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NOMINATIONS OF: LUIS A. AGUILAR, DANIEL M. GALLAGHER, JR., ANTHONY FRANK D'AGOSTINO, AND GREGORY S. KARAWAN

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

ON

NOMINATIONS OF:

LUIS A. AGUILAR, OF GEORGIA, TO BE A MEMBER, SECURITIES AND EXCHANGE COMMISSION

DANIEL M. GALLAGHER, JR., OF MARYLAND, TO BE A MEMBER, SECURITIES AND EXCHANGE COMMISSION

ANTHONY FRANK D'AGOSTINO, OF MARYLAND, TO BE A DIRECTOR, SECURITIES INVESTOR PROTECTION CORPORATION

GREGORY S. KARAWAN, OF VIRGINIA, TO BE A DIRECTOR, SECURITIES INVESTOR PROTECTION CORPORATION

JUNE 14, 2011

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GREGORY S. KARAWAN, OF VIRGINIA, TO BE A DIRECTOR, SECURITIES INVESTOR PROTECTION CORPORATION

TUESDAY, JUNE 14, 2011

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10:05 a.m. in room SD–538, Dirksen Senate Office Building, Hon. Tim Johnson, Chairman of the Committee, presiding.

OPENING STATEMENT OF CHAIRMAN TIM JOHNSON

Chairman JOHNSON. Good morning. I will call this hearing to order. Thanks to all of you for joining us here today and special thanks to our witnesses and their families and friends who are with us.

Today we consider four individuals nominated to serve in positions on the Securities and Exchange Commission and the Securities Investor Protection Corporation. Both of these agencies play key roles in our securities markets.

Trillions of dollars of stocks, options, bonds, and other securities trade hands in our markets. About half of American families invest in these markets as they save for retirement, college tuition, and other important purposes. And companies of all sizes rely on these markets to raise capital to help them grow and create jobs.

The SEC maintains order in the securities markets, roots out fraud and abuse, and protects investors. The SIPC also protects securities investors whose brokerages have failed. Since its inception in 1970 it has helped recover over $100 billion for investors.

The securities markets are emerging from a difficult period. They have suffered economic loss and an erosion in public confidence, brought on by a wide range of problems including failed mortgage-backed securities, unreliable credit ratings, fraudulent investment schemes, and more.

In response to the financial crisis, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act. The SEC is now implementing Dodd-Frank through roughly 100 rulemakings and 20 studies. These deal with many areas, from securitization to credit ratings, municipal securities, corporate governance, investor protection, enforcement, whistleblowers, executive pay, and regulatory management. And at the same time, the SEC is dealing with a strained budget.

The SIPC is busy as well, managing claims from investors defrauded by the likes of Bernie Madoff and Allen Stanford.

We need strong leadership at all our financial regulators, and I am glad the President has sent us four well-qualified individuals to fill these openings. I hope the Senate can consider their nominations in a timely manner.

The Honorable Luis A. Aguilar is currently serving as a Democratic Commissioner at the SEC. He is renominated for a term expiring June 5, 2015. Prior to his appointment to the SEC, Commissioner Aguilar was a partner with the international law firm of McKenna Long & Aldridge, specializing in securities law.

Daniel M. Gallagher, Jr., is a Republican nominee to be a Commissioner for a term expiring June 5, 2016. He is a partner in the Securities Department of the law firm Wilmer Hale. Prior to joining the firm, Mr. Gallagher was at the SEC, where he served as Co-Acting Director of the Division of Trading and Markets and as Counsel to Chairman Christopher Cox and to Commissioner Paul Atkins.

Tony D'Agostino is a managing director and chief operating officer of the Global Quantitative Analytics group at the UBS Investment Bank. From 2000 to 2009, Mr. D'Agostino worked at Wachovia Securities, and prior to 2000, Mr. D'Agostino was an officer in the U.S. Navy where he served on active duty for 24 years.

Mr. Gregory Karawan is senior vice president and general counsel of retirement and protection at Genworth Financial. Prior to joining Genworth, Mr. Karawan was a partner at the law firm of Sonnenschein Nath and Rosenthal.

I look forward to hearing all of their testimony.

I now turn to Senator Shelby for any opening remarks he may have. Senator Shelby.

STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Mr. Chairman.

Today, as you pointed out, the Committee will consider four nominations—two for the Securities and Exchange Commission and two for the Securities Investor Protection Corporation. Both organizations have played an important role in the aftermath of the financial crisis and will continue to do so.

The Dodd-Frank Act gave the Securities and Exchange Commission a long list of rules to promulgate. In addition, the SEC is contemplating other major rulemakings. The SEC also recently re-

structured its enforcement and compliance programs to address some of the systemic problems that enabled Bernie Madoff and Allen Stanford to defraud thousands of investors for years without being caught.

These initiatives, along with the important day-to-day business of the SEC, will continue to have significant effect on our economy for years to come. Therefore, I think it is important that the Commission use economic analysis to understand not only the cost of particular regulations but also the cumulative effect that all of the rulemaking is having on the markets and the economy.

At this critical time, the SEC, I believe, should do everything it can to ease the regulatory burden it imposes on American businesses, while at the same time remaining a credible deterrent to misconduct in the markets.

With respect to the Securities Investor Protection Corporation, or SIPC, the Madoff and Stanford frauds have put a spotlight on its responsibility for assisting customers of failed brokerage firms. The Madoff liquidation has been at the heart of their work over the past several years and is much bigger than anything that they have dealt with in its four-decade history. As for the Stanford case, they have taken the position that coverage under the Securities Investor Protection Act is not appropriate. That is troubling to a lot of us. The defrauded Stanford victims have asked the SEC to consider the propriety of that decision, and several Senators have met with the Chairman on that very issue.

The SEC's delay in making a decision is harming investors, who already were harmed by the SEC's failures to prevent the Stanford case in the first place. It is my hope that the SEC will stop delaying and make a final decision as quickly as possible in that area.

Thank you, Mr. Chairman, for holding this hearing. I look forward to hearing from the nominees and hope that we can expedite their confirmation.

Chairman JOHNSON. Will the nominees please rise and raise your right hand? Do you swear or affirm that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. AGUILAR. I do.

Mr. GALLAGHER. I do.

Mr. D'AGOSTINO. I do.

Mr. KARAWAN. I do.

Chairman JOHNSON. Do you agree to appear and testify before any duly constituted Committee of the Senate?

Mr. AGUILAR. I do.

Mr. GALLAGHER. I do.

Mr. D'AGOSTINO. I do.

Mr. KARAWAN. I do.

Chairman JOHNSON. Please be seated.

Please be assured that your written statement will be part of the record, so if you could confine your remarks to 5 minutes, that would be greatly appreciated. Please also note that Members of this Committee may submit written questions to you for the record, and you should respond to those questions promptly in order that the Committee may proceed on your nominations.

I invite all the witnesses to introduce your families and friends in attendance before the beginning of your statement. Mr. Aguilar.

STATEMENT OF LUIS A. AGUILAR, OF GEORGIA, TO BE A MEMBER, SECURITIES AND EXCHANGE COMMISSION

Mr. AGUILAR. Chairman Johnson, Ranking Member Shelby, and Members of this Committee, good morning. It is a great honor to be here with you today. I do want to acknowledge my wife, Denise, who was not able to accompany me today. She has been a constant source of support and enabled me to serve as a member of the United States Securities and Exchange Commission. I also want to acknowledge my parents, Juan and Gladys Aguilar, who sent their two small sons to the United States as Cuban refugees, to escape the Castro revolution, and would be bursting with pride to see one of them serving this great country in such a manner.

Three years ago, I had the honor to come before this Committee for confirmation hearings to be a member of the SEC, and it has been my tremendous privilege to serve as a Commissioner of the SEC. I was, and remain, humbled to be asked to serve the American people at the agency where I started my career as a staff attorney over 30 years ago. My deep respect and admiration for the importance of the institution and its mission has only grown during my tenure. I recognize the significant responsibilities of the SEC to fulfill its statutory mandate to protect investors, maintain fair and orderly markets, and facilitate capital formation.

I have remained focused on these responsibilities during these recent challenging times. The collapse of Lehman Brothers and the ensuing market turmoil—of a kind not seen since the Great Depression—began just weeks after I was sworn in as a member of the Commission. In these extraordinary times I have dedicated all of my skills, knowledge, and energy to the work of the SEC. My professional career spans over 30 years, and I have been a practitioner in corporate, securities, and international law. I have seen the securities industry from many vantage points. I have worked in Government, private practice, and in corporate America. I have been an SEC staff attorney, a law firm partner, and a general counsel and head of compliance, and I have spent time as a domestic and international business person. This breadth of experiences has served me well as the SEC has taken up, or been confronted with, a multitude of issues stretching across the securities and corporate spectrum.

And so I was deeply honored to be nominated by President Obama to serve another term as a Commissioner. It has been a privilege to work with Chairman Mary Schapiro and my other colleagues on the Commission: Kathleen Casey, Elisse Walter, and Troy Paredes. If confirmed, I look forward to continuing this work, along with Commissioner-Designate Dan Gallagher. I believe a great deal of unfinished business remains before the SEC—work that is vital toward improving our markets as well as the agency itself.

I am committed to answering these challenges. When I arrived in the United States as a refugee from Cuba, I was 6 years old and had little more than the clothes I was wearing. The generosity and opportunities of this country provided me the foundation to become

the person who now has the honor of appearing before you today. Serving as a Commissioner of the SEC and being able to apply my securities expertise on behalf of the American people is a tremendous honor and truly my privilege.

If the U.S. Senate determines to confirm my nomination to a second term as a member of the SEC, I promise to work faithfully to serve the American people at this critical time.

I thank you. I will be happy to answer any questions the Committee might have.

Chairman JOHNSON. Mr. Gallagher.

STATEMENT OF DANIEL M. GALLAGHER, JR., OF MARYLAND, TO BE A MEMBER, SECURITIES AND EXCHANGE COMMISSION

Mr. GALLAGHER. Chairman Johnson, Senator Shelby, distinguished Members of this Committee, it is a very great honor for me to appear before you today. I am grateful and humbled by the President's nomination to serve on the Securities and Exchange Commission, and I am also honored to be sitting here next to Commissioner Aguilar today.

I would first like to introduce you to members of my family that are here with me today. My wife, Stephanie Gallagher, who is sitting behind me, was recently named to be a Federal magistrate judge in Maryland; her investiture is this Friday so it is a big week for us. She is an incredible wife and mother, and she has always been a tremendous source of support for me, as she has been throughout the process that brings me before you today. With her are my two sons, Danny and Charlie, and I am incredibly proud of both of them.

My parents, Barbara and Daniel Gallagher, who have come down from Philadelphia for this hearing, have been small business owners for most of my life. Their work ethic, integrity, and devotion to family have been a continuous inspiration to me.

Since its creation, the SEC has been one of the most important agencies in the Federal Government. Investor protection and oversight of the capital markets are essential to American investors as well as the overall economy. The SEC must accomplish its mission in the context of complex, dynamic, and globally connected markets.

This is a time of great importance for the SEC. It is rebuilding after some setbacks, dealing with a loss of faith in the financial markets, and facing broad new oversight and regulatory responsibilities over complex financial instruments and markets. The SEC staff, which is the engine of the agency, is cognizant of the critical role they play, and I know from personal experience that the staff is intensely dedicated to the protection of investors and the health of the capital markets.

Despite the financial crisis, the U.S. capital markets are the strongest in the world. To maintain that status, the markets need the SEC to be a strong and respected regulator. Investors will only commit capital if they have faith in the fairness of our markets, and the SEC is charged with instilling and maintaining this confidence. By requiring transparency and rigorously and fairly enforcing the law as directed by Congress, the SEC plays a major role in maintaining the preeminence of the U.S. capital markets. If con-

firmed, I will strive every day to ensure that the agency satisfies this mission.

On a personal note, I want to point out that I have been nominated to fill the seat being vacated by Commissioner Kathleen Casey, who is someone very well known to this Committee. Commissioner Casey has been an outstanding Commissioner and has served the country and investors with integrity and dedication through an incredibly difficult time. Should I be confirmed, I hope to serve as ably as she has.

Thank you, Mr. Chairman, Senator Shelby, and Members of the Committee, for this opportunity to be before you today. I would be pleased to take any questions you may have.

Chairman JOHNSON. Thank you.

Mr. D'Agostino.

STATEMENT OF ANTHONY FRANK D'AGOSTINO, OF MARYLAND, TO BE A DIRECTOR, SECURITIES INVESTOR PROTECTION CORPORATION

Mr. D'AGOSTINO. Good morning, Mr. Chairman, Members of the Committee. My name is Tony D'Agostino, and I am honored to be before you today as President Obama's nominee to serve on the Board of SIPC.

I believe I am well qualified to serve on the SIPC Board based on my management background in the securities industry and my hands-on experience working within the capital markets.

Prior to joining Wall Street, I served in the United States Navy for 24 years. I started out as a young enlisted man flying in the H–3 helicopter, acted as a rescue swimmer, and operated anti-submarine warfare equipment flying off aircraft carriers in the Pacific. After I completed my undergraduate degree at the University of Kansas, I was commissioned and went on to serve in roles of increasing responsibility. A few job examples: I was a briefer for the Secretary of the Navy and Chief of Naval Operations during Desert Storm. I was an aide to a Navy admiral and went on to qualify as a surface warfare officer onboard aircraft carriers, my last ship being the USS John F. Kennedy.

Since retiring from my career in the Armed Forces, I have worked in the Capital Markets businesses of Wachovia and UBS. In both organizations, I served in executive roles, which allowed me to closely observe and fully appreciate the intricacies of how the businesses are structured, staffed, and operated.

As the chief operating officer of Wachovia's equity capital markets platform, I directly oversaw and managed internal functions supporting the equity businesses—technology, compliance, legal, and finance. After serving as COO, I went on to build from scratch an algorithmic and program trading business, electronic trading business, and then went on to manage an internal hedge fund known as a proprietary trading desk.

I had to study and understand the operational characteristics of hundreds of different companies in dozens of diverse industry groups. During the 2008 market collapse where 40-percent losses were the norm, our ability to manage risk—our fund was down just 2.4 percent. This part of my training to serve in these roles, I was FINRA-registered with Series 7, 24, 55, and 63.

After Wachovia's collapse and takeover by Wells Fargo, our division was shut down, and like so many other Americans, I found myself out of work for the first time in my life. After nearly a year out of work, I was recruited by UBS where I now serve as the COO of the Global Quantitative Analytics group. The QA group is responsible for building sophisticated mathematical models, which are used to create, price, and evaluate the risk of complex financial products—derivative products, CDS, MBS, CMOs, *et cetera.* I oversee and manage divisions around the world, which include modeling, trading support, strategy, and off-shoring.

Our recent economic challenges have inspired me to once again serve our great country, and I am very proud that President Obama has asked me to apply my experience in the Navy and in the capital markets to address these challenges. I understand the hardships that so many Americans are facing, and I am dedicated to working with the Board of SIPC to help ensure that the investors are protected when broker-dealers fail. The unique combination of more than a decade in the trenches of the financial services industry and twice that long serving my country in the Navy allow me to bring a wealth of experience, hard work, and accountability to the Securities Investor Protection Corporation.

If confirmed as a Director of SIPC, I promise the President and this Committee that I will use my experience to maintain and strengthen SIPC's accountability to the investing public.

In closing, I would like to recognize a few important people in my life. I am pleased to have some of my family with me here today: Havilah D'Agostino; Dr. Leigh Vinocur and her son, Max; as well as several of my friends visiting from up and down the east coast: Mr. Matti Kon, Scott Kaimien, Jeff Rassmussen, and Mark Carter.

In addition to my family and friends that are with me today, I would like to thank some of my mentors over the years that have given me opportunities that a milkman's son—that a milkman's son never expected: Colonel Mike Wyly, who happened to be Senator Jim Webb's commanding officer in Vietnam, as well as my commanding officer; Rear Admiral Ed Fahy, my commanding officer from onboard the John F. Kennedy; Mr. Al Berkley, former president of the NASDAQ; and my dear friend Mickey Misera, who is the former head of Wachovia's Equity Capital Markets, and all of my opportunities after my retirement have been due to Mick.

Mr. Chairman, that concludes my remarks. Thank you for your attention and consideration. I would be happy to answer your questions.

Chairman JOHNSON. Thank you.

Mr. Karwan, please proceed.

STATEMENT OF GREGORY S. KARAWAN, OF VIRGINIA, TO BE A DIRECTOR, SECURITIES INVESTOR PROTECTION CORPORATION

Mr. KARAWAN. Good morning. Chairman Johnson, Ranking Member Shelby, and Members of the Committee, it is indeed a great honor to appear before you as you consider my nomination to be a Director of the Securities Investor Protection Corporation.

Growing up in Sheepshead Bay Brooklyn, it never occurred to me that someday I might have the great privilege of being before a

U.S. Senate Committee with an opportunity to serve the public in such an important role. I can attribute my good fortune to a primary cause, and she is sitting behind me today: my mother, Devorah Einbinder. From my earliest memories, she stressed the importance of education, instilled in me the work ethic and values that I carry with me today, and propelled me to be part of the first generation of our family to attend college. I want to acknowledge her and thank her for her love and support, and for traveling up from Florida to be here today.

For the past 23 years, I have served as a lawyer responsible for handling complex commercial litigation, transactions, and regulatory issues. For the first 12 years of my career, I was in private practice, becoming a partner in the litigation group of the firm where I practiced. I represented a variety of financial sector clients in financial, securities, and other types of complex litigation and disputes. For the past 11 years of my career, I have been in-house counsel at a large financial services corporation. In that capacity I have had litigation management responsibility for the entire company, including insurance, broker-dealer, and wealth management operations.

And for the most recent 4 of those 11 years, I have also served as general counsel of the business segment that includes broker-dealer and investment adviser operations, with overall legal responsibility for those businesses. And throughout my 23-year career, I have counseled boards of directors on a variety of issues.

Now, today's environment is definitely a challenging one. Financial markets are global and in flux and are recovering from a devastating crisis. Financial frauds, as we have seen, are growing ever more complex and sophisticated. Technology—and the good, and bad, uses to which it can be put—is advancing at a lightning pace. The types of securities in which customers can invest are evolving and getting more complex every day. An experienced, dedicated, proactive, and forward-thinking SIPC Board is crucial to dealing with these challenges. If confirmed, I believe that as a result of my extensive experience dealing with financial services companies, I believe I am well equipped to serve as a SIPC Director and confront these challenges head on.

My commitment, if confirmed, is to bring my experience to bear as a SIPC director, to be unbiased, to be guided but not ruled by my instincts, to exercise sound judgment with an absence of hubris, and, most importantly, to always have an open mind, to hear and value all points of view, and, ultimately, to do the right thing. Being a passionate advocate for investor protection will always be one of my primary goals.

Mr. Chairman and Members of the Committee, thank you again for your consideration of my nomination, and I am happy to answer any questions you may have.

Chairman JOHNSON. Thank you, Mr. Karawan.

Commissioner Aguilar and Mr. Gallagher, the SEC has new responsibilities under Dodd-Frank that entails over 100 rulemakings, 20 studies, and the implementation of the new rules. In your opinion, does the SEC have the necessary budget to undertake these tasks as well as to perform its other duties as a securities regulator, or would it benefit from additional funding? Mr. Aguilar?

Mr. AGUILAR. Thank you, Mr. Chairman. Clearly, the Dodd-Frank Act imposes a great challenge on the SEC on top of our core responsibilities: those which have been part of the SEC's history for the last 77 years. The SEC has had a chronic problem, in my view, with appropriate budgets for over a decade. As the markets have been growing exponentially in sophistication and in size, the SEC staff has remained quite static and even gone down a little bit. We are only now getting back to 2006–2007 levels. And on top of that, Dodd-Frank is now imposing on us both a short-term responsibility and a long-term responsibility. Short-term, we are required to enact 100 or so rules, conduct 20 studies, create five new offices, an enormous task for any agency, especially one of our size, with approximately 3,800 staffers.

In addition, the Continuing Resolution stage that we went through in the first half of this fiscal year required us to freeze hiring, required us to curtail a number of our activities and to triage the things that we do, while at the same time trying mightily to fulfill our obligations under the Dodd-Frank Act, which I think the staff and the Commission has done an admirable job on. We are not going to meet all of our deadlines, but I think we are doing so in a measured, reasonable fashion.

Do we have resources to continue through the rulemaking phase? It will be a strain, but with the SEC's passionate, hard working staff, I think the answer is yes. Do we have enough resources to, on a long-term basis, to effectively regulate new markets we have never regulated? I think that SEC Chairman Schapiro has spoken to various Congressional committees and has indicated that we probably need a more robust budget.

Chairman JOHNSON. Mr. Gallagher?

Mr. GALLAGHER. Thank you, Chairman Johnson, for that question. It is critically important for the nation's investors and for the markets that the SEC have proper resources to satisfy its multiple missions. This issue of the proper budgeting for the agency is one that has been a hot topic for decades now and it is traditionally one that is handled by the Chairman of the agency. I can tell you, I do not have all the details as to the exact budgetary information and the allocation of resources, but if confirmed by the Senate, I will wholeheartedly jump into this issue to ensure that the Chairman has all the support that she needs as she tries to figure out proper budgeting.

At the same time, I want to point out, we are living in an extraordinarily difficult financial environment, and the SEC, like private bodies, needs to ensure that it is operating efficiently so that every penny that is sent to the SEC by way of budget is used for the protection of investors, and I hope, again, if confirmed, to be able to help the agency satisfy that mission.

Chairman JOHNSON. Mr. D'Agostino and Mr. Karawan, the Securities Investor Protection Corporation formed a task force to further its mission of protecting customers of failed securities brokerage firms in order to promote investor confidence. What is your opinion of the task force's progress thus far? When it issues a report, will you carefully review its recommendations and take appropriate actions?

Mr. D'AGOSTINO. Thank you, Mr. Chairman. The report has not yet been issued, and we understand that they have made great progress and they are going to present some good recommendations, and when that report is submitted, we will carefully consider it and evaluate it at the board levels.

Chairman JOHNSON. Mr. Karawan?

Mr. KARAWAN. Thank you, Mr. Chairman. I have the same understanding as Mr. D'Agostino and I would look forward, if confirmed, to working with the Board to examine the task force proposal and evaluate them on a speedy basis.

Chairman JOHNSON. Senator Shelby.

Senator SHELBY. Thank you, Mr. Chairman.

Commissioner Aguilar, you have taken credit for giving more enforcement authority to the staff of the SEC as a member. While I understand the interest in ensuring that enforcement cases proceed quickly—they are very important—delegation of the Commission's powers to the staff should not be undertaken lightly, particularly when that staff has been implicated in notable failures, such as Madoff and Stanford. Do the failures in the Madoff and Stanford cases indicate that SEC Commissioners need to be more, not less, involved in overseeing enforcement cases? In other words, what have you learned from that, the failures there?

Mr. AGUILAR. Thank you, Ranking Member Shelby, for that question. Clearly, the Madoff and Stanford situations are tragic: tragic to many American investors, and tragic to our capital markets, with a very adverse impact on investor confidence. The SEC staff, especially the Enforcement Division and the Office of Inspections and Examinations, as the market watchdogs, must maintain a very robust and aggressive posture when it comes to overseeing our regulated entities, such as Madoff and Stanford, and the markets as a whole.

I have been quite vocal in trying to look at the SEC's policies in the enforcement and exam programs: trying to highlight the ones that I think could be much better, identifying the ones that I think are ill advised. And I have made a number of recommendations, many of which have been adopted, to try to streamline and expedite the process by which the Commission staff can get active on a case, look robustly at what is going on, and I have been very supportive of them taking robust action to quickly remedy the situation.

I do think the Commission and the Commissioners have to keep a watchful eye on the staff at all times. The delegated authority to open an investigation that you have alluded to is one that I did champion early on. I think the staff has found it to be quite useful. We have now been able to go from finding out about a fraud to putting a freeze within the course of a week, which is to the benefit of the American public, and hopefully we will find assets before they are dissipated.

I do believe that the Commission should keep a watchful eye—and we have asked the staff to provide us periodic reports. We meet with the staff to make sure that we know how they are using that authority, and it is something that continues to be monitored, both to make sure that it is appropriately used and that it, quite

frankly, does not fall into not being used when, in fact, it should be being used.

Senator SHELBY. Well, we all know this. It is very important that it is the Commissioners on the Securities and Exchange Commission that are accountable to the American people. The staff is accountable to you, and the staff are very important, but the buck has got to stop with the Commissioners, has it not?

Mr. AGUILAR. I wholeheartedly agree. The buck does have to stop with the Commission——

Senator SHELBY. Mm-hmm.

Mr. AGUILAR.——and that is why I believe it is important for the Commissioners to speak clearly and to speak loudly about the policies that they think should be in place and to make sure that they monitor the staff as well as they possibly can to make sure that they are adhering to the appropriate policies.

Senator SHELBY. Mr. Gallagher, in February of this year, the Republicans on the Senate Banking Committee here sent a letter to all of our financial regulators urging them to employ rigorous economic analysis in their rulemaking. Given the scope of rulemaking under Dodd-Frank and the weak state of the economy that we are all confronted with, I believe it is particularly important that agencies such as the Securities and Exchange Commission understand the cost and benefits of their rules and the effect their rules will have on economic growth be considered.

In that context, what role do you believe economic analysis should play in the SEC rulemaking? Will you bring any unique skills in this area to the Commission?

Mr. GALLAGHER. Well, thank you, Senator Shelby. It is an excellent question. Now, more than ever, given the large number of rulemakings that the Commission is undertaking under Dodd-Frank, it is critically important that the SEC and other regulators get the rulemakings right, and to me, getting it right means also properly weighing the costs and benefits of the rulemaking. It would be impossible to say that you got the rulemaking right when the costs outweigh the benefits. So it is critically important.

It is an issue over the last several years that the agency has had some problems with in the D.C. Circuit and so it is critically important just functionally that the agency get it right, weigh the costs and benefits, and without doing so, it would be very hard to satisfy the missions that it has to facilitate capital formation, ensure fair and orderly markets, and protect investors——

Senator SHELBY. And ultimately create jobs, right?

Mr. GALLAGHER. And create jobs, Senator. That is right.

Senator SHELBY. Mr. Gallagher, you will be joining on the Commission at a time when the SEC faces an unprecedented rulemaking agenda unprecedented. I believe as a result, there is a risk that less attention will be paid to the SEC's day-to-day business while the rulemaking syndrome is going. What will you do to ensure as a Commissioner that the SEC continues to fulfill its regular routine, but critically important roles of reviewing filings, examining registrants, and enforcing the securities laws?

Mr. GALLAGHER. Thank you, Senator. That is another great question——

Senator SHELBY. You have been there. You have had experience there.

Mr. GALLAGHER. I have been there, Senator. I have been both counsel to a Commissioner and a Chairman and a senior staffer in one of the divisions, so I think I have a pretty unique perspective on that issue. I understand the day-to-day. I got to experience a normal day-to-day for at least a year or two before the crisis, and after that, I do not know, sincerely, what a normal day was like.

But the day-to-day business of the agency goes on, to your point, in addition to all of the Dodd-Frank rulemaking, and if confirmed as a Commissioner, I think I will have a unique perspective on ensuring that the agency is paying enough attention to that day-to-day work while at the same time trying to meet the mandates of Dodd-Frank.

Senator SHELBY. Commissioner Aguilar, the economy, as we all know, is in a very fragile state, yet the Dodd-Frank Act has unleashed a flood of new regulations that impose significant costs on businesses. These costs are passed along to investors in the form of lower returns and to consumers in the form of higher prices, generally. Collectively, I believe they are likely to diminish economic growth and further increase unemployment. Having said that, do you believe that the SEC should consider carefully the economic import of its actions, and what are you doing—you are a Commissioner now—doing to ensure that the SEC is assessing and taking into account the economic impact of its regulations?

Mr. AGUILAR. Thank you, Senator Shelby. The SEC has a robust process for promulgating the rules that we adopt. Dodd-Frank is no exception. We follow the notice and comment procedure mandated by the Administrative Procedures Act. When we issued the proposal, we received many comments and many fulsome comments. I, myself, have an open door policy. I make sure that I try to listen to all the views from all the interested parties and take that into consideration, and the burdens and costs of our rulemaking is certainly one of the topics that I take into serious consideration, and I also try to consider the benefits that we are trying to achieve with the rulemaking that we are trying to adopt.

I think it is important as part of our process to weigh, as best as we can, the balance between the costs and the benefits that are mandated by the Dodd-Frank Act, in particular, and what we are trying to accomplish—and the goals that Dodd-Frank has asked us to try to accomplish.

Senator SHELBY. Mr. Gallagher, in a speech in late 2009, you noted that, and I will quote you:

> it is human nature for people, once they get through the immediate crisis, to forget the historical errors and jump into the next industry trend without proper risk reflection and planning.

Although you were speaking about an industry, regulators are also human and are prone to forget their past mistakes. Since you were on the staff—I know you were not a Commissioner, but you were a very important staffer—at the SEC during the financial crisis, explain what lessons you learned from errors made in the run-up to the crisis and how will these lessons affect the way you fulfill your role as a Commissioner at the Securities and Exchange Commission.

Mr. GALLAGHER. Thank you, Senator Shelby. It was a tremendous honor to serve at the SEC on the staff during the financial crisis. It was amazing to me to see the hard work and diligence, the tireless efforts of the staff and the Commissioners, quite frankly, Commissioner Aguilar included.

The lessons learned from the crisis are many. First and foremost for me, I learned the incredible importance of regulatory cooperation and the flow of information amongst regulators, both domestic and international, and if confirmed as a Commissioner, that will be something that will be very important to me, to ensure, whether through the implementation of the Dodd-Frank Act or participation in international bodies, that the SEC is properly involved in the information flow and cooperating well with other regulators.

As to other issues leading up to the crisis, things that we saw, aggressive risk taking without aggressive risk management was probably, in a nutshell, the biggest problem, something that the industry was guilty of and regulators did not pay enough attention to. And so that is another area where, if confirmed, I would want to be paying a lot of attention to ensure that the Commission, whether through participation in the FSOC or just in our day-to-day business, that we are paying enough attention to that, Senator.

Senator SHELBY. Thank you.

Chairman JOHNSON. Senator Reed.

Senator REED. Well, thank you very much, Mr. Chairman.

First, I want to commend Mr. D'Agostino for his outstanding service in the United States Navy. As a Rock Squad swimmer at West Point, I am very jealous of a Navy Rescue swimmer, so I think you have got me already. I do not think you have to do anything, OK?

Mr. D'AGOSTINO. I can count on your vote.

Senator REED. You are all set. You are all set.

[Laughter.]

Senator REED. But, no, remarkable service to the Nation in the Navy. Thank you, sir.

Let me follow up. I thought Senator Shelby asked a very good question, Mr. Gallagher, about your experiences, because you were in several very critical positions and I just want to make sure I am aware. In your staff position, you had some involvement with the Consolidated Supervised Entity Program, which was designed to supervise Lehman, among others. How deeply engaged were you in the day-to-day activities of Lehman before it collapsed? Were you getting real-time information?

Mr. GALLAGHER. Thank you, Senator, for that question. I came down to the Division of Trading and Markets as a Deputy Director at the end of July of 2008, so like Commissioner Aguilar, came into a new role just shortly before Lehman failed. In that short window, just weeks before Lehman failed, myself, my boss, Erik Sirri, the Division Director of the Trading Markets, along with the Chairman and other senior staff, were getting a fair flow of information and trying to coordinate with other domestic regulators to ensure that we could best contain any problem that happened if Lehman did, in fact, fail.

Senator REED. There have been some allegations that I have read publicly where Lehman was reporting liquidity figures which

were much different than the actual figures which it has been suggested that the regulators knew about. Are those allegations accurate?

Mr. GALLAGHER. Senator, I have heard some of those same reports. I am not aware personally that that was an issue. I know it was something that was raised, I believe, in the Trustee's Report regarding Lehman, and I know it is something that the staff is investigating, or was, at least, when I left, investigating vigorously, and I assume that to the extent there was any impropriety, that they will——

Senator REED. But that would be very disturbing if, in fact, market information was much different than what regulators had.

Mr. GALLAGHER. Absolutely, Senator. Again, one of the lessons learned was the need for information, not just the sharing with regulators, but for somebody to have the information by which you could make rational decisions as a regulator. And if the businesses were not giving appropriate information, if they were taking different perspectives on pricing, for example, of the same types of instruments, then you cannot have the information you need to make those rational decisions.

Senator REED. Do you think, given your experience, that the SEC is in a stronger position now with the Dodd-Frank legislation to effectively regulate these institutions?

Mr. GALLAGHER. There is no doubt that the SEC has many more tools given to it by Dodd-Frank to regulate the institutions, the markets, and to take action that before the enactment of the statute they did not have.

Senator REED. And I know there is an appropriate concern with cost-benefit analysis, but the next issue and the hard issue is, OK, what are the costs and what are the benefits, and who is paying the costs and who is paying the benefits? And you can define a cost-benefit analysis in some cases, you know, what answer do you want? I will give you the analysis.

I think one of the aspects of this crisis was the huge cost to taxpayers which may have been mitigated or avoided with better regulation, and I would urge both you gentlemen, when you consider this cost-benefit analysis, it is not just a narrow, what cost will be paid by the regulated entity, what nominal benefit it is in terms of specific information to consumers, but a much broader, if this fails, we are on the hook for trillions of dollars, and I hope you do that.

Another aspect, Mr. Gallagher, too, because, again, of your critical role, and Senator Shelby alluded to it, and that is the degree at which enforcement is delegated to non-Commissioners. There are five Commissioners. You have extraordinarily complicated duties, *et cetera.* And the impression that many, particularly critics, have lodged is that the enforcement agents, division, were, in effect, hobbled. They had to get permission to do things which previously they could do on their own—subpoenas, collect information. To a certain degree, they could settle claims. That was dramatically held back under Chairman Cox, and I think Commissioner Atkins was particularly vocal.

Personally, I do not think it resulted in effective performance and I think it might have done something even worse, send a message

to the street that the cops were off the beat. So what is your impression now, the new rules that Chairman Schapiro and others have adopted?

Mr. GALLAGHER. Thank you, Senator. Let me just say at the outset, it is imperative for the SEC to have a strong and vibrant enforcement program. It is imperative for investors. It is imperative for markets. The agency needs to be seen as the cop on the beat and there needs to be comfort and confidence in the markets that the SEC will be there.

As to your specific question of the hobbling of the agency, I understand that there was some coverage of the issue and implication that there was hobbling. I think that was largely related to the Commission diving into an important enforcement policy issue which related to penalizing shareholders of corporations. That was a very, very small part of the enforcement docket, and I know that because I worked for Chairman Cox, 2 percent or less of the cases. But I think it got an out-sized reaction, and that, to my initial point, you cannot have these negative perceptions about the agency. Whether it is really hobbling somebody or not, it is very bad for the agency.

As to the changes that Chairman Schapiro has implemented, the restructuring of the division, some of the new delegations, I have been looking at it from the outside, and, if confirmed, am eager to get involved and see how this is paying off, what dividends have been paid, what are the new efficiencies.

The one thing I can tell you is a constant, though, is that I have the utmost faith in the Enforcement staff. They are men and women of just an unbelievable caliber. They have been through a hard time, and I think with proper encouragement and oversight from the Commission, they are going to regain the confidence that they used to have.

Senator REED. Can I add just one final point to Mr. Aguilar. There were a couple of situations in which you had a principled opposition, I believe, and you refrained from voting. Am I being accurate? I do not want to mischaracterize——

Mr. AGUILAR. Senator Reed, I think I know what you are speaking about, and I would not necessarily characterize it that way. There was an ill-advised staff policy that had been adopted with respect to certain claw backs that in my mind read out of the Sarbanes-Oxley Act legislation certain authority given to the SEC by Sarbanes-Oxley in 2002, and I engaged in a series of discussions with my colleagues and with the staff to try to get that policy reversed. While that was going on, there were a couple of cases where, while the discussion was ongoing, I thought it best not to participate in—while I continued to dialog with the staff and with the Commission as to what the policy should be so we could address those cases under the appropriate policy. I would have wished that those cases had been delayed until the policy had been restructured, as it subsequently was, but the decision was made for them to proceed with those cases while the dialog was still ongoing for us to try to develop a better policy.

Senator REED. Well, all I can say, we have these similar situations around here, and sometimes votes do not come on time, but

typically, we feel when the vote is called, we have to vote, so just one impression.

Thank you very much, Mr. Chairman.

Chairman JOHNSON. Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman.

Let me congratulate all the nominees on their nominations.

Mr. Gallagher, there are some of us who believe very strongly in a free market, but there is a difference between a free market and a free-for-all market, and many of us believe that the challenges we faced in September of 2008 when we were called upon to make sure the Nation did not go into what Chairman Bernanke described as the potential of a new depression was the lack of a regulator that instead of being the cop on the beat was asleep at the switch.

So you have had experience there. You have seen the consequences. Tell me how you would act today as a Commissioner to ensure that we have a free market but not a free-for-all market, that we do not relive—you know, the Ranking Member's concern about too much regulation, I understand the importance of having that pendulum just swing just right, but by the same token, I do not want to have to cast votes again to face another 2008 in this country. So tell me how you are going to approach their position.

Mr. GALLAGHER. Thank you, Senator Menendez. It is a great question——

Senator MENENDEZ. I only ask great questions.

[Laughter.]

Senator MENENDEZ. Just kidding. I am just kidding.

Mr. GALLAGHER. We will stipulate it for the next one, then.

[Laughter.]

Mr. GALLAGHER. As I mentioned earlier, it is critical that the SEC and the other agencies get these rulemakings right. To get them wrong could have some major impacts. If confirmed by the Senate, you have my pledge that I will do everything possible to ensure the rulemakings are done appropriately, done as timely as possible, and do not have adverse negative consequences to the extent we can predict those.

To your point about my prior experience, there is nothing I want less than to come back to this agency and deal with what I had to deal with in 2008. It was the most horrific experience of my life. It had a profound effect on me, my family, and I will do everything in my power to ensure it does not happen again.

Senator MENENDEZ. So I would expect you to be part of the cop on the beat——

Mr. GALLAGHER. Absolutely, Senator.

Senator MENENDEZ.——not asleep at the switch.

Mr. GALLAGHER. No doubt.

Senator MENENDEZ. Let me ask you one other question. What are your priorities as you look at your new role upon confirmation? Where do you put investor protection?

Mr. GALLAGHER. I put it number one, Senator. The missions of the SEC are incredibly challenging—investor protection, facilitating capital formation, fair and orderly markets, but, you know, at the end of the day, if investors do not have confidence in the agency and the markets, then there will not be an agency around.

Senator MENENDEZ. Commissioner Aguilar, give me a sense—I know your work at the SEC for the last several years. I know the work that you did before. But give me a sense of—you mentioned, touched upon in your opening statement your private sector experience. Give me a sense of how that private sector experience informs your work at the SEC.

Mr. AGUILAR. Thank you, Senator Menendez, and may I also say that is an awesome, great question, as well.

[Laughter.]

Senator MENENDEZ. I will not reiterate what I said to Mr. Gallagher.

[Laughter.]

Mr. AGUILAR. It pervades everything I do. In my 30 years as a professional in securities industries, I have worked at the SEC, I have worked in private practice, and I have worked for a very large global asset manager. I have done almost everything in my private practice that the Commission touches. I have been a president of a broker-dealer. I have been a senior officer for an investment advisor. And I think I have been a well known, and a well respected mutual fund lawyer. I have taken companies public. I have done a great number of private placements.

There really is not anything that the SEC does that I did not do in private practice with one notable exception—and that is that I was not a litigator. I never got sued. My clients never got sued as a result of my work. So I found it strange, to use Ranking Member Shelby's statement, I think, that when I first became SEC Commissioner, I focused heavily on the enforcement program, partly because it—it needed to be focused on, and so I found it strange that I was tagged by a publication as the Enforcement Commissioner, because it is the one thing I did not do in my private practice.

But in the role of a Commissioner, most of the matters that are brought to us for consideration outside of the enforcement world, I have had some personal experience with in many ways and I am able to see the practical impact of our rules. I am able to see what is likely to work, what is likely not to work. I am looking for smart regulation. I am looking for a regulation that finds that appropriate balance between the cost and the benefits, but at the end accomplishes the goals of the SEC to fulfill our mission and protect investors, maintain effective and orderly markets, and facilitate capital formation.

Senator MENENDEZ. Thank you. One last question, Mr. Chairman, to the SIPC nominees.

I have spoken to many Madoff scam victims in New Jersey and they are generally dissatisfied with SIPC policies and reimbursement process. What do you think—or, I should say, why do you think that is the case, and what would you do to improve such policies in this area?

Mr. KARAWAN. Senator, you are obviously batting a thousand on your questions today, so thank you for that one.

[Laughter.]

Mr. KARAWAN. From my personal experience in private practice and as in-house counsel, it is usually failed expectations that lead to disappointment. So one area to look at in terms of SIPC's role is do investors understand the extent and limits of the protections

that are provided by SIPC. If you have the understanding going in, you might not be disappointed on the back end if you need to rely on SIPC protections if that should ever come to pass.

So if I am confirmed, one of the things I would be interested in reviewing are the SIPC disclosures and investor education materials that are made available, how good they are, how robust they are, and how well understood——

Senator MENENDEZ. Mr. D'Agostino.

Mr. D'AGOSTINO. Senator——

Senator MENENDEZ. Would you put your microphone on, please?

Mr. D'AGOSTINO. Senator, a lot of people think that SIPC is kind of similar to the FDIC, and it is not. And it is a common misperception. When I was talking to some of my partners that have been in the financial services industry their whole lives, they did not understand the differences. And so I think a big part of what we need to do is educate the public. The SEC needs to educate the public. All regulators need to educate the public. Broker-dealers, Series 7, Series 6 representatives, they need to educate the public.

The responsibilities of SIPC are pretty clearly spelled out in SIPA. The courts ruled on this matter, and I think SIPC has taken the appropriate approach with regards to SIPA.

Senator MENENDEZ. Do either of you think that there are any changes needed to the Securities Investor Protection Act?

Mr. D'AGOSTINO. Senator, I have not had an opportunity to serve on the Board and spend time with colleagues and spend time with the staff to really understand those issues, and I am looking forward to the report that is going to be coming out to help me understand that.

Mr. KARAWAN. I agree with Mr. D'Agostino on that. The work, which I understand is fairly extensive, being done by the task force will be an extremely good starting point as to whether or not the current state of affairs at SIPC and the statute that governs it is appropriate and whether it needs modernization.

Senator MENENDEZ. Well, I look forward to working with you. I understand the question of expectations, and I can see that. I also think that there are certain failings here for investors, and I would look forward to working with you in that regard.

Thank you, Mr. Chairman.

Chairman JOHNSON. Commissioner Aguilar and Mr. Gallagher, the Dodd-Frank Act requires the SEC and the CFTC to craft new rules on the regulation of derivatives. It is important that the SEC and the CFTC rules be as consistent as possible to minimize costs and ensure effective oversight.

What is your view on the current SEC/CFTC coordination? And what can be done by the SEC to ensure that differences between these sets of rules are minimized and the agencies are cooperating? Commissioner Aguilar.

Mr. AGUILAR. Thank you, Mr. Chairman. In the proud history of both the CFTC and the SEC, we have, I am told, only met as a body on three separate occasions, all within the last couple of years. So we are now learning to work together. Our staffs have had more periodic involvement with one another. Under the Dodd-Frank Act they are certainly being asked to develop a number of

rules jointly and consult with one another, and that is happening regularly.

We have had a number of joint roundtables in the last year, and I think that the relationship between the two agencies is developing in an appropriate manner, both at the staff level and at the Commissioner level.

This country is one of the few countries that has decided to separate the oversight of the capital markets by having a separate regulatory agency, and it, therefore, is incumbent upon us to work twice as hard, three times as hard, to make sure the two agencies work as jointly as possible both to have consistency in the regulation and in the protection that investors have, because you today have the ability to accomplish the same economic goal by either using an instrument in the securities field or in the derivatives field. And so we do not want to have so much fragmentation that things get both convoluted for the capital markets as well as have things fall through the cracks.

Chairman JOHNSON. Mr. Gallagher.

Mr. GALLAGHER. Thank you, Chairman Johnson. It has traditionally been very important for the CFTC and the SEC to enjoy a good and collaborative relationship. With Dodd-Frank and the number of joint rulemakings, and under Title VII in particular, it is critically important that they cooperate and work together.

In my experience from being a staffer, sometimes this relationship is strained. Unfortunately, sometimes the relationship is too dependent on personalities at the agencies and not the formal protocols. And I think right now my sense, from looking in from the outside, is things are going pretty well. And my only fear is that is because the personalities seem to be meshing.

Commissioner Aguilar will have a much better sense of how things are actually going day to day. I do see these joint meetings. I know that the staffs seem to be working together pretty well. But I continue to ponder whether that is simply because of relationships. And if confirmed as a Commissioner at the SEC, I can tell you that this is an issue that is of the utmost importance to me, this regulatory cooperation with the CFTC, and it is something I am going to work hard ensuring happens, that we get it right and we cooperate.

Chairman JOHNSON. Senator Hagan.

Senator HAGAN. Thank you, Mr. Chairman, and thank you for holding this hearing.

I wanted to ask a question about the fiduciary duty. I am hearing so much concern about this right now. At the end of April, I sent a letter to the Department of Labor on its proposed fiduciary rule with Senator Reed of Rhode Island and Senator Bennet, and in that letter we encouraged the Department to consult with the SEC, citing the Commission's recent study on fiduciary standards.

Mr. Aguilar, can you describe what consultation has taken place between the SEC and the Department of Labor on the issue of fiduciary duty? And at what level have these conversations taken place? And do you feel that the Department of Labor has engaged the SEC adequately, appropriately on this rule, which I think has wide-ranging implications for securities markets?

Mr. AGUILAR. Thank you, Senator. I do know that the SEC staff has been meeting with the DOL staff on this particular issue. However, I have not yet been briefed by our staff as to the nature of those discussions, how many they have had, how in-depth they have gotten into the discussion. But I would be happy to look into it upon my return, and if you would like, I could supplement the record after the hearing.

Senator HAGAN. I would appreciate that.

Senator HAGAN. Anybody else want to address this issue?

Mr. GALLAGHER. Senator Hagan, I have no knowledge, being on the outside now, of what the interactions are with the staff. But being a practitioner in this space, I can tell you there is no more important issue than regulatory cooperation between DOL and the SEC on this issue. The implications, the ramifications of getting this wrong or one agency or department moving ahead of the other, could be huge.

Senator HAGAN. I agree. Thank you.

Since May 6th of last year, when we experienced the flash crash, I have heard an increasing number of concerns expressed by market participants about the stability of the exchanges. And once again, Mr. Aguilar, can you discuss the direction that the SEC is taking to address market structure issues that contributed to the flash crash?

Mr. AGUILAR. Thank you, Senator. Even before May 6th of last year, the staff and the Commission have put forth their concept release to try to look at the market structure from A to Z. The market has changed dramatically over the last decade, both in the volume of high-frequency traders and new products, such as ETFs that have really mushroomed, and that impact the trading markets, certainly in the last half-hour or so of a typical day. And so we put that concept release out, and then May 6th, of course, overtook those events.

We then, together with the CFTC, put together a task force to look at the events of May 6th, and reports have come out particularly on May 6th. But the work is not done. The SEC did establish single-stock circuit breakers to respond to May 6th, and they are now looking at limit-up/limit-down mechanism as an additional measure. And the staff is now developing a plan for how to continue to study the market structure and how to sequence the analysis that they need to do and how to consider what, if any, additional actions should be taken. The SEC Chairman has spoken about that a fair amount. But I am waiting to get the staff's considered thoughts on what the next concrete actionable steps should be and to further analyze and perhaps consider what additional rules may be required to deal with market structure.

Senator HAGAN. What is the timing to get that report back?

Mr. AGUILAR. I think the staff is working on it, and I will get back to the office and find out the exact thinking on that and respond with a more accurate statement.

Senator HAGAN. OK. Thank you.

Senator HAGAN. Mr. Gallagher, what steps do you believe still need to be taken to ensure that markets are safe for investors and allow for job-creating capital formation to take place?

Mr. GALLAGHER. Thank you, Senator. I assume this question is in connection with——

Senator HAGAN. Yes.

Mr. GALLAGHER. Yes. As Commissioner Aguilar alluded, a lot has been going on. A personal digression—in preparing for the hearing and meeting with the SEC staff—I had not seen them because I had been in my time-out period, and I got to confess to one of the lead staffers working on the May 6th initiative that on May 6th I was in the airport going to visit my sister with my parents and my son, and I saw the news coming about the Dow swing, and I had one of these 2008 moments of, you know, a heart flutter and feeling a little faint. And then I remember I was not there anymore, and I did not have to deal with it. I felt bad that they did.

But since then, they have been incredibly active. I mean, the number of proposals that have come out have been unbelievable, and quite frankly, in the months leading up to May 6th, even when I was just leaving the agency, between the concept release on market structure, the flash order proposal, there has been more going on in the market structure space than there has been at the SEC in over 10 years.

I think that dovetails with Senator Shelby's question earlier about the day-to-day business of the agency. These initiatives are not necessarily either May 6th or—they are definitely not Dodd-Frank mandated, but they are incredibly important to the markets, and they are incredibly important to get right. Whether it is limit-up/limit-down, the single stock circuit breaker, the short selling circuit breaker, and all of the other proposals that the Chairman has put out there, they all have laudable goals, but we need to ensure that when in operation together they work effectively and do not hinder the markets at a time when we are trying to bolster them.

Senator HAGAN. True.

Thank you, Mr. Chairman.

Chairman JOHNSON. I thank the witnesses for your testimony and for your willingness to serve our Nation.

I ask all Members of the Committee to submit questions for the record by noon this Friday, and I request that you submit your answers to us in a timely manner so that we can move your nominations forward.

This hearing is adjourned.

[Whereupon, at 11:11 a.m., the hearing was adjourned.]

[Prepared statements and responses to written questions supplied for the record follow:]

PREPARED STATEMENT OF LUIS A. AGUILAR

NOMINEE TO BE A MEMBER, SECURITIES AND EXCHANGE COMMISSION

JUNE 14, 2011

Chairman Johnson, Ranking Member Shelby, and Members of this Committee:

It is a great honor to be here before you today. I do want to acknowledge my wife, Denise, who was not able to accompany me today. She has been a constant source of support and enabled me to serve as a Member of the United States Securities and Exchange Commission ("SEC"). I also want to acknowledge my parents, Juan and Gladys Aguilar, who sent their two small sons to the United States as Cuban refugees, to escape the Castro revolution, and would be bursting with pride to see one of them serving this great country in such a manner.

Three years ago, I had the honor to come before this Committee for confirmation hearings to be a member of the SEC. It has been my tremendous privilege to serve as a Commissioner of the SEC. I was, and remain, humbled to be asked to serve the American people at the agency where I started my career as a staff attorney over 30 years ago. My deep respect and admiration for the importance of the institution, and its mission has only grown during my tenure. I recognize the significant responsibilities of the SEC to fulfill its statutory mandate to protect investors, maintain fair and orderly markets, and facilitate capital formation.

I have remained focused on these responsibilities during these recent challenging times. The collapse of Lehman Brothers and the ensuing market turmoil—of a kind not seen since the Great Depression—began just weeks after I was sworn in as a member of the Commission. In these extraordinary times, I have dedicated all of my skills, knowledge, and energy to the work of the SEC. My professional career spans over 30 years and I have been a practitioner in corporate, securities, and international law. I have seen the securities industry from many vantage points. I have worked in Government, private practice, and in corporate America. I've been an SEC staff attorney, a law firm partner and a general counsel and head of compliance, and I have spent time as a domestic and international business person. This breadth of experiences has served me well as the SEC has taken up, or been confronted with, a multitude of issues stretching across the securities and corporate spectrum.

And so, I was deeply honored to be nominated by President Obama to serve another term as a Commissioner. It has been a privilege to work with Chairman Mary Schapiro and my other colleagues on the Commission: Kathleen Casey, Elisse Walter, and Troy Paredes. If confirmed, I look forward to continuing this work, along with Commissioner-Designate Dan Gallagher. I believe a great deal of unfinished business remains before the SEC—work that is vital toward improving our markets as well as the agency itself.

I am committed to answering these challenges. When I arrived in the United States as a refugee from Cuba, I was 6 years old and had little more than the clothes I was wearing. The generosity and opportunities of this country provided me the foundation to become the person who now has the honor of appearing before you today. Serving as a Commissioner to the SEC and being able to apply my securities expertise on behalf of the American people is a tremendous honor, and truly my privilege.

If the U.S. Senate determines to confirm my nomination to a second term as a member of the SEC, I promise to work faithfully to serve the American people at this critical time.

Thank you. I will be happy to answer any questions the Committee might have.

PREPARED STATEMENT OF DANIEL M. GALLAGHER, JR.

NOMINEE TO BE A MEMBER, SECURITIES AND EXCHANGE COMMISSION

JUNE 14, 2011

Chairman Johnson, Senator Shelby, Distinguished Members of this Committee, it is a very great honor for me to appear before you today. I am grateful and humbled by the President's nomination to serve on the Securities and Exchange Commission.

I would like to introduce you to members of my family that are here with me today. My wife, Stephanie Gallagher, who was recently named to be a Federal Magistrate Judge in Maryland—her investiture is this Friday—is an incredible wife and mother, and she has always been a tremendous source of support for me, as she has been throughout the process that brings me here today. With her are my two sons, Danny and Charlie, and I am incredibly proud of both of them. My parents, Barbara and Daniel Gallagher, who have come down from Philadelphia for this

hearing, have been small business owners for most of my life. Their work ethic, integrity, and devotion to family have been a continuous inspiration to me.

Since its creation, the SEC has been one of the most important agencies in the Federal Government. Investor protection and oversight of the capital markets are essential to American investors as well as our overall economy. The SEC must accomplish its mission in the context of complex, dynamic, globally connected markets.

This is a time of great importance for the SEC. It is rebuilding after some setbacks, dealing with a loss of faith in the financial markets, and facing broad new oversight and regulatory responsibilities over complex financial instruments and markets. The SEC staff, which is the engine of the agency, is cognizant of the critical role they play, and I know from personal experience that the staff is intensely dedicated to the protection of investors and the health of the capital markets.

Despite the financial crisis, the U.S. capital markets are the strongest in the world. To maintain that status, the markets need the SEC to be a strong and respected regulator. Investors will only commit capital if they have faith in the fairness of our markets, and the SEC is charged with instilling and maintaining this confidence. By requiring transparency and rigorously and fairly enforcing the law as directed by Congress, the SEC plays a major role in maintaining the preeminence of the U.S. capital markets. If confirmed, I will strive every day to ensure that the agency satisfies this mission.

On a personal note, I want to point out that I have been nominated to fill the seat being vacated by Commissioner Kathleen Casey, who is someone very well known to this Committee. Commissioner Casey has been an outstanding Commissioner and has served the country and investors with integrity and dedication through an incredibly difficult time. Should I be confirmed, I hope to serve as ably as she has.

Thank you, Mr. Chairman, Senator Shelby, and Members of the Committee, for this opportunity to appear before you today. I would be pleased to take any questions you may have.

PREPARED STATEMENT OF ANTHONY FRANK D'AGOSTINO

NOMINEE TO BE A DIRECTOR, SECURITIES INVESTOR PROTECTION CORPORATION

JUNE 14, 2011

Good morning Mr. Chairman and Members of the Committee. My name is Anthony (Tony) D'Agostino, and I am honored to be before you today as President Obama's nominee to serve on the SIPC Board of Directors.

I believe I am well qualified to serve on the SIPC Board based on my management background in the securities industry and my hands-on experience working in the capital markets.

Prior to joining Wall Street, I served in the United States Navy for 24 years. I started out in the Navy as an enlisted man flying in the H–3 helicopter as a rescue swimmer and anti-submarine warfare specialist. After I completed my undergraduate degree at the University of Kansas I received my commission and went on to serve in roles of increasing responsibility, a few examples are: SECNAV–CNO Briefer during Desert Storm, an Admirals Aide and as a Surface Warfare Officer onboard the USS John F. Kennedy (CV–67). Since retiring from my career in the Armed Forces, I have worked in the Capital Markets businesses of Wachovia and UBS. In both organizations, I served in executive roles, which allowed me to closely observe and fully appreciate the intricacies of how these businesses are structured, staffed and operated.

As the Chief Operating Officer (COO) of Wachovia's Equity Capital markets platform I directly oversaw and managed internal functions supporting the Equity Capital Markets business including Technology, Compliance, Legal, and Finance. After serving as COO, I went on to build from scratch, the firm's Program and Algorithmic equity trading business. As the architect for that business I became proficient in all aspects of electronic trading. I then went on to build another new venture for Wachovia: I helped build a proprietary Long/Short U.S. Equity Hedge Fund (*i.e.,* a proprietary trading desk) where I focused on portfolio and risk management as well as financial analysis. In that role, I had to study and understand the operational characteristics of hundreds of different companies, in dozens of diverse industry groups. During the 2008 market collapse where 40 percent losses became the norm, the fund we managed was down only 2.4 percent. As part of my training to serve in these roles, I was a FINRA Registered Principal and held Series 7, 24, 55 and 63 licenses.

After Wachovia's collapse and takeover by Wells Fargo, our division was shut down. Like so many other Americans, I found myself unemployed for the first time

in my life. After nearly 1 year out of work, I was then recruited by UBS where I am currently serving as the COO of the Global Quantitative Analytics (QA) group. The QA group is responsible for building sophisticated mathematical models, which are used to create, price and evaluate the risk of complex financial products (Derivatives, CDS, CMO, ABS, MBS, *etc.*). I oversee and manage divisions around the world, which include quantitative modeling, trading support, technology, strategy and off-shoring.

Our recent economic challenges have inspired me to once again serve our great country, and I am very proud that President Obama has asked me to apply my experience in the Navy and in the Capital Markets to address these challenges. I understand the hardships that so many Americans are facing today, and I am dedicated to working with the Board of SIPC to help ensure that investors are protected when broker dealers fail. The unique combination of more than a decade in the trenches of our financial industry and twice that long serving my country in the Navy allow me to bring a wealth of experience, hard work, and accountability to the Securities Investor Protection Corporation Board.

If confirmed as a director of SIPC, I promise the President and this Committee, that I will use my experience to maintain and strengthen SIPC's accountability to the investing public.

In closing, I would like to recognize a few important people in my life. I am pleased to have some of my family with me today: Havilah and Hannah D'Agostino, Dr. Leigh Vinocur, and her son, Max, as well as my friends Matti Kon, Scott Kaimien and Jeff Rassmussen.

In addition to my family and friends with me today, I would like to thank my mentors from over the years that have given me opportunities that a milkman's son from South Jersey never expected: Col Mike Wyly, USMC (retired), Rear Admiral Ed Fahy, USN (retired), Mr. Al Berkley, former President of the NASDAQ and my dear friend Mickey Misera, former Head of Wachovia's Equity Capital Markets business. Mick believed in me and hired me directly from active duty to be his COO; all of my opportunities to work within the financial services industry are due to him.

Mr. Chairman, that concludes my remarks, thank you for your attention and consideration. I will be happy to answer your questions.

PREPARED STATEMENT OF GREGORY S. KARAWAN

NOMINEE TO BE A DIRECTOR, SECURITIES INVESTOR PROTECTION CORPORATION

JUNE 14, 2011

Chairman Johnson, Ranking Member Shelby, and Members of the Committee, it's a great honor to appear before you as you consider my nomination to be a director of the Securities Investor Protection Corporation.

As a boy growing up in Sheepshead Bay Brooklyn, I never considered that I might someday have the privilege of being before a United States Senate Committee with an opportunity to serve the public in such an important role. I can attribute my good fortune to a primary cause, and she's sitting behind me today, my mother Devorah Einbinder. From my earliest memories, she stressed the importance of education, instilled in me the work ethic and values that I carry with me today, and propelled me to be part of the first generation of our family to attend college. I want to acknowledge and thank her for her love and support, and for traveling up from Florida to be here today.

For the past 23 years, I have served as a lawyer responsible for handling complex commercial litigation, transactions and regulatory issues. For the first 12 years, I was in private practice, becoming partner in the litigation group of the firm where I practiced. I represented a variety of financial sector clients in financial, securities, and other types of disputes. For the past 11 years I have been in-house counsel for a large financial services corporation. In that capacity I have had litigation management responsibility for the entire company, including insurance, broker/dealer, and wealth management operations.

And for the most recent 4 of those years, I have also served as General Counsel of the business segment that includes broker/dealer and investment advisor operations, with overall legal responsibility for those businesses. Throughout my 23 years of practice, I have counseled boards of directors on many issues.

Members of the Committee, today's environment is challenging. Financial markets are global and in flux, and are recovering from a devastating crisis. Financial frauds are growing ever more complex and sophisticated. Technology . . . and the good, and bad, uses to which it can be put . . . is advancing at a lightning pace. The types of securities in which customers invest are constantly evolving. An experienced,

dedicated, proactive and forward-thinking SIPC Board is crucial to dealing with these challenges. As a result of my extensive experience dealing with financial services companies, I believe I am well equipped to serve as a SIPC director and confront these challenges head on.

My commitment, if confirmed, is to bring my experience to bear in my role as a SIPC director, to be unbiased, to be guided but not ruled by my instincts, to exercise sound judgment with an absence of hubris, and, most importantly, to always have an open mind, to hear and value all points of view, and, ultimately, to do the right thing. Being a passionate advocate for investor protection will be one of my primary roles.

Mr. Chairman and Members of the Committee, thank you again for your consideration of my nomination, and I am happy to answer any questions you may have.

RESPONSE TO WRITTEN QUESTIONS OF CHAIRMAN JOHNSON FROM LUIS A. AGUILAR

Q.1. What is your view of the changes the SEC has made to improve enforcement of the securities laws in the wake of the Madoff and Stanford Ponzi schemes? How would you work to support or enhance the effectiveness of SEC enforcement in the future?

A.1. The SEC has made a number of changes that are designed to improve enforcement and that seek to respond to weaknesses identified by the Madoff and Stanford Ponzi schemes. As outlined by Chairman Schapiro, these include:

- New management across the major divisions and offices.
- A new Division of Risk, Strategy, and Financial Innovation to re-focus the agency's attention on—and response to—new products, trading practices, and risks.
- Additional senior operational personnel, specifically a Chief Operating Officer and Chief Compliance Officer.
- Efforts to modernize the SEC's information technology, including a centralized system for tips and complaints, enforcement and examination management systems, risk analysis tools, and financial management systems.

To better ensure effective performance in detecting and addressing fraud, the agency has carried out a restructuring of its two largest programs—enforcement and examinations. These reforms are intended to maximize the SEC's use of resources and permit the agency to move more swiftly and strategically.

Specifically, the Division of Enforcement has streamlined its procedures in order to be able to bring cases more quickly; removed a layer of management to permit more staff to be allocated to frontline investigations; created five national specialized investigative groups dedicated to high-priority areas of enforcement; and created a new Office of Market Intelligence to serve as the hub for the effective handling of tips, complaints, and referrals. The Office of Compliance Inspections and Examinations ("OCIE") has been implementing reforms to the agency's national examination program, in response to rapidly changing Wall Street practices and lessons learned from the Madoff and Stanford frauds.

The changes provide greater consistency and efficiencies across the SEC's 11 regions, and are expected to sharpen the staff's focus on identifying the higher risk firms that it targets for examination. OCIE also implemented new policies requiring examiners to routinely verify the existence of client assets with third-party custodians, counterparties, and customers. Going forward, the national exam program plans to continue to conduct sweeps in critical areas, from trading practices to market manipulation, *to structured products.*

I believe it is critical that the SEC's enforcement program be effective. I have been a strong supporter of reforms to improve the effectiveness of the program, and I will continue to do so.

Q.2. The Dodd-Frank Act includes over 100 rulemaking provisions applicable to the SEC. This is a large undertaking and a tremendous responsibility. What is your opinion of the progress of these rulemakings? Will you commit to promulgating rules that are consistent with the letter and spirit of the Dodd-Frank Act?

A.2. As you note, the Dodd-Frank Act contains a number of provisions that require SEC rulemaking, and dozens of other provisions that give the SEC discretionary rulemaking authority. In terms of where the SEC stands, as of the most recent status review by SEC staff in late May of this year, the SEC has proposed or adopted rules for about two-thirds of the mandatory rulemaking provisions. As you note, the SEC's rulemaking responsibilities under the Dodd-Frank Act are a significant, and important, undertaking.

To help perform these responsibilities effectively, the SEC buttressed its process for obtaining input from the public and interested parties, such as by soliciting comment in advance of formal rule proposals. The SEC's staff has worked very hard to review these comments, develop formal proposals, review comments on proposals, and prepare final rules for consideration by the Commission. The dedication of our staff has been on display throughout this period.

I am committed to working faithfully to promulgate rules that are consistent with the letter and spirit of the Dodd-Frank Act.

Q.3. The Department of Labor has proposed amendments to ERISA that would expand the activities subject to a fiduciary duty under ERISA. On May 3, 2011, I co-signed a letter authored by HELP Committee Chairman Harkin sent to the SEC, DOL and CFTC about the importance of working together on this issue to avoid disruption. On June 6, 2011, Chairman Schapiro responded, stating that the SEC staff has been meeting with and the SEC is committed to coordinating with DOL "to prevent potentially conflicting standards while recognizing the different mandates of the statutes that each agency administers." Would you support the Chairman's efforts and support coordination by the SEC and DOL on these matters?

A.3. I understand from SEC staff that there have been several formal meetings, as well as numerous telephone calls and other informal communications, between senior staff members of the SEC, the Department of Labor ("DOL"), and, in some cases, the Commodity Futures Trading Commission (HCFTC"). Senior staff members of SEC, CFTC, and DOL have also participated in joint briefings with Congressional staff on these issues. SEC staff members attended the hearings held by the DOL on March 1 and 2, 2011, to hear the concerns raised by affected parties, and they continue to consult with DOL and CFTC staff on these matters.

The consultations with DOL staff have included discussions of the potential overlap between the DOL's proposed rule amending the definition of "fiduciary" under ERISA and the SEC's pending rulemaking relating to business conduct rules applicable to security-based swap dealers and major security-based swap partici-

pants under Title VII of the Dodd-Frank Act. Senior SEC staff members have also had several meetings with DOL staff to discuss the interplay between the fiduciary standard under ERISA (both existing and proposed) and the rules applicable to broker-dealers regulated by the SEC.

Based on my interaction with the SEC staff, I believe that they recognize the concerns alluded to in your question regarding the possible impact of different standards. The staff informs me that they intend to continue to consult with DOL staff to avoid potentially conflicting standards. I believe deeply in cooperation between regulators and support Chairman Schapiro's efforts to continue coordination and consultation between the SEC and DOL. Based on the information I have received from the staff, the extent of the consultation between the SEC and DOL appears appropriate and productive. I have asked the SEC staff to continue this consultative process.

Q.4. On May 25, 2011, the Commission adopted final rules to create a whistleblower program that rewards individuals who provide the agency with high-quality tips that lead to successful enforcement actions, pursuant to Dodd-Frank. The program was designed to help the SEC by identifying wrongdoers and providing evidence. Would you support the robust implementation of the Dodd-Frank whistleblower program consistent with Congressional intent?

A.4. Too often, we see frauds revealed only after the money is gone and investors are tragically harmed. In an attempt to systematically combat this, Congress mandated that the SEC promulgate rules so that whistleblowers would serve as an early warning system to detect fraud. The goal of the whistleblower program is to create a system that incentivizes individuals to come forward with high quality information to help the Commission expose fraud.

These are critically important goals, and I support robust implementation of the Dodd-Frank Act's whistleblower program to support Congressional intent.

Q.5. Public Company Accounting Oversight Board Chairman James Doty at the recent SEC and Financial Reporting Institute Conference on June 2 gave a speech entitled "Rethinking the Relevance, Credibility and Transparency of Audits." In it, Chairman Doty described an agenda for the PCAOB to work with the SEC, investors, auditors, preparers, audit committee members, scholars and other interested parties to analyze the structural foundation for auditing with a view to enhancing the relevance, credibility and transparency of the audit. He cited topics for possible inquiry, including cultural impediments to auditor independence and skepticism, the auditor's reporting model, enhancing audit committees' understanding of the PCAOB inspection process, and audit transparency. Would you support these goals and such analysis by the PCAOB?

A.5. The PCAOB is a vital institution, one that is able to have a significant positive effect on investor protection and audit quality. The SEC has an important responsibility to select the members of the Board, approve PCAOB rules, and generally to engage in oversight of the PCAOB. I believe that it is critical for the SEC and PCAOB to work together for the good of the public.

I believe the goals outlined by Chairman Doty are important, and I will support his efforts to carefully analyze how best to accomplish them.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR REED FROM LUIS A. AGUILAR

Q.1. There have been a number of recent high-profile criminal cases concerning insider trading. As we see in the recent cases, there appears to be an evolution of insider trading from one-off opportunists to more sophisticated networks and structuring to obtain nonpublic information. How has insider trading changed over recent years? Do these changes require changes at the SEC? Please explain in detail.

A.1. A longstanding goal of SEC law enforcement has been to deter market participants from unfairly exploiting informational advantages. As evidenced by recent insider trading cases, some wrongdoers have expended significant efforts to obtain material nonpublic information and avoid detection of their unlawful trading. The Galleon and Cutillo cases, in which the SEC charged more than a dozen hedge fund managers, lawyers, and investment professionals, in two overlapping serial insider trading rings, clearly indicate that insider trading remains an issue. These cases collectively constituted one of the largest insider trading prosecutions in Commission history. Moreover, on Monday, June 20, a defendant in the first expert network case was convicted for selling inside information about multiple companies to hedge fund traders. As your question notes, these are not one-off opportunists.

While these cases were successful, they highlight changes in the nature of insider trading schemes. These schemes appear to be more lucrative than a single episode, can result in a pattern of activity, and may involve persons who traditionally were considered gatekeepers, such as lawyers. The SEC's response to these new schemes should include tailored investigative techniques. In addition, the elements of any response should include (i) better market data and (ii) better analysis of that data.

The SEC has taken some steps to develop better market data and data analysis. These have already paid dividends and computer analysis of trading records has helped the SEC to bring charges in complex insider trading schemes, such as the recent actions against Matthew H. Kluger and Garrett D. Bauer.

However, there is much more that is possible with regard to technology and data analytics. Chairman Schapiro and I have championed rules that would require standardized market data across a fragmented market structure, and that would permit SEC investigators to track a securities transaction from the original order through execution and settlement. This is often referred to as a consolidated audit trail. I also support efforts to establish a state-of-the-art IT forensic lab within the Division of Enforcement.

Q.2. What is your view concerning the imposition of corporate penalties by the SEC?

A.2. As the Commission has said, corporate penalties are an essential part of an aggressive and comprehensive program to enforce

the Federal securities laws, and the availability of a corporate penalty, as one of a range of remedies, contributes to the Commission's ability to achieve an appropriate level of deterrence through its decision in a particular case.

Q.3. What should be the top five priorities of the SEC? Please explain in detail?

A.3. The SEC has an essential responsibility to oversee the U.S. capital markets, and maintain their preeminence. Accomplishing this goal requires the SEC to focus on many things. Of these, I believe the top five priorities at this time are:

- The SEC must maximize its resources, improve its use of technology, and work toward reforming the agency to support its mission. In particular, the SEC must continue to ensure that its enforcement and examination programs are effective. It is vital for the protection of investors and the maintenance of market confidence that the SEC hold wrongdoers accountable, and return stolen money to those who have been harmed.
- Continue and complete the implementation of the Dodd-Frank Act's rulemaking directives to accomplish the goals Congress intended. I believe the SEC should continue to implement the Dodd-Frank Act's provisions in a measured, thoughtful way that improves the strength of the financial system and quality of the capital markets.
- Establish required investor initiatives. It is essential that the SEC have investors at the forefront of its mind. Congress agreed, and the Dodd-Frank Act requires, the implementation of two initiatives to accomplish this goal: (1) establishing an Investor Advisory Committee; and (2) creating the Office of the Investor Advocate. I believe it is important to expeditiously reestablish the Investor Advisory Committee, which the SEC had established in 2009. In addition, I would like to see the prompt establishment of the Office of the Investor Advocate.
- Strengthen our oversight and understanding of the markets, and work toward preventing market breaks like May 6th from occurring again. The SEC must continue to strive to address the problems manifested in the May 6th market break. In addition, the SEC should adopt a consolidated audit trail to enable it to comprehensively monitor trading activity and perform meaningful market surveillance for suspicious activity.
- Recruit and retain a high quality, diverse, and motivated workforce, dedicated to serving the public interest. The SEC can and must do a better job of recruiting and retaining a diverse, knowledgeable workforce, who are committed to fulfilling the Commission's mission—protecting investors, maintaining fair and orderly markets, and facilitating capital formation.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR HAGAN FROM LUIS A. AGUILAR

Q.1. Mr. Aguilar, In March Federal financial regulators published a proposed rule that would implement Section 956 of the Dodd-Frank Act. Section 956 requires regulators to issue rules that pro-

hibit "covered financial institutions" from entering into incentive-based compensation arrangements that encourage inappropriate risks.

"Covered financial institutions" are defined to include investment advisers that have $1 billion or more in total consolidated assets. The proposed rule seems to ignore assets under management and leverage employed by institutions.

It would seem to me that an asset manager's consolidated assets could be minimal relative to its assets under management and more importantly, to the leverage it employs. Wouldn't you agree?

A.1. Section 956 of the Dodd-Frank Act requires the SEC and six other Federal agencies to engage in rulemaking regarding the incentive-based compensation of "covered financial institutions." As you note, the joint proposal by Federal agencies defines "covered financial institutions" in a way that includes investment advisers that have $1 billion or more in total consolidated assets.

As a general rule, asset managers do not consolidate the assets and liabilities of a managed fund. As a result, it is true that an asset manager's consolidated assets can be small relative to the assets held by funds that are under management, and relative to the leverage of such funds.

Q.2. In that case, if one of the reasons for the standard under Section 956 is to avoid compensation arrangements that could lead to material financial loss to the institution, shouldn't some consideration be given to assets under management or leverage when defining covered financial institutions?

A.2. Earlier this year, after extensive inter-agency discussions, the Commission, the Board of Governors of the Federal Reserve, the FDIC, the Office of Comptroller of the Currency, the National Credit Union Administration, the Office of Thrift Supervision, and the Federal Housing Finance Agency (the "Agencies") jointly proposed rules pursuant to section 956 of the Dodd-Frank Act, which concern incentive-based compensation arrangements at financial institutions with assets of $1 billion or more.

The Agencies sought to propose a rule that could be applied consistently to the different categories of entities that might be "covered financial institutions"—depository institutions and their holding companies, credit unions, broker-dealers, investment advisers, Fannie Mae, Freddie Mac, and any other financial institution that the Agencies, by rule, determine should be included. The proposal measures "total consolidated assets" by the financial institutions' own balance sheets (as reported to their regulators), thus drawing a distinction between an institution's own assets and the assets it has under management. Nonetheless, the proposing release reflects awareness that it may be appropriate to consider a different measure for investment advisers, and it specifically solicits public comment on the issue. The release states, "Commenters are asked to provide additional comments on the proposed method of determining asset size for investment advisers, and specifically to address whether the determination of total assets should be further tailored for certain types of advisers, such as advisers to hedge funds or private equity funds, and if so, why and in what manner."

As the Commission considers adopting final rules jointly with the other Agencies, I will carefully consider this issue and any comments we receive on the subject.

Q.3. Mr. Aguilar, during your testimony before the Committee you offered to follow up on certain questions about the coordination between the SEC and the Department of Labor with respect to the Department of Labor's proposed rule on Fiduciary Duty.

I understand that you have not yet been briefed on the nature of those discussions, but would like to understand better what coordination is taking place. In particular, at what level have these conversations taken place? What has been the nature of the coordination? Do you feel that the Department of Labor has engaged the SEC actively, adequately and appropriately on this rule writing, which I think has wide ranging implications for securities markets?

A.3. Having consulted with SEC staff, I can confirm that there have been several formal meetings, as well as numerous telephone calls and other informal communications, between senior staff members of the SEC, the Department of Labor (DOL), and, in some cases, the Commodity Futures Trading Commission (CFTC).[1] Senior SEC staff members participating in these discussions have included the Chief Counsel and Associate Director of the Division of Investment Management, and the Acting Co-Chief Counsel of the Division of Trading and Markets. Senior members of the SEC, CFTC, and DOL have also participated in joint briefings with Congressional staff on these issues. SEC staff members attended the hearings held by the DOL on March 1 and 2, 2011, to hear the concerns raised by affected parties, and they continue to consult with DOL and CFTC staff on these matters.

The consultations with DOL staff have included discussions of the potential overlap between the DOL's proposed rule amending the definition of "fiduciary" under ERISA and the SEC's pending rulemaking relating to business conduct rules applicable to security-based swap dealers and major security-based swap participants under Title VII of the Dodd-Frank Act. Based on my interaction with the SEC staff, I believe that they recognize the concerns, to which you alluded during the hearing, regarding the possible impact of differences between business conduct obligations imposed by the Dodd-Frank Act and the proposed revised definition of "fiduciary" under ERISA. The staff informs me that they intend to continue to consult with DOL staff to avoid potentially conflicting standards.

Senior SEC staff members have also had several meetings with DOL staff to discuss the interplay between the fiduciary standard under ERISA (both existing and proposed) and the rules applicable to broker-dealers regulated by the SEC. As you know, market participants have expressed concern about being a fiduciary under ERISA when they offer securities to Individual Retirement Account customers.

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[1] The CFTC published its proposed rules regarding Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties on December 22, 2010. 75 FR 80638 (Dec. 22, 2010), available at *http://cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2010-31588a.pdf*. In response, the CFTC received a number of comments relevant to the SEC's consideration of its own rulemaking regarding business conduct standards pursuant to the Dodd-Frank Act.

Based on the information I have received from the staff, the extent of the consultation between the SEC and DOL appears appropriate and productive. I have asked the SEC staff to continue this consultative process.

RESPONSE TO WRITTEN QUESTIONS OF CHAIRMAN JOHNSON FROM DANIEL M. GALLAGHER, JR.

Q.1. What is your view of the changes the SEC has made to improve enforcement of the securities laws in the wake of the Madoff and Stanford Ponzi schemes? How would you work to support or enhance the effectiveness of SEC enforcement in the future?

A.1. I support strong and vigorous enforcement of the Federal securities laws and support changes at the Commission to achieve that goal. The Commission has already made several changes in response to the Madoff and Stanford Ponzi schemes. The Commission has promulgated rules designed to improve the protection of investor assets in the custody of financial professionals. The Office of Compliance, Inspections and Examinations has revamped its examinations of investment advisers and broker-dealers to include a focus on asset verification and other important areas of customer protection. The Enforcement Division has restructured and devoted more resources to its tips and complaints processes, including the creation of a new Office of Market Intelligence.

If confirmed, I will actively work to support the effectiveness of the Division of Enforcement. I will regularly interact with the Enforcement staff at all levels so that I am aware of the needs of the Division, and I will work to maintain and enhance the *esprit de corps* in the Division. I will also focus on ensuring that the SEC is appropriately engaged with other law enforcement agencies, and that SEC enforcement resources are being focused and used to maximum advantage.

Q.2. The Dodd-Frank Act includes over 100 rulemaking provisions applicable to the SEC. This is a large undertaking and a tremendous responsibility. What is your opinion of the progress of these rulemakings? Will you commit to promulgating rules that are consistent with the letter and spirit of the Dodd-Frank Act?

A.2. The Dodd-Frank Act has mandated a rulemaking agenda that is more extensive than at any other time in the SEC's history. Looking in from the outside, I believe the SEC is making good progress in proposing and adopting Dodd-Frank related rules in a timely manner. I understand that some deadlines will not be met, but I believe this is understandable given the large number of rules and the complexity and importance of many of the rules. If confirmed, I will be committed to promulgating Dodd-Frank related rules in accordance with the statutory mandates.

Q.3. The Department of Labor has proposed amendments to ERISA that would expand the activities subject to a fiduciary duty under ERISA. On May 3, 2011, I co-signed a letter authored by HELP Committee Chairman Harkin sent to the SEC, DOL and CFTC about the importance of working together on this issue to avoid disruption. On June 6, 2011, Chairman Schapiro responded, stating that the SEC staff has been meeting with and the SEC is com-

mitted to coordinating with DOL "to prevent potentially conflicting standards while recognizing the different mandates of the statutes that each agency administers." Would you support the Chairman's efforts and support coordination by the SEC and DOL on these matters?

A.3. Yes. If confirmed, I will strive to ensure that the SEC and DOL are working together on these critically important initiatives. It is of the utmost importance to investors—especially those who are saving for retirement—that the SEC and DOL ensure that the rulemakings work appropriately together, and are rolled out in a way that allows for proper implementation and investor education and protection.

Q.4. On May 25, 2011, the Commission adopted final rules to create a whistleblower program that rewards individuals who provide the agency with high-quality tips that lead to successful enforcement actions, pursuant to Dodd-Frank. The program was designed to help the SEC by identifying wrongdoers and providing evidence. Would you support the robust implementation of the Dodd-Frank whistleblower program consistent with Congressional intent?

A.4. If confirmed, I will be duty-bound to follow Congressional mandates with respect to the whistleblower provision and the rest of the Dodd-Frank rulemakings.

Q.5. Public Company Accounting Oversight Board Chairman James Doty at the recent SEC and Financial Reporting Institute Conference on June 2 gave a speech entitled "Rethinking the Relevance, Credibility and Transparency of Audits." In it, Chairman Doty described an agenda for the PCAOB to work with the SEC, investors, auditors, preparers, audit committee members, scholars and other interested parties to analyze the structural foundation for auditing with a view to enhancing the relevance, credibility and transparency of the audit. He cited topics for possible inquiry, including cultural impediments to auditor independence and skepticism, the auditor's reporting model, enhancing audit committees' understanding of the PCAOB inspection process, and audit transparency. Would you support these goals and such analysis by the PCAOB?

A.5. I believe that auditors play a critical role in our capital markets, and it is imperative that investors have confidence in the independence and competence of auditors. If confirmed, I would look forward to working with the PCAOB on all matters.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR REED FROM DANIEL M. GALLAGHER, JR.

Q.1. There have been a number of recent high-profile criminal cases concerning insider trading. As we see in the recent cases, there appears to be an evolution of insider trading from one-off opportunists to more sophisticated networks and structuring to obtain nonpublic information. How has insider trading changed over recent years? Do these changes require changes at the SEC? Please explain in detail. Would the practice of granting stock options in advance of the announcement of good news, or so-called "spring-

loading" of stock options, constitute insider trading? Why or why not?

A.1. The SEC enforcement program must keep pace with changes in the securities markets. While the tools of insider trading have evolved since the infamous scandals of the 1980s, such as the use of foreign accounts, Internet trading, emails, and instant messages instead of phone calls and faxes, the complexity of some schemes remains unchanged. I believe that the SEC has the appropriate legal remedies available to investigate and bring insider trading cases. If confirmed, I would work to ensure that the Enforcement staff has the appropriate technological resources, including surveillance tools, to discover suspicious trading patterns and to pursue insider trading cases.

With respect to the options grant question, I believe that this issue arose in connection with the options backdating investigations in 2006. There was an argument advanced that the practice of granting options ahead of the public disclosure of good news could constitute insider trading because a board would be approving grants while in possession of material nonpublic information. The countervailing argument was that such a situation would not give rise to insider trading liability because both parties to the transaction, the employee and the corporation acting through the board, would be fully informed of the relevant information and the board should be acting in the best interests of the corporation and the shareholders. I do not believe a court addressed this issue under the Federal securities laws. I understand both sides of this debate, and I believe that the facts and circumstances of a particular case would dictate whether there is insider trading or some other basis for liability. Putting aside the insider trading analysis, I believe that companies employing this practice should fully and fairly disclose to investors that options may be granted in this manner.

Q.2.a. Several articles and critics have asserted that then-Chairman Christopher Cox engineered procedural and tactical changes to reduce the SEC's enforcement division's power. Specifically, critics point to control of the Commission's calendar to delay and water down enforcement cases, reduction in the staff's ability to negotiate individual and corporate civil monetary penalties, and shifting priorities away from larger public companies to petty-fraud cases.

During your tenure with Chairman Cox, what was your role in managing the Commission's Enforcement calendar?

A.2.a. One of my duties when I was counsel to Chairman Cox was to work with the Division of Enforcement (and other Divisions or Offices as necessary), the Secretary's Office, and the Commissioners' offices to finalize a roster of enforcement recommendations that had been prepared by the Secretary's Office for the weekly closed meetings held by the Commission. We would also decide whether some recommendations could be sent to the Commission for consideration on a seriatim basis, thereby allowing more room on the weekly closed meeting roster for pressing or complicated recommendations. The primary goal of this process was to maximize the amount of recommendations considered by the Commission each week.

Q.2.b. How important is a robust enforcement division?

A.2.b. As I stated in the confirmation hearing, I believe it is critically important for the SEC to have a robust Enforcement Division, and it is also important that investors and markets have confidence that the SEC is actively policing the markets. SEC Enforcement cases can and should have a deterrent effect, and deterrence is a significant part of the Commission's effort to police the markets. The SEC Enforcement program is the most high profile aspect of the Commission's work, and the effectiveness of the SEC is judged by investors and others in large part on the work of the Enforcement Division. If confirmed, I will actively support the work of the Division of Enforcement.

Q.2.c. What is your opinion on the degree of independence that the SEC enforcement staff should have with respect to determining what matters to pursue and what recommendations to make to the Commission?

A.2.c. I believe that the Enforcement staff is, and has traditionally been, very independent in determining what to investigate and what to recommend to the Commission. I also believe it is important for the Commission to play an active role in overseeing the work of the Division, to see that Staff has adequate support and resources, and to ensure that the Enforcement program is meeting the policy goals of the Commission.

Q.2.d. If you were to become a Commissioner, what additional recommendations do you have for improving enforcement at the SEC?

A.2.d. Chairman Schapiro and Enforcement Director Khuzami have implemented several important changes in the Division of Enforcement over the last 2 years. I believe that the impact of these changes has not yet been fully realized, and if confirmed I will study the effectiveness of the changes and the potential for further enhancements and refinements. One thing I would focus on in particular is the use of technology by the Enforcement Staff, whether the technology is sufficient, and what additional technological resources are needed.

Q.3. What is your view concerning the imposition of corporate penalties by the SEC?

A.3. Civil monetary penalties are part of the SEC's enforcement arsenal and should be used in appropriate cases, including enforcement cases brought against corporations. Corporate penalties can be an effective tool for the SEC to remediate securities law violations, particularly when they are returned to harmed investors through the Commission's Fair Funds authority, and to deter wrongdoing. At the same time, a corporate penalty should not be used in a way to harm the investors and shareholders the SEC's enforcement program should protect and who have already been harmed by the conduct.

In 2006, a unanimous Commission adopted a policy statement regarding the imposition of corporate penalties. The Commission policy statement analyzed and attempted to implement the guidance provided by the Committee on Banking, Housing, and Urban Affairs in a report that accompanied the statute providing for the SEC's penalty authority in 1990. The Committee's report noted,

among other things, that shareholders could be harmed by a corporate penalty unless the shareholders received an improper benefit from the company's securities law violation. The Committee report also recognized that corporate penalties can have a deterrent effect on would-be violators of the securities laws.

Q.4. In 2007, the Commission endorsed the concept of "scheme liability," which considered the ability of shareholders to sue third parties for another company's fraud. What is your view of scheme liability? Please explain in detail.

A.4. The "scheme liability" theory is the private liability corollary of the SEC's aiding and abetting authority. Congress expressly gave the SEC authority to bring aiding and abetting actions, but did not provide for a private right of action for the same activity. Questions about scheme liability have arisen in private securities cases based on an implied right of action under section 10(b) of the Exchange Act and Rule 10b–5. Congress and the courts have been the principal architects of the scope of that implied right of action, and the Supreme Court rejected the scheme liability theory in the 2008 *Stoneridge* case. I believe it is important for the SEC to exercise its statutory aiding and abetting authority, when appropriate, to address activity that supports securities laws violations.

Q.5. The SEC staff from time to time issue interpretive guidance in the form of Staff Accounting Bulletins (SABs) or Staff Legal Bulletins (SLABs). In your opinion, what is the role of "Staff Accounting Bulletins" or "Staff Legal Bulletins"? What weight do they have? Do you agree with this role? Why or why not?

A.5. Although I have not worked with SABs or SLABs on a regular basis, my understanding is that both types of bulletins are meant to provide guidance to corporate filers regarding the content of filings made with the Commission. The bulletins are issued by the Staff, not the Commission, and they appear to be issued infrequently. The Staff makes it clear in these bulletins that the guidance is not official Commission policy such as a rule or formal Commission interpretation.

I believe it is very useful for registrants and others to have timely staff level guidance on issues that are new or unclear, including the guidance relating to accounting practices that is included in SABs and SLABs. I also believe that the Staff is cognizant of when legal or policy issues are important enough to warrant Commission level approval, and that the Staff will elevate those issues to the Commission.

Q.6. What should be the top five priorities of the agency? Please explain in detail?

A.6. On a macro level, I believe that the SEC needs to continue to focus on having the most effective enforcement program possible, and to study, monitor, and take action on issues of systemic risk posed by the markets and market participants overseen by the agency. With respect to examples of specific issues of priority, I believe that the following issues, which I address in no particular order of importance, are currently important to the SEC:

A. Dodd-Frank Act implementation.

It is important that the SEC and other agencies meet the mandates Congress established in the Dodd-Frank Act, while at the same time striving to promulgate rules that do not have negative unintended consequences. If confirmed, I would look forward to helping the SEC meet these very difficult goals.

B. Market Structure/May 6 Initiatives

The SEC has taken several important steps to address the "flash crash" of May 6, 2010. And before the flash crash, the agency was very active in the market structure area. For example, the SEC proposed a very important concept release on market structure issues in early 2010 that garnered much public comment. I believe it is important for the SEC to study these issues carefully and to receive appropriate public comment as the proper functioning of the equity markets is crucial for U.S. investors.

C. Credit rating agency oversight

Since Congress gave the SEC statutory authority to oversee certain rating agencies in 2006, the agency has been very active in processing registrations and promulgating rules in this area. And with the increased authority and other mandates in the Dodd-Frank Act, the SEC will continue to focus on the proper oversight of credit rating agencies over the next several years. Given the important role that rating agencies play in the U.S. capital markets, and the problems with certain rating agency activities that emerged during the financial crisis, this is an area that will require careful attention by the Commission.

D. Organizational Issues

As described in the Boston Consulting Group's SEC Organizational Study and Reform report that was mandated in the Dodd-Frank Act, there are numerous operational issues that the agency needs to address. It is imperative that the SEC be incredibly efficient so as to maximize the resources allocated to it by Congress, and to ensure that investors are protected. An obvious area of focus (as indicated in the BCG report) should be the agency's technology resources. The SEC cannot be fully effective if its technology is vastly inferior to that of the markets and market participants it is charged withoverseeing.

E. Fixed Income Markets Oversight

The SEC has become very active with respect to the oversight of municipal markets over the last few years. I believe that the Commission should be studying in detail these and other fixed income markets to better understand how they operate, and whether the protections that are in place for investors are adequate. At a time when the Commission is examining the equities markets at a micro level and beginning to oversee certain aspects of the credit markets, the SEC should also devote resources to fixed income market oversight as all of these markets are interconnected and vital to the health of our economy.

Based on the lessons learned from the events of the last several years, I assume that the SEC will need to focus on other new and

pressing issues, perhaps even in the near term. The securities markets are dynamic and constantly evolving, and issues will undoubtedly arise that will take priority over those listed above.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR HAGAN FROM DANIEL M. GALLAGHER, JR.

Q.1. Mr. Gallagher, In March Federal financial regulators published a proposed rule that would implement Section 956 of the Dodd-Frank Act. Section 956 requires regulators to issue rules that prohibit "covered financial institutions" from entering into incentive-based compensation arrangements that encourage inappropriate risks.

"Covered financial institutions" are defined to include investment advisers that have $1 billion or more in total consolidated assets. The proposed rule seems to ignore assets under management and leverage employed by institutions.

It would seem to me that an asset manager's consolidated assets could be minimal relative to its assets under management and more importantly, to the leverage it employs. Wouldn't you agree?

A.1. I agree that an asset manager's consolidated assets could be much smaller than its assets under management. Whether a manager's Consolidated assets could be minimal relative to the leverage it employs would depend, I believe, on the nature of the investment strategies—which would include the use of leverage—employed by the asset manager.

Q.2. In that case, if one of the reasons for the standard under Section 956 is to avoid compensation arrangements that could lead to material financial loss to the institution, shouldn't some consideration be given to assets under management or leverage when defining covered financial institutions?

A.2. Because this is a pending rulemaking, I do not believe it would be appropriate for me to express a view at this time. If confirmed, however, you have my commitment that I will study and seek to fully understand this issue and will work to ensure that the final rule is designed to accomplish the statutory purpose.

RESPONSE TO WRITTEN QUESTIONS OF CHAIRMAN JOHNSON FROM ANTHONY D'AGOSTINO

Q.1. The recent failure of Madoff has diminished the SIPC fund. What is your view of the adequacy of the fund? If confirmed, how would you recommend that the SIPC oversee the adequacy of the fund in the future?

A.1. The SIPC Fund has been well managed and adequately funded since its inception.

The Madoff fraud is an example of a "Black Swan" event that would test the adequacy of virtually any investor protection program.

With hindsight as my guide, I believe the fund should now be expanded to a level that will better prepare SIPC for similar outlier events in the future.

If confirmed, I would recommend that the current assessment rate be maintained until such a time as the fund is adequately funded to address future outlier events.

The Board will need to work with Congress to determine what the appropriate funding level might be going forward. Recent decisions by the Securities and Exchange Commission indicate they are taking a more expansive view of the protection than has historically been provided by SIPC. In that regard, the starting point for the appropriate funding level is a clear understanding of what is, and what is not, protected under the SIPC statute.

Q.2. I understand that certain conflicts of interest may exist in connection with you serving on the SIPC Board and that you have agreed to recuse yourself on certain SIPC matters. Please describe the conflicts and the scope of your recusals.

A.2. By statute, " . . . three such directors shall be selected from among persons who are associated, with, and representative of different aspects of, the securities industry."

I am qualified for the Board because I am an employee of UBS Securities, UBS, like every large financial institution has transactions that were in some way connected to Madoff and/or Lehman.

Because of the scope of the Madoff fraud and the size of Lehman Brothers, it would be nearly impossible to find a qualified Board member that came from a firm that did not have some connection to Madoff and/or Lehman. I believe that large firm representation on the SIPC Board is particularly important at this time. Under Dodd-Frank, Congress has created a new scheme for the resolution of systemically important firms, including securities broker-dealers, in which SIPC have a role. I believe that my position at UBS makes me particularly qualified to offer guidance, knowledge, and experience as the resolution program is developed and put into place.

When discussions arise and when decisions are required about issues that may affect UBS, I will seek and follow the advice of SIPC counsel and recuse myself from discussions and decisions as appropriately advised.

As reference, a departing member of the Board, Mark Shelton, is employed by UBS and also recused himself on Lehman matters because UBS was/is involved in LBI claims trading and litigation with the LBI trustee.

RESPONSE TO WRITTEN QUESTION OF SENATOR REED FROM ANTHONY D'AGOSTINO

Q.1. What should be the top five priorities of SIPC? Please explain in detail?

A.1. —In light of the recent SEC direction regarding the Stanford fraud, we need to take a hard look at revising SIPA, and make appropriate recommendations to Congress on how to update the Act. SIPC needs an updated, clear statutory mandate of the extent of protection under the statute.

—An adequate fund to carry out a revised statutory mandate.

—Adequate staffing and technology at SIPC to implement the mandate.

—Education of the public investor regarding the extent and level of protection provided by SIPC.

—Ensure that SIPA is properly aligned with the risks associated with modern-day sophisticated markets and securities investment products.

RESPONSE TO WRITTEN QUESTIONS OF CHAIRMAN JOHNSON FROM GREGORY S. KARAWAN

Q.1. The recent failure of Madoff has diminished the SIPC fund. What is your view of the adequacy of the fund? If confirmed, how would you recommend that the SIPC oversee the adequacy of the fund in the future?

A.1. From my experience being on the senior leadership team of a large financial services company, I am very familiar with issues such as reserve adequacy, surplus capital, and funding sources. I'm also aware that assessing such issues requires a detailed review of relevant data and metrics in order to form reliable, well informed opinions. Assessing reserve adequacy, or, by analogy, the adequacy of the SIPC fund, is not something I would be comfortable "ballparking". I would want detailed data, metrics and analyses to inform an opinion on funding adequacy. At a minimum, I would like to see, for example, historical data on fund adequacy, the average size of investor accounts, the trend in terms of account-size growth, the average investor loss in a broker-dealer liquidation, the average SIPC covered loss in a broker-dealer liquidation, the trend in terms of growth of these data points, and perhaps a stochastic analysis of fund adequacy given the likelihood of events in the future. As of today, I do not have this type of information in order to assess the current adequacy of the SIPC fund. If confirmed, however, I believe that such an analysis should be performed at least annually in order to oversee the adequacy of the fund, with perhaps a quarterly summary review to ensure that intervening events have not altered the view of fund adequacy.

Q.2. I understand that certain conflicts of interest may exist in connection with you serving on the SIPC Board and that you have agreed to recuse yourself on certain SIPC matters. Please describe the conflicts and the scope of your recusals.

A.2. My brother, Howard Karawan, suffered losses as a result of indirect investments with Bernard L. Madoff Investment Securities, LLC ("Madoff"). My brother did not invest directly with Madoff, but rather through a feeder fund, and accordingly, he is not expected to receive any direct advances from SIPC. However, my brother did file a claim in the Madoff liquidation proceeding, and has objected to the trustee's denial of the claim. The objection will likely be the subject of litigation in that proceeding. As a result, I may have a potential conflict of interest with respect to the Madoff proceeding. I will recuse myself from involvement in any issues giving rise to even the appearance of a potential conflict of interest in this regard.

Additionally, I am currently employed by Genworth Financial, Inc., a financial services company, which includes a subsidiary that is a broker-dealer. As such, I am associated with and representa-

tive of the securities industry. I also receive deferred compensation from General Electric Corporation ("GE") and own shares in Citigroup Inc. ("Citigroup"), which have broker-dealer subsidiaries, and own life insurance through Metropolitan Life Insurance Company ("MetLife"), which has a broker-dealer affiliate. I do not believe that any of these associations present a conflict of interest with respect to my service on the SIPC Board of Directors if confirmed. However, if a specific situation arose, such as, for example, a potential liquidation of the Genworth Financial subsidiary broker-dealer, I would recuse myself from Board activities involving that situation.

RESPONSE TO WRITTEN QUESTION OF SENATOR SHELBY FROM GREGORY S. KARAWAN

Q.1. The Madoff liquidation is one of the biggest the Securities Investor Protection Corporation has ever handled. According to the Corporation's annual report for 2009, the Madoff liquidation, together with the Lehman liquidation, "dominated SIPC's agenda in a way that SIPC has never previously experienced in its 39-year history." Issues related to Madoff will continue to occupy a substantial part of the Corporation's agenda for some time. However, your confirmation papers note that, because of a conflict, you will have to recuse yourself from all matters relating to the Madoff liquidation. Is it true that you will have to recuse yourself from all Madoff-related issues? Won't your recusal significantly reduce your utility as a Board member?

A.1. Although the Madoff liquidation has dominated the SIPC Board's agenda, I am advised that the amount of activity and time devoted to the Madoff liquidation is naturally trailing off since its peak in the 2009 timeframe. And, given recent events, the amount of time devoted to situations such as the Stanford liquidation is likely to significantly eclipse the time devoted to the Madoff liquidation.

Additionally, the work of the modernization task force is being finalized, with the likely result that there will be a number of recommendations that will require analysis, discussion, and possibly implementation. That work is also likely to require significant devotion of Board member time and attention.

I believe that my utility as a Board member may actually be greater in that we have existing Board members continuing to devote the necessary time and attention to the Madoff liquidation, a matter with which they have significant involvement and experience, while I could pick up a greater share of the laboring oar on these other significant, and important issues.

RESPONSE TO WRITTEN QUESTION OF SENATOR REED FROM GREGORY S. KARAWAN

Q.1. What should be the top five priorities of SIPC? Please explain in detail?

A.1. As I alluded to in my testimony before the Committee, the complexity and sophistication of financial frauds are growing, financial markets are global, investment vehicles are evolving every

day, and technology is advancing rapidly. Without being steeped in the facts and details of what might presently be SIPC's priorities, which might alter my view, the confluence of all these things would suggest to me that, amongst SIPC's top priorities, should be the following:

- The adequacy of the SIPC fund (for further detail, see my response to Question 1 from Chairman Johnson).
- The adequacy of current SIPC protection limits.
- Whether SIPC has all the necessary subject matter experts at the operational level to deal with these global and growing complex challenges.
- Reviewing the work and recommendations of the modernization task force. I would include, as part of that work, reviewing whether legislation needs to be amended and updated to deal with the more sophisticated manner in which financial frauds are now taking place to help clarify which situations fall under SIPC coverage, and which do not.
- Assessing and improving investor disclosure and education, and SIPC communication about the level, extent, and scope of SIPC protection.

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

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June 14, 2011

The Honorable Tim Johnson
Chairman
United States Senate
Committee on Banking, Housing
and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Richard Shelby
Ranking Member
United States Senate
Committee on Banking, Housing
and Urban Affairs
304 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Johnson and Ranking Member Shelby:

On behalf of the California Public Employees' Retirement System (CalPERS), I am writing to express our strong support for President Obama's nomination of Luis A. Aguilar to continue as a Commissioner at the U.S. Securities and Exchange Commission (SEC). CalPERS is the largest public pension fund in the United States with approximately $230 billion in global assets providing retirement security to more than 1.6 million public workers, retirees, their families, and beneficiaries. As a significant long-term investor in the U.S. capital markets, CalPERS is reliant upon effective and comprehensive market regulation designed to protect investors.

During his tenure at the SEC, Commissioner Aguilar has embodied the Commission's mission to be "the investors' advocate." He has worked tirelessly to help ensure that investors are provided a voice in all aspects of the Commission's work. As an example, Commissioner Aguilar was the first to call upon the SEC to create an Investor Advisory Committee and, following the formation of the IAC, he agreed to be the Sponsor of the group.

Commissioner Aguilar also has been a vocal supporter of providing investors a market-driven mechanism for holding boards of directors accountable. He understands that the ability of significant, long-term shareowners to nominate candidates for boards is paramount to fundamental corporate governance and we applaud his support for meaningful proxy access.

We also want to highlight Commissioner Aguilar's support for diversity in the corporate boardroom and his calls for greater disclosure on board nominations. We believe that

"group-think" was a major contributor to the financial crisis and we see board diversity as an opportunity for improving board quality and performance.

As the SEC continues to move forward with the implementation of critically important provisions of the historic Dodd-Frank Wall Street Reform and Consumer Protection Act, we believe that Commissioner Aguilar's participation is essential to the Commission's ongoing success. He has been an unwavering advocate for investors and has aggressively supported the enforcement of securities laws. He has been an effective representative of the Commission with outside organizations. He cares deeply about the staff and the institution as a whole. He has shown his willingness to meet with and consider the divergent views of all stakeholders.

Finally, Commissioner Aguilar brings a breadth and depth of knowledge rarely found at the Commission. He possesses a combination of expertise in mergers and acquisitions, corporate law, and investment company/advisor issues. He has a great deal of experience in global securities transactions and brings a practical approach to regulation from his many years in the private sector. In fact, Commissioner Aguilar brings to the SEC more private sector experience than any other sitting Commissioner.

Commissioner Aguilar has proven himself to be an invaluable member of the SEC and we urge the Senate to confirm his nomination as soon as possible. If you or your staff have any questions regarding our support for Commissioner Aguilar, please do not hesitate to contact Anne Simpson at (916) 795-9672 (anne_simpson@calpers.ca.gov) or Don Marlais of Lussier, Gregor, Vienna & Associates – our federal representatives – at (703) 888-4522 (dmarlais@lgva.net).

Thank you for your time and consideration.

Sincerely,

ANNE STAUSBOLL
Chief Executive Officer

cc: Senate Banking Committee Members
Senator Dianne Feinstein
Senator Barbara Boxer