



GAO

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United States Government Accountability Office  
Washington, DC 20548

April 22, 2010

The Honorable Dennis Moore  
Chairman  
Subcommittee on Oversight and Investigations  
Committee on Financial Services  
House of Representatives

Subject: *Securities and Exchange Commission: Information on Fair Fund Collections and Distributions*

Dear Mr. Chairman:

The Securities and Exchange Commission's (SEC) primary mission is to protect investors and maintain the integrity of securities markets. As a part of its responsibility to protect investors, SEC seeks to ensure that individuals who violate federal securities laws and regulations take responsibility for their misdeeds. Specifically, when individuals or firms are found to have violated securities laws, SEC may order civil monetary penalties and seek ill-gotten financial gains, or disgorgement, from the violators.<sup>1</sup> For its enforcement actions to be successful, SEC must have a collection and distribution program for both civil monetary penalties and disgorgement that functions effectively.

In 2002, Congress passed the Sarbanes-Oxley Act to address corporate malfeasance and restore investor confidence in the U.S. securities markets. This legislation established numerous reforms to increase investor protection, including Section 308(a), the Federal Account for Investor Restitution provision, commonly known as the Fair Fund provision. This provision allows SEC to combine civil monetary penalties and other donations to disgorgement funds for the benefit of investors who suffer losses resulting from fraud or other securities violations. Fair Funds may be created through either SEC administrative proceedings or litigation in U.S. District Court, and either SEC or the courts may administer the funds. However, SEC is responsible for general monitoring of all Fair Funds created, reinforcing the need for SEC to have an effective collection and distribution program for both civil monetary penalties and disgorgement so that additional funds collected as a result of the Fair Fund provision can benefit harmed investors. In 2007, SEC created the Office of Collections and Distribution (OCD) to manage the collection of penalties and disgorgement, including Fair Funds, and speed the process of returning funds back to harmed investors.

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<sup>1</sup>Disgorgement is a remedy designed to deprive defendants of their ill-gotten gains derived from their illegal activities.

We have issued a number of reports on SEC's Fair Fund program and made a number of recommendations designed to help SEC improve the Fair Fund program management and internal controls.<sup>2</sup> For example, in 2005, we recommended that SEC ensure that management establish a procedure for consistently collecting and aggregating its Fair Fund data to assist in the monitoring and managing of the distribution of monies to harmed investors and establish measures to evaluate the timeliness and completeness of distribution efforts. In 2007, we recommended that SEC establish and implement a comprehensive plan for improving the management of the Fair Fund program, to include (1) staffing the new central Fair Fund office, defining its roles and responsibilities, and establishing relevant written procedures and (2) ensuring the consistency of and analyzing final accounting reports on completed Fair Fund plans. In 2009, we recommended that SEC, to help ensure effective and efficient operation of OCD, consider an alternative organizational structure and reporting relationship for the office. SEC generally has agreed with our recommendations. We have previously reported that SEC continues to make refinements and improvements in many areas but that some recommendations designed to further strengthen their data collection efforts remain open.

Because of your interest in ensuring that SEC effectively manages its resources and enforces compliance with securities laws and regulations, you requested that we follow up on our previous work, including updating the information on the status of Fair Funds presented in our 2007 report and SEC's progress in implementing our recommendations related to OCD. Accordingly, this study examines (1) the status of Fair Fund collections and distributions and (2) the actions that SEC has taken to address our previous recommendations regarding SEC's OCD. On March 15, 2010, we briefed staff from your office on the results of this work. This report summarizes the information provided during that briefing. (Enclosure I contains the slides used during the briefing.)

To determine the status of Fair Fund collections and distributions, we reviewed and analyzed SEC data on Fair Fund cases from 2001 through February 2010, examining funds ordered, collected, and distributed, and the judgment dates of cases. We also reviewed SEC data on funds distributed in tranches and fund distribution overseen by SEC and by the courts. According to SEC, although the Fair Fund data provided comes from sources that have not been reconciled with the other SEC data systems, it is the best available information. We used the same data source in reporting on Fair Funds in 2007 and have determined it to be sufficient for our purposes.<sup>3</sup> To identify the actions SEC has taken to improve the efficiency of OCD, we reviewed documentation on policies and practices for Fair Funds and examined SEC planning documentation, such as their disgorgement and Fair Fund Distribution Manual. We also interviewed SEC officials about OCD and steps taken to improve the Fair Fund distribution process.

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<sup>2</sup>GAO, *Securities and Exchange Commission: Greater Attention Needed to Enhance Communication and Utilization of Resources in the Division of Enforcement*, [GAO-09-358](#) (Washington, D.C.: Mar. 31, 2009); *Securities and Exchange Commission: Additional Actions Needed to Ensure Planned Improvements Address Limitations in Enforcement Division Operation*, [GAO-07-830](#) (Washington, D.C.: Aug. 15, 2007); and *SEC and CFTC Penalties: Continued Progress Made in Collection Efforts, but Greater SEC Management Attention Is Needed*, [GAO-05-670](#) (Washington, D.C.: Aug. 31, 2005).

<sup>3</sup>[GAO-07-830](#).

We conducted our work from December 2009 to April 2010 in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for any findings and conclusions.

## Summary

Since 2007, fewer Fair Funds have been established and the collection and distribution of Fair Funds have increased, but many Fair Funds continue to remain open and active for years. From 2002 through February 2010, \$9.5 billion in Fair Funds were ordered, with the majority of this total ordered prior to May 2007. Since that date, only \$521 million, or less than 6 percent, of total Fair Funds have been ordered. Of the \$9.5 billion total Fair Funds ordered, \$9.1 billion (96 percent) has been collected and \$6.9 billion (76 percent) of the Funds collected has been distributed. In comparison, in 2007, only 21 percent of Fair Funds had been distributed. Although the percentage of Fair Funds distributed has increased, there are many Fair Funds that remain open and active for years. For example, our analysis of SEC data shows that of the 128 ongoing Fair Fund cases, over half have been ongoing for more than 4 years. SEC officials offered several reasons why Fair Funds remain open, including difficulties in obtaining investor information and legal objections and appeals that must be settled. To improve its management of Fair Fund cases, SEC proposed a performance metric of tracking the number of cases that have completed distribution within 2 years of the appointment of a Fund administrator.<sup>4</sup> However, to date, SEC has not started collecting the data in a manner necessary to track this measure.

SEC has taken steps to increase efficiency and assess Fair Fund distribution, but a number of actions that are necessary to improve tracking of distribution related information are still pending. In response to our recommendations, SEC centralized the administration of collections and distributions under OCD and subsequently eliminated the dual reporting structure that initially existed in this new office. According to SEC, the creation of OCD has allowed the opportunity to build institutional knowledge and decreased inefficiencies by developing key administrative aspects of the program. SEC officials also told us that they have implemented other operational and administrative changes that are designed to improve Fair Fund distribution. For example, SEC established a working group to share information and to coordinate between functions on distribution plans and to identify problems that may slow distribution. However, SEC officials acknowledged that Fair Fund information and data tracking still need improvement. SEC officials said they have not implemented any major improvements to Fair Fund-related data management since 2007 and that additional improvements are needed in recording

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<sup>4</sup>According to a draft of the SEC Strategic Plan for Fiscal Years 2010-2015, the proposed performance metric would measure the percentage of Fair Fund and disgorgement fund plans that distributed the final tranche of funds to injured investors within 24 months of the order appointing the Fund administrator. SEC officials said that the date a Fund administrator was appointed is currently not tracked.

and monitoring of Fair Fund data. For instance, Fair Fund data are housed in several different databases that have not been reconciled and aggregate information on Fair Fund administrative expenses is unavailable. According to SEC officials, an extensive review of the Fair Fund program is under way, the findings of which may result in changes to workflow, procedures, and information systems. While SEC is taking steps to better capture, report, and manage the programmatic and financial impact of the collections and distribution process, it is too early to determine the impact and ultimate success of these efforts.

### **Agency Comments**

We provided SEC with a draft of the enclosed briefing slides for review and comment prior to briefing Committee staff. SEC provided technical comments that were incorporated, where appropriate. We also provided a draft of this report to the Chairman of SEC for her review and comment. SEC provided written comments on the draft, which we have reprinted in enclosure II. In its written comments, SEC noted the upward trend in Fair Fund distribution and said that it is committed to having a timely and efficient process for making Fair Fund distributions to injured investors. SEC agreed with our finding that improvements in Fair Fund information and data tracking are necessary and said they have hired an external consultant to advise the agency in improving business processes and integrating data systems.

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We are sending copies of this report to the Chairman of SEC and other interested parties. The report will be available at no charge on the GAO Web site at [www.gao.gov](http://www.gao.gov).

If you or your staff have any questions regarding this report, please contact me at (202) 512-8678 or [clowersa@gao.gov](mailto:clowersa@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Orice Williams Brown, Director; Karen Tremba, Assistant Director; Simon Galed; Akiko Ohnuma; Omyra Ramsingh; Barbara Roesmann; and Andrew Stavisky.

Sincerely yours,



A. Nicole Clowers, Acting Director  
Financial Markets and Community Investment

Enclosures - 2



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**Briefing to Subcommittee on Oversight and  
Investigations, House Committee on  
Financial Services**

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**Information on Securities and  
Exchange Commission Fair Fund  
Collections and Distributions**

**March 15, 2010**

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## Briefing Outline

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- Background
- Objectives and Summary of Results
- Scope & Methodology
- SEC Fair Fund Collections and Distributions
- SEC Fair Fund Enforcement and Administration

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## Background

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- SEC was created in 1934 as an independent agency with the mandate to regulate the securities markets
    - SEC's mission is to protect investors, maintain fair, honest, and efficient markets, and facilitate capital formation.
  - The Fair Fund program was established under the Sarbanes-Oxley Act of 2002. The program provides for penalties to be paid for the benefit of investors who suffer losses resulting from fraud or other securities violations.
  - Disgorgement deprives securities law violators of ill-gotten gains linked to their wrongdoing.
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## Background (continued)

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- Under the Fair Fund program, SEC can combine the proceeds of monetary penalties and disgorgements into a single fund and then distribute the proceeds to harmed investors.
- Fair Funds can be overseen by SEC or by the courts.
- SEC created the Office of Collections and Distributions (OCD) to manage the collection of penalties and disgorgement and speed the process of distributing funds to harmed investors.
- In 2005, 2007, and 2009, GAO made several recommendations to SEC that would directly and indirectly improve the Fair Fund program management and internal controls (GAO-05-670, GAO-07-830, GAO-09-358).<sup>1</sup>

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<sup>1</sup>GAO, *SEC and CFTC Penalties: Continued Progress Made in Collection Efforts, but Greater SEC Management Attention Is Needed*, GAO-05-670 (Washington, D.C.: Aug. 2005); *Securities and Exchange Commission: Additional Actions Needed to Ensure Planned Improvements Address Limitations in Enforcement Division Operation*, GAO-07-830 (Washington, D.C.: Aug. 2007); *Securities and Exchange Commission: Greater Attention Needed to Enhance Communication and Utilization of Resources in the Division of Enforcement*, GAO-09-358 (Washington, D.C.: Mar. 2009)

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## Objectives and Summary of Results

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1. What is the status of SEC Fair Fund collection and distribution?

*Since 2007, fewer Fair Funds have been established and collection and distribution of Fair Funds have increased, while many Fair Funds remain open and active for years.*

2. What actions have been taken to address our previous recommendations related to the SEC Office of Collections and Distributions (OCD)?

*SEC has identified steps to increase efficiency and assess Fair Fund distribution, but a number of actions that are necessary to improve tracking of distribution related information are still pending.*

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## Scope & Methodology

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- To determine the status of collections and distributions, we
    - reviewed and analyzed SEC data on Fair Funds created from 2001 to February 2010;
  - To determine SEC actions to improve the OCD, we
    - interviewed SEC officials about steps taken to improve Fair Fund distribution; progress made in addressing outstanding GAO recommendations regarding our review of OCD's organizational structure; and
    - reviewed SEC documentation on policies and practices for Fair Fund distribution.
  - Limitations:
    - According to SEC, the Fair Fund data provided is the best available information. It comes from sources that have not been fully reconciled with other SEC data systems.
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## Scope & Methodology (continued)

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- We conducted our work from December 2009 to March 2010 in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for any findings and conclusions.

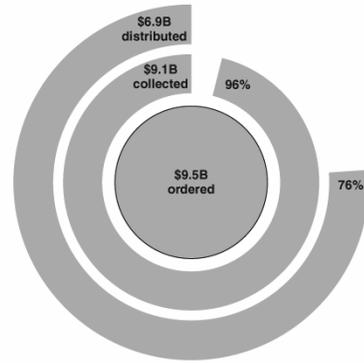
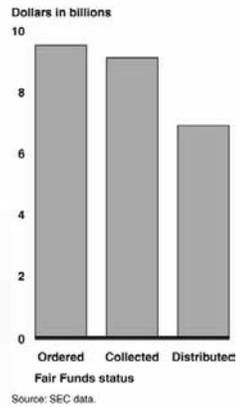
## SEC Data on Fair Funds Ordered, Collected, and Distributed

- The total amount of Fair Funds ordered in recent years has declined as the percent of Funds distributed has increased.
  - Ordered: \$9.5 billion as of February 2010; \$8.9 billion had been ordered through May 2007.<sup>1</sup>
  - Collected: \$9.1 billion or 96 percent of funds ordered to date have been collected.
  - Distributed: \$6.9 billion or 76 percent of funds collected to date have been distributed.

<sup>1</sup>In 2007, we reported that \$8.4 billion had been ordered according to SEC data (see GAO-07-830). SEC has subsequently adjusted this figure as additional information became available in Fair Funds cases.

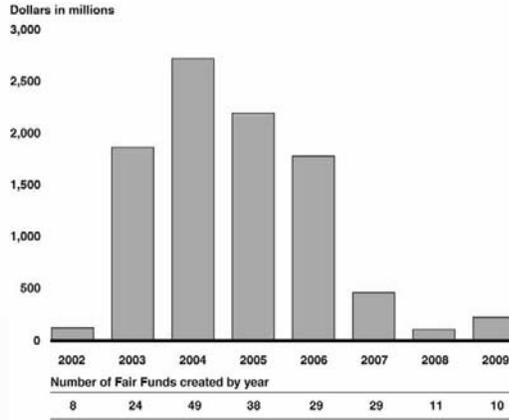
## SEC Data on Fair Funds Ordered, Collected, and Distributed (continued)

- Fair Funds ordered, collected, and distributed through Feb. 2010
- Percent of ordered funds that have been collected and collected funds that have been distributed



## Fair Funds Established and Funds Ordered

- Fewer Fair Funds have been created in recent years and the dollar amount of funds ordered have been significantly lower after 2006.



Sources: SEC data.

## The Fair Fund Distribution Rate Increased Significantly Since 2007

- In 2007, we reported that 21 percent of Fair Funds had been distributed. According to SEC, as of February 2010, 76 percent of Fair Funds collected have been distributed.<sup>1</sup>
- The significant increase in the percent of funds distributed could owe to the fact that the bulk of Fair Funds—also some of the largest Fair Funds—were ordered prior to 2007 and have been distributed since the 2007 GAO report.
  - Since May 2007, about \$520 million or 5.5 percent of total Fair Funds have been ordered. According to SEC, recent Fund orders have been lower because
    - Fewer Fair Funds have been established since the large financial fraud cases in 2004-2005; and
    - SEC determined that Fair Funds are not appropriate for certain types of cases.

<sup>1</sup>The Fair Fund distribution rate in GAO-07-830 was calculated using Funds ordered. Based on input from SEC, the February 2010 distribution rate is based on Funds collected.

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## Improved Fair Fund Distribution

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- SEC officials said the distribution rate has increased because of changes in processing Fair Funds.
    - Issues concerning tax consequences were resolved through private letter rulings from the Internal Revenue Service.
    - In 2007, SEC began distribution of Fair Funds in tiers or tranches by distributing funds to investors in steps, as harmed investors were identified.
      - SEC identified 12 Funds that are currently being distributed in tranches, amounting to \$2 billion of distributed funds.
    - SEC officials believed operational and organizational changes have improved Fair Fund Distribution.
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## The Largest Fair Funds Were Established Before 2007

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- The ten largest Fair Funds to be established through January 2010 are the same as reported in 2007.
  - The ten largest Funds account for \$4.3 billion, or nearly half of all funds ordered. All funds ordered in the ten largest cases have been collected.
  - In the ten largest Fair Funds, 89 percent or \$3.9 billion of Funds' proceeds have been distributed as of February 2010.
  - Of the ten largest Fair Funds, two have completed distribution to investors (Fannie Mae and Time Warner).
  - SEC often collects and distributes more monies to investors than funds ordered because the Funds proceeds' accrue interest and money is contributed to the Funds from sources other than penalties or disgorgement.
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Objective 1: Collections and Distributions



**The Largest Fair Funds Were Established Before 2007 (continued)**

**The 10 Largest Fair Funds Orders, as of February 2010**

Fair Fund	Alleged type of activity	Source	Judgment date	Total ordered and collected	Total distributed
AIG	Improper accounting and workers' compensation practices	Court	2/17/2006	\$800,000,000	\$843,350,000
WORLDCOM, INC.	Overstating income	Court	7/7/2003	\$677,500,000	\$673,444,544
Global Settlement	Research and investment banking conflicts of interest	Court	10/31/2003	\$432,750,000	\$377,035,532
Enron	Earnings manipulation	Court	7/30/2003	\$422,995,012	\$0
BANK OF AMERICA (BACAP) (MT)	Market timing trading and late trading in mutual fund	SEC	2/9/2005	\$375,000,000	\$212,720,199
Fannie Mae	Fraudulent accounting	Court	8/9/2006	\$350,000,001	\$356,128,500
INVESCO (MT)	Market timing trading in mutual funds	SEC	10/8/2004	\$325,840,004	\$418,127,632
Alliance Market Timing	Market timing trading in mutual funds	SEC	4/28/2005	\$321,230,003	\$341,982,094
Massachusetts Financial Services (MT)	Market timing trading in mutual funds	SEC	2/5/2004	\$308,249,143	\$312,042,489
TIME WARNER	Overstating online revenue and number of internet subscribers	Court	3/29/2005	\$300,000,001	\$317,000,000

Source: SEC

<sup>1</sup>The Enron Fair Fund has not distributed any funds to date as a result of ongoing litigation and the high number of potential claimants.

## Court vs. SEC-overseen distributions

- SEC and court-overseen cases have a similar percent of funds distributed. In 2007, court-overseen Fair Funds had higher distribution rates.

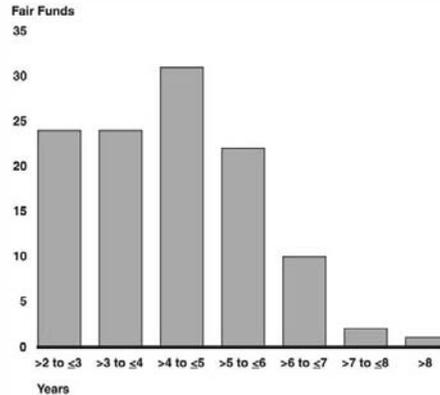
**Fair Funds Orders, Collections and Distribution, as of February 2010**

	SEC-overseen Fair Funds	Court-overseen Fair Funds	All Fair Funds
Number of plans	73	126	199
Total amount ordered (in thousands)	\$4,345,843	\$5,121,205	\$9,467,048
Total amount collected (in thousands)	\$4,344,760	\$4,779,151	\$9,123,911
Total amount distributed (in thousands)	\$3,264,135	\$3,626,031	\$6,890,166
Percent distributed	75.1	75.9	75.5
2007 percent distributed	24.9	16.4	20.9

Source: GAO analysis of SEC data.

## Completion of Fair Funds Cases

- SEC identified 71 Fair Funds that have completed distribution to investors and 128 cases that have not completed distribution.
- Duration of ongoing cases:



Source: GAO analysis of SEC data.

<sup>1</sup>Duration of Fair Funds is based on the date money was first collected. In 1 Fair Fund case, money was first collected as disgorgement prior to the establishment of Fair Funds under the Sarbanes-Oxley Act of 2002.

## Completion of Fair Fund Cases

- Of the 128 Fair Fund cases that have not completed distribution, 114 have been ongoing for longer than 2 years.

**Ongoing Fair Funds Orders, Collections and Distribution, as of February 2010**

Duration	Fair Funds	Fair Funds ordered but not collected	Fair Funds collected but not distributed	Percent distributed
Ongoing between 2 and 3 years	24	\$104,318,421	\$307,193,044	19.2
Ongoing between 3 and 4 years	24	\$122,787,909	\$237,500,451	86.2
Ongoing between 4 and 5 years	31	\$48,127,690	\$897,545,933	66.8
Ongoing between 5 and 6 years	22	\$40,692,486	\$438,477,621	79.1
Ongoing between 6 and 7 years	10	\$2,357,170	\$490,991,386	62.0
Ongoing between 7 and 8 years	2	\$44,000	\$460,672	0.0
Ongoing for longer than 8 years	1	\$51,733	\$8,401,118	0.0
<b>Total</b>	<b>114</b>	<b>\$318,379,409</b>	<b>\$2,380,570,224</b>	<b>70.5</b>

Source: GAO analysis of SEC data.

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## Delays in Completing Fair Funds Cases

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- According to SEC, Fair Funds remain open for many years for a number of reasons.
    - Obtaining investor information from financial intermediaries poses a challenge.
    - Every case represents a unique challenge because investor information is not maintained uniformly.
    - Distribution can be delayed by objections and appeals from investors.
    - Lack of information can delay calculation of each investor's share of the Fund and the preparation of investor payment files.
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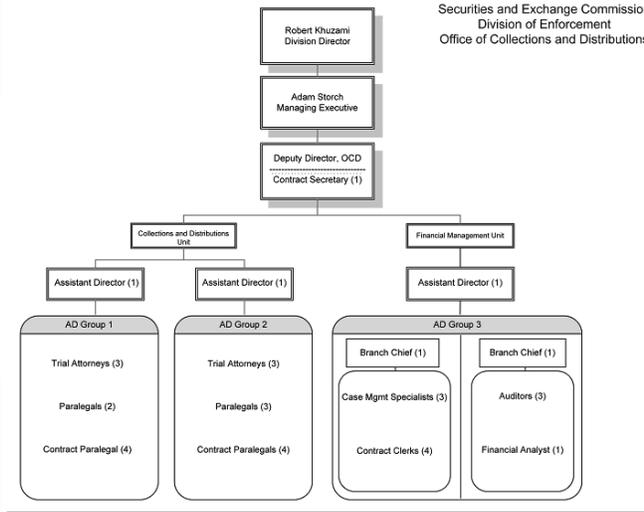
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## Steps Taken by Division of Enforcement to Increase Efficiency

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- In 2007, we recommended that SEC establish and implement a comprehensive plan for improving the management of the Fair Fund program, including staffing the new central Fair Fund office, defining its roles and responsibilities, and establishing relevant written procedures. Subsequently in 2009, we recommended that SEC reorganize OCD to address organizational concerns.
  - SEC has taken steps to address these recommendations.
    - According to SEC, the creation of OCD has allowed the opportunity to build institutional knowledge and decreased inefficiencies by developing key administrative aspects of the program.
    - SEC officials said they have reorganized OCD under a new Managing Executive within the Enforcement Division and has eliminated the dual-reporting structure that previously existed.
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# SEC Officials Have Streamlined OCD's Organizational Structure



Source: SEC.

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## Enforcement Division Operational Changes

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- According to officials, SEC has introduced operational changes that are designed to improve Fair Fund distribution through information sharing and collaboration.
  - SEC officials said they have initiated a “working group” on distribution issues. According to SEC,
    - beginning in October 2009, OCD created an inter-office “working group” to ensure information sharing on problems or disruptions in Fund distribution.
    - the purpose of the working group is to coordinate between functions on distribution plans and to identify problems that may slow distribution.
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## Enforcement Division Operational Changes (continued)

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- SEC officials said that central oversight has improved Fund distribution. According to SEC,
  - OCD is providing centralized guidance on developing and administering distribution plans.
  - OCD is now assigning attorneys at SEC headquarters to partner on Fair Fund field cases to ensure consistency in how cases are handled.
  - OCD attorneys provide the staff with expert advice at each step of the process; formulate policies and best practices.

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## Improved Distribution Process

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- SEC officials noted that administrative changes have been implemented to standardize and improve the distribution process. According to SEC,
  - OCD has implemented numerous policies and procedures aimed at standardizing and streamlining distribution.
  - Templates for forms and documentation have been introduced to ensure consistency in how Fund information is processed.

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## SEC Plans New Measure to Assess Fair Fund Distribution

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- SEC proposed a performance measure to assess SEC's progress in distributing Fair Funds in its 2010-2015 Strategic Plan.<sup>1</sup>
- If adopted, the new metric would measure the percentage of Fair Funds that were fully distributed within 24 months of the order appointing the fund administrator.
- As shown above, many Fair Funds cases do not meet the proposed performance measure in distributing final funds to investors within 24 months. SEC officials do not believe the data provided to us was sufficient to make this determination.
- SEC officials said that currently information on Fair Funds necessary to implement the proposed performance measure is not being collected.

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<sup>1</sup>The measure would assess the percentage of Fair Fund and disgorgement fund plans that distributed the final tranche of funds to injured investors within 24 months of the order appointing the fund administrator.

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## SEC Recognizes That Fair Fund Information and Data Tracking Still Need Improvement

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- In 2005, we recommended that SEC establish a procedure to collect Fair Fund data to assist in managing and monitoring distribution (GAO-05-670).
  - SEC officials said that SEC has not implemented any Fair Fund-related major data management system or account reporting changes since 2007 and that additional improvements are needed in recording and monitoring of Fair Fund data.
    - Fair Fund data is housed in several different databases that have not been reconciled.
    - Aggregate information on Fair Fund administrative expenses is unavailable. SEC has case specific information on when final accountings have been performed.
    - Fair Fund case information, such as the date a Fund administrator is appointed, is unavailable.
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## Improvements in Tracking of Distribution Related Information Are Still Pending

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- According to SEC officials, an extensive review of the program is underway, the findings of which may result in changes in workflow, procedures, and information systems.
  - SEC officials said they are in the process of hiring an external consultant to advise SEC in streamlining its business processes and integrating data systems, but the timeframe for completion is unclear.
- While SEC is beginning to take steps to better capture, report, and manage the programmatic and financial impact of the collections and distribution process, it is too early to determine the impact of these efforts.

## Enclosure II



Division of Enforcement

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

April 12, 2010

A. Nicole Clowers  
Acting Director  
Financial Markets and Community Involvement  
U.S. Government Accountability Office  
Washington, DC 20548

Dear Ms. Clowers:

Thank you for the opportunity to respond to the draft study prepared by the Government Accountability Office (GAO) entitled *Securities and Exchange Commission: Information on Fair Funds Collections and Distributions*.

I am pleased that the GAO noted the steps that the SEC has taken to increase efficiency, as well as the increase in distributions of Fair Funds to investors. The creation of our Office of Collections and Distributions has afforded us the opportunity to build institutional knowledge and has decreased inefficiencies by developing key administrative aspects of the program by, for example, providing centralized guidance on developing and administering distribution plans. As the study indicates, many Fair Funds remain open for a variety of reasons, including difficulties in obtaining investor information and the need to respond to legal objections and appeals from investors that must be resolved before moving forward with the distribution; nonetheless as you noted we have distributed over 76% of all Fund collected since 2002. This represents a significant upward trend and demonstrates the Commission's continuing commitment to using the Fair Fund provisions of the Sarbanes-Oxley Act of 2002 to return money to investors injured by securities law violators. SEC Enforcement actions have resulted in the return of billions of dollars to injured investors since the agency received "Fair Fund" authority in 2002. During Fiscal Year 2009, the Commission distributed approximately \$2.1 billion to harmed investors from both disgorgement funds and Fair Funds, a two-fold increase in comparison with the prior fiscal year. During the first half of Fiscal Year 2010, the Commission continued to make significant distributions, totaling over \$1 billion.

As GAO notes, however, that our Fair Fund information and data tracking warrant further improvement. As we discussed during GAO's study, an extensive review of the agency's tracking of disgorgement and penalties is underway, the findings of which may result in changes in workflow, procedures, and information systems. To assist in this project, the agency has hired an external consultant to advise the SEC in improving business processes and

## Enclosure II

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integrating data systems, including those related to distributions. As an important component of the SEC's investor protection mission, we are deeply committed to continuing to improve our processes to timely and efficiently make Fair Fund and disgorgement distributions to injured investors.

Thank you again for the opportunity to comment on this study. If you have any questions relating to our response, please contact me or Joan McKown at (202) 551-4933.

Sincerely,



Robert S Khuzami

cc: Joan McKown  
Adam Storch  
Ken Johnson  
Diego Ruiz  
Lynn Powalski

(250508)

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