I. Introduction

Thank you, Pat, for that kind introduction. It's great to be back in New York. And I am grateful to the New York City Bar for providing me with this opportunity to talk about the Enforcement Division. There is lots to talk about.

As I was thinking about this speech, a colleague mentioned that I had been with the Commission approximately 100 days. Aside from making me wonder why my colleagues are counting, it caused me to pause and reflect – how did my 100-day accomplishments compare with those of others? That often over-weighted yardstick of accomplishment – did I measure up?

Franklin Roosevelt set the bar pretty high. In his first 100 days in office, he reopened failed banks under Treasury supervision; he established the FDIC; and he created extensive farm subsidy and federal jobs programs.

More recently, President Obama has also achieved impressive accomplishments in his first 100 days. First off, President Obama appointed a brilliant, experienced, and

transformative leader of the SEC … and I'm not just saying that because Chairman Schapiro might read this speech. After that, President Obama passed the economic stimulus plan, funded stem cell research, took on the health care crisis and crafted a plan to withdraw troops from Iraq.

All that being said, I'm pretty proud of my own 100-day accomplishments. So how have things changed? Before I joined the Division in March, the Dow was struggling around 6500 points. Now the Dow is over 9200. So am I really responsible for a 41% increase in the Dow? I am, and I'd explain it, but it's very complicated. It involves algorithms, and calculus, and a black box and other … stuff. Now, when I ran this speech by my wife, she looked (kind of like some of you out there) a little incredulous. She said, "you're not claiming credit for the stock market, are you? While you're at it, are you also taking credit for the mild hurricane season or the sharp decrease in lethal shark attacks world-wide." Well I am, and I'd explain it, but it's very complicated. It involves algorithms, and calculus, and a black box and other … stuff.

Jokes aside, the Enforcement Division has accomplished much in the 100 days. This reflects a dedicated and talented staff as well as a reinvigoration of our core mission of investor protection. Before I describe some of these accomplishments, I need to make an important disclaimer – my views are my own and do not necessarily reflect the views of the Securities and Exchange Commission or any member of the Commission staff.

II. Self-Assessment: Building the Future SEC

My first 100 days presented many challenges. Many questioned the effectiveness of the Division in light of the revelations surrounding Bernard Madoff and his egregious misconduct. The criticism was sharp and it was steady. It manifested itself in many ways. Proposed regulatory reforms which forecast a sharply reduced role for the SEC. Legislation proposing additional funds to fight financial fraud that left the SEC off the list of proposed recipients. It was, to say the least, a difficult time.

That said, the reaction to Madoff was, in short, one of the most impressive organizational responses to criticism I have ever witnessed -- across the SEC and within the Enforcement Division. The attorneys and investigators within the Division remained focused on investor protection and pursuing wrongdoers, and were not distracted from their mission.

The metrics bear this out. Comparing the period from late January to the present to roughly the same period in 2008, the Division has opened 10% more investigations (approximately 525, compared to 475); have been granted 118% more formal orders (which grants us subpoena power) (275, compared to 126); have filed 147% more TROs (52, compared to 21); and have filed nearly 30% more actions (397, compared to 306).

These results underscore the fact that the criticism of the SEC that resulted from Madoff – however justified – should not be permitted to obscure the 75-year tradition of vigorous enforcement resulting from the dedicated efforts of thousands of public servants

who work tirelessly and with impressive results to protect the investing public.

That is not to say that we disregarded the criticism. That would have been very wrong. We listened to the criticism and used it as a learning opportunity. We did what a responsible public agency must do – we used the episode as a catalyst to undertake a rigorous self-assessment of how we do our job. For my part, on my first day on the job, I asked the staff to embrace four principles – the four "S's" as they have come to be known:

- First, to be as *strategic* as possible. This means a focus on cases involving the greatest and most immediate harm and on cases that send an outsized message of deterrence.
- Second, to be as *swift* as possible. A sense of urgency is critical. Long gaps between conduct and atonement undermine the deterrent impact of our cases, and result in missed opportunities to achieve a permanent change in behavior and culture.

- Third, to be as *smart* as possible. Our resources are finite and critically limited. We must better determine on an informed basis whether to continue an investigation, who to continue it against, how to shape it and how to charge it.
- And last, to be as *successful* as possible. This means building strong cases so that defendants settle quickly on the Commission's terms or face a trial unit armed with compelling evidence.

To take these principles from the abstract to the real, we embarked on a top-to-bottom scrub of our structure and operations to evaluate virtually all significant aspects of our work. The marching orders were simple — ask what can we do better?

I am not going to mince words. Real self assessment is tough work. It's time and resource intensive, it's uncomfortable and it can create uncertainty, disagreement and the need to make difficult decisions. And the Division's self assessment was and did all of

that. But the business of investor protection is too important for us to do anything less.

With that backdrop, I am pleased to announce a number of new initiatives that we have already put into motion.

A. Specialization

The first major initiative is the introduction of specialized units. Human capital – the brains and experience of people -- is the most critical asset of most organizations. And the SEC is no exception. The ability of an organization to excel depends on the ability to capture, nurture and utilize the expertise of its people. Certain organizational structures can help to accomplish that; other structures do a poor job by leaving too much of that expertise stranded and isolated throughout the organization.

That is why we will be creating national specialized units dedicated to particular highly specialized and complex areas of securities law.

These specialized units will provide the structure and resources for staff to "get smart" about certain products, markets, regulatory regimes, practices and transactions. This will permit us to be better investigators, because we will be more efficient and less likely to be misled by those who use complexity to conceal their misconduct. Specialization will also permit us to be more proactive in deciding on an informed basis where to focus our investigations, as opposed to being more reactive to public information or the vast number of undifferentiated tips we receive. It will also help to enable us to attack problems systemically, swiftly and thoroughly and on an industry-wide basis where appropriate.

Each Specialized Unit will be headed by a Unit Chief, and will be staffed across the nation by people in the Division who already have expertise in these topics, or have a desire to learn. They will receive specialized and advanced training. We will also hire into these units individuals with practical market experience

and other expertise, whether from private industry, other SEC Divisions, or elsewhere.

There will be five Specialized Units to start:

The Asset Management Unit will focus on Investment Advisors, Investment Companies, Hedge Funds, and Private Equity Funds. These entities account for an ever-increasing share of public and private investment funds, and the lines between these various vehicles blur and overlap. More than ever, effective enforcement requires a comprehensive approach to these entities. There are many issues potentially the subject of this Asset Management Unit, including disclosure, valuation, portfolio performance, due diligence and diversification, transactions with affiliates, misappropriation, conflicts of interest, and others. This Unit will work closely with our colleagues in the Office of Inspections, Compliance and Examinations, which has great expertise in investment advisers and companies.

The Market Abuse unit will focus on large-scale market abuses and complex manipulation schemes by institutional traders,

market professionals and others. These market participants account for a high and ever-increasing percentage of trading volumes, and with that comes a risk of large-scale harm. We expect to build some of our own technological tools and screening programs to ferret out suspicious trading activity. We expect to use these tools to analyze trading and other activity across markets, including equities, debt securities and derivatives, and across different corporate announcements and other market events. This will allow us to see patterns, connections and relationships that might otherwise not be apparent if one were focused on a single security or single announcement.

The Structured and New Products Unit will focus on complex derivatives and financial products, including CDS, CDOs and securitized products. These are huge markets, with outstanding notional amounts that at one time came close to the market capitalization of all publicly traded companies in the world. They are also opaque markets due to the complexity of the products, the limited availability of trading information and the prevalence of

private offerings. This lack of transparency has become a fertile ground for abuse and misconduct, and staying on top of these markets, and whatever new products are next devised, requires specialized knowledge and commitment.

The Foreign Corrupt Practices Act unit will focus on new and proactive approaches to identifying violations of the Foreign Corrupt Practice Act, which prohibits U.S. companies from bribing foreign officials for government contracts and other business. While we have been active in this area, more needs to be done, including being more proactive in investigations, working more closely with our foreign counterparts, and taking a more global approach to these violations.

And last, there is the Municipal Securities and Public Pensions Unit. The market for municipal securities is huge, and there is every reason to believe that the size and importance of these markets will continue to grow, as the nation's infrastructure needs increase and more and more investors seek safe investment opportunities. A number of areas appear ripe for scrutiny,

including offering and disclosure issues, tax and arbitrage-driven activity, unfunded or underfunded liabilities, and "pay-to-play" schemes in which money managers and advisors pay kickbacks and give other favors in return for the right to advise the funds.

B. *Streamlining Management & Internal Processes*

The second initiative stemming from our self-assessment is to streamline our management structure. We will reduce the number of managers by redeploying our branch chiefs -- some of whom are our best and brightest performers – to the heart-and-soul function of the SEC – conducting investigations. This flattening of our management structure will increase the resources dedicated to our investigative efforts, and will operate as a check on the extra process, duplication, unnecessary internal review and the inevitable drag on decision-making that happens in any overly-managed organization. This flattening will also encourage autonomy and accountability throughout the organization by pushing more decision-making to the front-line staff.

Let me be clear. The branch chiefs we are re-deploying are among our best and most talented performers. They are an accomplished and dedicated group, and there is a reason they rose to the level that they did. But our current structure does not serve the Division's long-term needs, as it does not optimize efficiency or resource allocation. The Branch Chiefs' demonstrated excellence and talents can better serve U.S. investors if focused full-time on investigations.

We are also streamlining our internal process to make us more nimble and quick. I am announcing tonight that the Commission has approved, subject to certain exceptions, an order that delegates to the Division Director the authority to issue formal orders of investigation, with their accompanying subpoena power. I in turn intend to delegate that authority to senior officers throughout the Division. Thus, Staff will no longer have to obtain advance Commission approval in most cases to issue subpoenas; instead, they will simply need approval from their senior supervisor. This means that if defense counsel resist the voluntary

production of documents or witnesses, or fail to be complete and timely in responses or engage in dilatory tactics, there will very likely to be a subpoena on your desk the next morning.

We are streamlining decision-making by delegating the power to approve all routine case decisions from the Deputy Director at a national level to the Division's senior officers located throughout the country. These senior officers are on the scene and closest to the facts. Granting them the autonomy to make routine case decisions should expedite our investigative process.

The policy on tolling agreements will change – going forward, approval by the Division Director will be required for all tolling agreements. There are valid reasons to seek and grant tolling agreements. But tolling agreements have become far too common. In some instances, they impose a significant cost of delay and may undermine our message of prompt accountability for wrongdoing. And I have it on good authority that the Director will grant tolling agreements as an exception, not the rule.

Also, our internal memorandum to the Commission recommending specific enforcement actions will be shorter and will be subject to fewer reviews and require quicker turn-around times. We will take steps to insure that the historical high-quality and thoroughness of Commission investigations is maintained, but there will be significant time-savings associated with streamlining the Action Memo process.

These initiatives – flattening of management and more streamlined process and procedure – are designed to achieve one goal – to move our cases more quickly and to free up time and resources to take on new matters with greater urgency and impact.

C. *Office of Market Intelligence*

A third initiative I am pleased to announce is the creation of an Office of Market Intelligence. It is this Office that will be responsible for the collection, analysis, risk-weighing, triage, referral and monitoring of the hundreds of thousands of tips, complaints and referrals that the Agency receives each year. By analyzing each tip according to our internally-developed risk

criteria, as well as our priorities, and by making connections between and among tips from different sources, we will be better able to focus our resources on those tips with the greatest potential for uncovering wrongdoing. This Office of Market Intelligence will also utilize the expertise of the Agency's other Divisions and of our Specialized Units to help analyze the tips and identify wrongdoing.

D. *Fostering Cooperation By Individuals*

Fourth, I consider it critical that we increase our incentives to individuals to cooperate in SEC investigations. We have an enormous task – the SEC has anti-fraud jurisdiction over 30,000 issuers, advisors, broker-dealers, transfer agents and issuers, as well as anyone who commits securities fraud -- and yet we have only 1,100 Enforcement staff nationwide. It is thus critical that we leverage our limited resources by incentivizing cooperation by individuals, which is often the source of some of the most credible and valuable evidence.

To this end, we are working on four initiatives. Previously, in the "Seaboard" case, the Commission set standards to evaluate cooperation by corporations in enforcement actions. The Division is now seeking to create a "Seaboard" for individuals, a public policy statement that will set forth standards to evaluate cooperation by individuals in enforcement actions. Second, the Division is seeking an expedited process by which the Division Director is delegated the authority to submit immunity requests to the Department of Justice. Third, the Division is exploring ways to provide witnesses in the appropriate cases with oral assurance early on in a case that we do not intend to file charges against them. Fourth and finally, the Division will be prepared to recommend to the Commission that the SEC enter into Deferred Prosecution Agreements, in which we agree in the appropriate case to forego an enforcement action against an individual or entity subject to certain terms, including full cooperation, a waiver of statutes of limitations, and compliance with certain undertakings.

Let me make one observation. While I believe in giving credit for cooperation that results in tangible benefits for investors and the Enforcement program, I don't believe in being lenient for the sake of leniency, or for rewarding persons for simply complying with routine or expected requests. For that reason, the purpose of these tools is primarily to reward extraordinary cooperation. So if your client has broken the law, and has not provided the requisite level of cooperation, don't expect leniency. Arguments such as "our competitors do it" or "we've always done it this way," will not be credited.

E. <u>Commitment to Strategic Use of New Resources</u>

These initiatives reflect in part our obligation to use the resources we have now in the most efficient manner possible. That is our obligation and our commitment to taxpayers. Having said that, we are also hopeful that Congress will increase our resources. We have had an approximately 11% reduction in force since 2005. With greater resources we can do even more.

Congress already has given us some targeted relief. We have employed those resources where they will do the most good. We have committed to more than triple the current number of fulltime paralegals and support personnel in the Division. We are determined to free up our investigators for critical front-line work and to relieve them of the burdens of routine administrative tasks. We have committed significantly greater resources to a number of ongoing technology initiatives, including revamping how tips, complaints, and referrals are handled and to improve and expand the Division's document management, reporting and case management capabilities.

We have also added to the ranks of our Trial Unit. It is imperative that we convey to all defendants in SEC actions that we are prepared to go to trial and we will win, as evidenced by our eight trial wins since April, including jury verdicts against the former CEO of K-Mart for financial fraud and a mutual fund manager for insider trading. Without this credible threat, we

would be at a severe disadvantage. Our trial unit does an exceptional job in deploying its resources, but given the increased caseload, particularly the great increase in the number of emergency TROs and asset freezes, we have committed to hiring more trial litigators to maintain the highest level of trial-readiness.

We will also be hiring, for the first time in the Division's history, a Chief Operating Officer who can manage information technology, oversee project management and build efficient workflow processes, including in the critical area of our collection of funds and the distribution of those funds to harmed investors. Many of these tasks are currently being handled by lawyers in the Division, and it is better for all involved if such tasks are handled by persons with the proper background and training.

These initiatives reflect Phase One of our self-assessment. The implementation will be challenging, but I am confident that the professionalism and the dedication of the staff will make this a successful transformation.

II. Current Priorities and Cases

Much of my first 100 days has been focused on process – how best to structure the Division to operate efficiently and urgently in the months and years ahead. But that has not come at the expense of the present – quite the opposite, in fact, because as you will hear and undoubtedly have noticed, by any measure the Division has been extremely active.

And with respect to the Division's high level of activity, let me emphasize that the cases brought in the last few months were cases that reflect the work of the Division in the months and even years before my arrival. I am fortunate to simply build on the work of others, most notably the Staff and my predecessor Linda Thomsen. I know I speak for Lorin Reisner, who started Monday as the Deputy Director of Enforcement, and George Canellos, who recently joined as Regional Director of the New York office, both of whom I am delighted to call my colleagues, when I say that just because we might be on third base does not mean we think we hit a triple.

Let me talk briefly about some cases. The credit crisis remains the highest priority in the Division of Enforcement. To state the obvious, the impact on companies and investors of the deterioration of credit products, including mortgage and mortgage-related derivatives and structured products, is staggering. If you needed any more convincing, I note that the American Dialect Society, a century-old group of linguists, grammarians, historians and scholars, recently chose "subprime" as its Word of the Year.

That is not to say that every loss suffered in the credit crisis was a fraud or nondisclosure appropriately addressed by an SEC enforcement action – there was a great deal of inappropriate risk-taking, lack of understanding and poor decision-making that falls short of actionable misconduct. But where there was fraud and wrongdoing and investors suffered, we will take action. That is why we started a Subprime Working Group in 2007, and that Group has been responsible for a number of significant credit-related cases. That Subprime Group will remain intact and

continue its work alongside the other specialized groups I mentioned previously.

Countrywide is the best-known case of the subprime or mortgage cases. We charged former Countrywide Financial CEO Angelo Mozilo and two other former executives with fraud for allegedly deliberately misleading investors about the significant risks it was undertaking. In public, Countrywide portrayed itself as underwriting mainly prime quality mortgages, while concealing that the loans it actually was taking on were so risky that Mozilo privately described them as "toxic." Our complaint also charged Mozilo with insider trading based on his exercise of stock options and sale of more than 5.1 million shares of Countrywide stock pursuant to 10-b-5-1 plans he had adopted while allegedly in possession of material nonpublic information Countrywide's increasingly risky business model.

In other mortgage-related cases, we brought cases against former mortgage lending company executives for accounting fraud and allegedly making false and misleading disclosures relating to

the riskiness of the mortgages originated and held by the company as the credit crisis began to unfold. We sued registered representatives of a broker-dealer firm for allegedly making false statements in marketing investments in mortgage backed securities as safe and suitable for retirees and others with conservative investment goals. We have charged a registered investment advisor and its affiliate with allegedly overstating the value of a mutual fund that invested primarily in mortgage-backed securities, and for selectively disclosing problems with the fund to favored investors, allowing them to bail out early to avoid losses.

We also charged the managers of a $62 billion money market fund whose net asset value fell below $1.00, or "broke the buck," last Fall, based in part on investments in Lehman-backed paper, for failure to deal with the crisis in an orderly manner with full disclosure.

B. *Ponzi Schemes:* Ponzi schemes have always been a priority of the Division. We brought about 70 enforcement actions

against Ponzi schemes in 2007 and 2008. In recent months, Ponzi schemes have become an even higher priority. This is both because of the Madoff fraud and because the financial crisis has exposed so many Ponzi schemes. Ponzi schemes rely on a steady stream of cash from new investors to pay returns to old investors, but in a financial crisis, new investors cannot be found. So the scheme collapses.

Since January, we have filed more than 40 cases involving Ponzi schemes or Ponzi-like payments. The vast majority of these cases have started as emergency actions – seeking a TRO and an asset freeze -- both to prevent new victims from being harmed and to maximize the recovery of assets to investors.

Stanford is the best-known of these cases. We alleged Stanford masterminded an $8.2 billion Ponzi scheme. And, in one of the more disturbing aspects of any case I have seen, we allege that Stanford bought not the CD investments he had promised his investors, but he bought Leroy King, the CEO of Antigua's Financial Services Regulatory Commission, who accepted

thousands of dollars of Stanford bribes per month to ignore Stanford's Ponzi scheme. Accordingly to our complaint, King showed Stanford the SEC letters to the FSRC seeking information about Stanford's operations. He even permitted Stanford and his lawyers to draft the FSRC's responses back to the SEC containing false assurances that Stanford's Antiguan operations were in compliance with the law.

Another priority area for the Division is cross-market misconduct – that is, utilizing two or more of the equity, fixed income and derivatives markets to engage in wrongdoing. The lack of transparency in the derivatives markets adds a new and more dangerous dimension to misconduct such as insider trading. To that end, in May, we charged a former portfolio manager at hedge fund investment adviser Millennium Partners and a salesman at Deutsche Bank with insider trading in credit default swaps on an international holding company VNU. In a new derivative-oriented twist on an old fashioned illegal play, bank employees allegedly tipped the portfolio manager about an

anticipated change in the VNU's underlying bond structure. Once announced, that change substantially increased the price of the credit default swap. By purchasing CDS before the deal structure changed, the defendants profited when the restructuring was announced.

As much as we have focused on misconduct related to the credit crisis, as well as Ponzi schemes, we have not turned our back on traditional bread-and-butter priorities of the Division.

Working with the New York State Attorney General, we pursued placement agents and others for allegedly extracting kickbacks from investment management firms seeking to manage the assets of New York's largest pension fund, the New York State Common Retirement Fund.

We have charged hedge fund consultants with breaches of fiduciary duties for allegedly failing to perform the due diligence that they had advertised before they invested their clients' money in hedge funds that turned out to be massive frauds. With respect

to executive pay, we filed late last month a litigated SOX Section 304 action seeking to clawback more than $4 million in bonuses and stock sale profits from the former CEO of CSK Auto Corporation, which the Commission charged earlier this summer for filing false financial statement. This is the first Section 304 action seeking to clawback compensation from an officer that was not alleged to have personally participated in the underlying financial wrongdoing.

With respect to proxy disclosure, two days ago Bank of America agreed to pay $33 million to settle charges that it violated proxy disclosure rules in connection with its acquisition of Merrill Lynch. We alleged they failed to disclose an agreement to pay $5.8 billion in discretionary bonuses to Merrill employees.

With respect to accounting and financial statement fraud, just yesterday General Electric agreed to pay $50 million to settle charges that it used improper derivative accounting methods to

increase its reported earnings and revenues and avoid reporting negative financial results.

And finally, just earlier today, in two separate actions, we charged two broker-dealers and two options traders for "naked" short sale rule violations. Our complaint alleges that the respondants improperly claimed that they were entitled to an exception to the Reg SHO requirements that broker-dealers must locate a source of borrowable shares prior to selling short and circumvented the requirement to deliver securities sold short by a specified closeout date.

V. Conclusion

These are challenging times at the Division of Enforcement, but they are also times of great opportunity. We are aggressively pursuing long-term improvements in our structure and processes, while at the same time working hard to continue our vigorous enforcement efforts. I am confident that we will be successful

because we have the most critical ingredients for success -- an abundance of talent, core values of professionalism and fairness, and the total commitment to the mission of investor protection shared by each of our staff.

It is always a privilege to exchange ideas with a group such as this and I am happy to take any questions.

Thank you.