the databases) to the response letters published on the SEC's website. Although the comparison did not yield a perfect match, CF management had already disclosed requests that had not been entered into the databases, and we considered the differences in data to be immaterial. Therefore, we determined that CF's request data were sufficiently reliable to support our conclusions.

**Prior Coverage.** During the last 11 years, the SEC OIG has issued the following two reports of particular relevance to this audit:

- *Oversight of and Compliance With Conditions and Representations Related to Exemptive Orders and No-Action Letters* (Audit Report No. 482, June 29, 2011); and
- *IM Exemptive Application Processing* (Audit Report No. 408, September 29, 2006).

These reports can be accessed at:

[https://www.sec.gov/about/offices/oig/inspector\\_general\\_audits\\_reports.shtml](https://www.sec.gov/about/offices/oig/inspector_general_audits_reports.shtml).

## Appendix II. Management Comments

### MEMORANDUM

**TO:** Rebecca L. Sharek, Deputy Inspector General for Audits, Evaluations, and Special Projects, Office of Inspector General

**FROM:** Shelley Parratt, Acting Director, Division of Corporation Finance  
David Fredrickson, Chief Counsel, Division of Corporation Finance

**RE:** Audit of the Division of Corporation Finance's Management of Requests for No-Action and Interpretive Letters, Exemptions, and Waivers, Draft Report No. 540

**DATE:** March 23, 2017

The Division of Corporation Finance submits this memorandum in response to the Office of Inspector General's draft report number 540 entitled "Audit of the Division of Corporation Finance's Management of Requests for No-Action and Interpretive Letters, Exemptions, and Waivers."

We appreciate the acknowledgement of the Division's internal efforts to assess and improve the management of requests for no-action and interpretive letters, exemptions and waivers. As noted in the Report, over the last several years the Division has undertaken a number of initiatives to improve its processes for responding to these requests.

The Report included two recommendations to improve the Division's management of requests for no-action and interpretive letters, exemptions and waivers. As described more fully below, we concur with both of the recommendations in the Report.

***Recommendation 1:** Update or develop, as necessary, policies or procedures for receiving, recording, and responding to requests, and communicate those policies and procedures to staff.*

The Division concurs with this recommendation. While the Division has met or exceeded its response rate targets for written requests for no-action and interpretive guidance in the last five years, the Division agrees that updated policies and procedures will enhance its ability to preserve institutional knowledge and assess and report performance. In fact, in response to the FY16 management assurance process, the Division began to document current processes for no-action and interpretive letters, exemptions and waivers in all seven of the offices that handle these requests. The Division is reviewing each of these processes to ensure that they are efficient

and up-to-date. This ongoing review will result in documented procedures that will be communicated broadly to the staff.

***Recommendation 2:** Perform periodic validations of data used to track requests for no-action and interpretive letters, exemptions, and waivers to ensure the data's accuracy and completeness and to correctly calculate the Division's annual performance metric.*

The Division also concurs with this recommendation. In FY 2016, the Division discovered, during the calculation of its quarterly performance metrics, a small percentage of requests for no-action and interpretive letters had not been entered into the internal database used to track requests. In response, the Division implemented new procedures to perform periodic validations of data used to track requests for no-action and interpretive letters. As part of the new procedures, Senior Officers are now responsible for verifying the completeness and accuracy of the data used to track these requests on a quarterly basis.

The Division continues to evaluate the processes used to track requests for no-action and interpretive letters, and it is formulating recommendations for further actions to ensure the data's accuracy and completeness. Preliminary findings suggest that implementing consistent technology across the offices responsible for processing requests would enhance the Division's ability to track and monitor requests, to report trends to management, and to accurately calculate the Division's annual performance metrics. Funding to develop this technology has been requested in the FY18 budget.

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## Comments and Suggestions

If you wish to comment on the quality or usefulness of this report or suggest ideas for future audits, evaluations, or reviews, please send an e-mail to OIG Audit Planning at [AUDplanning@sec.gov](mailto:AUDplanning@sec.gov). Comments and requests can also be mailed to the attention of the Deputy Inspector General for Audits, Evaluations, and Special Projects at the address listed above.