Testimony on Implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act by the U.S. Securities and Exchange Commission

by Chairman Mary L. Schapiro
U.S. Securities and Exchange Commission

Before the United States Senate Committee on Banking, Housing, and Urban Affairs

Thursday, September 30, 2010

Chairman Dodd, Ranking Member Shelby, and members of the Committee:

Thank you for inviting me to testify today on behalf of the Securities and Exchange Commission regarding our implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act" or "Act"). As you know, the Dodd-Frank Act fills a number of significant regulatory gaps, brings greater public transparency and market accountability to the financial system, and gives the SEC important tools to better protect investors.

The Act includes over 100 rulemaking provisions applicable to the SEC, many of which require action within one year. It also requires the SEC to conduct more than twenty studies and create five new offices. While this is a very significant task, we are fully committed to fulfilling our mandates under the Act, as well as our preexisting responsibilities.

My testimony today will describe our progress and plans for implementing the Dodd-Frank Act, particularly with respect to those issues that you specifically inquired about: derivatives regulation, clearance and settlement activities, registration of private fund advisers, credit rating agency regulation, corporate governance and executive compensation regulation, reforms to the asset-backed securitization process, the standard of care applicable to financial intermediaries, and other improvements to investor protection.

Process and Priorities

Let me begin by discussing our overall approach to implementing the new rules, studies, reports, offices and other actions mandated or contemplated by the Dodd-Frank Act.

Internal Processes

To hit the ground running, we established new internal processes and formed cross-disciplinary working groups for each of the major rulemaking initiatives and studies, and designated team leaders for each effort. Our rule writing divisions and offices are meeting weekly to review the status of rulemakings and studies and to plan for the upcoming weeks. My office and the Office of the General Counsel oversee and coordinate much of this planning effort, and all

Commissioners are provided with both written weekly updates and monthly oral briefings on status.

Public Consultation

We also have enhanced our public consultative process by expanding the opportunity for public comment beyond what is required by law. To maximize the opportunity for public comment and to provide greater transparency, less than a week after the President signed the Act, we made available to the public a series of e-mail boxes to which interested parties can send preliminary comments before the various rules are proposed and the official comment periods begin.[1] These e-mail boxes are on the SEC website, organized by topic. Since July 27th, the public has been providing preliminary comments on 31 topics, including over-the-counter ("OTC") derivatives, private funds, corporate disclosure, fiduciary duty, credit rating agencies, and other areas in which the SEC will be conducting rulemaking and studies over the next 12 to 18 months. We also specifically solicited comment on the definitions contained in Title VII of the Act,[2] on the interim final rule on temporary municipal advisor registration and on the study we have undertaken regarding the effectiveness of the existing legal and regulatory standards of care for broker-dealers and investment advisers when providing personalized investment advice about securities to retail investors.[3]

Through this process, we are receiving a wide variety of views. Indeed, our request for comment on the investment adviser/broker-dealer study alone has generated over 3,000 individualized comments.

Transparency

We recognize that the process of establishing regulations works best when all stakeholders are engaged and contribute their combined talents and experience, and our staff and Commissioners are trying, within reasonable time constraints, to meet with anyone who seeks to meet with us on these issues. We have increased transparency for meetings with interested members of the public.[4] We are asking those who request meetings to provide an agenda, and we are posting on our website the agendas and names of individuals participating in these meetings, along with copies of any written materials that are distributed at those meetings. In addition, staff will reach

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[1] SEC Chairman Schapiro Announces Open Process for Regulatory Reform Rulemaking, Press Release 2010-135 (July 27, 2010), http://www.sec.gov/news/press/2010/2010-135.htm.

[2] Advance Joint Notice of Proposed Rulemaking - Definitions Contained in Title VII of Dodd-Frank Wall Street Reform and Consumer Protection Act, Rel. No. 34-62717 (Aug. 13, 2010), http://www.sec.gov/rules/concept/2010/34-62717.pdf.

[3] Study Regarding Obligations of Brokers, Dealers, and Investment Advisers, Rel. No. 34-62577 (July 27, 2010), http://www.sec.gov/rules/other/2010/34-62577.pdf.

[4] See SEC Press Release 2010-135 (July 27, 2010), http://www.sec.gov/news/press/2010/2010-135.htm.

out as necessary to solicit views from affected stakeholders who do not appear to be fully represented by the developing public record on a particular issue. Thus far, our approach has resulted in meetings with a broad cross-section of interested parties. To further this public outreach effort, the Commission is holding public roundtables and hearings on selected topics. For example, to further inform our OTC derivatives rulemaking efforts under Title VII of the Act, our staff has held three joint roundtables with the CFTC staff regarding key swap and security-based swap matters.[5]

Coordination with Other Regulators

We are meeting regularly, both formally and informally, with other financial regulators. Staff working groups consult and coordinate with the staffs of the CFTC, Federal Reserve Board and other prudential financial regulators, as well as the Department of the Treasury, the Department of State, the Commerce Department, and the Comptroller General. Because the world today really is a global marketplace and what we do to implement many provisions of the Act will affect foreign entities that do business within our shores, our Office of International Affairs is consulting bilaterally and through multilateral organizations with counterparts abroad, and is meeting bi-weekly with our rule writing staff to ensure appropriate coordination with our foreign counterparts. In short, we remain committed to working closely, cooperatively and regularly with our fellow regulators to strengthen our regulatory structure.

Priorities

To help us timely complete all rulemakings, as well as studies, reports, and other actions, required under the Act, we have prioritized our activity into four principal categories.

The first category includes all matters that require very rapid action. A number of provisions of the Dodd-Frank Act became effective immediately upon, or shortly after, the Act's date of enactment, and required prompt interpretive guidance, changes to administrative practice, or removal of inconsistent regulations, including:

- Adopting an interim final rule that establishes a procedure for municipal advisors to satisfy temporarily the requirement that they register with the Commission by October 1, 2010, as required by Section 975 of the Act;[6]

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[5] Joint Public Roundtable on Swap Execution Facilities and Security-Based Swap Execution Facilities, Rel. No. 34-62864 (Sept. 8, 2010), http://www.sec.gov/rules/other/2010/34-62864.pdf; Joint Public Roundtable to Discuss Data for Swaps and Security-Based Swaps, Swap Data Repositories, Security-Based Swap Data Repositories, and Real-Time Public Reporting, Rel. No. 34-62863 (Sept. 8, 2010), http://www.sec.gov/rules/other/2010/34-62863.pdf; and Joint Public Roundtable on Governance and Conflicts of Interest in the Clearing and Listing of Swaps and Security-Based Swaps, Rel. No. 34-62725 (Aug. 16, 2010) http://www.sec.gov/rules/other/2010/34-62725.pdf.

[6] Temporary Registration of Municipal Advisors, Rel. No. 34-62824 (Sept. 1, 2010), http://www.sec.gov/rules/interim/2010/34-62824.pdf.

- Amending our rules that were in conflict with Dodd-Frank's provision that the auditor attestation requirement of Section 404(b) of the Sarbanes-Oxley Act does not apply with respect to non-accelerated filers;[7]

- Issuing an interpretation clarifying the requirement for audits of broker-dealers pending implementation of the authority over such audits granted to the Public Company Accounting Oversight Board by the Dodd-Frank Act;[8] and

- Providing interim guidance on calculating the net worth standard for an accredited investor, to reflect the elimination of a person's principal residence in the calculation, as required by Section 413 of the Act;[9]

The second category of priorities includes matters that require action within one year from the date of enactment of the Act. This category includes the bulk of the rulemakings, reports, and studies about which the Committee inquired. As discussed in more detail below, we have made significant progress on many of the action items in this category. We have performed analyses, reviewed preliminary comments received in response to our public solicitation for comment, and are making substantial progress in preparing draft rule proposals for public comment.

The third category of priorities includes items that require action more than one year from the date of enactment, and the fourth category includes items for which there is no prescribed statutory deadline.

To help the public track our progress as we take actions to implement the Act, we have created a new section on our website that provides greater detail about our schedule for implementation, along with links to completed actions.[10] We think this will provide a useful reference tool to both the investing public and the financial industry as we proceed with implementation.

I will now turn to the specific items raised by the Committee.

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[7] Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers, Rel. No. 33-9142 (Sept. 15, 2010), http://www.sec.gov/rules/final/2010/33-9142.pdf.

[8] Commission Guidance Regarding Auditing, Attestation, and Related Professional Practice Standards Related to Brokers and Dealers, Rel. No. 34-62991 (Sept. 24, 2010), http://www.sec.gov/rules/interp/2010/34-62991.pdf.

[9] Interpretation of Section 413(a): Corporation Finance Compliance & Disclosure Interpretation Section 179.01 (July 23, 2010); http://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm.

[10] *See* http://www.sec.gov/spotlight/dodd-frank.shtml.

Reform Initiatives

OTC Derivatives

Title VII of the Dodd-Frank Act provides a comprehensive framework for the regulation of the OTC derivatives market. Working with other regulators, and the CFTC in particular, we are writing rules that address, among other issues, capital and margin requirements; mandatory clearing; the operation of execution facilities and data repositories; business conduct standards for swap dealers; and public transparency for transactional information. Under the Act, primary jurisdiction over swaps is divided between the SEC and the CFTC. The SEC has primary jurisdiction over security-based swaps, and the CFTC has primary jurisdiction over other swaps, such as energy and agricultural swaps. To prevent gaps, regulatory arbitrage and confusion, the SEC and CFTC will engage in joint rulemaking regarding issues including the definition of terms like "swap," "security-based swap" and "security-based swap agreement."

We have done much already in preparation for making rule proposals in this area. Jointly with the CFTC, we have held three staff roundtables on the topics of conflicts of interest, data repositories, reporting and dissemination, and execution facilities. We also solicited comment in our Advance Joint Notice of Proposed Rulemaking regarding key definitional terms. Based on input from these roundtables and the comment letters on key definitions, as well as other comment letters received, we anticipate soliciting public comment on a number of proposed rulemakings in this area in the coming months.

As part of our collaborative outreach, our rulemaking teams are working closely with the corresponding teams at the CFTC to coordinate our efforts. While the Act requires the SEC and CFTC to adopt joint rules further defining key definitional terms relating to jurisdiction and certain categories of market participants, we believe that collaboration with the CFTC, the Federal Reserve Board and other prudential regulators also is essential for the rulemakings where joint action is not required by the Act. Our overarching goal is to build on the foundation established by Congress in Title VII of the Act to create a robust and workable framework for regulating the derivatives market.

We expect to propose and adopt Title VII rules in a series of actions, beginning in October and proceeding over the next few months. We fully expect to meet the deadlines described in the Act.

Clearance and Settlement

Our staff also is working closely with the Federal Reserve Board and the CFTC to develop, as required by Title VIII of the Act, a new framework to supervise systemically important financial market utilities, including clearing agencies registered with the Commission. For example, Commission staff has been actively coordinating with the other agencies to develop rules regarding submission of notices by systemically important financial market utilities with respect to rules, procedures, or operations that may materially affect the risks presented.

Commission staff also has discussed with the other agencies the new authority granted to SEC and CFTC to develop standards for these financial market utilities. Moreover, the SEC and CFTC staffs have begun working with staff from the Federal Reserve Board to develop a framework for consulting and working together on exams of systemically important financial market utilities consistent with Title VIII. This added layer of protection, or "second set of eyes," called for by the Act provides assurance that the U.S. financial system receives well coordinated oversight from all relevant supervisory authorities.

We expect to propose our first set of Title VIII rules in December.

Private Fund Adviser Registration and Reporting

By July 2011, all large hedge fund advisers and private equity fund advisers will be required to register with the Commission.[11] Under the Act, venture capital advisers and private fund advisers with less than $150 million in assets under management in the United States will be exempt from the new registration requirements, although the Act does provide for recordkeeping and reporting by these advisers.[12] In addition, family offices will not be subject to registration.[13] In order to implement the exemptions, the Commission must propose and adopt rules. The staff is planning to propose rules on all of these matters between October and December of this year.

Our staff also has begun work regarding the collection of systemic risk information from private fund advisers as required by Title IV of the Act. In this regard, our staff has had informal discussions with staffs from the CFTC and other regulators regarding what categories of potentially reportable information would be consistent with the Act. In addition, we are working with the International Organization of Securities Commissions and various foreign regulators, most particularly the United Kingdom Financial Services Authority, regarding hedge fund systemic risk reporting. The goal of these consultations is to gain a better understanding about what categories of data would be useful and necessary for assessing the potential systemic risks posed by hedge funds, and how comparable this data would be with data from other countries.

Credit Rating Agency Initiatives

The Dodd-Frank Act requires the SEC to establish a new Office of Credit Ratings, conduct annual exams of each nationally recognized statistical rating organization ("NRSRO"), report on the collective results of those exams, and conduct studies relating to credit rating agencies regarding, among other things, NRSRO independence,[14] conflicts of interest[15] and standardizing

[11] *See* Title IV of the Dodd-Frank Act.

[12] *See* Section 408 of the Dodd-Frank Act.

[13] *See* Section 409 of the Dodd-Frank Act.

[14] *See* Section 939C of the Dodd-Frank Act.

ratings terminology.[16] We are in the process of establishing this office, and are actively recruiting for its new director. We also are identifying the staff from existing divisions who should be transferred to this new office, and have posted 25 new credit rating agency examination positions.

The Commission is required to undertake approximately a dozen NRSRO-related rulemakings. The Act requires the SEC to address internal controls and procedures, conflicts of interest, credit rating methodologies, rating methodology transparency and performance, analyst training, credit rating symbology, and disclosures accompanying asset-backed securities ratings.[17] To meet the July 2011 deadline for these rules, the staff plans to recommend rule proposals to the Commission by early next year. In addition, the SEC, and all other Federal agencies, must review and report to Congress on existing references to credit ratings in their rules and undertake rulemaking to eliminate these references.[18] SEC staff has begun this review in preparation for drafting the report and proposed rulemaking.

In addition, this week the Commission issued an amendment to Regulation FD that implements Section 939B of the Act, which requires that the SEC amend Regulation FD to remove the specific exemption from the rule for disclosures made to NRSROs and credit rating agencies for the purpose of determining or monitoring credit ratings. The amendment will be effective upon publication in the Federal Register.

Many of the credit rating agency provisions of the Act became effective immediately upon enactment. Therefore, shortly after the Act was signed by the President, we sent letters to each NRSRO asking how it planned to comply with these new requirements. In addition, SEC staff asked each NRSRO to describe the impact of the repeal of the expert liability exemption formerly available to NRSROs for ratings used as part of a securities registration statement. We are evaluating the responses to these requests, will conduct appropriate follow-up, and will examine these issues as part of our annual examinations of the NRSROs.

Corporate Governance and Executive Compensation Reforms

Section 951 of the Act requires a shareholder advisory "say-on-pay" vote on executive compensation at least once every 3 years and a separate advisory vote at least once every 6 years on whether the say-on-pay resolution will be presented for shareholder approval every one, two, or three years. In addition, in any proxy statement asking shareholders to approve a merger or similar transaction, the Act requires disclosure about, and a shareholder advisory vote to approve, compensation related to the transaction, unless the arrangements were already subject to

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[15] *See* Section 939F of the Dodd-Frank Act.

[16] *See* Section 939 of the Dodd-Frank Act.

[17] *See* Subtitle C, Title IX of the Dodd-Frank Act.

[18] *See* Section 939A of the Dodd-Frank Act.

the periodic say-on-pay vote. The Act also requires every institutional investment manager subject to Exchange Act Section 13(f) to report at least annually how it voted on any of the required votes. The staff is preparing rule proposals to address each of these new requirements. The Commission's goal is to adopt final rules in time to inform the 2011 proxy season. We anticipate that the Commission will propose rules designed to implement these provisions in the next few weeks.

The Act also requires the rules of each national securities exchange to be amended to prohibit brokers from voting uninstructed shares on the election of directors (other than uncontested elections of directors of registered investment companies), executive compensation, or any other significant matter, as determined by the Commission by rule.[19] The Commission previously approved changes to New York Stock Exchange ("NYSE") Rule 452 to prohibit broker voting of uninstructed shares in director elections, as well as similar changes for several other national securities exchanges.[20] On September 9, 2010 the Commission approved further changes to the NYSE rules to prohibit broker voting on all executive compensation matters.[21] On September 24, 2010, the Commission approved corresponding changes to the Nasdaq rules,[22] and we anticipate that corresponding changes to the rules of other national securities exchanges will be considered by the Commission in the near future.

By April 2011, the Commission is required to adopt – jointly with other financial regulators – incentive-based compensation regulations or guidelines that apply to covered financial institutions, including broker-dealers and investment advisers, with assets of $1 billion or more.[23] The regulations or guidelines will prohibit incentive-based compensation practices that encourage firms to take inappropriate risks and will require firms to disclose to their respective appropriate financial regulator their incentive-based compensation structures. The Commission staff has met with other regulators in preparation for drafting either proposed regulations or

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[19] *See* Section 957 of the Dodd-Frank Act.

[20] *See* New York Stock Exchange Rule 452.11(19) and Listed Company Manual Section 402.08(B)(19); Securities Exchange Act Release No. 34-60215 (July 1, 2009), http://www.sec.gov/rules/sro/nyse/2009/34-60215.pdf; Securities Exchange Act Release No. 34-61732 (March 18, 2010), http://www.sec.gov/rules/sro/cboe/2010/34-61732.pdf; Securities Exchange Act Release No. 34-61733 (March 18, 2010), http://www.sec.gov/rules/sro/chx/2010/34-61733.pdf; Securities Exchange Act Release No. 34-61292 (January 5, 2010), http://www.sec.gov/rules/sro/nyseamex/2010/34-61292.pdf; and Securities Exchange Act Release No. 34-62775 (August 26, 2010), http://www.sec.gov/rules/sro/phlx/2010/34-62775.pdf.

[21] *See* Securities Exchange Act Release No. 34-62874 (September 9, 2010), http://www.sec.gov/rules/sro/nyse/2010/34-62874.pdf.

[22] *See* Securities Exchange Act Release No. 34-62992 (September 24, 2010), http://www.sec.gov/rules/sro/nasdaq/2010/34-62992.pdf.

[23] Section 956 requires the SEC to adopt these regulations or guidelines jointly with the Federal Reserve, Office of the Comptroller of the Currency, the FDIC, the Office of Thrift Supervision, the National Credit Union Administration Board, and the Federal Housing Financing Agency.

guidelines. To meet the April 2011 adoption deadline, we anticipate that the staff will submit proposed rules to the Commission for consideration as soon as December.

The Dodd-Frank Act also requires the Commission to write rules mandating new listing standards relating to the independence of compensation committees and establishing new disclosure requirements and conflict of interest standards that boards must observe when retaining compensation consultants.[24] Under the Act, these rules must be adopted by the Commission within 360 days from the date of enactment of the Act, and we anticipate that the staff will submit proposed rules for the Commission's consideration by year end.

In addition, the Act requires the Commission to amend our executive compensation disclosure rules to require public companies to disclose information showing the relationship between executive compensation actually paid and the financial performance of the company,[25] as well as information about the total annual compensation of the chief executive officer, the median annual total compensation of all other employees, and the ratio of these two amounts.[26] Rule amendments also are mandated that will require public companies to disclose in their annual meeting proxy materials whether any employee or director is permitted to purchase financial instruments designed to hedge any decrease in market value of equity securities granted as part of their compensation.[27] Finally, the Act requires the Commission to adopt rules mandating changes to listing standards requiring companies to implement and disclose "clawback" policies for recovering from current and former executive officers incentive-based compensation paid during any 3-year period preceding a material accounting restatement.[28] We currently anticipate that the staff will submit proposed rules for the Commission's consideration by the middle of next year.

Also related to corporate governance, the Act confirmed the Commission's authority to adopt rules that facilitate shareholders' ability to nominate director candidates.[29] The Commission had proposed such rules in May 2009, before the Act's enactment, and we approved final rules on August 25, 2010.[30] Further, Section 972 of the Act requires the Commission to adopt rules requiring an issuer to disclose in its annual proxy statement the reasons why it has chosen the same or different people to serve as chairman of the board and chief executive officer. The

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[24] *See* Section 952 of the Dodd-Frank Act.

[25] *See* Section 953(a) of the Dodd-Frank Act.

[26] *See* Section 953(b) of the Dodd-Frank Act.

[27] *See* Section 955 of the Dodd-Frank Act.

[28] *See* Section 954 of the Dodd-Frank Act.

[29] *See* Section 971 of the Dodd-Frank Act.

[30] *See* Release No. 33-9136, Facilitating Shareholder Director Nominations (Aug. 25, 2010), http://www.sec.gov/rules/final/2010/33-9136.pdf.

Commission adopted Item 407(h) of Regulation S-K in December 2009, which requires this information to be disclosed.

Asset-Backed Securities

Section 943 of the Dodd-Frank Act requires the Commission to adopt rules on the use of representations and warranties in the market for asset-backed securities ("ABS"). Also, Section 945 of the Act requires the Commission to issue rules requiring an asset-backed issuer in a Securities Act registered transaction to perform a review of the assets underlying the ABS, and disclose the nature of such review. Under the Act, both sets of rules must be adopted by the Commission by January 14, 2011, and we expect to propose rules in these areas within the next few weeks. We also are working on rules prohibiting material conflicts of interest in certain securitizations[31] and rules requiring the disclosure of information regarding the assets backing each tranche or class of security.[32] We expect that these rules also will be proposed by the end of the calendar year, and considered for adoption in early 2011.

Our efforts to advance the securitization reform envisioned by the Act are not limited to writing new rules. The Act also addresses risk retention (i.e., the requirement that a securitizer retain an economic interest in a material portion of the credit risk for any asset that it transfers, sells, or conveys to a third party) in connection with securitization. The Act mandates two studies on risk retention: one to be conducted by the Federal Reserve Board in coordination and consultation with the Commission, among other agencies, which is due October 19, 2010. The other study is to be conducted by the Chairman of the Financial Stability Oversight Council, and it is due January 14, 2011.[33] Accordingly, we are providing advice and assistance to the Federal Reserve Board in connection with the first study. We are working with other regulators to jointly create the risk retention rules, including the appropriate amount, form and duration of required risk retention, and the definition of qualified residential mortgages. For example, to encourage discussion of these issues, the staff in the Division of Corporation Finance communicated with Treasury and other regulators shortly after the Act's enactment, raised relevant questions and provided preliminary staff thoughts on the risk retention provision. In light of the Act's April 15, 2011 deadline for prescribing rules in this area, we currently are planning for Commission consideration of proposed risk retention rules by year end.

Municipal Securities

Section 979 of the Dodd-Frank Act requires the SEC to establish an Office of Municipal Securities to administer the rules pertaining to broker-dealers, advisors, investors, and issuers of municipal securities. The new office will coordinate with the Municipal Securities Rulemaking

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[31] *See* Section 27B of the Securities Act, as added by Section 621 of the Dodd-Frank Act.

[32] *See* Section 942(b) of the Dodd-Frank Act.

[33] As a member of the Financial Stability Oversight Council, the Chairman of the SEC is actively participating in this study.

Board on rulemaking and enforcement actions. We expect to create the new office by the end of October, transfer existing staff performing these duties to that office, and begin recruiting for the new director, who will report directly to the Chairman.

Section 975 of the Act also requires the registration of municipal advisors with the Commission. This new registration requirement becomes effective on October 1, 2010. On that date, it becomes unlawful for any municipal advisor to provide advice to a municipality unless registered with the Commission. As noted above, on September 1, the Commission adopted an interim final rule establishing a temporary means for municipal advisors to satisfy the registration requirement. The SEC staff is working on proposed final registration rules for the Commission's consideration.

Studies and Reports

The Dodd-Frank Act requires the Commission to conduct a significant number of studies and issue numerous reports, some on a periodic basis. As with our rulemaking efforts, we have prioritized these studies and reports and assigned teams to address each of them. While I have already referenced some of the studies we are conducting in conjunction with rule writing, I want to share with you our progress on three studies that relate to topics about which the Committee specifically requested information.

Investment Adviser-Broker Dealer Standard of Care Study

Section 913 of the Dodd-Frank Act mandates that we study the effectiveness of existing legal or regulatory standards of care for broker-dealers and investment advisers for providing personalized investment advice and recommendations about securities to retail customers. Under Section 913, we must produce a report on the study to the Senate Committee on Banking, Housing, and Urban Affairs, and the House of Representatives' Committee on Financial Services. The report regarding the study is due to the Committees in January 2011.

We are moving rapidly to meet the report's January deadline. Six days after the date of enactment of the Dodd-Frank Act, we published a request for public input, comments, and data on issues related to the effectiveness of existing standards of care for brokers-dealers and investment advisers, and whether there are gaps, shortcomings, or overlaps in the current legal or regulatory standards. In response, we received more than 3,000 individualized letters, including letters from investors, financial professionals, industry groups, academia, and other regulators. Staff is reviewing the comments, and the views of these commenters will be reflected in the report on our study.

We established a cross-divisional working group to implement the study. To help further inform our study and consistent with our public outreach on these issues, from August to October, the working group is meeting with as many interested parties representing a variety of perspectives as possible. We also requested assistance from state regulators and FINRA with the aspects of the study involving their efforts, such as examinations and enforcement.

At the completion of the study, the Act gives the SEC the authority to write rules, including rules that could create a uniform standard of conduct for professionals who provide personalized investment advice to retail customers. Under the Act, any new standard can be "no less stringent" than the standard applicable to investment advisers under sections 206(1) and (2) of the Investment Advisers Act of 1940. The Commission's ultimate rulemaking in this area will, of course, be informed by what we learn from our study and from the comments we receive.

Internal Operations

A top challenge is continuing to strengthen the SEC's organization itself – its structure, daily operations, personnel, technological infrastructure, and resources – to meet its statutory responsibilities and adapt to the ever changing realities of our dynamic markets. To assist the SEC in assessing its operational efficiency, Section 967 of the Dodd-Frank Act directs the agency to engage the services of an independent consultant to study a number of specific areas of SEC internal operations and the SEC's relationship with self-regulatory organizations ("SROs").

To quickly implement this provision, we sought and received formal reprogramming approval from our House and Senate Appropriations Subcommittees to fund the study. On August 3, 2010, the SEC's Office of Acquisitions issued a formal solicitation (a Request for Quotation, or RFQ) describing the work to be performed and asking contractors to submit bids that describe their qualifications and discuss their plans to carry out the work. Bids were required to be submitted by August 27. Once a contract is awarded, the contractor will be given 150 days to conduct its study, and to prepare recommendations to the SEC and to Congress. We have already formed the working team of staff that will be made available to assist the consultant as requested.

Financial Literacy

Section 917 requires the Commission to conduct a broad study regarding the financial literacy of investors. The study will focus on, among other things, the current level of financial literacy of individual investors and how to increase the transparency of expenses and conflicts of interest in investment products such as mutual funds. Additionally, we will be studying the most effective private and public efforts to educate investors. I have asked the Commission's Office of Investor Education and Advocacy ("OIEA"), which is focused in this area, to take the lead on the study. The staff is currently working on a project plan, including developing an organizational framework, an analysis of required resources, and a calendar of expected completion dates of various project milestones. I expect OIEA will complete the study within the next 18 months, and we will be prepared to submit the required report to Congress within the two-year period reflected in the statute.

Agency Growth and Infrastructure

New Offices

The Act requires the SEC to establish five new offices, four of which will report directly to the Chairman. We are consulting with our appropriations committees regarding the reprogramming of funds needed to establish these new offices. I have previously mentioned the new Office of Credit Ratings and Office of Municipal Securities in connection with rulemaking in these areas. The other three offices are:

Whistleblower Office. Section 924 requires us to establish a new Whistleblower Office. We already have posted a job announcement for the head of the new office, and we expect the office to include a senior special counsel and at least four additional employees. The office will be located within the Division of Enforcement and will work closely with that division's Office of Market Intelligence, which is dedicated to the handling of tips, complaints, and referrals. The primary functions of the new office will include: (1) performing intake, tracking and recordkeeping of whistleblower tips; (2) overseeing the review process for eligible whistleblower claims and presenting recommendations concerning whistleblower awards; and (3) communicating with the general public, the Commission, and reporting to Congress on the whistleblower program. The first report to Congress on the whistleblower program will be provided on October 30, 2010.

Staff in the Division of Enforcement, with assistance from other divisions and offices, is actively working to draft implementing regulations for the whistleblower program. Pending the issuance of these regulations (due no later than 270 days after the date of enactment of the Act), the staff has been and will continue to be able to receive whistleblower complaints. Also, information for potential whistleblowers has been posted on our website.[34] Already, since the passage of the Act, we have seen a slight uptick in the number of tips and complaints received, and, more importantly, an uptick in the quality of complaints.

Office of the Investor Advocate. Section 915 requires the SEC to establish an Office of the Investor Advocate, headed by an Investor Advocate who reports directly to the Chairman. The office will assist retail investors in resolving significant problems they may have with the Commission or with SROs. The Investor Advocate also will identify areas in which investors would benefit from changes in Commission regulations or SRO rules; identify problems that investors have with financial service providers and investment products; and analyze the potential impact on investors of proposed Commission regulations and SRO rules. The Investor Advocate must report to Congress annually on its activities, including information on the steps the Investor Advocate has taken to improve investor services and responsiveness of the Commission and SROs to investor concerns; a summary of the most serious problems encountered by investors; and recommendations for administrative and legislative actions to

[34] *See* http://www.sec.gov/complaint.shtml.

resolve problems encountered by investors. The Investor Advocate also must hire an Ombudsman, whose activities will be included in the Advocate's reports to Congress. The Commission must adopt regulations establishing procedures for responding to all recommendations submitted to the Commission by the Investor Advocate. We have developed a position description, and are actively recruiting.

Office of Minority and Women Inclusion. Section 342 requires specified financial agencies, including the SEC, to establish an Office of Minority and Women Inclusion that is responsible for all matters of the agency relating to diversity in management, employment, and business activities, other than enforcement of civil rights laws. The director of this Office will report to the Chairman. The director will develop and implement standards for: equal employment opportunity and the racial, ethnic, and gender diversity of the workforce and senior management of the SEC; increased participation of minority-owned and women-owned businesses in the programs and contracts of the agency, including standards for coordinating technical assistance to such businesses; and assessing the diversity policies and practices of entities regulated by the SEC.

Additionally, the director will advise the Chairman on the impact of the policies and regulations of the SEC on minority-owned and women-owned businesses. We have solicited comments from our internal Diversity Council on the structure of this new office, as well as several external groups. This is an area in which our request for suggestions from the public has been helpful. We are drafting the director position description, and plan to begin recruiting for this position very soon.

Hiring

As noted earlier, the Dodd-Frank Act not only requires the Commission to complete a significant number of rulemakings, studies, and reports, it also expands the role of the SEC in the regulation of OTC derivatives, private fund advisers, credit rating agencies, and other areas of the financial industry. To enable us to carry out these new responsibilities, we will need additional resources, and in particular, additional staff.

We have been working to develop estimates of the resources that will be needed to achieve the full implementation of Congress' regulatory reform mandate. While the dollar cost of full implementation will depend greatly on the effective date of new rules, the timing of hiring, and other factors, we currently estimate that the SEC will need to add approximately 800 new positions over time in order to carry out the new or expanded responsibilities given to the agency by the legislation.

If Congress were to appropriate the funds to support this increase in the agency's workforce, then the SEC would need to be ready to act swiftly to recruit and hire hundreds of additional personnel. To accomplish this, the SEC is enhancing our human resources staff and streamlining our hiring process. Improvements include simplifying the application process and maintaining a searchable database of applicants, so that it is possible to interview for a vacancy as soon as it appears rather than having to go through the lengthy posting process each time. Being able to

better tailor, target and speed recruiting will enhance the quality of the applicant pool and help the agency more efficiently acquire the necessary talent to perform effectively in an increasingly complex financial environment. The expanded streamlined hiring authority included in the Dodd-Frank Act will help these efforts.

Technology

The SEC's Office of Information Technology is currently collaborating with the principal rule writing divisions and offices to gather and develop the technology requirements that will be necessary to implement the legislation and the associated rulemaking. We currently anticipate technology investment will be required to implement a variety of changes to our responsibilities included in the Dodd-Frank Act, such as those relating to SRO rulemaking, regulation of security-based swap intermediaries, disclosure filing requirements, regulation of security-based swap execution facilities and data repositories, advisor registration, equipment to enable improved audits of market participants, end user equipment for additional staff expected to be hired, and changes to our filing and registration management and reporting systems.

Our "EDGAR" team, which operates our disclosure system for public company filings, will assist in the deployment of changes to the asset-backed securities disclosure system in December 2010, and changes to existing forms, items, and exhibits to improve disclosure. While many of the technology requirements remain under development at this stage, the Office of Information Technology, under the leadership of our new Chief Operating Officer, will remain closely engaged with our operating divisions and offices and work to provide responsive solutions to enable implementation of the legislation.

Conclusion

The Dodd-Frank Act provides the SEC with important tools to better meet the challenges of today's financial marketplace. While implementation of the Act clearly will require a major effort, this effort is already well underway at the SEC. While we undoubtedly will encounter some bumps along the way, we are on track to meet the goals, mandates and deadlines specified in the Act and to do so in a transparent and inclusive manner. As we proceed with implementation, we look forward to continuing to work closely with Congress, our fellow regulators and members of the financial and investing public. Thank you for inviting me here today to share with you our progress on and plans for implementation. I look forward to answering your questions.