Strengthening the SEC's Vital Enforcement Responsibilities

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I. Introduction

Chairman Reed, Ranking Member Bunning, and members of the Subcommittee, thank you for inviting me to testify today on behalf of the Securities and Exchange Commission and its Division of Enforcement. I am both honored and proud to be here as the SEC's new Director of Enforcement. I am also extremely grateful for this Subcommittee's support and assistance in, among other things, efforts to increase our budget, meet our enforcement responsibilities, and fulfill our mission of protecting investors.

I would also like to thank the GAO and its team. I truly appreciate the careful work that is evident in the GAO Report: *Securities and Exchange Commission: Greater Attention Needed to Enhance Communication and Utilization of Resources in the Division of Enforcement* (GAO-09-358), and the extensive cooperation that our two agencies have shared not only with respect to this report, but with respect to others in the past. As our Chairman, Mary Schapiro, has noted, reinvigorating the SEC's Enforcement program is a top priority, and I fully concur with the GAO's recommendations.

In your letter inviting me to appear, you asked me to provide my views on: (1) the extent to which the resource shortages and enforcement policies of the SEC in recent years have hampered aggressive enforcement of securities laws; (2) what changes are needed to ensure that the SEC does not once again fall behind on its enforcement responsibilities; and (3) what changes Congress should consider to ensure adequate resources and authority for the SEC to fulfill its vital enforcement role.

As I will discuss in more detail, we have faced and are facing many challenges, including a complex and growing market and limited resources. It is critical not only that we do our job and do it right, but that in so doing, we help restore confidence in the agency and in the marketplace. In my testimony, I will outline for you our plan for addressing the challenges that we face. I will discuss some of the changes Chairman Schapiro has instituted since her arrival that have already helped our program. Additional resources in my view also would enhance greatly our ability to keep pace with ever-changing developments in a dynamic marketplace, as well as rapid advances in technology. Further in this regard, I will touch on some potential legislative changes.

The proposed plan I will outline dovetails with the GAO report and its recommendations concerning an alternative organizational structure and reporting relationship for the SEC's Office of Collections and Distributions; further review of the level and mix of Enforcement resources and the Division's current internal processes; review of the 2006 corporate penalty policy; and enhancing communications. And, I will address the GAO report and each of its recommendations in turn.

Before I begin, however, I am mindful that this panel – and the public – is deeply concerned about the Division's failure to detect the fraud perpetrated by Bernard Madoff. I am not here today to defend the agency's actions, nor am I in a position yet to explain precisely what went wrong. I am here to say that I will be the first to admit mistakes when they are made and to work toward preventing them from happening again. But, I am also here to ask that you consider this failure in the context of the Division's storied history of successful enforcement and vigorous efforts to protect investors, and the many talented and committed members of the enforcement staff who work very hard every day on behalf of investors.

My belief as a newcomer is that there may have been multiple things that contributed to the agency's failure to act timely in the Madoff matter. But, whatever the agency's internal investigation concludes in this regard, not a day goes by that I don't think about how we can stop the next big fraud.

I am here to pledge my best efforts toward revitalizing the Division and earning back the respect of investors. I know there is much to do, and we've gotten a lot of things started. But all of our ideas and initiatives will take time and effort. I look forward to discussing some of these efforts with you today and in the future. We expect that some of our improvements will require legislative assistance, and your interest in a stronger SEC is greatly appreciated.

II. Background

Since I am new to the SEC and this is the first time I am appearing before you, I hope you will permit me to tell you a little about myself and about the Division of Enforcement, particularly its recent successes. Over my career, I have been blessed to work in a wide range of legal jobs among some of the most talented members of the profession. These include positions as a judicial law clerk with the United States Court of Appeals for the Eighth Circuit; an associate with a long-established law firm in New York; 11 years as a federal criminal prosecutor of terrorism and white-collar criminal cases in the United States Attorney's Office for the Southern District of New York in Manhattan; and seven years as a general counsel for a large financial services firm. Despite these experiences, and all that I learned from each one, I can say without hesitation or qualification that, to be asked by our Chairman, Mary Schapiro, to join the SEC, an institution with such a rich tradition of excellence and commitment to protecting investors, was the greatest day of my career.

Although I am new as a member of the SEC staff, over the years I have had much experience with the agency and particularly, with the Division of Enforcement. As a federal prosecutor, defense counsel, and most recently, in-house counsel, I have worked with the Division – and against the Division – and I have seen it from many perspectives. Through it all, I consistently saw in the Division staff integrity, excellence, dedication, and a passion for investor protection. I saw professionalism and teamwork. I saw a commitment to justice. And in my 38 days as Director of the Division of Enforcement, I can assure you that despite the enormous challenges we have faced and are facing, I have seen these traits in abundance. They are alive and well and, in my view, one of the great, distinguishing safeguards of the integrity of our capital markets.

III. The Division of Enforcement and Recent Successes

The Enforcement Division is in many ways the face of our investor protection agency. Ours is the Division authorized to investigate and bring civil charges in federal district court or in administrative proceedings based on violations of the federal securities laws. These violations include fraud by any person or entity, whether or not such actor is otherwise regulated by the SEC, as long as the violation is in connection with the offer, purchase or sale of securities. In addition to fraud, we also investigate and prosecute regulatory misconduct, including registration, reporting, and recordkeeping violations relating to issuers, broker-dealers, municipal securities dealers, investment advisers, investment companies, and transfer agents.

We initiate investigations based on our own surveillance efforts, information from other regulators, and complaints and tips from investors and other members of the general public. Although we have delegated authority to initiate investigations on an informal basis, we require Commission approval in the form of a formal order of investigation, in order to issue subpoenas.

When we find violations of the federal securities laws during our investigation, if appropriate, we recommend to the Commission that it authorize us to bring an enforcement action, including seeking any appropriate relief, against the alleged wrongdoers. Our potential remedies include: injunctions, cease-and-desist orders, disgorgement of ill-gotten gain, financial penalties, revocations of registration,

undertakings to maintain or improve internal procedures, and bars from associating with broker-dealers or investment advisers, practicing before the Commission as an accountant or an attorney, serving as an officer or director of a public company, and participating in the offer or sale of a penny stock. In emergency actions, we often seek temporary restraining orders, asset freezes, appointments of receivers, and other ancillary relief. Whenever practicable, we seek to return monies to harmed investors. In addition, we frequently work closely with the Department of Justice, criminal investigators, and state and federal regulators, including conducting parallel and coordinated investigations, and cooperating with prosecutions as appropriate.

We have brought many important and timely cases this year. Here is a small sample of our recent actions:

- Public trust: In March, we charged New York's former Deputy Comptroller and a top political advisor with allegedly extracting kickbacks from investment management firms seeking to manage the assets of New York's largest pension fund, the New York State Common Retirement Fund. Last month, we amended the complaint to add a former New York state political party leader, a former hedge fund manager, and a Dallas-based investment management firm and one of its founding principals, in connection with the alleged multi-million dollar kickback scheme.[1]

- Reserve Fund: On Tuesday, we filed fraud charges in the Southern District of New York against the managers of the Reserve Primary Fund, a $62 Billion

money market fund whose net asset value fell below $1.00, or "broke the buck," in the fall. As part of this action, the Commission is seeking to consolidate the numerous lawsuits involving the Reserve Fund, and bring about an efficient and equitable pro-rata distribution to shareholders of the fund's remaining assets, including the $3.5 Billion set aside in the Fund's litigation reserve.

- Insider trading: Last week, we charged a former Citigroup investment banker and seven others for allegedly engaging in a widespread insider trading scheme that involved repeated tips about upcoming merger deals.[2]

- Subprime mortgages: In another important case filed last week, we charged two former executives at American Home Mortgage Investment Corporation for allegedly engaging in accounting fraud and making false and misleading disclosures, including misleading disclosures relating to the riskiness of the mortgages originated and held by the company, to conceal from investors the company's worsening financial condition in early 2007 as the subprime crisis emerged.[3]

- Auction rate securities: In February, as part of the auction rate securities settlements, we announced a settlement that would provide more than $7 billion in liquidity to thousands of customers who invested in auction rate securities before the market for those securities collapsed.[4]

- Ponzi schemes: Also last week, we obtained an emergency court order freezing assets and providing other relief against a California-based financier and his two companies for allegedly defrauding investors of hundreds of millions of dollars by misrepresenting investments in the life insurance policies of senior citizens and in timeshare real estate. The complaint alleged, among other things, that investors were misled by false claims that their returns would come from proceeds made on their investments, when instead some of the purported returns were paid out of funds raised from newer investors.[5] Since January, we have filed 23 cases involving Ponzi schemes or Ponzi-like payments, in which we charged that perpetrators fraudulently raised funds from new investors to pay "returns" to existing investors.[6] Of the 23, 19 cases sought emergency relief in the form of an asset freeze to prevent the possible dissipation of investor assets and, in some instances, a temporary restraining order to halt ongoing conduct.

- Other emergency actions: In addition to the 19 emergency actions involving Ponzi schemes or Ponzi payments filed in the last four months, we have also filed several emergency actions related to other types of misconduct. In the last two weeks alone, we obtained an emergency court order to freeze the assets of a Connecticut-based money manager and the hedge funds that he controls, alleging that he forged documents, promised false returns, and misrepresented assets managed by the funds to illicitly raise more than $30 million from investors;[7] we obtained an asset freeze against a Florida-based adviser for allegedly misrepresenting the nature of $550 million in investments;[8] and we obtained

emergency relief against a Texas businessman and his company – both subjects of a previous SEC enforcement action in 2001 -- for allegedly fraudulently raising approximately $40 million from hundreds of investors through a high-yield debenture offering.[9]

IV. Challenges and How to Refocus the Division of Enforcement

These are challenging times. The financial industry has grown dramatically over the last decade in both size and scope. As evidenced by the current financial crisis, our markets attract a large and complicated group of participants that deal in a variety of new, complex, and ever-changing financial products. In today's market, the SEC oversees more than 30,000 registrants, including more than 12,000 public companies, 4,600 mutual fund families, 11,000 investment advisers, 600 transfer agents, and 5,500 broker dealers. In fiscal year 2008, the Enforcement Division received more than 700,000 complaints, tips and referrals regarding potential violations of the federal securities laws. Yet, our entire Enforcement staff nationwide – including lawyers, accountants, information technology staff, and support staff – is just above 1,100. Our mandate is broad, including not only regulatory misconduct by registered entities and persons but also fraud by **any** entity or person, whether registered or not, in connection with the purchase or sale or in the offer or sale of securities or security-based swap agreements. The challenge of our mandate grows as new financial products emerge that may fit the definition of a "security."

In the face of these growing challenges, the Division needs sufficient resources to meet its mandate. Yet, because of several years of flat or declining SEC budgets, the SEC has faced significant reductions. As a result, even after receiving a much appreciated budget increase in 2009, the SEC's workforce still will have significantly fewer staff than in 2005. As noted in the GAO Report, this decline is reflected in Enforcement's staffing levels as well. And our budget for new technology investments is still more than 50% lower than the 2005 level. If the SEC were to receive additional Enforcement resources, we would be able to continue rebuilding our staff and technology investments, which would reinvigorate the Enforcement Division and help restore investor confidence.

We have a talented and dedicated staff and the support of a Chairman and Commissioners who are committed to a strong Enforcement program. And, I am reminded daily that a change in culture within the division has already started to occur. The staff has redoubled their efforts to meet the challenges of this ongoing financial crisis. By way of comparison, since the end of January,

- We have filed at least 27 emergency temporary restraining orders. During roughly the same period last year, we filed 7.
- We have opened more than 287 investigations. During roughly the same period last year, we opened 217.
- The Commission has issued at least 138 formal orders. During roughly the same period last year, the Commission issued 57.

Chairman Schapiro also has begun to implement changes in our policies and procedures. For example, she streamlined the formal order approval process. As the Chairman has noted, in investigations that require the use of subpoena power, time is of the essence, and delay can be costly. To ensure that subpoena power is available to the staff when needed, the Chairman returned the SEC to a policy of faster consideration of formal orders, where appropriate, by a single Commissioner acting as duty officer. Another change, discussed more fully below, is the Chairman's abolition of the "penalty pilot" program, which had required Enforcement staff to obtain full Commission approval before the staff could begin settlement negotiations regarding civil penalty amounts with public issuer defendants.

But there is more to be done. With what I have already learned—and am still learning—as Division Director, I am prepared to make changes to the structure of the Division, how we conduct business internally, how we view the world, and most importantly, how we can rise to the challenge and fulfill our critical mission of enforcing the federal securities laws, pursuing violators, and protecting investors, in a timely and effective way. We have heard the criticisms and the commentary, and we are doing what any responsible trustee of the public faith should do – we are using it to conduct a serious self-assessment to determine what we can do to improve and move forward, and be all the better for the adversity. We are learning as many lessons from the few things we have handled less effectively as we have learned from the many we have handled highly effectively. We need to do this so that we can restore investor confidence and send a strong message to would-be violators that the SEC is on the beat. As our Chairman noted before the full Banking Committee, the SEC is the only agency focused primarily on the

protection of investors. As the agency's most public face in its efforts to protect investors, a strong Division of Enforcement is critical to the investing public's confidence in the integrity of our markets.

I met with Division staff my first day on the job and I asked the staff to embrace four principles:

- First, we have to be as strategic as possible. We need to use our resources as efficiently as possible and in a manner that achieves the greatest impact. This means a focus on cases involving the greatest and most immediate harm and on cases that send an outsized message of deterrence.

- Second, we have to be as swift as possible. A sense of urgency is critical. If cases are unreasonably delayed, if there is a wide gap between conduct and atonement, then the message – to the investing public that the SEC is vigilant and effective, as well as the message to those who might themselves be considering a step outside the law – is diluted. Timeliness is critical. Corporate institutions are dynamic and ever-changing. People come and go. When a case is brought years after the conduct, the fines and the penalties still hurt, but the opportunity to achieve a permanent change in behavior and culture is greatly reduced.

- Third, we have to be as smart as possible. Investigating cases or individuals past the point of diminishing returns is as inefficient as choosing the wrong

case to investigate up front. This means a constant focus on investigative plans. We need to have regular decision points during the life-cycle of a case, where we determine on an informed basis how to shape the investigation and charge the case. We also need other tools to help us better track and analyze case progress, or lack thereof.

- And last, we have to be as successful as possible. We need to win. This means building strong cases so that defendants settle quickly on the Commission's terms or face a trial unit armed with compelling evidence.

There was, and is, little dispute over these goals. The challenge, as always, is one of execution. But I assure you that I am committed to implementing the changes necessary to achieve our goals. To that end, 10 days into the job, I assembled approximately nine advisory groups within the Division, staffed by senior personnel to assess and propose changes to virtually all significant aspects of our work and processes. The advisory groups looked at issues relating to, among other things, Division structure, case management and handling, streamlining, and better training. The marching orders in this top-to-bottom review were simple – in each context, ask yourselves, what works better? These advisory groups then gathered and presented their preliminary findings just two weeks later to a group of approximately 175 managers in the Division. The result was two days of commentary, feedback and brainstorming. We also had the aid of a management consultant who has analyzed and restructured law firms and law departments in both the public and private sectors. The discussions were free-flowing and highly constructive.

The result of this exercise is that we have recognized critical items that need to be addressed if we are to improve our protection of investors. Consistent with the GAO's recommendations, I propose allocating additional resources to the following categories:

- Administrative and paralegal support: The Division's lawyers and accountants spend too much time doing document or organizational tasks that are better handled by para-professional personnel. This includes document collection, organization, uploading and indexing, as well as tasks related to the collection and distribution of disgorgement and penalties. It would be much more efficient, and free-up much more time for high-value investigative tasks, if these efforts were transferred to administrative and support staff.

- Information technology support: The SEC is working on a number of technology initiatives designed to bolster its ability to detect, investigate, and prosecute wrongdoing. These initiatives include a review of how the SEC handles tips, complaints, and referrals; the improvement and expansion of the Division's document management, reporting and case management capabilities; and the improvement of the SEC's ability to identify, track, and analyze data to identify risks to investors better.

- Trial lawyers: It is important that the Commission maximize the capacity and ability of its trial unit. Simply stated, we must convey to all defendants in SEC actions that not only do we assemble winning cases against them, but also we are prepared to go to trial and we will win. Only then can we expect

to secure the type of settlements that both achieve justice for investors and save resources to be used in pursuing the next case. Without that credible threat, we are at a severe disadvantage. Our trial unit does an admirable job, but given the increased caseload, particularly the great increase in the number of emergency actions such as temporary restraining orders and asset freezes, it needs to grow.

- Hiring a Chief Operating Officer/Business Manager: the Division lacks a business manager or COO who can manage administrative, information technology, project management, and human resource issues. Additional staffing in the Office of Collections and Distributions would be welcome, as our attorney-investigators spend a significant amount of time doing collection and distribution work – approving distribution plans and distribution service providers – when they could be investigating cases.

Resources are critical, and I believe there is a compelling need at the Division for greater assistance. An increased budget would enhance significantly our ability to make the changes I believe we need to do our job to the best of our abilities. But as I told the SEC staff who gathered on my first day on the job, relying on new resources is a little like waiting for the cavalry – you don't know if they will come, you don't know when they will come, and you don't know how long they will stay. So it is our obligation – to those who are evaluating whether we should be afforded additional resources as well as to the taxpayer – to efficiently use the resources we already have.

To that end, our self-assessment effort is underway, in which we are asking ourselves a number of pointed questions to identify those changes that will allow us to be more efficient and successful. These questions include:

- Specialization: Should we increase our use of specialized groups organized along product, market or transactional lines, in order to understand better the areas we investigate and to see patterns, links, trends and motives? Would such a structure permit us to better gather in one place and harvest the accumulated expertise that exists throughout the Division, to target focused training at such a group, and to utilize outside market specialists better?

- Management: Would a different management model enable us to do our job with fewer managers, thus freeing up those managers – including many highly talented and experienced investigators – to conduct more investigations and bring more cases?

- Approvals and Procedures: The Division has a number of processes by which approvals must be secured at the highest level of the Division. Are these approvals necessary or can they be delegated to those running the investigations day-to-day? We are also considering whether changes to agency-wide procedures will help make our processes more efficient.

- Metrics: Can we de-emphasize the current quantitative metrics used to evaluate personnel and programs – the number of cases opened and the number of cases filed – in favor of a more qualitative standard, which includes concepts like timeliness, programmatic significance, and deterrent effect of a case?

- National Program: Can we undertake efforts to break down the roles that naturally exist when one is organized along a regional basis and think of ways to encourage and incentivize more collaboration across regions? (Specialization, in which groups are created that are staffed nationally, could be one way to do this.)

- Complaints, Tips and Referrals: As Chairman Schapiro has previously noted, we have retained Mitre, a Federally Funded Research and Development Company, to advise us on how we can better collect, record, investigate, refer and track the hundreds of thousands of complaints, tips and referrals that we receive each year. How can we analyze them better in order to reveal links, trends, statistical deviations, and patterns that might not be observable when they are examined on a less-than-comprehensive basis?

- Rewards: Would it improve our program to use tools that we either already have, or would like to have, to reward persons for coming forward with information about wrongdoers before it is too late? Such tools include a

whistleblower program and a greater use of benefits – reduced sanctions, immunity or agreements similar to a deferred prosecution agreement – for persons who come forward to identify and provide evidence against those who violate the law. Some of the most credible and valuable evidence is gathered in this manner by criminal and other authorities, and we seek to determine if we are taking full advantage of this opportunity. As Chairman Schapiro has stated, we are actively considering coming to Congress soon with a request for authority to compensate whistleblowers who bring us well-documented evidence of fraudulent activity.

- Cooperation: Could we cooperate further with other law enforcement agencies and regulators to leverage resources more effectively? The Commission staff works closely with other authorities, for example, in securities-related criminal actions. The nature and extent of the cooperation varies from case to case and can include referrals, the sharing of information in parallel investigations, simultaneous actions, and staff assistance on criminal cases. Additional cooperation and coordination with criminal and other authorities may yield even better results.

These are, in broad strokes, some of the questions we are asking and changes we are considering. The focus, as I said, is on being more strategic, swift, smart and successful in our job – protecting the investor.

V. Potential Legislative Changes

As I discussed earlier, I believe that an increased budget would enable us to address our resource concerns better, both in terms of staffing and technological support. We greatly appreciate the support we have received time and again from you, Chairman Reed, as well as Chairman Dodd, Ranking Member Shelby and many others on the Banking Committee who have advocated for the SEC on this front.

With regard to specific legislative changes, there are a number of ways to broaden or clarify our authority so that we can better enforce the federal securities laws and protect investors. I have discussed a number of items with Chairman Schapiro that would aid our enforcement efforts, including a whistleblower program, additional aiding and abetting authority, and legislation in areas such as swap agreements and hedge fund regulation. I understand that she will be providing some of these legislative recommendations to you very soon. These proposals will be aimed, in part, at ensuring we have sufficient authority and reach to combat fraud and other market misconduct.

We also expect to request other legislative measures we have discussed with you in the past, which would provide important substantive and procedural tools to the Enforcement Division. Some of those include giving the Commission the authority to seek penalties in cease-and-desist proceedings and authorizing civil money penalties against aiders and abettors under the Investment Advisers Act. We also believe providing for nationwide service of process in civil actions filed in federal courts would afford significant savings of travel costs and staff time through the elimination of

duplicative depositions and adds the benefit of having live witnesses and party testimony before the trial court.

VI. The GAO Report

Let me now turn to the GAO Report. As Chairman Schapiro has noted, reinvigorating the SEC's enforcement program is a top priority for the Commission, and I welcome the GAO's report and recommendations. The GAO report and its recommendations are timely and dovetail with our proposed initiatives to strengthen our Enforcement Division, maximize our resources, and meet the challenges that lay ahead.

The GAO's report has identified four specific recommendations for actions that the SEC can take to enhance the operations of our enforcement program. I agree with each of the recommendations.

a. To consider an alternative organizational structure and reporting relationship for the Office of Collections and Distributions.

The Commission in September 2007 established a new centralized office, the Office of Collections and Distributions, to expedite the distribution of Commission recoveries to injured investors. The Office is responsible for overseeing the distribution of billions of dollars to investors who have been injured by securities laws violations, implementing the Division's collections and distributions programs, and conducting litigation to collect disgorgement and penalties imposed in certain Enforcement actions.

In addition, the Office tracks, records, and provides financial management assistance with respect to the distribution funds, and provides overall case management for the Division.

The GAO's review has identified the need for improvements to the Office's organizational structure. The SEC agrees with this recommendation and is working to identify and evaluate various alternatives for reforming the Office's organizational structure. We are considering how best to improve the administration of the Office of Collections and Distributions and to make sure that the Office's workflows and processes are run efficiently. By making the necessary changes, we hope to enhance the Commission's ability to collect disgorgement and penalties and swiftly and efficiently distribute the monies to harmed investors.

b. To further review the level and mix of resources dedicated to Enforcement, and assess the impact that the Division's current review and approval process for investigative staff work has on organizational culture and the ability to bring timely enforcement actions.

Declining staffing levels have had an impact on the SEC's ability to pursue an aggressive enforcement program. The GAO report notes that the total number of staff who work in the enforcement program is down 4.4% since 2005, and the total number of non-supervisory investigative attorneys is down even more significantly, by 11.5%, since 2004. The report also identifies the need for additional resources in Enforcement devoted to administrative and paralegal support, information technology support, and specialized services and expertise.

I concur with GAO's recommendation. Given the number of Enforcement Division staff as compared with the broad area that is potentially under our purview, it is clear that smart and strategic use of resources is critical to the success of our mission to protect investors. I have consulted at length with Division staff, as well as with the Chairman, to find ways to work smarter with our current resources and to identify the highest impact use of any additional funds that Congress may provide. As described above, I believe we need to allocate more resources to administrative and paralegal support, information technology, trial lawyers, and to hiring a COO/business manager. With regard to specialized services and expertise, as outlined above, I am also exploring the increased use of specialized groups as a way to enhance our understanding of the areas we investigate and our ability to see patterns, links, trends, and motives. Such groups may also provide a better forum in which to hire persons with specialized expertise in various aspects of the securities industry to improve our collective ability to detect fraud and prosecute violators. Similarly, a national program that reaches across the current regional lines may enable us to share information and expertise better.

The GAO report also identifies the need to ensure efficiency in the internal case review process so that Enforcement staff can bring enforcement cases more quickly and spend more time on investigations. I concur with this recommendation. To this end, as outlined above, we are exploring changes in management structure and whether certain procedures and processes are necessary or can be improved.

c. To examine the effects of the 2006 corporate penalty policy to determine whether the policy is achieving its stated goals, and any other effects the policy may have had in adoption or implementation.

In January 2006, the Commission issued a Statement Concerning Financial Penalties. The Statement identified two key considerations and seven additional factors to be considered in determining whether to impose a penalty. The two key considerations are 1) the presence or absence of a direct benefit to the corporation as a result of the violation; and 2) the degree to which the penalty will recompense or further harm the injured shareholders. The other factors are the need to deter the particular type of offense, the extent of the injury to innocent parties, whether complicity in the violation is widespread throughout the corporation, the level of intent on the part of the perpetrators, the degree of difficulty in detecting the particular type of offense, the presence or lack of remedial steps by the corporation, and the extent of cooperation with Commission and other law enforcement. The purpose of the guidelines was to provide "clarity, consistency, and predictability" to the issuer penalty process.

I concur with the recommendation in the GAO Report that the Commission examine whether the 2006 corporate penalty policy is achieving its intended goals. Although my tenure has only recently begun, I have already initiated discussions with various members of the staff and will report back to the Commission with findings and recommendations. To me, however, the focus of any penalty policy should be assurance that malefactors get appropriately severe sanctions to sufficiently deter them and others from engaging in similar misconduct in the future.

The GAO Report also raised concerns about the Commission's 2007 "penalty pilot" program. Before I arrived, Chairman Schapiro ended the 2007 "penalty pilot" program, which had required Enforcement staff to obtain a special set of approvals from the Commission in cases involving civil monetary penalties against public companies as punishment for securities fraud. I believe this decision has had a positive effect on Enforcement staff.

d. To take steps to ensure that the Commission, in creating, monitoring, and evaluating its policies, follows the agency strategic goal and other best practices for communication with, and involvement of, the staff affected by such changes.

Finally, the GAO recommends that the SEC take steps to ensure that the Commission better involves, and communicates with, Enforcement staff in its decision making process relating to the management of the Enforcement program. Again, I concur with this recommendation. Communication is a top priority and critical not only to the effective performance of our jobs but to one of our most important intangibles – the morale of our staff on the ground. I am a strong believer that all constituencies should be heard. Since my arrival at the SEC, I have conducted Enforcement-wide Town Hall meetings, I have met individually and in groups with many members of the staff and with the management of the Division, I have solicited commentary and feedback and brainstormed with Division managers on the restructuring of the Enforcement Division and other issues, and I have asked and will continue to ask for input from Enforcement staff and others. I intend to keep the lines of communication open not only within

Enforcement, but with other SEC Divisions and Offices and with the Chairman and the Commissioners.

VI. Conclusion

I would like to thank you again for the privilege and opportunity to appear before you today, and to thank the GAO and its staff for their hard work and cooperation. I would be happy to answer any questions you might have.

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[1] *SEC v. Henry Morris, et al*., Lit. Rel. No. 20963 (March 19, 2009), Lit. Rel. No. 21001 (April 15, 2009), Lit. Rel. No. 21018 (April 30, 2009).
[2] *SEC v. Maher F. Kara, et al.* Lit. Rel. No. 21020 (April 30, 2009).
[3] *SEC v. Michael Strauss, Stephen Hozie and Robert Bernstein*, Lit. Rel. No. 21014 (April 28, 2009).
[4] *SEC v. Wachovia Securities, LLC*, Lit. Rel. No. 20885 (Feb. 5, 2009).
[5] *SEC v. Private Equity Management Group LLC, et al.*, Lit. Rel. No. 21013 (April 27, 2009).
[6] The cases are:

1. *SEC v. Bradley L. Ruderman, et al.*, Lit. Rel. No. 21017 (April 29, 2009) (sought emergency relief to halt an alleged $38 million Beverly Hills-based hedge fund fraud that included at least one Ponzi-like payment).
2. *SEC v. Private Equity Management Group LLC, et al.*, Lit. Rel. No. 21013 (April 27, 2009) (sought emergency relief in California-based scheme involving hundreds of millions of dollars).
3. *SEC v. Donald Anthony Walker Young, et al*., Lit. Rel. No. 21006 (April 20, 2009) (sought emergency relief to halt alleged scheme involving a Philadelphia-area investment adviser and its principal, who misappropriated more than $23 million from investors);
4. *SEC v. Maximum Return Investments, Inc. and Clelia A. Flores*, Lit. Rel. No. 20997 (April 13, 2009) (charged promoter and firm with allegedly operating a $23 million scheme primarily targeted at California's Hispanic-American community);
5. *SEC v. Robert P. Copeland*, Lit. Rel. No. 20994 (April 9, 2009) (charged Georgia attorney who allegedly fraudulently raised over $35 million from at least 140 investors in several states, including Georgia);
6. *SEC v. Market Street Advisors, et al*., Lit. Rel. No. 20992 (April 7, 2009) (sought emergency relief against Colorado adviser for allegedly conducting multi-million dollar scheme);
7. *SEC v. Oversea Chinese Fund Limited Partnership, et al*., Lit. Rel. No. 20988 (April 6, 2009) (sought emergency relief to halt alleged $50-75 million scheme involving a Toronto-based hedge fund and targeting members of the Chinese-American community);
8. *SEC v. Edward T. Stein*, Lit. Rel. No. 20983 (April 1, 2009) (sought emergency relief to halt alleged ongoing $55 million scheme);
9. *SEC v. Millennium Bank, et al*., Lit. Rel. No. 20974 (March 26, 2009) (sought emergency relief to halt alleged ongoing $68 million scheme involving the sale of bogus high-yield CDs issued by Caribbean-based bank and its Swiss affiliate);
10. *SEC v. Brian J. Smart, et al*, Lit. Rel. No. 20946 (March 12, 2009) (sought emergency relief to halt alleged ongoing scheme that raised $1.68 million from investors, including senior citizens);
11. *SEC v. John M. Donnelly, et al.*, Lit. Rel. No. 20941 (March 11, 2009) (sought emergency relief in alleged scheme based in Charlottesville, Virginia, and involving $11 million);

12. *SEC v. Anthony Vassallo et al.,* Lit. Rel. No. 20943 (March 11, 2009) (sought emergency relief in alleged $40 million scheme based in Northern California);
13. *SEC v. Shelby Dean Martin, et al.*, Lit. Rel. No. 20935 (March 6, 2009) (sought emergency relief to halt alleged $10 million scheme based in North Carolina);
14. *SEC v. Ray M. White et al.,* Lit. Rel. No. 20925 (March 4, 2009) (sought emergency relief in alleged $11 million scheme based in Dallas);
15. *SEC v. Daren L. Palmer et al.,* Lit. Rel. No. 20918 (Feb. 26, 2009) (sought emergency relief in alleged $40 million scheme based in Idaho Falls);
16. *SEC v. Billions Coupons, Inc.*, Lit. Rel. No. 20906 (Feb. 19, 2009) (sought emergency relief to halt alleged Hawaii-based scheme targeting deaf investors);
17. *SEC v. William L. Walters,* Lit. Rel. No. 20904 (Feb. 18, 2009) (charged former registered representative with allegedly operating a Ponzi scheme promising annual returns ranging from 20% to 40%);
18. *SEC v. Stanford International Bank, et al.*, Lit. Rel. No. 20901 (Feb. 17, 2009) (sought emergency relief in connection with an alleged $8 billion Ponzi scheme).
19. *SEC v. Craig T. Jolly et al.*, Lit. Rel. No. 20890 (Feb. 9, 2009) (alleged $40 million internet-based Ponzi scheme based in Spokane);
20. *SEC v. Rod Cameron Stringer,* Lit. Rel. No. 20857 (Jan. 21, 2009) (sought emergency relief in alleged hedge fund Ponzi scheme based in Texas);
21. *SEC v. CRE Capital Corporation and James G. Ossie*, Lit. Rel. No. 20853 (Jan. 15, 2009) (sought emergency relief to halt alleged ongoing $25 million Ponzi scheme based in Atlanta);
22. *SEC v. Gen-See Corp. et al.*, Lit. Rel. No. 20858 (Jan. 8, 2009)(sought emergency relief to halt alleged ongoing affinity fraud scheme targeting clergy, Catholics and senior citizens); and
23. *SEC v. Joseph S. Forte, et al.*, Lit. Rel. No. 20847 (Jan. 8, 2009) (sought emergency relief to halt alleged $50 million scheme operating from Pennsylvania for 15 years).

[7] *SEC v. Ponta Negra Fund I, LLC et al.*, Lit. Rel. No. 21012 (April 27, 2009).
[8] *SEC v. Founding Partners Capital Management Co., et al.*, Lit. Rel. No. 21010 (April 23, 2009).
[9] *SEC v. Benny L. Judah, et al.*, Lit. Rel. No. 21009 (April 22, 2009).