

REPORT NO. 573  
AUGUST 30, 2022

OFFICE OF  
**INSPECTOR  
GENERAL**

OFFICE OF AUDITS

**OASB Complied With Statutory  
Requirements But Can Improve  
As It Matures**




OFFICE OF  
INSPECTOR GENERAL

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

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

August 30, 2022

**TO:** Sebastian Gomez Abero, Deputy Director, Office of the Advocate for Small Business Capital Formation

**FROM:**   
Rebecca L. Sharek, Acting Inspector General

**SUBJECT:** *OASB Complied With Statutory Requirements But Can Improve As It Matures*, Report No. 573

Attached is the Office of Inspector General (OIG) final report detailing the results of our evaluation of the design and implementation of the Office of the Advocate for Small Business Capital Formation's (OASB) operations, policies, and controls. The report contains two recommendations that should help further strengthen OASB's programs and operations as it matures, including recommendations to identify and establish performance measures for activities and to update OASB's policies and procedures.

On August 8, 2022, we provided management with a draft of our report for review and comment. In its August 23, 2022 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 management will address the recommendations.

We appreciate the courtesies and cooperation extended to us during the evaluation. If you have questions, please contact me or Kelli Brown-Barnes, Acting Deputy Inspector General for Audits, Evaluations, and Special Projects.

Attachment

cc: Gary Gensler, Chair  
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Heather Slavkin Corzo, Policy Director, Office of Chair Gensler  
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# EXECUTIVE SUMMARY

## OASB Complied With Statutory Requirements But Can Improve As It Matures

REPORT NO. 573 | AUGUST 30, 2022

### WHY WE DID THIS EVALUATION

The Office of the Advocate for Small Business Capital Formation (OASB or the Office) is an independent office of the U.S. Securities and Exchange Commission (SEC, agency, or Commission) established pursuant to the SEC Small Business Advocate Act of 2016 (Advocate Act). OASB's mission is to advance the interests of small businesses and their investors at the SEC and in the capital markets.

We conducted this evaluation to assess OASB's design and implementation of operations, policies, and controls—including coordination and collaboration with other SEC divisions and offices and external stakeholders—to determine whether OASB has met applicable statutory requirements and strategic goals and objectives. Specifically, we sought to (1) evaluate OASB's processes for planning and conducting outreach and engagement activities and for assessing the performance of such activities; (2) assess the design and implementation of OASB's rulemaking feedback process; and (3) verify whether OASB was organizing and executing the SEC's annual Small Business Forum, preparing an independent annual report, serving as a member of the Small Business Advisory Committee, and consulting with the Investor Advocate as required.

### WHAT WE RECOMMENDED

We made two recommendations to strengthen OASB's programs and operations as it matures, including (1) identifying and establishing performance measures for activities, and (2) updating the Office's policies and procedures. Management concurred with our recommendations, which will be closed upon completion and verification of the proposed actions.

### WHAT WE FOUND

We determined OASB effectively established a new independent organization and complied with the statutory requirements outlined in the Advocate Act. Specifically, since commencing operations in January 2019, OASB has done the following:

- conducted outreach events, including educational activities;
- assisted small businesses and their investors;
- analyzed the potential impact of proposed self-regulatory organizations' (SRO) rules and SEC rulemaking on small businesses and their investors;
- consulted with the SEC Investor Advocate;
- issued annual independent reports on activities;
- participated on the Small Business Advisory Committee; and
- planned, organized, and executed the SEC's annual Small Business Forum.

Although the Advocate Act does not require OASB to coordinate with other SEC divisions and offices, many of the Office's functions require OASB personnel to work closely with other divisions and offices. We met with personnel from SEC divisions and offices that OASB coordinated with, and none of them identified any challenges or gaps in coordination with OASB.

OASB created a *Foundational Business Plan* (April 2019) that identified the Office's mission and provided a framework for reaching full-scale programming. The Office then published a strategic plan on July 9, 2021, that outlined 4 key goals and 11 strategies. Although OASB identified goals in its strategic plan, OASB did not develop performance measures (qualitative and/or quantitative) to assess the efficacy of key activities in its strategic goals. Without performance measures, OASB potentially limits (1) the effectiveness of key programmatic activities, and (2) its ability to make data-driven improvements, as needed, to ensure the Office achieves its strategic goals.

Furthermore, although OASB issued policies and procedures, the documents in effect at the time of our review did not include detailed information about workflows, responsibilities, data collection and management, or the expected timing of certain actions, all of which OASB personnel described to us when we asked about the Office's standard practices. In addition, OASB's *Outreach Management System (OMS) User Guide* and *OMS Admin User Guide* did not offer detailed data entry information for the OMS system. Without detailed policies and procedures, as OASB matures and grows as an organization, there is an increased risk that its processes may not be followed correctly, reviews of SEC and SRO proposed rules may be performed inconsistently, and decision making may not be documented properly.

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## Abbreviations

<b>FY</b>	fiscal year
<b>GAO</b>	U.S. Government Accountability Office
<b>OIG</b>	Office of Inspector General
<b>OMS</b>	Outreach Management System
<b>OASB or the Office</b>	Office of the Advocate for Small Business Capital Formation
<b>PRA</b>	Paperwork Reduction Act
<b>RSS</b>	Really Simple Syndication
<b>SEC, agency, or Commission</b>	U.S. Securities and Exchange Commission
<b>SRO</b>	self-regulatory organization
<b>Utility</b>	Federal Register Really Simple Syndication Feed Utility

# Background and Objectives

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## BACKGROUND

The SEC Small Business Advocate Act of 2016 (Advocate Act)<sup>1</sup> established, within the U.S. Securities and Exchange Commission (SEC, agency, or Commission), an independent office—the Office of the Advocate for Small Business Capital Formation (OASB or the Office). In January 2019, OASB commenced operations to advance, at the SEC and in the capital markets, the interests of small businesses and their investors. “Small business” for OASB spans from early-stage start-ups raising initial capital to later-stage private companies whose founders and investors are seeking liquidity, and even to smaller public companies. As required by the Advocate Act, OASB advocates for small businesses and their investors by, among other things, conducting outreach to solicit views on relevant capital formation issues, providing assistance to resolve significant problems with the Commission or with self-regulatory organizations (SROs), analyzing the potential small business impact of proposed regulations and rules, and recommending changes to mitigate capital formation and other issues and promote the interests of small businesses and their investors. OASB is also required to:

- plan, organize, and execute the SEC’s annual Government-Business Forum on Small Business Capital (Small Business Forum) and summarize the proceedings of each year’s event;
- prepare an independent annual report to Congress summarizing OASB’s activities in supporting small businesses and their investors during the immediately preceding fiscal year (FY); and
- participate on the SEC’s Small Business Capital Formation Advisory Committee (Small Business Advisory Committee), which provides the SEC with advice on SEC rules, regulations, and policies relating to: (1) capital raising by emerging, privately-held companies to smaller public companies with less than \$250 million in public market capitalization; (2) trading in the securities of such companies; and (3) public reporting and corporate governance requirements of such companies.

**Establishing a New Office.** On December 21, 2018, the SEC appointed the first Advocate for Small Business Capital Formation (Advocate) to lead OASB.<sup>2</sup> As a new, independent office within the SEC and, under the direction of the first Advocate, OASB created a *Foundational Business Plan* (April 2019) to craft the Office’s mission, define its target market, and begin identifying the capital formation needs of small business market segments. The *Foundational Business Plan* also provided a framework for reaching full-scale programming. On July 9, 2021, OASB published a strategic plan for 2021 through 2025 as a roadmap to guide the Office’s decisions and align actions with mission execution, as Table 1 notes.

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<sup>1</sup> Pub. L. No. 114-284, 130 Stat. 1447 (2016).

<sup>2</sup> The Advocate Act restricts current SEC employees from being named as the Advocate (Section 4(j) [15 U.S.C. §78d] part (2)(C)). The Advocate also serves as OASB’s Director. Throughout this report, we use the terms “Advocate” and “OASB Director” interchangeably. On April 22, 2022, the first Advocate left the Commission and OASB’s Deputy Director has helped administer the functions of the Office until a new Advocate is appointed.

**TABLE 1. Summary of OASB Strategic Plan, 2021-2025**

<b>GOAL 1</b> Engage with small businesses and their investors to solicit views on relevant capital raising issues.	
Strategy 1.1	Conduct outreach with diverse audiences.
Strategy 1.2	Host the SEC's annual Small Business Forum.
<b>GOAL 2</b> Educate small businesses and their investors about capital raising rules to reduce barriers to entry and increase compliance. <sup>a</sup>	
Strategy 2.1	Develop accessible educational materials about capital raising.
Strategy 2.2	Optimize content and delivery based upon changes in market needs and preferences.
<b>GOAL 3</b> Collaborate on pragmatic policy solutions to address capital raising challenges faced by small businesses and their investors.	
Strategy 3.1	Assist small businesses and their investors in resolving issues encountered with the SEC or SROs.
Strategy 3.2	Analyze data on capital raising to identify trends and gaps in funding, including for underrepresented and rural founders, <sup>b</sup> and in areas affected by natural disasters.
Strategy 3.3	Promote practical policy solutions for Commission or Congressional action to address capital raising challenges.
Strategy 3.4	Deliver annual reports to Congress and the Commission that advocate for capital raising solutions.
Strategy 3.5	Support the Small Business Advisory Committee in providing advice to the Commission on capital raising policy.
<b>GOAL 4</b> Empower a mission driven team to leverage varied perspectives to solve the complex problems of an evolving and increasingly diverse capital market.	
Strategy 4.1	Advance diversity, equity, and inclusion throughout OASB operations.
Strategy 4.2	Foster a culture of connectivity, collegiality, and collaboration among OASB staff.

Source: Office of Inspector General (OIG)-generated based on OASB's Strategic Plan, 2021-2025.

<sup>a</sup> Although the Advocate Act does not establish "education" as a required function of OASB, the Office considers education to be part of its overall outreach efforts.

<sup>b</sup> The Advocate Act requires OASB to identify problems that small businesses have with securing access to capital, including any unique challenges to minority-owned, women-owned, and disaster-affected small businesses. In its strategic plan, however, OASB also stipulated rural small businesses as key stakeholders in this area.

**Roles and Responsibilities.** As of June 2022, OASB had 12 personnel<sup>3</sup> whose activities were primarily organized into 2 work streams under (1) a Strategic Engagement Advisor responsible for OASB's outreach and engagement activities (aligned with the Office's first and second strategic goals), and (2) a Policy Manager responsible for OASB's rulemaking feedback process (aligned with the Office's third strategic goal). OASB's staff has been cross-trained and, as needed, can support both work streams. In addition, both work streams report to the Advocate. Between January 1, 2019, and December 31, 2021, OASB completed numerous activities, as Table 2 notes.

<sup>3</sup> OASB's personnel is made up of 10 full-time employees and 2 contractors.



**TABLE 2. Summary of OASB Activities Completed Between January 2019 and December 2021**

Activity	Description	Number of Activities
Outreach events	OASB advocates for small businesses and their investors by conducting outreach events with a particular focus on the unique challenges faced by minority-owned, women-owned, rural, and natural disaster-affected small businesses, to solicit views on relevant capital formation issues.	87 <sup>a</sup>
Educational resources	OASB develops educational materials to assist small businesses and their investors navigate the capital raising framework and to provide high-level summaries of relevant policies and rulemakings. OASB promotes these resources during outreach events and through social media.	19 <sup>b</sup>
Engagement activities <sup>c</sup>	OASB assists small businesses and their investors in resolving significant problems <sup>d</sup> with the Commission or with SROs, through phone calls, e-mails, and in-person meetings.	1,015
SRO proposed rules reviewed	OASB analyzes the potential impact on small businesses and their investors of proposed SRO rules that are likely to have a significant impact on small businesses and small businesses capital formation.	975 <sup>e</sup>
SEC proposed rules reviewed	OASB analyzes the potential impact on small businesses and their investors of proposed Commission rules that are likely to have a significant impact on small businesses and small business capital formation.	51 <sup>f</sup>
Annual reports	OASB annual reports provide (1) statistical information and analyses of the issues on which OASB has worked; (2) information on steps that OASB has taken to improve small business services and the responsiveness of the SEC and SROs to such needs; and (3) a summary of the most serious issues encountered by small businesses and their investors, including any unique issues encountered by minority-owned, women-owned, rural, and natural disaster-affected small businesses.	3
Small Business Advisory Committee meetings	The Small Business Advisory Committee membership is composed of the Advocate and individuals appointed by the Commission who represent smaller public and private companies and their investors and advisors, including officers or directors of minority-owned and women-owned small businesses. OASB coordinates with the Small Business Advisory Committee to host a minimum of four meetings a year. The Committee submits recommendations to the Commission, to which the Commission must respond.	13
Small Business Forum	The SEC's Small Business Forum is an annual event where members of the public and private sectors gather to craft suggestions for securities policy impacting emerging businesses and their investors, from startups to smaller public companies.	3

Source: *OIG-generated based on the SEC's FY 2021 Congressional Budget Justification; OASB policies, procedures, and annual reports; Small Business Forum annual reports; and data provided by OASB.*

<sup>a</sup> This number includes outreach events conducted and attended by OASB personnel.

<sup>b</sup> This number includes capital raising interactive tools and educational videos developed by OASB. As Table 1 mentions, OASB considers education to be part of its outreach efforts.

<sup>c</sup> This excludes outgoing referrals to other SEC divisions and offices and event/speaking engagements.

<sup>d</sup> OASB personnel stated that, to the extent they receive a request for assistance in resolving a problem with the SEC or an SRO (versus seeking resources or technical assistance), they solicit background information from the requesting party, as well as the likely scope of the difficulties. OASB personnel further stated that the significance of the problem is relative to the affected party, not necessarily the significance to the SEC or the SRO.

<sup>e</sup> We identified the number of SRO filings reviewed by OASB through an export from OASB's Federal Register Really Simple Syndication (RSS) Feed Utility (Utility). OASB started using the Utility on October 22, 2020, to identify SRO proposed rules related to the SEC and determine whether each proposed rule may have an impact on small businesses or their investors. OASB reviewed 975 SRO filings between October 22, 2020, and December 31, 2021.

<sup>f</sup> While OASB received 67 proposed rules from other SEC divisions and offices between January 2019 and December 2021, this number reflects only those rules that OASB reviewed because the rules may have a significant impact on small businesses and small business capital formation.

**OASB Policies and Procedures.** On November 25, 2019, OASB issued its initial set of policies and procedures, which contained general guidance on the rulemaking feedback process, data management, and outreach and events. Since then, OASB has updated and issued four additional versions of its

policies and procedures.<sup>4</sup> Updates included (1) new instructions for handling publication and speech clearance requests, (2) a requirement that OASB staff take reasonable measures to evaluate whether OASB reaches out to small businesses and their investors, and (3) a requirement that the OASB Director or Deputy Director approves written comments on the SEC rulemaking process before issuance to agency rulemaking staff.

**OASB Collaboration Site.** To support OASB's mission, the Office uses a collaboration site to store, organize, share, and access the Office's tools and information. Within this site, the Office uses a variety of tools to assist with day-to-day responsibilities, including:

- Outreach Management System (OMS) – OMS allows OASB personnel to document and track activities, such as (1) phone calls, (2) in-person meetings, (3) e-mail resolutions, (4) referrals, and (5) event/speaking engagements.
- SEC Rulemaking List – This list tracks the status of all SEC rulemaking activities reviewed by OASB.
- Federal Register RSS Utility – The Utility is a database designed to read the Federal Register RSS feed for documents related to the SEC and load them into a list managed by OASB. OASB personnel use the Utility to assist in identifying SRO proposed rules that may impact small businesses and their investors.

## OBJECTIVES

Our overall objective was to assess the design and implementation of OASB's operations, policies, and controls—including coordination and collaboration with other SEC divisions and offices and external stakeholders—to determine whether OASB has met applicable statutory requirements and strategic goals and objectives. Specifically, we:

- a) evaluated OASB's processes for planning and conducting outreach and engagement activities and for assessing the performance of such activities;
- b) assessed the design and implementation of OASB's rulemaking feedback process; and
- c) verified whether OASB was organizing and executing the SEC's annual Small Business Forum, preparing an independent annual report, serving as a member of the Small Business Advisory Committee, and consulting with the Investor Advocate as required.

Our evaluation scope period was from the first Advocate's appointment in December 2018 through December 2021. To address our objectives, among other work performed, we (1) interviewed OASB personnel, (2) reviewed the Advocate Act, applicable SEC regulations, and OASB's policies and procedures;<sup>5</sup> (3) obtained an understanding of how OASB uses systems and applications to track and document outreach and engagement activities and to identify and filter relevant SRO proposed

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<sup>4</sup> The updates were dated (1) February 16, 2021; (2) June 10, 2021; (3) January 25, 2022; and (4) February 8, 2022.

<sup>5</sup> Because our scope period covered OASB's activities between December 2018 and December 2021, we reviewed OASB's policies and procedures dated November 25, 2019; February 16, 2021; and June 10, 2021.

rules;(4) evaluated OASB's rulemaking feedback process to determine how the Office identifies relevant SEC proposed rules, analyzes proposed rules, and provides comments; (5) interviewed employees of other SEC divisions and offices to assess coordination efforts relative to our objectives; and (6) attended OASB meetings, including an outreach event, the first day of the 2022 Small Business Forum, and a Small Business Advisory Committee meeting.

Appendix I of this report includes additional information about our scope and methodology, including our review of relevant internal controls and prior coverage.

# Results

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## **FINDING: OASB TOOK STEPS TO EFFECTIVELY ESTABLISH A NEW ORGANIZATION AND COMPLY WITH THE ADVOCATE ACT, BUT DID NOT DEVELOP PERFORMANCE MEASURES OR DETAILED POLICIES AND PROCEDURES**

Since commencing operations in January 2019, OASB has:

- conducted outreach events, including educational activities;
- assisted small businesses and their investors;
- analyzed the potential impact of proposed SRO rules and SEC rulemaking on small businesses and their investors;
- consulted with the SEC Investor Advocate;
- issued annual reports on its activities;
- participated on the Small Business Advisory Committee; and
- planned, organized, and executed the SEC's annual Small Business Forum.

OASB also published a strategic plan and established goals and strategies to guide decisions and align actions with mission execution. Furthermore, other SEC divisions and offices did not identify gaps in coordination with OASB. Although OASB took steps to effectively establish itself as a new organization and meet its statutory requirements, as the Office's programs and operations further mature, OASB can improve by expanding the Office's strategic approach, including, where appropriate, developing performance measures (quantitative and/or qualitative) to assess the efficacy of key activities in its strategic goals, such as outreach efforts. Moreover, OASB can benefit from more detailed policies and procedures. Without such performance measures, OASB potentially limits (1) the effectiveness of key programmatic activities, and (2) its ability to make data-driven improvements, as needed, to ensure the Office achieves its strategic goals. Additionally, more detailed policies and procedures could ensure OASB has clear and consistent methods for performing its duties and collecting the necessary information to guide policy and business decisions.

### **OASB Met Advocate Act Requirements**

As previously discussed, OASB's work can generally be divided across two work streams: (1) reviewing, commenting, and making recommendations on proposed SEC and SRO rules impacting small business capital formation; and (2) conducting outreach to small businesses and their investors regarding capital formation issues. OASB also supports the Small Business Advisory Committee, plans and executes the SEC's annual Small Business Forum, and prepares an annual report to Congress, as required by the Advocate Act. Moreover, although the Advocate Act does not require OASB to coordinate with other SEC divisions and offices, many of the Office's functions require OASB personnel to work closely with other divisions and offices. We met with personnel from SEC divisions and offices that OASB

coordinated with on outreach events and the rulemaking feedback process, including the divisions of Trading and Markets, Investment Management, Corporation Finance, and Economic and Risk Analysis, as well as the Office of Minority and Women Inclusion and the Office of the Investor Advocate. None of these divisions and offices identified challenges or gaps in coordinating with OASB.

To address our objectives, among other work performed, we interviewed personnel from OASB, SEC rulemaking divisions and offices, the Office of the Investor Advocate, and the Office of the Chair. We also reviewed applicable policies and procedures, assessed OASB's rulemaking feedback processes relevant to SEC and SRO rulemaking, and conducted walkthroughs of OASB's collaboration site and tools. As Table 3 notes, we determined that OASB met the requirements of the Advocate Act during the period we reviewed.

**TABLE 3. OASB's Compliance With Advocate Act Requirements Between January 2019 and December 2021**

Advocate Act Requirement	Results of OIG's Compliance Review	Met
Conduct outreach	We reviewed OASB's outreach event listing and the OMS report for the period of January 1, 2019, through December 31, 2021, and found that OASB personnel conducted or participated in 87 outreach events that reached required demographic groups and met applicable statutory requirements. <sup>a</sup> Furthermore, in January 2022, we participated in an outreach event hosted by OASB.	✓
Assist small businesses and their investors in resolving significant problems they may have with the Commission or with SROs	We walked through the engagement input process in OMS and reviewed several engagement records. Overall, we determined that, for the period of January 1, 2019, through December 31, 2021, OASB assisted small businesses and their investors in resolving significant problems. Assistance was provided through phone calls, e-mails, and in-person meetings.	✓
Analyze the potential impact of proposed SRO rules on small businesses and their investors	OASB uses the Utility to identify SRO proposed rules related to the SEC. We verified that the Utility and its underlying queries generated the correct universe of SRO proposed rules. We reviewed the <i>OASB Federal Register RSS Data Feed Process</i> , which provides a process flow of the overall system, and decision points in OASB's process to review SRO proposed rules. We walked through the SRO review process and reviewed available policies. Additionally, because OASB does not perform a secondary review of SRO proposed rules with the action type "No Review Needed," we tested a non-statistical sample of 73 filings with this action type and found no issues with OASB's handling of the matters.	✓
Analyze the potential impact of proposed SEC rulemaking on small businesses and their investors	We reviewed OASB's policies and procedures, which provide a summary of the overall SEC rulemaking process, and were provided a walkthrough of OASB's process to review SEC rulemaking activities. We verified the number of SEC rulemakings within the scope period. We noted that OASB reviewed 51 of 67 rulemakings that were provided to the Office by the SEC's rulemaking divisions and offices. OASB did not review the remaining 16 rulemakings because OASB determined that those rulemakings did not have a significant impact on small businesses and small business capital formation. We also judgmentally selected a sample of two proposed rules that OASB reviewed during our scope period. For both of these proposed rules, we determined that OASB followed the process staff described during the walkthrough.	✓
Consult with the SEC Investor Advocate on proposed recommendations	We met with the former Investor Advocate and the former Director of OASB to understand coordination between the two offices. Both senior officials stated that they met throughout the year to coordinate policy issues, as appropriate.	✓
Issue independent annual reports on activities	We reviewed OASB's annual reports from FY 2019 through FY 2021 and determined that the reports included required information. Additionally, as required, OASB issued the reports to specific Congressional committees before December 31 <sup>st</sup> of each year.	✓

Advocate Act Requirement	Results of OIG's Compliance Review	Met
Participate on the Small Business Advisory Committee	We met with the former Advocate and, in February 2022, attended a Small Business Advisory Committee meeting to confirm the Advocate's participation as a non-voting member of the Committee. Additionally, we determined that the Small Business Advisory Committee met at least four times each year and gave written notice of each meeting to the Committee members no later than 2 weeks before the date of the meeting, as required.	✓
Plan, organize, and execute the SEC's annual Small Business Forum	We confirmed that OASB planned, hosted, and executed the Small Business Forum in FY 2019 through FY 2021. OASB prepared a report, as required, from each year's event and issued the report to the appropriate Congressional committees.	✓

Source: OIG-generated based on the Advocate Act, documents provided by OASB, interviews with agency personnel, and OIG analysis.

<sup>a</sup> According to the OMS report for the period of January 1, 2019, through December 31, 2021, OASB reached the following four demographic groups: (1) women-owned businesses; (2) minority-owned businesses, (3) natural disaster area businesses, and (4) rural businesses. The OMS report showed that an event could cover more than one demographic group and that not every event identified a demographic group.

Although we determined that OASB complied with the requirements of the Advocate Act during the period we reviewed, we also identified areas in which OASB can improve as its programs and operations further mature, as we describe further below.

### OASB Did Not Develop Performance Measures to Assess the Efficacy of Key Activities in Its Strategic Goals

As Table 1 shows, OASB's strategic plan includes 4 goals along with 11 strategies; the Office performs key activities that are aligned to each of its 4 goals. Although we found that OASB (1) conducted or participated in outreach events; (2) developed educational materials; (3) assisted small businesses and their investors in resolving issues encountered with the SEC or SROs; (4) analyzed the potential impact of proposed SEC and SROs rules on small businesses and their investors; and (5) advanced diversity, equity, inclusion, and collaboration throughout the Office,<sup>6</sup> OASB can improve by expanding the Office's strategic approach through the development and use of performance measures to assess the efficacy of these activities.

Notably, federal internal controls standards (promulgated by the U.S. Government Accountability Office [GAO]) state that:

- management should design control activities to achieve objectives and respond to risks, and
- establishing and reviewing performance measures and indicators is one of the most common categories of control activities used by management.<sup>7</sup>

<sup>6</sup> The five activities listed are aligned with all four goals listed in OASB's strategic plan.

<sup>7</sup> U.S. Government Accountability Office, *Standards for Internal Control in the Federal Government* (GAO-14-704G, September 2014); Principle 10, Design Control Activities (10.01 and 10.03).

GAO has also repeatedly reported on the importance of performance measures, stating that, by comparing outcomes with expected results, performance measures provide critical information on whether a program is succeeding in obtaining its goals or has gaps in its performance and needs improvement.<sup>8</sup> Moreover, GAO has defined performance measurement as “the ongoing monitoring and reporting of program accomplishments, particularly progress toward pre-established goals,”<sup>9</sup> and has

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*Performance measures provide critical information on whether a program is successful in obtaining its goals or needs improvements*

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stated that performance measures may address the direct products and services delivered by a program (outputs), or the results of those products and services (outcomes). Finally, according to GAO, agencies should make every attempt to identify and use outcome goals whenever possible to reflect the results of their activities.<sup>10</sup>

For example, when asked how OASB measures the success and effectiveness of its outreach efforts, OASB personnel stated they use both quantitative and qualitative factors. Quantitatively, OASB aims to engage in at least 30 outreach events per year with a variety of demographic groups, including those identified in the Advocate Act.<sup>11</sup> However, an OASB official clarified that this target reflects workload estimates included in the Office’s Congressional Budget Justification submission<sup>12</sup> and explained that the Office does not manage its activities solely by the numbers. Qualitatively, OASB personnel stated they look for meaningful participant engagement during events (such as questions asked), exposure to new audiences, and event partners’ informal feedback after events. However, information is gathered informally, and OASB did not have a process for documenting or tracking specific conversations, questions, or feedback from audience members or panelists. According to OASB personnel, outreach events and speaking invitations are selected based on a number of factors, including availability of resources, staff judgement, and whether or not the group being addressed is one that OASB personnel have reached out to recently. An OASB staff member also explained that there is no algorithm to select outreach events and, in the past, staff have asked event participants basic background questions during the event registration process, but OASB has taken no action based on the information collected. In short,

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<sup>8</sup> A sample of relevant GAO reports issued since May 2021 include: (1) *DOD ANIMAL USE Objectives and Performance Measures Needed to Monitor Use of Alternatives for Trauma Training* (GAO-22-103992, May 2022); (2) *INDIAN ENERGY SERVICE CENTER Support Activities Have Been Provided, but Goals and Performance Measures Should be Defined* (GAO-22-103514, March 2022); (3) *BANKING SERVICES Regulators Have Taken Actions to Increase Access, but Measurement of Actions’ Effectiveness Could Be Improved* (GAO-22-104468, February 2022); (4) *PIPELINE SAFETY Performance Measures Needed to Assess Recent Changes to Hazardous Liquid Pipeline Safety Regulations* (GAO-21-493, June 2021); and (5) *PEDESTRIANS AND CYCLISTS Better Information to States and Enhanced Performance Management Could Help DOT Improve Safety* (GAO-21-405, May 2021).

<sup>9</sup> U.S. Government Accountability Office, *Performance Measurement and Evaluation: Definitions and Relationships* (GAO-11-646SP, May 2011).

<sup>10</sup> U.S. Government Accountability Office, *The Results Act: An Evaluator’s Guide to Assessing Agency Annual Performance Plans* (GGD-10.1.20, April 1998). The Government Performance and Results Act of 1993, as updated and expanded by the GPRA Modernization Act of 2010, generally requires agencies to have performance goals that are objective, measurable, and quantifiable.

<sup>11</sup> This target includes events hosted by OASB and/or other groups, as well as speaking engagements in which OASB participates.

<sup>12</sup> The Congressional Budget Justification requires OASB to identify estimates and actual outputs for workload activities. According to information submitted for the FY 2022 and FY 2023 Congressional Budget Justification, OASB conducted 40 and 32 outreach events and speeches in FY 2020 and FY 2021, respectively, and estimated it would conduct 30 outreach events and speeches in FY 2022.

the quantitative and qualitative factors used have not resulted in recorded data or measurable metrics that could enable OASB to assess the effectiveness of its outreach and engagement program.

OASB personnel explained that OASB is subject to the Paperwork Reduction Act (PRA),<sup>13</sup> which limits the feedback it can request from those who participate in the Office's events, as well as the use of such feedback. Although the SEC received approval for a generic clearance from the PRA, which provides a streamlined approach to comply with PRA requirements, OASB personnel told us that the agency's generic clearance did not support OASB's needs because it did not allow OASB to share collected information publicly, such as in the Office's annual reports to Congress. Therefore, OASB pursued its own PRA generic clearance, which was published in the Federal Register for a 60-day comment period on October 25, 2021, and was approved by the Office of Management and Budget on June 6, 2022. As a result, OASB is now able to collect and publish feedback and information from small businesses and their investors to better understand the population the Office is serving and the small businesses and their investors' role in the small business ecosystem. Collected information will fall into the following four categories:

1. Demographic information about program participants.
2. Feedback on OASB's outreach and educational materials.
3. Answers to capital formation-related questions.
4. Information about issues and challenges faced by small businesses and their investors.

In the future, OASB's ability to collect information under its generic clearance will help ensure that OASB's outreach efforts, communication and educational materials, and other program initiatives are effective and responsive to stakeholder needs (including in content and delivery), and that OASB is achieving its organizational goals. Officials estimate that OASB will collect information for about 20 activities per year for a 3-year period.

When asked why OASB did not have formal performance metrics to measure success against the goals listed in its strategic plan, an OASB official stated that (1) OASB could not collect and publish feedback on its outreach events before approval of its generic clearance, (2) some goals do not lend themselves to meaningful performance metrics, and (3) other goals are dependent on factors outside of OASB's control. However, without performance measures to assess the efficacy of efforts in key activities, OASB potentially limits the effectiveness of key programmatic activities, and its ability to make data-driven improvements, as needed, to ensure the Office achieves its strategic goals.

### **OASB Did Not Establish Detailed Policies and Procedures**

Although OASB management revised and re-issued the Office's policies and procedures more than once, the documents in effect at the time of our review did not include detailed information about workflows, responsibilities, data collection and management, or the expected timing of certain actions, all of which

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<sup>13</sup> Pub. L. No. 104-13, 109 Stat. 163 (1995).



OASB personnel described to us when we asked about the Office's standard practices. According to federal internal controls standards, management should document in policies the internal control responsibilities of the organization, and each unit should document policies in the appropriate level of detail to allow management to effectively monitor the control activity.<sup>14</sup> Furthermore, management should internally communicate the necessary quality information to achieve the entity's objectives.<sup>15</sup> Nonetheless, OASB's written guidance to staff did not offer detailed information on procedures or responsibilities for completing and documenting reviews of proposed SEC and SRO rules and the timing of such reviews.<sup>16</sup> In addition, OASB's *OMS User Guide* (May 5, 2021) and *OMS Admin User Guide* (October 5, 2020) (collectively referred to hereafter as the "OMS Guides") did not offer detailed data entry information for the OMS system, which OASB uses to document and track phone calls, in-person meetings, and e-mails from stakeholders; referrals to other divisions and offices; and outreach events and speaking engagements.

Specifically, OASB personnel told us that, after a division or office sends OASB a draft rule, the OASB Policy Manager determines whether it is likely to have a significant impact on small businesses and their investors and then recommends to the OASB Director or Deputy Director a high-level review,<sup>17</sup> a full review,<sup>18</sup> or no review of the draft rule. If the OASB Director or Deputy Director agrees with the recommendation to perform a review, the OASB Policy Manager assigns the draft rule to a staff attorney who completes the review. However, OASB's policies and procedures in effect at the time of our review did not capture this triage process, nor did they describe the steps taken as part of the attorney's review process. Furthermore, OASB's policies and procedures did not contain guidance on (1) pertinent timing-related issues regarding staff's review of SRO proposed rules, (2) the information required to be documented in the notes of each review, and (3) the level of review for each SRO filing type, though this was documented in a table provided to us.

Similarly, the OMS Guides did not state when or where staff should enter the date on which they first make contact with a stakeholder. OASB's *Best Practices, Tips and Resources for Responding to External Calls/Emails* (February 22, 2022) states that OASB employees should aim to respond to stakeholder calls and e-mails within 48 hours or inform the individual that OASB staff is looking at their request.<sup>19</sup>

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<sup>14</sup> GAO-14-704G; Principle 12, Implement Control Activities.

<sup>15</sup> GAO-14-704G; Principle 14, Communicate Internally.

<sup>16</sup> OASB has issued the following policies and guides: (1) *Federal Register RSS Feed Utility Instructions - User and System Guide* (User and System Guide) (May 8, 2020) and (2) *OASB Federal Register RSS Data Feed Process* (August 21, 2020). The User and System Guide provides instructions on how to download and run the Utility, design and technical features of the Utility, and a Utility data model.

<sup>17</sup> A high-level review is assigned if one or more aspects of the rule may significantly affect small business capital formation. Staff assigned may focus on the limited portion of the rule that may affect small business capital formation or staff may do a more high-level review of the rulemaking that confirms relevant recommendations and that small business feedback has been properly cited in the release. Staff assigned consider whether or not to recommend any comments or discuss any questions with the rulemaking team.

<sup>18</sup> A full review is assigned if the rule is likely to significantly affect small business capital formation. Staff assigned review the full rule and consider whether or not to recommend any comments or discuss any questions with the rulemaking team.

<sup>19</sup> The best practice guide indicates that prompt responses are often the most helpful because the employee most likely would get the best feedback, as the issues will be fresh in the stakeholder's mind. The guide clarifies that 48 hours is not a hard deadline.

Consistency in data entry is necessary to ensure OASB meets its own stated best practice and timely responds to stakeholder needs.

According to OASB personnel, OASB had not developed detailed policies and procedures documenting the process to review proposed SEC and SRO rules because the process requires judgement and is not prescriptive. Personnel's ability to review draft rules comes from training and experience. As a result, OASB management decided to keep the Office's policies and procedures at a higher level. In the event of staff turnover, OASB management plans to train new personnel. With respect to the OMS Guides, OASB personnel stated that not all OMS fields are mandatory but acknowledged the lack of data entry guidance.

We agree that the review of SEC and SRO proposed rules is not a process that aligns itself with a specific direction, such as a checklist. However, without detailed policies and procedures that document roles and responsibilities and the review and approval process, as OASB matures and grows as an organization, there is an increased risk that the process may not be followed correctly, reviews may be performed inconsistently, and decision making may not be documented properly. In addition, the lack of OMS data entry guidance could impact OASB's use of OMS data to track responses to stakeholders, identify and track areas of stakeholder interest, and plan future outreach efforts.

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*A lack of detailed policies and procedures increases programmatic risk*

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## **RECOMMENDATIONS, MANAGEMENT'S RESPONSE, AND EVALUATION OF MANAGEMENT'S RESPONSE**

To further strengthen OASB's programs and operations, we recommend that OASB:

### **Recommendation 1:**

Identify which of the Office's strategic goals and strategies lend themselves to performance measurement (both quantitative and qualitative) and establish performance measures to assess the efficacy of those activities.

**Management's Response.** Management concurred with the recommendation. According to OASB's Deputy Director, the Office has begun the process of identifying which of the goals and strategies lend themselves to performance measurements and will establish performance measures to assess the efficacy of those activities. Management's complete response is reprinted in Appendix II.

**OIG's Evaluation of Management's Response.** Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

**Recommendation 2:**

Update the Office's policies, procedures, and guides to document (a) the process to review proposed SEC and SRO rules, to include documentation requirements and the timing of such reviews; and (b) the data staff should enter in the Outreach Management System to ensure proper tracking of OASB's engagement activities.

**Management's Response.** Management concurred with the recommendation. According to OASB's Deputy Director, the Office will update its policies and procedures (a) with respect to the review of proposed SEC and self-regulatory organization rules, including documentation requirements and the timing of such reviews, and (b) with respect to the Outreach Management System, including additional detail on the data staff should enter to track OASB's engagement activities. Management's complete response is reprinted in Appendix II.

**OIG's Evaluation of Management's Response.** Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

# Appendix I. Scope and Methodology

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We conducted this evaluation from January through August 2022 in accordance with Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation* (2020). Those standards require that we plan and perform the evaluation to obtain sufficient, competent, and relevant evidence to provide a reasonable basis for our findings, conclusions, and recommendations based on our evaluation objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our evaluation objective.

## Objectives and Scope

Our evaluation covered OASB activities from the first Advocate's appointment in December 2018, through December 2021. Our overall objective was to assess the design and implementation of OASB's operations, policies, and controls—including coordination and collaboration with other SEC divisions and offices and external stakeholders—to determine whether OASB has met applicable statutory requirements and strategic goals and objectives. Specifically, we: (1) evaluated OASB's processes for planning and conducting outreach and engagement activities and for assessing the performance of such activities; (2) assessed the design and implementation of OASB's rulemaking feedback process; and (3) verified whether OASB was organizing and executing the SEC's annual Small Business Forum, preparing an independent annual report, serving as a member of the Small Business Advisory Committee, and consulting with the Investor Advocate as required.

## Methodology

To address our objectives, among other work performed, we interviewed OASB personnel, including senior leadership to gain an understanding of the Office's programs. In addition, we:

- reviewed the Advocate Act and assessed OASB's policies and procedures;
- obtained an understanding of how OASB uses systems and applications to track and document outreach and engagement activities and to identify and filter relevant SRO proposed rules;
- evaluated OASB's rulemaking feedback process to determine how the Office identifies relevant SEC proposed rules, analyzes proposed rules, and provides comments;
- interviewed employees of other SEC divisions and offices to assess coordination efforts relative to our objectives; and
- attended OASB meetings, including an outreach event, the first day of the 2022 Small Business Forum, and a Small Business Advisory Committee meeting.

Additionally, to further assess internal controls, we performed tests on OASB's review of proposed SEC and SRO rules. We selected and tested a judgmental sample of 2 out of 67 proposed rules OASB received from other divisions and offices during our scope period to determine whether, in reviewing the proposed rules, OASB followed the process it described during the walkthrough of the review process. We then selected a non-statistical, random sample of 73 out of 1,459 SRO filings with an action type "No Review Needed" to determine whether the correct action type was assigned. Although these samples

were non-statistical and our results cannot be projected to the total population for each test performed, the evidence we gathered helped support our finding, conclusions, and recommendations.

## Internal Controls

We identified and assessed internal controls, applicable internal control components, and underlying principles significant to our objectives, as we describe below.

**Control Environment.** We assessed the control environment established by OASB's management. We reviewed OASB's organizational structure and interviewed staff responsible for maintaining OASB's internal control documentation. We also met with those assigned responsibility for achieving OASB's objectives, including OASB's former Director and Deputy Director.

**Risk Assessment.** We obtained and reviewed the OASB's FY 2020 and 2021 management self-assessment and risk control matrices to identify risks and controls related to OASB. OASB identified the following risks applicable to our objective, which we considered as we planned and performed our work:

1. If OASB is not accessible to small businesses and their investors to raise questions or concerns regarding capital formation, then OASB may be unable to fulfill its mission under the Advocate Act.
2. If OASB does not have an opportunity to comment on SEC or SRO rulemakings or fails to identify significant issues that would affect small businesses and/or their investors, it will not be in compliance with the Advocate Act.
3. If OASB fails to publish (a) its annual report summarizing OASB activities in supporting small businesses and their investors during the immediately preceding fiscal year or (b) the report summarizing the SEC's annual government-business forum on small business capital formation, and findings or recommendations by participants, it will not be in compliance with the Advocate Act and the Small Business Investment Incentive Act of 1980 (15 U.S.C. § 80c-1(d)), respectively.

**Control Activities.** We reviewed applicable federal guidance, SEC regulations, OASB policies and procedures, and risk and control matrices to identify and test key control activities. We tested control activities related to OASB's rulemaking review process and did not find any deficiencies in OASB's process to review SEC and SRO proposed rules. However, as this report describes, we found that as the Office's programs and operations further mature, OASB can improve by expanding the Office's strategic approach to include performance measures to measure the efficacy of certain key activities.

**Information and Communication.** OASB communicates regularly with external stakeholders through its outreach and engagement activities. We conducted a walkthrough of its engagement activities and OASB's process to document stakeholder engagement in OMS. We also met with other SEC divisions and offices and noted no gaps in coordination and communication with OASB. Furthermore, OASB communicates its policies and procedures to the Office's staff. However, as this report describes, we found that at the time of our review, the policies and procedures did not include detailed information about workflows, responsibilities, data collection and management, or the expected timing of certain actions. Moreover, the OMS Guides did not offer detailed data entry information for the OMS system.

**Monitoring.** We reviewed OASB's internal control documentation and policies and procedures. We discussed with OASB management its roles and responsibilities for monitoring its internal control system to ensure compliance with its statutory requirements and strategic goals.

As noted in this report, we found that, overall, OASB has established an effective internal control system. However, we identified areas for potential improvement related to internal controls as the Office matures. Our recommendations, if implemented, should help strengthen OASB's internal control system as the Office matures.

## Data Reliability

GAO's *Assessing Data Reliability* (GAO-20-283G, December 2019) states reliability of data means that data are applicable for audit purpose and are sufficiently complete and accurate. Data primarily pertains to information that is entered, processed, or maintained in a data system and is generally organized in, or derived from, structured computer files. Furthermore, GAO-20-283G defines "applicability for audit purpose," "completeness," and "accuracy" as follows:

- "Applicability for audit purpose" refers to whether the data, as collected, are valid measures of the underlying concepts being addressed in the audit's research objectives.
- "Completeness" refers to the extent that relevant data records and fields are present and sufficiently populated.
- "Accuracy" refers to the extent that recorded data reflect the actual underlying information.

To address our objectives, we relied on computer-processed data from OASB's collaboration site, specifically, the Utility, SEC rulemaking list, and OMS. To assess the reliability of data we interviewed knowledgeable personnel, including OASB personnel and information technology specialists; reviewed relevant system documentation; performed a walkthrough of the Utility, SEC rulemaking list, and OMS applications; and performed data validation tests. We tested computer-processed data for duplicate records and missing data, and we compared totals to published agency totals, as applicable.

Additionally, to assess the reliability of the data produced by the Utility, the OIG's Data Analytics Group performed the following analyses:

- Reviewed the design of the Utility and its interfaces to determine whether controls were in place to ensure it performed as requested by OASB;
- Reviewed the underlying queries in the database macro to determine the scope of the queries being performed and whether the underlying code performed queries as stated;
- Reviewed the interface between the database table and OASB's collaboration site to determine whether the database table correctly populated to OASB's collaboration site; and
- Conducted an independent pull of the Utility, independently re-performed queries performed in the Utility, and conducted a test to determine whether the results of the independently performed pull produced the same results as OASB's Utility.

Based on our assessment, we found the data sufficiently reliable for the purpose of this evaluation.

## Prior Coverage

Since 2016, the SEC OIG and GAO issued the following reports of particular relevance to this evaluation:

### SEC OIG:

- *Audit of the SEC's Process for Reviewing Self-Regulatory Organizations' Proposed Rule Changes* (Report No. 537; September 23, 2016).
- *The SEC's Office of Investor Education and Advocacy Could Benefit From Increased Coordination, Additional Performance Metrics, and Formal Strategic Planning* (Report No. 564; January 13, 2021).

### GAO:

- *Financial Services Regulations: Procedures for Reviews under Regulatory Flexibility Act Need to Be Enhanced* (GAO-18-256, January 2018).

These reports can be accessed at <https://www.sec.gov/oig> (SEC OIG) and <https://www.gao.gov> (GAO).

## Appendix II. Management Comments

### MEMORANDUM

TO: Rebecca L. Sharek  
Acting Inspector General  
Office of the Inspector General

FROM: Sebastian Gomez Abero Gomez Abero, Digitally signed by Gomez  
Abero, Sebastian  
Date: 2022.08.23  
13:32:21 -0400  
Deputy Director Sebastian  
Office of the Advocate for Small Business Capital Formation

RE: Response of the Office of the Advocate for Small Business Capital Formation to the Office of the Inspector General's Report, *OASB Complied With Statutory Requirements But Can Improve As It Matures*

DATE: August 23, 2022

The Office of the Advocate for Small Business Capital Formation (OASB) submits this memorandum in response to the Office of the Inspector General (OIG) report entitled *OASB Complied With Statutory Requirements But Can Improve As It Matures*.

OASB appreciates the OIG's recognition that OASB effectively established a new independent organization and complied with the statutory requirements outlined in the SEC Small Business Advocate Act of 2016. Specifically, we appreciate the OIG's recognition that since commencing operations in January 2019, OASB has completed numerous activities, as noted in Table 2, including the following:

- Conducted outreach events, including educational activities;
- Assisted small businesses and their investors;
- Analyzed the potential impact of proposed self-regulatory organizations' rules and SEC rulemaking on small businesses and their investors;
- Consulted with the SEC's Investor Advocate;
- Issued annual independent reports on activities;
- Participated on the Small Business Advisory Committee; and
- Planned, organized, and executed the SEC's annual Small Business Forum.

OASB's response to the recommendations is in Appendix A.

Thank you for the professionalism of your audit team and for OIG's insights on how we can further improve OASB's programs. We will be implementing the two recommendations in your report as a key priority for the Office.



### Appendix A: OASB's Response to OIG's Recommendations

The following is OASB's response to the two recommendations in the Report.

**Recommendation 1:** Identify which of the Office's strategic goals and strategies lend themselves to performance measurement (both quantitative and qualitative) and establish performance measures to assess the efficacy of those activities.

**Response:** Concur. OASB has begun the process of identifying which of the goals and strategies lend themselves to performance measurements and will establish performance measures to assess the efficacy of those activities.

**Recommendation 2:** Update the Office's policies, procedures, and guides to document (a) the process to review proposed SEC and SRO rules, to include documentation requirements and the timing of such reviews; and (b) the data staff should enter in the Outreach Management System to ensure proper tracking of OASB's engagement activities.

**Response:** Concur. OASB will update its policies and procedures to: (a) with respect to the review of proposed SEC and self-regulatory organization rules, include documentation requirements and the timing of such reviews, and (b) with respect to the Outreach Management System, include additional detail on the data staff should enter to track OASB's engagement activities.

## Major Contributors to the Report

Carrie Fleming, Audit Manager

Eileen Kao, Lead Auditor

Lucia Fuentes, Auditor

## 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 Acting Deputy Inspector General for Audits, Evaluations, and Special Projects at the address listed below.

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