



State Securities Board
Self Evaluation Report

**Submitted to the
Sunset Advisory Commission
August 13, 1999**

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I. Key Functions, Powers, and Duties

- A. Provide an overview of the agency's mission, key functions, powers, and duties. Specify which duties are statutory.**

Mission

The mission of the State Securities Board is to protect Texas investors. Consistent with that primary mission, the agency seeks to ensure a free and competitive securities market for Texas, increase investor confidence, and thereby encourage the formation of capital and the creation of new jobs.

Duties and Powers

The agency's duties are to administer the provisions of the Texas Securities Act (Act), TEX. REV. CIV. STAT. ANN. art. 581-1 et seq., and to take such measures and make such investigations as will prevent or detect a violation of the Act. The Act sets forth powers to investigate suspected violations of the Act, initiate administrative enforcement proceedings, refer matters for civil or criminal action, require registration of nonexempt securities sold in Texas, and require registration of firms and individuals who sell securities or render investment advice in the State. For these purposes, the State Securities Board maintains programs for law enforcement, analysis of securities offerings, evaluation of dealer and agent applications, and inspections.

Functions

The law enforcement program seeks to detect and prevent violations of the Act, including fraud committed in connection with the sale of securities, sales of unregistered, nonexempt securities, and sales made by unregistered dealers and agents. The program investigates suspected violations of the Act and, if appropriate, promptly initiates administrative enforcement proceedings or refers the matter for criminal prosecution or civil action.

The program for analysis of securities offerings includes the review of all applications to register securities for sale in Texas. The primary function of such a review is to ensure investor access to full and fair disclosure of all relevant investment information and to ensure that the offering terms are "fair, just and equitable" in accordance with the criteria established by the Act and Board Rules. In fiscal 1998, the program reviewed 293 such applications. The program also processes notice filings for certain offerings in Texas not subject to registration review. In fiscal 1998, the program processed 24,295 such filings. Applications and filings handled by the program in fiscal 1998 represented nearly \$314 Billion in securities. The program also provides information to entrepreneurs, small businesses, and securities issuers throughout the state regarding the capital

formation process and compliance with the Act.

The program for evaluation of dealer and agent applications examines each application for registration of a dealer, investment adviser, or agent in accordance with the standards set forth in the Act and Board Rules. The program also conducts an ongoing review process by examining each amendment submitted by a registrant. Amendments are filed when an event occurs that causes an answer on an original application to change. In the last fiscal year the program approved and renewed the registration of 153,180 firms and individuals.

The inspection program conducts periodic inspections of the records of registered entities. Primary subjects are dealers and investment advisers with offices in Texas who are not regularly inspected by other regulatory authorities.

The State Securities Board seeks to maximize its effectiveness in achieving its mission by maintaining information-sharing procedures and closely coordinating activities between programs of the agency as well as with other local, state, and federal regulatory and law enforcement agencies and has undertaken a series of investor education initiatives to assist all Texans in making informed investment decisions that affect their financial future.

B. Does the agency's enabling law correctly reflect the agency's mission, key functions, powers, and duties?

Yes.

C. Please explain why these functions are needed. Are any of these functions required by federal law?

The long-term health and viability of the capital markets in Texas depend on investor confidence. Each of the functions described in the preceding Section is a key component of a regulatory structure that protects investors and facilitates the transparency, efficiency, and integrity of the capital markets in Texas, thereby maintaining investor confidence.

Federal law provides that, with respect to transactions occurring in interstate commerce and individuals doing business in a number of states, certain aspects of some of these functions are performed on the national level by the U.S. Securities and Exchange Commission (SEC) and the National Association of Securities Dealers (NASD). The state and federal regulatory systems form a complementary partnership to maintain effective oversight of the nation's capital markets. Similarities and differences between functions performed on the national level and those performed

by the State Securities Board are described in Section VI. of this report.

D. In general, how do other states carry out similar functions?

Other states generally have the same, or substantially the same, regulatory functions as the State Securities Board. The way in which these functions are carried out may differ by region and by jurisdiction based on enforcement trends, number and location of registered firms doing business in the state, volume of registration applications filed with the agency, and regulatory philosophy.

E. Describe any major agency functions that are outsourced.

None.

F. Discuss anticipated changes in federal law and outstanding court cases as they impact the agency's key functions.

Legislation pertaining to financial services modernization is presently pending in Congress that could potentially impact enforcement, dealer and agent registration, or the inspection functions of the agency. The legislation is presently being considered in a congressional conference committee. Texas Senator Phil Gramm has also announced an intention to introduce legislation in Congress to amend federal securities law. A draft of the legislation has not yet been introduced and it is unclear what impact, if any, such legislation may have on the functions of the State Securities Board. Social Security reform proposals are also under discussion in Congress that could have an impact on the agency's functions. No other changes in federal law have been identified at this time. No pending court cases are anticipated to impact the agency's key functions.

G. Please fill in the following chart, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact the agency. Do not include general state statutes that apply to all agencies, such as the Open Records Act, the Open Meetings Act, or the Administrative Procedure and Texas Register Act. Provide the same information for Attorney General opinions from FY 1995 - 1999, or earlier significant Attorney General opinions, that affect the agency's operations.

State Securities Board Exhibit 1: Statutes/Attorney General Opinions	
Statutes	
Citation/Title The Securities Act TEX. REV. CIV. STAT. ANN. art. 581-1 et seq.	Authority/Impact on Agency Creates the State Securities Board and provides for the administration and enforcement of the provisions of The Securities Act.
Attorney General Opinions	
Attorney General Opinion No.	Impact on Agency
ORD No. 130	Investigative files of the agency pertaining to enforcement of the Act are excepted from the disclosure requirements of the Open Records Act.
ORD No. 122	A transcript of testimony taken pursuant to Section 28 of the Act is excepted from the disclosure requirements of the Open Records Act.
ORD 96-2446	Information obtained in connection with the investigation of a complaint is excepted from the disclosure requirements of the Open Records Act.
OR 89-150	Internal memoranda, notes, worksheets and other internal agency files relating to the regulation of a securities issuer are excepted from the disclosure requirements of the Open Records Act.
JM 707	The agency does not have authority to adopt a rule which would authorize the Securities Commissioner to waive the statutory "fair, just, and equitable" securities registration requirements.

H. Please fill in the following chart:

State Securities Board Exhibit 2: Agency Contacts			
	Name	Address	Telephone Number Fax Number E-mail Address

Agency Head	Denise Voigt Crawford Securities Commissioner	State Securities Board P.O. Box 13167 Austin, Tx. 78711	(512) 305 - 8306 (512) 305 - 8336 dcrawford@ssb.state.tx.us
Agency's Sunset Liaison	John R. Morgan Deputy Commissioner	State Securities Board P.O. Box 13167 Austin, Tx. 78711	(512) 305 - 8302 (512) 305 - 8336 jmorgan@ssb.state.tx.us

II. History and Major Events

Provide a timeline discussion of the agency's history, briefly describing the key events in the development of the agency, including:

- C the date the agency was established;
- C the original purpose and responsibilities of the agency;
- C major changes in responsibilities or statutory authority;
- C agency/policymaking body name and composition changes;
- C the impact of state/federal legislation, mandates, and funding;
- C the impact of significant state/federal litigation that specifically affects the agency's operations; and
- C key organizational events and areas of change and impact on the agency's organization (e.g., a major reorganization of the agency's divisions or program areas).

In 1957, the Act was passed by the 55th Legislature in Regular Session, creating the State Securities Board. The legislation was the culmination of four earlier statutes dating back to 1913 adopted in response to a series of securities fraud scandals in Texas. The Act set forth the responsibility of the agency to register securities sold in Texas, register firms and individuals selling securities or rendering investment advice in the state, and to “. . . take such measures and make such investigations as will prevent or detect the violation of any provision . . .” of the Act. The Act also created the policymaking body of the agency, known as “The State Securities Board,” composed of three members appointed by the Governor, with concurrence of the Senate, who serve six-year staggered terms. Board members must be citizens of Texas and members of the general public. A person is not eligible for appointment if the person or the person's spouse is registered as a dealer, salesman, agent or investment adviser, is employed by or participates in the management of a securities dealer or investment adviser, or has a financial interest in a dealer or investment adviser other than as a consumer. Board members serve without compensation but are entitled to reimbursement of travel expenses while in the performance of their actual duties.

In 1963, in an effort to raise the qualifications of persons entering the securities industry, the Legislature amended the Act to require that individuals pass a written examination before being registered to sell securities in Texas.

In 1983, Texas joined with the NASD and other states in the use of the Central Registration

Depository computer network to facilitate the rapid nationwide registration of securities dealers and agents.

In 1991, Section 41 of the Act was amended by the Legislature to increase fees required of a securities dealer, investment adviser, or agent by \$200. The “professional fee” transformed Texas registration fees from among the lowest in the United States to among the highest.

In 1995, the State Securities Board solicited comments from 200 individuals and organizations, including persons practicing before the agency, the Texas Stock and Bond Dealers Association, the American Association of Retired Persons, the Securities Industry Association, the Consumer Federation of America, and members of the Securities Law Committee of the Business Law Section of the State Bar of Texas, regarding changes to the Act and submitted to the Legislature a consensus proposal to modernize the Act. The resulting legislation was passed unanimously by the House and Senate and signed into law by the Governor. These amendments to the Act helped ensure that investors would continue to be adequately protected and addressed concerns of the regulated community. Financial statement requirements for certain small business issuers were reduced, methods of registration and renewal procedures were clarified, certain fees paid by small business persons and retired individuals were reduced, the Board was granted authority to exempt certain persons from dealer and agent registration requirements, provisions relating to service of process and actions by securities dealers or agents to collect commissions were clarified, and changes to accommodate participation in an electronic filing system and certain uniform renewal procedures were made.

In 1996, Congress passed the National Securities Markets Improvement Act (NSMIA), amending federal securities laws to redefine the roles of state and federal regulatory authorities with respect to certain securities offerings and registered firms and individuals. The SEC was vested with exclusive authority for the registration of securities issued by investment companies and certain other classes of “covered securities.” States retained the authority to register other securities offerings, impose notice filing requirements and collect fees for “covered securities” transactions based on the amount of securities sold in the state, and to investigate and bring enforcement actions based on fraud or unlawful conduct by a dealer or agent.

The other major change effected by the legislation was to create a division of authority between the SEC and the states with respect to investment advisers. Three categories of advisers are subject to SEC regulation. The states retained authority over investment advisers having less than \$25 Million in assets. The states also retained authority to receive notice filings and fees for advisers registered with the SEC who do business in the state and to investigate and bring enforcement actions for fraud or deceit.

In response to this federal legislation, the agency adjusted the number of personnel assigned to the programs for the analysis of securities offerings and inspections to more appropriately reflect the regulatory responsibilities of the agency in those areas.

III. Policymaking Structure

A. Please complete the following chart:				
State Securities Board				
Exhibit 3: Policymaking Body				
Name Nicholas C. Taylor Chairman	Term Expires: 1-20-2001 Appointment Date: 4-6-95 Appointed by: Governor George W. Bush	Qualification Public Member	Address 214 W. Texas Ave. Ste.1101 Midland, Tx. 79701	Telephone Number (915) 682-1821 Fax Number (915) 682-1123 E-mail Address N/A
Name Jose Adan Trevino Member	Term Expires: 1-20-2003 Appointment Date: 3-12-97 Appointed by: Governor George W. Bush	Qualification Public Member	Address 4809 Fern St. Bellaire, Tx. 77401	Telephone Number (713) 349-2914 Fax Number (713) 661-4047 E-mail Address N/A
Name Kenneth W. Anderson, Jr. Member	Term Expires: 1-20-2005 Appointment Date: 5-7-99 Appointed by: Governor George W. Bush	Qualification Public Member	Address P.O. Box 601237 Dallas, Tx. 75360	Telephone Number (214) 696-1933 Fax Number (214) 696-9396 E-mail Address kwalaw@swbell.net

B. How is the chair of the policymaking body appointed?

By a vote of the Board.

C. Describe the primary role and responsibilities of the policymaking body.

The primary responsibility of the Board is to set policy for the agency by meeting periodically to update agency rules to ensure that investors remain adequately protected and that unreasonable burdens on legitimate capital formation are avoided.

D. List any special circumstances or unique features about the policymaking body or its responsibilities.

Section 2 of the Act prohibits appointment to the Board, and provides a ground for removal, if the person or the person's spouse is registered with the agency, employed by or participates in the management of a registered entity, or has a financial interest in a registered entity other than as a consumer.

E. In general, how often does the policymaking body meet? How many times did it meet in FY 1998? in FY 1999?

Generally, the Board meets every three to four months. In Fiscal 1998 the Board met three times: November 5, 1997, March 5, 1998, and July 22, 1998. In Fiscal 1999 the Board has met three times: October 21, 1998, February 10, 1999, and June 28, 1999.

F. What type of training do the agency's policymaking body members receive?

Board members may receive training regarding the Open Meetings Act and Open Records Act through programs sponsored by the Office of the Attorney General, state ethics laws through programs sponsored by the Texas Ethics Commission, and on other issues relevant to policymaking bodies through programs sponsored by the Governor's Office.

G. Does the agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, please describe these policies.

Yes. Policies describing respective responsibilities of the Board and the staff are found throughout the Act and in the Rules promulgated by the State Securities Board. Copies of these documents are being provided to the Sunset Advisory Commission at the time of the submission of the Self Evaluation Report.

H. If the policymaking body uses subcommittees or advisory committees to carry out its duties, please fill in the following chart.

State Securities Board Exhibit 4: Subcommittees and Advisory Committees			
Name of Subcommittee or Advisory Committee	Size/Composition/How members are appointed	Purpose/Duties	Legal Basis for Committee
Audit Committee	One member appointed by majority vote of the Board	Monitor the Agency's internal audit program.	N/A

I. How does the policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of the agency?

Board members typically receive comments regarding issues subject to the jurisdiction of the agency in connection with public meetings of the Board held approximately every three to four months. Comments received at other times may be discussed with the Securities Commissioner, other members of the staff, or at a meeting of the Board. Meetings of the Board and rule making are conducted in accordance with the public comment and public hearing requirements of the Government Code.

IV. Funding

A. Describe the agency’s process for determining budgetary needs and priorities.

The Securities Commissioner, Deputy Commissioner, and the agency directors meet weekly in a senior staff meeting to discuss goals, accomplishments, budgetary needs, and priorities. Information and ideas discussed during these meetings, together with the existing Strategic Plan, form the basis for the review of the budget structure, measures, and the internal and external environment for the agency. In even-numbered years, the Strategic Plan is revised, generally reflecting changes in the internal or external environment. Those changes together with anticipated changes lead to the development of the exceptional items which become a part of the Legislative Appropriations Request in the odd-numbered year following the revision of the Strategic Plan.

PLEASE FILL IN EACH OF THE CHARTS BELOW, USING EXACT DOLLAR AMOUNTS.

B. Show the agency’s sources of revenue. Please include all local, state, and federal sources.

State Securities Board Exhibit 5: Sources of Revenue — Fiscal Year 1998 (Actual)	
Source	Amount
General Revenue Fund	
Regular Appropriation	3,382,268
Article IX, Section 195 Salary Increase	97,624
Appropriated Receipts	12,372
TOTAL	3,492,264

C. If you receive funds from multiple federal programs, show the types of federal funding sources.

State Securities Board Exhibit 6: Federal Funds — Fiscal Year 1998 (Actual)				
Type of Fund	State/Federal Match Ratio	State Share	Federal Share	Total Funding
N/A				
TOTAL		N/A	N/A	N/A

D. Show the agency’s expenditures by strategy.

State Securities Board Exhibit 7: Expenditures by Strategy — Fiscal Year 1998 (Actual)	
Goal/Strategy	Amount
01-01 Law Enforcement	1,241,351
01-02 Analysis of Securities Offerings	497,653
01-03 Evaluation of dealer/agent applications	565,765
01-04 Inspections	372,514
02-01 Indirect Administration	767,298
GRAND TOTAL:	3,444,581

E. Show the agency's expenditures and FTEs by program.

State Securities Board Exhibit 8: Expenditures and FTEs by Program — Fiscal Year 1998 (Actual)					
Program	Budgeted FTEs, FY 1998	Actual FTEs as of August 31, 1998	Federal Funds Expended	State Funds Expended	Total Actual Expenditures
Law Enforcement	28.5	26	0	1,241,351	1,241,351
Analysis of Securities Offerings	10.6	10.2	0	497,653	497,653
Evaluation of dealer/agent applications	16.8	16.6	0	565,765	565,765
Inspections	10	10	0	372,514	372,514
Indirect Administration	16.6	17.2	0	767,298	767,298
TOTAL	82.5	80	0	3,444,581	3,444,581

F. If applicable, please provide information on fees collected by the agency.

State Securities Board Exhibit 9: Fee Revenue and Statutory Fee Levels — Fiscal Year 1998				
Description/ Program/ Statutory Citation	Current Fee/ Statutory maximum *	Number of persons paying fee	Fee Revenue	Where Fee Revenue is Deposited
Sec. 35. E	1/10 of 1% of the dollar amount of securities to be sold plus \$10	16,993	65,842,198	General Revenue Fund
Sec. 41	200	156,091	31,218,200	General Revenue Fund
Sec. 35. A-D	various	156,091	5,239,306	General Revenue Fund
Total			102,299,704	General Revenue Fund

* Current fees are equal to statutory maximum

G. Please fill in the following chart.

State Securities Board Exhibit 10: Purchases from HUBs				
FISCAL YEAR 1996				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	N/A			11.9%
Building Construction	N/A			26.1%
Special Trade	4,047	0	0	57.2%
Professional Services	1,353	0	0	20.0%
Other Services	86,365	3,908	4.5	33.0%
Commodities	89,029	67,828	76.2	12.6%
TOTAL	180,794	71,736	39.7	
FISCAL YEAR 1997				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	N/A			11.9%
Building Construction	N/A			26.1%
Special Trade	N/A			57.2%
Professional Services	11,250	0	0	20.0%
Other Services	82,908	2,815	3.4	33.0%
Commodities	88,233	68,961	78.2	12.6%
TOTAL	182,391	71,776	39.4	
FISCAL YEAR 1998				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	N/A			11.9%
Building Construction	N/A			26.1%
Special Trade	N/A			57.2%
Professional Services	11,860	0	0	20.0%
Other Services	80,729	2,186	2.7	33.0%
Commodities	51,739	38,654	74.7	12.6%
TOTAL	144,328	40,840	28.3	

H. Does the agency have a HUB policy? How does the agency address performance shortfalls related to the policy?

Yes. In a typical year, the agency makes purchases in three categories. In the "Professional Services" category there is one purchase per year. In the "Other Services" category, more than 70 percent of the amounts paid are to one vendor which acquired the contract in an outsourcing arrangement with the Department of Information Resources. To address expected shortfalls in these categories, the agency purchases commodities at a rate which is nearly five times the statewide goal for that category. The net impact in fiscal year 1998 was that HUBs received \$5,308 more from the agency than would have been the case if the statewide goals had been met in each category.

V. Organization

A. Please fill in the chart below. If applicable, list field or regional offices.			
State Securities Board			
Exhibit 11: FTEs by Location — Fiscal Year 1998			
Headquarters, Region, or Field Office	Location	Number of Budgeted FTEs, FY 1998	Number of Actual FTEs as of August 31, 1998
Headquarters	Austin	68.5	68
Field Office	Dallas	6	4
Field Office	Houston	3	3
Field Office	Corpus Christi	3	3
Field Office	Lubbock	2	2
TOTAL		82.5	80
B. What was the agency's FTE cap for FY 1998?			

82.5

C. How many temporary or contract employees did the agency have as of August 31, 1998?

Three. (Part-time.)

D. Please fill in the chart below.							
State Securities Board Exhibit 12: Equal Employment Opportunity Statistics							
FISCAL YEAR 1996							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	8	0	5%	0	8%	12.5%	26%
Professional	35	5.7%	7%	20%	7%	45.7%	44%
Technical	3	0	13%	0	14%	66.6%	41%
Protective Services	N/A	N/A	13%	N/A	18%	N/A	15%
Para-Professionals	1	0	25%	0	30%	100%	55%
Administrative Support	33	12.1%	16%	33.3%	17%	93.9%	84%
Skilled Craft	N/A	N/A	11%	N/A	20%	N/A	8%
Service/Maintenance	N/A	N/A	19%	N/A	32%	N/A	27%
State Securities Board Exhibit 12: Equal Employment Opportunity Statistics (cont.)							
FISCAL YEAR 1997							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	8	0	5%	0	8%	12.5%	26%
Professional	34	2.9%	7%	11.8%	7%	41.2%	44%
Technical	4	0	13%	0	14%	75%	41%
Protective Services	N/A	N/A	13%	N/A	18%	N/A	15%
Para-Professionals	1	0	25%	0	30%	100%	55%
Administrative Support	38	10.5%	16%	28.9%	17%	89.5%	84%
Skilled Craft	N/A	N/A	11%	N/A	20%	N/A	8%
Service/Maintenance	N/A	N/A	19%	N/A	32%	N/A	27%

FISCAL YEAR 1998							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	8	0	5%	0	8%	12.5%	26%
Professional	38	5.3%	7%	21.1%	7%	36.8%	44%
Technical	5	0	13%	20%	14%	80%	41%
Protective Services	N/A	N/A	13%	N/A	18%	N/A	15%
Para-Professionals	1	0	25%	100%	30%	0	55%
Administrative Support	36	16.7%	16%	25%	17%	94.4%	84%
Skilled Craft	N/A	N/A	11%	N/A	20%	N/A	8%
Service/Maintenance	N/A	N/A	19%	N/A	32%	N/A	27%

E. Does the agency have an equal employment opportunity policy? How does the agency address performance shortfalls related to the policy?

Yes. Performance shortfalls related to the policy are addressed in the agency's affirmative action plan approved by the Texas Commission on Human Rights.

VI. Guide to Agency Programs

LAW ENFORCEMENT

State Securities Board	
Exhibit 13: Program Information — Fiscal Year 1998	
Name of Program	Law Enforcement
Location/Division	Austin, Lubbock, Dallas, Houston, South Texas (Corpus Christi)
Contact Name	John Morgan
Number of Budgeted FTEs, FY 1998	28.5
Number of Actual FTEs as of August 31, 1998	26
B. What are the key services and functions of this program? Describe the major program activities involved in providing all services or functions.	

The functions of the law enforcement program are carried out by the Enforcement Division of the agency. The program conducts investigations to prevent or detect violations of the the Act. Based on information obtained in connection with such investigations, the program refers matters to state and federal prosecutors and to the Office of the Attorney General, and provides a wide range of assistance and support in the criminal or civil proceedings that follow. The staff also represents the agency in administrative actions to cease and desist violations of the Act, impose administrative fines, and to deny, revoke, or suspend the registration of applicants, dealers, and agents.

C. When and for what purpose was the program created? Describe any statutory or other requirements for this program.

The program was created shortly after the creation of the agency in 1957 to implement enforcement provisions in the Act designed to protect investors. Section 3 of the Act requires the Securities Commissioner to "... take such measures and to make such investigations ..." as will prevent or detect any violation of the Act and to promptly provide evidence of criminal violations of the Act to the appropriate district or county attorney. Section 28 permits the Securities Commissioner to issue administrative subpoenas to obtain testimony or records and restricts the dissemination of information obtained in an investigation. Other enforcement provisions of the Act provide mechanisms for denial, revocation, or suspension of the registration of a securities dealer, agent or salesman (Section 14); cease and desist and cease publication orders (Section 23); administrative fines (Section 23-1); receiverships of persons or assets (Section 25-1); criminal prosecution (Section 29); and civil injunctions and restitution for victims of fraudulent practices (Section 32).

D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program will no longer be needed?

Since the inception of the agency, the fundamental functions of the law enforcement program -- to initiate investigations to prevent or detect violations of the Act and to take appropriate administrative, civil, or criminal action -- have remained unchanged. In recent years, with the explosive growth of the capital markets, rapidly expanding population of individual investors, and dramatic changes in technology, the law enforcement program has been required to focus on case selection to maximize the impact from its actions, and to educate the public to prevent the recurrence of common types of fraudulent schemes. The law enforcement function will continue to be needed to protect investors and maintain the integrity of the capital markets in Texas.

E. Describe who this program serves. How many people or entities are served? List any qualifications or eligibility requirements for receiving services or benefits.

This is a law enforcement program that serves the public of the state of Texas. The universe of those subject to the enforcement provisions of the Act is even larger. Any firm or individual who appears to violate the Act is subject to investigation and potential enforcement action. This population includes those committing registration and fraud violations of the Act, small and large issuers, firms

and individuals (whether or not registered), domestic and foreign entities, and those directly or indirectly offering for sale or selling securities into or out of the state of Texas. No statistical information is known to exist that would purport to calculate the size of this group.

F. Describe how the program is administered. Include flowcharts, timelines, or other illustrations as necessary. List any field or regional services.

The law enforcement program is administered by the Director of Enforcement. This individual supervises and evaluates the work of all employees in the program, including branch office personnel, directs investigations of potential violations of the Act, authorizes the filing of administrative enforcement actions, evaluates all civil and criminal referrals, and assists the Securities Commissioner in making recommendations to the Board regarding rulemaking. The Director of Enforcement reports to the Securities Commissioner and Deputy Securities Commissioner.

The staff of the program reports to the Director of Enforcement. Due to the complexity of the law enforced by the program, the sophisticated nature of transactions and schemes investigated, the level of interaction between the staff and legal counsel representing issuers, dealers and their agents, and the level of assistance typically required by prosecutors, the staff consists of highly trained and well-educated professionals.

At the time of the preparation of this report, the program employed thirteen enforcement attorneys, three accountants, one investigator with substantial law enforcement experience, and ten administrative support personnel.

Below is a description of the distribution of these personnel.

Austin

Director of Enforcement
 Assistant Director (2)
 Enforcement Attorneys (3)
 Accountants (3)
 Support Staff (5)

Lubbock

Assistant Director
 Support Staff (1)

Dallas

Assistant Director
 Attorneys (2)
 Support Staff (2)

Houston

Assistant Director
 Attorney (1)
 Support Staff (1)

South Texas

(Corpus Christi)
 Investigator (1)
 Attorney (1)
 Support Staff (1)

The law enforcement program works closely with the other programs of the agency to coordinate the discovery of potential violations of the Act. The program monitors publications of general circulation throughout the state, the Internet, and other forms of mass communication, and receives information from the public, members of the State Bar, and consumer organizations to learn of public solicitation of securities in Texas. The program also works with self-regulatory organizations and with local, state, federal, and international law enforcement and regulatory authorities in a cooperative effort to interdict intrastate, interstate, and international schemes to defraud the public.

If information is received indicating a potential violation of the Act, the matter is investigated by the staff in Austin or one of the four branch offices. As part of this process, the staff may take testimony, subpoena documents, and obtain information from a number of other sources before a determination is made whether or not to pursue enforcement action. If a criminal prosecution is considered appropriate, evidence of the violation is provided to a district attorney or to a U.S. Attorney's Office. The staff will assist the prosecutor with grand jury proceedings, trial, and appeal of the case, as needed. If requested, a staff member will assume responsibility for all or part of this process by acting as a special prosecutor. If an administrative action is considered appropriate, the staff will represent the agency at proceedings in the State Office of Administrative Hearings. If a civil action in the nature of receivership or injunction is considered appropriate, the matter is referred to the Office of the Attorney General and the staff will assist with the preparation of pleadings, discovery, trial, and, if necessary, appeal of the case.

G. If the program works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency. Briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The law enforcement program works with police departments, sheriffs' offices, county attorneys, district attorneys, and other local units of government throughout the state. The program frequently shares information with these groups, based on the information sharing provisions of Section 28 of the Act and Chapter 131 of the Board Rules, without the necessity of formal agreements or contracts. The agency has entered into a formal memorandum of understanding to share regulatory and investigation information with the Texas Department of Banking and the Texas Department of Insurance.

H. Identify all funding sources and amounts for the program, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

General Revenue Fund.

I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.

The performance-based budgeting approach, with the ability to request funding for exceptional items, provides an appropriate basis for funding for the program mission, goals, objectives, and performance targets.

J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.

Similar services or functions are provided by other states to protect their citizens and the integrity of their capital markets.

The State Securities Board places an emphasis on criminal prosecution of violations of the Act and is not limited to interstate commerce considerations in policing the capital markets in Texas. The

SEC performs similar functions with respect to civil enforcement of the federal securities laws. The SEC's enforcement emphasis is on matters implicating national securities markets and interstate commerce. Many securities offerings made in Texas do not fall within SEC jurisdiction or enforcement interest.

K. Discuss how the program is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers.

The law enforcement program works closely with the other programs listed in Question J to ensure that enforcement efforts are not duplicated. The staff meets quarterly with representatives of the SEC, other states in the region, as well as the NASD to discuss specific enforcement cases. The staff communicates on a daily basis with other members of the North American Securities Administrators Association, Inc. (NASAA) via telephone, Internet enforcement discussion groups, and the Central Registration Depository.

ANALYSIS OF SECURITIES OFFERINGS

State Securities Board	
Exhibit 13: Program Information — Fiscal Year 1998	
Name of Program	Analysis of Securities Offerings
Location/Division	Austin
Contact Name	John Morgan
Number of Budgeted FTEs, FY 1998	10.6
Number of Actual FTEs as of August 31, 1998	10.2
B. What are the key services and functions of this program? Describe the major program activities involved in providing all services or functions.	

This program reviews applications for registration and processes filings for securities offerings made in Texas. In accordance with requirements set forth in the Act and registration guidelines in Board Rules, the program examines applications for registration of securities offerings to determine

whether the issuer of securities has disclosed all material information about its plan of business and finance and the offering is “fair, just and equitable” to prospective investors. The program works closely with the other programs of the agency to ensure that fraudulent offerings are not registered and that any information indicating a violation of the Act is referred to the law enforcement program. In addition to ensuring the registration of appropriate offerings and preventing fraudulent offerings from being registered, financial analysts assigned to the program provide assistance to entrepreneurs, small businesses, and others regarding exemptions from registration, registration procedures, and financing alternatives through telephone conferences, distribution of information on the Internet, in-office visits, and at seminars.

C. When and for what purpose was the program created? Describe any statutory or other requirements for this program.

The program was created shortly after the creation of the agency in 1957 to implement securities registration provisions in the Act designed to protect investors. Sections 7 and 10 of the Act set forth the requirements and procedure for review of applications and the registration of securities. Administrative guidelines for registration of specific types of offerings are set forth in the Board Rules.

D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program will no longer be needed?

An original function of the program – to review applications for registration of securities offerings made in Texas – remains unchanged. However, applicability of the function to the universe of securities offerings made in the state has diminished over time with the adoption of regulations providing additional exemptions from the securities registration requirements of the Act and with the passage of NSMIA. However, this function remains applicable to applications for the registration of offerings requiring the most difficult and time-consuming review. The functions of the program, which include providing assistance to entrepreneurs, small businesses, and other issuers seeking access to the capital markets, will continue to be a key component of the system in place to protect investors and encourage the formation of capital in Texas.

E. Describe who this program serves. How many people or entities are served? List any qualifications or eligibility requirements for receiving services or benefits.

This is a regulatory program that serves the people of the state of Texas as a component of the investor protection mission of the agency. The program examines and processes applications and filings submitted by securities issuers. In fiscal 1998, the program received such submissions from 16,993 different entities. The program also provides assistance to entrepreneurs, small businesses, and others regarding exemptions from registration and financing alternatives, through telephone conferences, distribution of information on the Internet, in-office visits, and at seminars. The agency does not track the number of those who receive such assistance.

F. Describe how the program is administered. Include flowcharts, time lines, or other illustrations as necessary. List any field or regional services.

The program is administered in the Austin office by the Director of Securities Registration. This individual reviews all incoming applications for the registration of securities, assigns such applications to securities analysts, performs the second-tier review of applications for registration, forwards registration recommendations to the Deputy Commissioner or Securities Commissioner for approval, coordinates the resolution of problems associated with offerings that do not comply with the Rules of the Board or provisions of the Act, and supervises and evaluates the work of all employees in the program. The Director of Securities Registration reports to the Securities Commissioner and Deputy Securities Commissioner.

The staff of the program consists of the Director, Assistant Director, three securities analysts and four support personnel.

The program works closely with the other programs of the agency to ensure that fraudulent offerings are not registered and that any information indicating a violation of the Act is referred to the law enforcement program. The staff carefully examines applications filed with the agency, negotiates with issuers to address deficiencies in compliance with the requirements of the Act or Board Rules, and makes recommendations to the Director of Securities Registration regarding registration. For a small offering made by an issuer in a number of states, the program has developed procedures to coordinate comments regarding the offering through a designated "lead state" to expedite the review process. All filings received by the program are reviewed for completeness and checked to see that appropriate fees are paid. The professional staff also provides assistance to entrepreneurs, small businesses, and others regarding exemptions from registration, registration procedures, and financing alternatives via the telephone, the Internet, in-office visits, and at seminars.

G. If the program works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency. Briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

N/A

H. Identify all funding sources and amounts for the program, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

General Revenue Fund.

I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.

The performance-based budgeting approach, with the ability to request funding for exceptional items, provides an appropriate basis for funding for the program mission, goals, objectives, and performance targets.

J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.

Similar services or functions are provided by other states to protect their citizens and the integrity of their capital markets. There is no internal or external program that provides similar services or functions in Texas.

K. Discuss how the program is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers.

The staff works closely with other states and NASAA to propose and periodically update uniform procedures, registration guidelines, and exemptions from registration.

L. Please provide any additional information needed to gain a preliminary understanding of the program.

N/A

M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:

- C why the regulation is needed;
- C the scope of, and procedures for, inspections or audits of regulated entities;
- C follow-up activities conducted when non-compliance is identified;
- C sanctions available to the agency to ensure compliance; and
- C procedures for handling consumer/public complaints against regulated entities.

Why the regulation is needed.

The functions of the program for analysis of securities offerings are designed to ensure that certain minimal financial and informational requirements are met before securities are publicly offered in Texas. These functions are necessary to sustain the transparency and fairness of the capital markets in Texas and maintain investor confidence.

The scope of, and procedures for, inspections or audits of regulated entities

Securities issuers are not routinely subject to inspection or audit by the program. The staff generally relies upon audited financial statements submitted by the issuer in connection with the registration and renewal process. Financial statements for small business issuers, as defined by Board Rule, may be reviewed by an independent certified public accountant in accordance with certain standards set forth in the Act. Securities issuers who are dealers are subject to inspections by the inspection program of the agency discussed below.

Follow-up activities conducted when non-compliance is identified

N/A

Sanctions available to the agency to ensure compliance

A violation of the Act may subject the issuer to administrative, civil, or criminal liability.

Procedures for handling consumer/public complaints against regulated entities.

Any information received by the program indicating a potential violation of the Act relating to a securities issuer is sent to the law enforcement program for investigation.

N. Please fill in the following chart for each regulatory program. The chart headings may be changed if needed to better reflect the agency's practices.		
State Securities Board Information Received From the Public Indicating Suspected Violations of the Securities Act For Securities Issuers Exhibit 14: – Fiscal Years 1997 and 1998		
	FY 1997	FY 1998
Number of complaints received	N/A	N/A

EVALUATION OF DEALER AND AGENT APPLICATIONS

State Securities Board Exhibit 13: Program Information — Fiscal Year 1998	
Name of Program	Evaluation of Dealer and Agent Applications
Location/Division	Austin
Contact Name	John Morgan
Number of Budgeted FTEs, FY 1998	16.8
Number of Actual FTEs as of August 31, 1998	16.6

B. What are the key services and functions of this program? Describe the major program activities involved in providing all services or functions.

The program reviews and processes applications and filings pertaining to the registration of firms and individuals doing business in Texas as securities dealers, investment advisers, or agents. The program reviews applications for registration to determine compliance with requirements of the Act and Board Rules and closely examines any criminal, disciplinary, or financial information relating

to an applicant or registrant. The program works closely with other programs of the agency to ensure that unqualified firms and individuals are prohibited from dealing with the investing public and that any information indicating a violation of the Act is referred to the law enforcement program.

C. When and for what purpose was the program created? Describe any statutory or other requirements for this program.

The program was created shortly after the creation of the agency in 1957 to implement dealer and agent registration provisions in the Act designed to protect investors. Sections 12, 13, 15, 16, 18, and 19 of the Act set forth the requirements and procedure for registration. Administrative guidelines for registration and record keeping are set forth in Chapter 115 of the Board Rules.

D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program will no longer be needed?

The original functions of the program remain unchanged. These functions will continue to be needed as a key component of the system in place to protect investors and maintain the integrity of the capital markets in Texas.

E. Describe who this program serves. How many people or entities are served? List any qualifications or eligibility requirements for receiving services or benefits.

This is a regulatory program that serves the people of the state of Texas as a component of the investor protection mission of the agency. The program examines and processes applications and filings submitted by securities dealers, investment advisers, and agents. In the last fiscal year, there were 41,665 new registrations submitted and approved and 111,515 registrations renewed. During the period there were also 34,020 registrations canceled, 165 registrations abandoned, and 162 applications withdrawn. The requirements for registration or filing vary depending on the entity, the plan of business, and in the case of investment advisers, the amount of assets under management. These requirements are set forth in Sections 13, 16, 18, and 19 of the Act and Chapter 115 of the Board Rules.

F. Describe how the program is administered. Include flowcharts, time lines, or other illustrations as necessary. List any field or regional services.

The program is administered in the Austin office by the Director of Dealer Registration. This individual supervises the review and processing of dealer, investment adviser, and agent applications, coordinates the procedures of the program with those of other states and the NASD in utilizing the Central Registration Depository for uniform applications for dealer and agent registration, reviews and analyzes complex or questionable filings, supervises the intake and initial review of information received from the public indicating a potential violation of the Act by a registered firm or individual, and coordinates with the Director of Enforcement in initiating investigations of dealer or agent activities indicating a potential violation of the Act. The Director of Dealer Registration reports to the Securities Commissioner and Deputy Securities Commissioner.

The staff of this program consists of the Director, Assistant Director, and nine full-time employees who examine and process applications and filings.

The staff conducts a thorough examination of each application with an emphasis on the proposed plan of business, financial condition, and disciplinary history of the applicant. This review is sometimes coordinated with the law enforcement program before a decision is made as to whether registration should be opposed or granted.

Registrants are required to timely file amendments to their registration when an event occurs that causes an answer to a question on a previously filed application to become incorrect. This ongoing reporting and review process constitutes a major portion of the workload of the program. At the end of each calendar year, registrants are required to file certain forms and fees to renew their registration for the following year.

The agency is a participant in the Central Registration Depository system developed by NASAA and the NASD, which allows dealers registered under federal law to apply for registration of their agents in all desired states via a single form filed electronically at a central location. This computer system makes the application available electronically to every state. The Central Registration Depository, along with the advent of uniform forms and uniform exams, has created a simplified avenue for dealers in seeking registration of their agents. Dealer and agent fees collected through the Central Registration Depository are transmitted to the state daily via electronic funds transfer.

G. If the program works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency. Briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

N/A

H. Identify all funding sources and amounts for the program, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

General Revenue Fund.

I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.

The performance-based budgeting approach, with the ability to request funding for exceptional items, provides an appropriate basis for funding for the program mission, goals, objectives, and performance targets.

J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.

Other states have similar functions but may not place as much importance as Texas on disciplinary disclosures made by applicants and registrants. The NASD, a self-regulatory organization, performs a similar function with respect to its member firms and individuals registered in multiple jurisdictions but does not register investment advisers or agents of such firms and does not perform a substantive review of the disciplinary history or criminal background of applicants beyond what may constitute a “statutory disqualification” for purposes of the federal Securities Exchange Act of 1934.

K. Discuss how the program is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency’s customers.

The program works closely with other states, NASAA, and the NASD to maintain and periodically update uniform forms and procedures for registration of dealers, investment advisers, and agents. Representatives of the agency participate on regulatory committees and working groups and meet periodically with industry representatives to address issues relating to uniformity and the registration process. The staff meets quarterly with representatives of the SEC, other states in the region, as well as the NASD to discuss specific cases relating to registered dealers, investment advisers, and agents. The staff also communicates on a daily basis with other regulatory authorities via telephone, Internet discussion groups, and the Central Registration Depository.

L. Please provide any additional information needed to gain a preliminary understanding of the program.

N/A

M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:

- C why the regulation is needed;
- C the scope of, and procedures for, inspections or audits of regulated entities;
- C follow-up activities conducted when non-compliance is identified;
- C sanctions available to the agency to ensure compliance; and
- C procedures for handling consumer/public complaints against regulated entities.

Why the regulation is needed.

The functions of the program are designed to ensure that firms and individuals meet certain minimal qualifications before being permitted to deal in securities or render investment advice in Texas. These functions are necessary to maintain the integrity of the capital markets in the state and maintain investor confidence.

The scope of, and procedures for, inspections or audits of regulated entities

Securities dealers are subject to inspections by the Inspections function of the agency discussed later in this section.

Follow-up activities conducted when non-compliance is identified

See discussion under the Inspections function of the agency.

Sanctions available to the agency to ensure compliance

A violation of the Act may subject a firm or individual to administrative, civil, or criminal liability.

Procedures for handling consumer/public complaints against regulated entities.

Information received by the program indicating a potential violation of the Act by a registered firm or individual is carefully examined by the staff. In evaluating the matter, the staff may take testimony, request documentation from the registrant, obtain subpoenas for the records of financial institutions, conduct an undercover investigation to determine whether regulatory deficiencies are systemic in an organization, and share information with self-regulatory organizations, regulatory agencies, or local, state, federal, or international law enforcement authorities. In some instances, a seemingly isolated and non-actionable matter may later become established as a part of a pattern of conduct that warrants enforcement action. Throughout the process of investigating the matter, the staff works closely with attorneys in the law enforcement program. Evidence of a violation of the Act is referred to these attorneys for administrative, civil, or criminal action, as appropriate.

N. Please fill in the following chart for each regulatory program. The chart headings may be changed if needed to better reflect the agency's practices.		
State Securities Board		
Exhibit 14: Complaints Received from the Public Fiscal Years 1997 and 1998		
	FY 1997	FY 1998
Complaints Received from the Public	N/A	N/A

INSPECTIONS

State Securities Board Exhibit 13: Program Information — Fiscal Year 1998	
Name of Program	Inspections
Location/Division	Austin
Contact Name	John Morgan
Number of Budgeted FTEs, FY 1998	10
Number of Actual FTEs as of August 31, 1998	10
B. What are the key services and functions of this program? Describe the major program activities involved in providing all services or functions.	

This program conducts inspections of registered dealers and investment advisers to ensure that these firms, and agents acting on their behalf, remain in compliance with the Act and Board Rules. The Inspection program targets registrants that are not routinely inspected by other regulatory authorities. Depending on the seriousness of violations that are identified, the firm may be given the opportunity to correct the problem or may be subject to administrative, civil, or criminal enforcement action.

C. When and for what purpose was the program created? Describe any statutory or other requirements for this program.

The program was created in fiscal year 1990 in response to significant growth in the number of registered dealers and agents in Texas and indications that an inspection program was necessary to ensure that registrants were complying with the record keeping, registration and other provisions of the Board Rules and the Act. The program was initiated by the agency pursuant to the mandate set forth in Section 3 of the Act “. . . to take such measures and to make such investigations as will prevent or detect the violation of any provision thereof.” There were no other requirements for this program.

D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program will no longer be needed?

Since the creation of the program, the fundamental functions have remained unchanged. Over time, the program has received appropriations that have allowed it to gradually reduce the inspection cycle of registrants to approximately once every eight years for the 2000/2001 biennium. In response to increasing levels of sophistication and complexity of certain schemes detected through the inspection process, inspectors have been required to become adept at understanding and using developing technologies. With the passage of NSMIA, more responsibility has been placed on the inspection program to ensure that investment advisers in the state subject to the sole regulatory oversight of the agency are acting in compliance with the Act and Board Rules. Those firms could have effective control of as much as \$20 Billion in investors' funds.

The Inspection program will continue to be needed as a key component of the system in place to protect investors and maintain the integrity of the capital markets in Texas.

E. Describe who this program serves. How many people or entities are served? List any qualifications or eligibility requirements for receiving services or benefits.

This is a regulatory program that serves the people of the state of Texas as a component of the investor protection mission of the agency. At the fiscal year ended August 31, 1998, there were 3,036 dealers and 1,878 investment advisers registered with the State Securities Board subject to inspections.

F. Describe how the program is administered. Include flowcharts, time lines, or other illustrations as necessary. List any field or regional services.

The dealer inspection program is administered by the Director of the Dealer Registration Division. This individual supervises the work of the employees performing the inspection function, selects firms for inspection, reviews all inspection reports, evaluates the sufficiency of evidence indicating potential violations of the Act or Board Rules, and coordinates staff resources to work closely with the law enforcement program to analyze information indicating potential violations of the Act and to provide assistance in administrative, civil, or criminal enforcement proceedings. The Director of Dealer Registration reports to the Securities Commissioner and Deputy Securities Commissioner.

At the time of the preparation of this report, the dealer inspection program employed nine investigators. At the direction of the Director of Dealer Registration, these individuals conduct inspections in teams of two or more to examine records required to be maintained pursuant to Board Rules. Following an inspection, a report is prepared for the Director of Dealer Registration describing any record keeping deficiencies or potential enforcement issues noted during the inspection or in information analyzed subsequently to the inspection. Depending on information in the report, the Director of Dealer Registration may take no action if no deficiencies are noted, send notification of specific deficiencies and request confirmation of corrective action to be taken, or may refer the matter to the law enforcement program. The staff of the inspection program assists the staff of the law enforcement program in analyzing information indicating a potential violation of the Act and may provide assistance in administrative, civil, or criminal enforcement proceedings. The staff may also be called upon to investigate information filed with the agency regarding potential violations of the Act by registered firms or individuals.

The Dealer Inspection program works closely with the Enforcement, Securities Registration, and Dealer and Agent Registration functions of the agency and with the NASD, NASAA, other state securities agencies, the SEC, and other state and federal law enforcement and regulatory authorities to coordinate the discovery of potential violations of the Act.

G. If the program works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency. Briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

N/A

H. Identify all funding sources and amounts for the program, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

General Revenue Fund.

I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.

The performance-based budgeting approach, with the ability to request funding for exceptional items, provides an appropriate basis for funding for the program mission, goals, objectives, and performance targets.

J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.

Similar functions are provided by other states, the SEC, and the NASD. The practical dividing line for inspections between national regulators and the states is at the branch office level. The primary focus of the national regulators is on the financial stability of the firm. The State Securities Board focus is more on fraudulent sales practices and unregistered sales activity. NSMIA established a clear division of responsibility for the registration and inspection of investment advisers between the SEC and the states. The states have exclusive jurisdiction over investment advisers with assets under management of less than \$25 million.

K. Discuss how the program is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers.

The inspection program works closely with other states, the NASD, and the SEC to coordinate the discovery of potential violations of the Act and to avoid duplication or conflict. Representatives of the program meet quarterly with representatives of the NASD, SEC, and other states in the region to discuss specific cases relating to registered dealers, investment advisers, and agents. The staff also communicates on a daily basis with other regulators via telephone, Internet discussion groups, and the Central Registration Depository.

L. Please provide any additional information needed to gain a preliminary understanding of the program.

N/A

M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:

- C why the regulation is needed;
- C the scope of, and procedures for, inspections or audits of regulated entities;
- C follow-up activities conducted when non-compliance is identified;
- C sanctions available to the agency to ensure compliance; and
- C procedures for handling consumer/public complaints against regulated entities.

Why the regulation is needed.

The inspection program is necessary for the agency to maintain effective oversight over registered dealers and investment advisers to protect investors from fraud and maintain the integrity of the capital markets in Texas. The inspection program is designed to serve as an early warning system – detecting problems before they have catastrophic consequences.

The scope of, and procedures for, inspections or audits of regulated entities

See response to F. above.

Follow-up activities conducted when non-compliance is identified

See response to F. above.

Sanctions available to the agency to ensure compliance

Violation of the record keeping or access requirements of Board Rules may subject a firm to suspension or revocation of registration and/or an administrative fine. A violation of the Act may subject a firm or individual to administrative, civil, or criminal liability.

Procedures for handling consumer/public complaints against regulated entities.

See the response to this question regarding the program for evaluation of dealer and agent applications discussed previously.

VII. Agency Performance Evaluation

A. What are the agency's most significant accomplishments?

1. Leadership in Enforcement

For many years, Texas has lead all other jurisdictions in the United States in the number of indictments and convictions for securities fraud and related offenses. The aggressiveness and effectiveness of the law enforcement program have made Texas a model for other state securities agencies throughout the nation.

2. Management of Extraordinary Growth of the Securities Markets

AVERAGE PERCENTAGE CHANGE

IN AGENCY WORKLOAD FROM BASE YEAR 1977



In its 42 years of existence, the State Securities Board has efficiently and effectively carried out its mission to protect the public, and consistent with that objective, encourage capital formation, job formation, and free and competitive securities markets. With the passage of time, that mission has become increasingly critical. From modest beginnings, Texas has grown to be one of the major securities markets in the nation and is eagerly sought out by national and international securities issuers. Texas, reflecting a nationwide trend, is becoming a state populated by investors. As of June 1996, the dollar volume of securities applications processed in Texas exceeded the deposits in Texas banks, savings and loans, savings banks, and credit unions *combined* by \$29 Billion. By June of 1998, the securities applications processed exceeded deposits in these financial institutions by \$85 Billion. The dollar volume of securities registrations and filings processed in Texas continues to climb – in fiscal 1998 to a record \$314 Billion. It is important to note that these filings represent only a fraction of the total volume of securities transactions conducted in the state. This is because most securities transactions are made pursuant to exemptions from registration set forth in the Act, based on a legislative determination that certain securities and transactions have sufficient safeguards in place to protect the public without the necessity of registration.

Throughout this period of enormous growth, the agency has faced challenges to investor protection and managed the increasing workload without requiring significant percentage increases in manpower or resources. (See chart on page 42).

3. Investor Education

With the explosive growth of the capital markets and the rapidly expanding population of individual investors, the agency has undertaken a series of investor education initiatives to assist all Texans in making informed investment decisions that affect their financial future. This effort has included the dissemination of teaching guides to educators throughout the state, distribution of financial planning guides for Texas families, and issuing investor alerts and press releases describing recent enforcement actions and the steps investors can take to identify and protect themselves from fraudulent schemes.

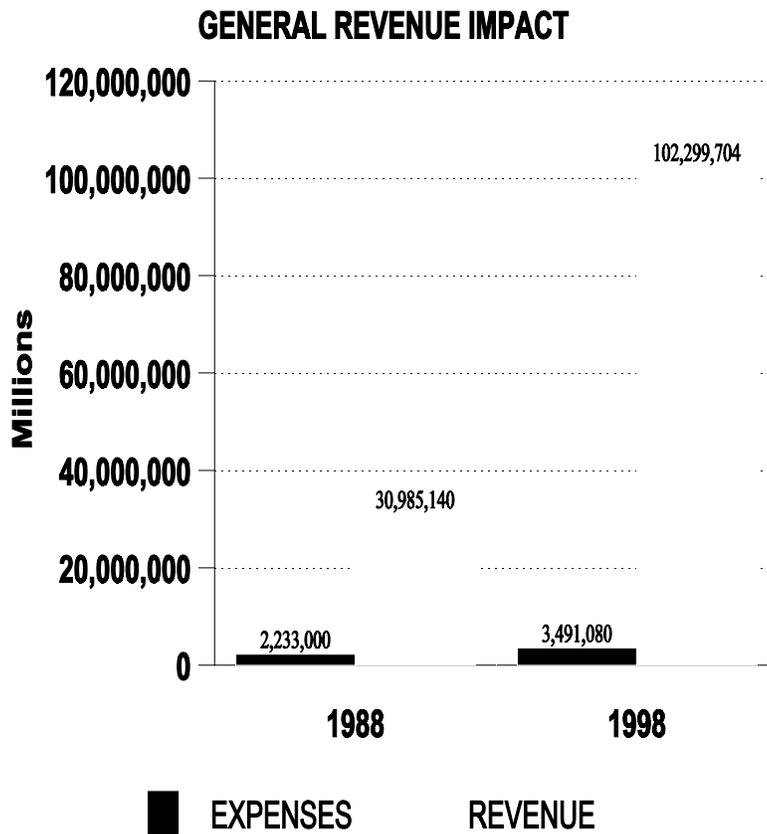
4. Assistance to Small Businesses

The agency has taken many steps to facilitate the ability of small businesses in Texas to raise capital. Pursuant to its rule making authority the agency added a number of exemptions from the registration requirements of the Act and adopted uniform registration guidelines. The agency participated in coordinated multi-state review programs designed to lessen regulatory burdens for small businesses. The agency worked with the NASAA Small Business Capital Formation Committee to develop, implement, and periodically update the U-7 Uniform Form to simplify the disclosure process for small businesses and was one of the first in the nation to permit its use as a disclosure document. The staff of the agency routinely participates in conferences and seminars for small businesses, distributes publications prepared by the agency, and has created links to electronic planning and funding resources on its Internet website to assist small businesses seeking to raise capital in Texas.

5. Public and Industry Access to Information

The agency has greatly improved access to public information relating to its functions, services, and regulations and has distributed such information efficiently and inexpensively through its Internet website. The agency website was designed with user speed and convenience in mind. It is in the form of a simple table of contents with "hyperlinks" as the elements. The essential information that can be accessed via the site includes: agency contact and employment information, the Act, Board Rules, forms, administrative orders, dealer and agent registration information, small business information, and investor information. The agency's website address is www.ssb.state.tx.us.

6. Regulation Without a Burden to Taxpayers



In every year since its creation in 1957, the State Securities Board has been a net contributor to the General Revenue Fund. In fiscal year 1998, the agency expended \$3,491,080 and deposited revenues, primarily from securities and dealer registration fees, of \$102.29 million. The chart above illustrates the growth of revenues deposited by the agency into the General Revenue Fund in the last ten years.

B. Describe the internal process used to evaluate agency performance, including how often performance is formally evaluated and how the resulting information is used by the policymaking body, management, the public, and customers.

The Securities Commissioner receives performance information weekly from the program directors. The Securities Commissioner provides members of the Board with formal and informal reports on a continual basis. Agency performance is formally evaluated quarterly. When results differ from expectations or when events or environmental factors change expectations for the future, those matters are discussed in weekly senior staff meetings. Sometimes specific and immediate responses are required. In other cases, broader and longer term responses are planned and the item is considered in the strategic planning and budgeting process when projecting future performance and possible exceptional items.

C. What are the agency's biggest opportunities for improvement?

The performance-based budgeting process requires that the agency constantly monitor and assess changes and trends in the regulatory environment to identify exceptional items which require an agency response. Statewide fiscal constraints impacted the Legislature's ability to fully fund the agency's proposed responses to all the exceptional items identified for the 2000 - 2001 biennium, leaving room for improvement in the following areas:

1. Improve the enforcement presence of the agency in areas of the state experiencing significant increases in securities fraud, including San Antonio.
2. Decrease the current inspection cycle for registered dealers and investment advisers to at least once every five years.
3. Improve efforts to provide investor education materials to Texans to ensure a better informed generation of investors and entrepreneurs.
4. Expand the ability to conduct Internet surveillance and improve access to electronic databases.
5. Improve professional salaries to obtain parity with other government agencies.

D. How does the agency ensure its functions do not duplicate those of other entities?

The agency frequently meets and communicates with those agencies who may have some coexisting jurisdiction or regulatory interest. The agency interacts on a frequent basis with other states, NASAA, the SEC, the NASD, and other regulatory and law enforcement authorities. The agency

formally meets each quarter with representatives of the SEC, NASD, and other states in the region to discuss coordination of regulatory activities. Representatives of the agency participate on committees and working groups of regulators and meet periodically with industry representatives to address issues relating to regulatory overlap, uniformity, and the registration process. The agency also has information-sharing agreements with the Texas Department of Banking and the Texas Department of Insurance.

E. Are there any other entities that could perform any of the agency's functions?

No.

F. What process does the agency use to determine customer satisfaction and how does the agency use this information?

The agency periodically receives input on its services and functions from applicants, registrants, small business organizations, members of the bar, industry associations, and the public. The Securities Commissioner uses this information as a factor in evaluating the effectiveness of the agency in fulfilling its mission.

G. Describe the agency's process for handling complaints against the agency, including the maintenance of complaint files and procedures for keeping parties informed about the process. If the agency has a division or office, such as an ombudsman, for tracking and resolving complaints from the public or other entities, please provide a description.

Complaints regarding the agency are very infrequent and are generally handled informally. They may be directed to a program director, the Deputy Commissioner, or the Securities Commissioner, as appropriate. For liaison purposes, the Deputy Commissioner has been designated as the agency's ombudsman for handling inquiries or complaints from other agencies. A complaint is evaluated to determine its merit and, if appropriate, action is taken to address issues set forth in the complaint. A person who has submitted a complaint is generally advised of the action, if any, taken by the agency. No formal tracking system has been established for these matters.

I. What process does the agency use to respond to requests under the Public Information (Open Records) Act?

The General Counsel acts as the public information officer of the agency and coordinates the response to requests for information under the Public Information Act. Depending on the nature of a request, the agency will use one of four procedures in place to respond to the request. These procedures are for: 1) Records that can be provided within ten days of the request; 2) Records that cannot be provided within ten days of a request; 3) Records that relate to computer and electronic information; and 4) Information that requires programming or manipulation of data. Specific instructions for each of these procedures are disseminated to all employees. Charges for copies of records are made in compliance with guidelines issued by the General Services Commission.

J. Please fill in the following chart:

State Securities Board Exhibit 16: Contacts		
INTEREST GROUPS (groups affected by agency actions or that represent others served by or affected by agency actions)		
Group or Association Name/ Contact Person	Address	Telephone Number Fax Number E-mail Address
Texas Stock and Bond Dealers Association / Mr. Charles Kirkham, Jr.	2121 San Jacinto Tower, Ste. 1200 Dallas, Texas 75201	(214) 969-2365
State Bar Securities Law Committee / Mr. Lee Polson	Sheinfeld, Maley & Kay 301 Congress Ave, Ste. 1400 Austin, TX. 78701	(512) 469-5404
American Association of Retired Persons / Ms. Laura Polacheck	601 E Street, N.W. Washington, D.C. 20049	(202) 434-3917
Consumers Union / Mr. Rob Schneider	1300 Guadalupe, Ste. 100 Austin, TX. 78701	(512) 477-4431
Securities Industry Association / Mr. Steven Judge	1401 I Street, N.W. Ste. 1000 Washington, D.C. 20005	(202) 296-9410
INTERAGENCY, STATE, OR NATIONAL ASSOCIATIONS (that serve as an information clearinghouse or regularly interact with the agency)		

Group or Association Name/ Contact Person	Address	Telephone Number Fax Number E-mail Address
North American Securities Administrators Association / Mr. Phil Feigin	10 G Street, N.E. Suite 710 Washington, D.C. 20002	(202) 737-0900 (fax) (202) 783-3571
U.S. Securities and Exchange Commission / Mr. Harold Degenhardt	801 Cherry Street, 19th Floor Fort Worth, TX. 76102	(817) 978-3821
National White Collar Crime Center / Mr. Richard Johnston	7401 Beaufont Springs Drive, Ste.300 Richmond, VA. 23225	(804) 323-3563
National Association of Securities Dealers / Mr. Bernard Young	12801 N. Central Expressway, Ste. 105 Dallas, TX. 75243	(972) 701-8554
New York Stock Exchange / Mr. Salvatore Pallante	20 Broad Street New York, NY. 10005	(212) 656-8480

LIAISONS AT OTHER STATE AGENCIES (with which the agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)		
Agency Name/ Relationship/ Contact Person	Address	Telephone Number Fax Number E-mail Address
Office of the Governor Analyst Mr. Wayne Kelley	P.O. Box 12428 Austin, Texas 78711-2428	(512) 463-1900 (512) 463-1880 wkelley@governor.texas.gov
Office of the Lieutenant Governor Budget Director Mr. Mike Morrissey	State Capitol 2E.13 Austin, Texas	463-0010 mike.morrissey@ltgov.state.tx.us
Office of the Speaker Special Assistant, Investments and Finance Mr. Johnnie Morales	P. O. Box 2910 Austin, Texas 78768-2910	(512) 463-1100 (512) 463-0921 johnnie.morales@speaker.state.tx.us
Comptroller of Public Accounts Appropriations Control Officer Ms. Ora Haynes	P. O. Box 13528 Austin, Texas 78711-3528	(512) 463-3848 (512) 475-0527 ora.haynes@cpa.state.tx.us

Legislative Budget Board Analyst Mr. David Pagan	P. O. Box 12666 Austin, Texas 78711-2666	(512) 475-2927 (512) 475-2902 david.pagan@lbb.state.tx.us
State Auditor's Office Contact Mr. John Swinton	P. O. Box 12067 Austin, Texas 78711-2067	(512) 479-4822 (512) 479-4884 jswinton@sao.state.tx.us

VIII. 76th Legislative Session Chart

Fill in the chart below or attach information if it is already available in an agency-developed format. In addition to summarizing the key provisions, please provide the intent of the legislation. For example, if a bill establishes a new regulatory program, please explain why the new program is necessary (e.g., to address specific health and safety concerns, or to meet federal mandates). For bills that did not pass, please briefly explain the issues that resulted in failure of the bill to pass (e.g., opposition to a new fee, or high cost of implementation).

State Securities Board Exhibit 17: 76th Legislative Session Chart		
Legislation Enacted in the 76th Legislative Session		
Bill Number	Author	Summary of Key Provisions/Intent
SB 1368	Harris	Nonsubstantive corrections to codes / Changed reference in The Securities Act to the Finance Code provision regarding rates of interest.
Legislation Not Passed in the 76th Legislative Session		
Bill Number	Author	Summary of Key Provisions/Intent/Reason the Bill did not Pass
HB 39	Culberson	Certain professional fees and taxes / Delegate fee authority to the Securities Commissioner or Board / No hearing on the bill.
HB 226	West	Personal financial education / Requiring personal finance education for graduation from high school / Inadequate time.
SB 164	Carona	Inactive status fees / Render occupational tax inapplicable to inactive status applications / No hearing on the bill.
HB 1015	Culberson	Repeal of certain professional fees and taxes / Repeal of occupational tax/ No hearing on the bill.

IX. Policy Issues

1. Additional Board Members

A. Brief Description of Issue

Should the Policymaking Body of the State Securities Board consist of more than three members?

B. Discussion

Section 2.A of the Act presently provides for three Board members, appointed by the Governor, with concurrence of the Senate, to serve six-year staggered terms. Because of communication restrictions in the Open Meetings Law associated with a quorum of Board members, a Policymaking Body with a small number of members may not function as effectively as one with a larger number.

C. Possible Solutions and Impact

An increase in the number of members of the Policymaking Body of the agency would require an amendment to Section 2.A of the Act. Such an increase might improve the ability of the Board to communicate among themselves while remaining in compliance with the provisions of the Open Meetings Law. The fiscal impact of an increase in the number of Board members would include additional travel and per diem costs.

2. Criminal Sanctions for Business Entities

A. Brief Description of Issue

Should the Act be amended to eliminate the restriction of its penal provisions to “natural persons?”

B. Discussion

The Act presently provides for the criminal prosecution of individuals, but not business entities, that

may have engaged in conduct, through its agents, in violation of the penal provisions of the Act. Section 4.B of the Act defines the terms “person” and “company” broadly but provides that under the criminal provisions of Section 29 of the Act, the word “person” shall mean a natural person. Texas may be one of the few states, if not the only state, that cannot prosecute business entities.

For many years, Texas has led all other states in the number of criminal indictments and convictions for securities fraud and related offenses. Throughout its history, the agency has found that criminal actions provide the best deterrent to those who would engage in schemes to defraud the public. While it is not anticipated that a change in the law would result in a significant number of criminal prosecutions of firms, a sanction that may subject a firm to fines specified in Section 12.51 of the Texas Penal Code, possible dissolution proceedings under the Business Corporations Act, and disclosure of the action in future securities offerings might improve the ability of the agency to carry out its mission to protect investors.

C. Possible Solutions and Impact

The issue could be addressed by deleting the final sentence in Section 4.B of the Act. The proposed change would potentially impact business entities who engage in fraud in connection with the offer for sale or sale of securities in Texas or who violate the securities registration or dealer and agent registration requirements of the Act. Potential benefits are described in paragraph B above. The fiscal impact to the state, if any, is unknown.

X. Comments

The securities markets are in a period of extraordinary growth as more and more Texans transform themselves from savers in depository institutions to securities investors. The decline of the prevalence of the defined benefit retirement plan in corporate America together with advancing technology (which makes access to information and trading systems fast and convenient) are indicators that this growth will continue.

As the number of individual investors and the amount of money invested in the securities markets grows, the need for the integrated system of oversight provided by the agency increases. Technological advances have made it inexpensive and easy for promoters of fraudulent schemes to reach millions of people quickly. Internet sites and e-mail solicitation may soon become more common than telephone boiler rooms as the vehicle of choice for promoters. The growing importance of the securities markets in the lives of Texans has been recognized by the Legislature as evidenced by the increases in appropriations to this agency in the last several sessions.

When reviewing the significant revenues generated by the State Securities Board (more than \$100 million per year), it is of interest to note that the majority of those making filings and paying fees to the agency are located in other states and are making similar filings in other states at the same time. That is why dealers, investment advisers, and agents are all renewed on a calendar year basis in all states.

As previously noted elsewhere in this report, a major revision of the Act was completed by the Legislature in 1995. However as part of a continuing effort to identify improvements that could be made in achieving the objectives of the Act in a changing regulatory environment, the staff has created a preliminary list of sections of the Act where changes may be beneficial. Few, if any, of these possible changes are viewed as essential.

<u>Section</u>	<u>Description</u>
Section 2	Add language to clarify the ability of Securities Commissioner to delegate responsibilities to the staff.
Section 4.D	Include in the definition of salesman or agent one who renders investment advice.
Section 4.E	Include in the definition of sale and offer for sale one who renders investment advice.

<u>Section</u>	<u>Description</u>
Section 5.C	Delete “vendor,” “vendee,” and “not engaged in the business.”
Section 5.H	Update the list of entities to be consistent with those specified in Board Rule 109.3.
Section 5.I	Clarify the status of status of unregistered agents of an issuer.
Section 8	Eliminate the requirement for a resolution.
Section 10-1	Change paragraph B. from “may” to “shall” or “will.”
Section 10-1 B	Include a reference to the promotion of investor education.
Section 11	Include an exclusion for information relating to investigations and examinations.
Section 12	Provide the Board with authority to set bonding and net capital requirements for dealers.
Section 12.A	Add to the prohibition one who engages in rendering services as an investment adviser.
Section 13	Add language that the Securities Commissioner can require an undertaking or agreement necessary to fulfill the purposes of the Act. Create new Section 13-1 to expressly authorize and describe the examination of registered dealers.
Section 14	Add authority to issue an emergency summary suspension with provisions for notice and an opportunity for hearing. Add a basis for denial, revocation, or suspension for one who acts as an aider and abettor of a violation of the Act, Board Rule, or Board Order. Add a basis for denial, revocation, or suspension for one who fails to supervise agents of a dealer.
Section14.A(1)	Change to “has been convicted of any felony or pled guilty and placed on probation for such an offense.”
Section14.A(5)	Clarify that the agent must be registered with the dealer for whom he is selling.
Section14.A(9)(a)	Add “any state” to include orders issued by the State Securities Board.
Section 16	Combine Sections 8 and 16.

<u>Section</u>	<u>Description</u>
Section 20	Consider deletion of the Section.
Section 23.A	Recite that hearings are pursuant to the Gov't Code, Section 2001.
Section 23.A	Allow for the issuance of emergency Cease and Desist orders with provisions for notice and opportunity for hearing. Add language to permit a cease and desist orders to extend to those acting as unregistered agents. Limit the time for requesting a hearing to 30 days.
Section 23.B	Limit the time for requesting a hearing to 30 days.
Section 25	Clarify that the termination of registration of the dealer terminates the registration of the dealer's agent.
Section 25-1	Add a provision to make records admissible in evidence under the receiver's affidavit.
Section 26	Add a provision for the last known address for service of process. Clarify that such service may be used for Section 23.
Section 28	Simplify the Section and clarify that all information obtained in connection with an examination or investigation is deemed confidential. Provide for the use of information by the agency at judicial proceedings.
Section 28.B	Add a provision to maintain confidentiality of information provided to other governmental authorities and to receivers.
Section 29.D	Add language to create a provision for violations of a cease and desist order for those acting as unregistered dealers and agents.
Section 32	Simplify the Section. Allow for the verification of a petition to be on information and belief consistent with Section 25-1. Modify the venue provision to allow the action to be brought in Travis County.
Section 35	Provide for notice filing fees as contemplated by NSMIA.