

**ALL FIVE SEC COMMISSIONERS TESTIFY TOGETHER BEFORE  
CONGRESS FOR THE FIRST TIME IN MORE THAN A DECADE**

On June 26, 2007, for the first time in more than a decade, all five Commissioners of the SEC testified together in front of Congress. The hearing was held in the House Committee on Financial Services chaired by Congressman Barney Frank (D-MA). Committee Chairman Frank acknowledged the significance of the meeting as a necessary means for the Committee to enhance its understanding of the SEC's work, but ultimately apologized at the end of the hearing for the lack of groundbreaking revelations.

After Committee member opening remarks, SEC Chairman Christopher Cox began by presenting the Commissioners' joint statement. SEC Chairman Cox was also responsible for responding to most of the Committee's subsequent questions. Committee members intently questioned the Commissioners about a recent 3-2 Commission vote recommending that the U.S. Solicitor General file with the Supreme Court an amicus curiae brief in support of "scheme liability" for securities fraud, which is a theory under which a third party can be held liable to shareholders for participating in deceptive conduct as part of another company's securities fraud. Democratic members of the Committee offered many congratulatory remarks for the Commissioners' support of shareholders under the new liability theory, while Republican members were concerned that this theory would encourage class action lawsuits, unnecessarily increase costs for business, and harm capital formation. SEC Chairman Cox, stressing the economic benefits of predictability, noted that the Commissioners made the recommendation consistent with a precedent recommendation in a similar case in 2004 and that the SEC is always concerned with the cost of regulation and shareholder litigation.

Other Committee members cited evidence of the flight of capital from the U.S. markets due to increased litigation costs, as evidenced by an increase in the number of initial public offerings in overseas markets relative to U.S. IPOs. SEC Chairman Cox asserted that the SEC does not believe that the "sky is falling" on U.S. markets. He further emphasized that foreign capital infusion is near its peak and foreign markets are offering more competition, making the U.S. markets stronger. SEC Chairman Cox was quick to note that "doing nothing" would be dangerous and stated that the SEC will continue to work actively to make U.S. markets the best in the world.

Several other themes surfaced and resurfaced throughout the four hours of testimony by the Commissioners. In response to an explanation from Committee Chairman Frank of the importance of proxy access for shareholders, SEC Chairman Cox assured the Committee that the SEC had long studied the issue and planned to issue a rule proposal in the fall. Another Committee member referenced the recent IPO by a private asset management firm and attacked the SEC's determination that the firm was not required to register under the Investment Company Act of 1940. SEC Chairman Cox affirmed that the Division of Investment Management had reviewed the offering, and had concluded that the company failed to meet the tests that would require such registration.

Other Committee members were concerned about the transparency of complex financial transactions in the wake of the sub-prime mortgage crisis and its effect on the collateralized debt obligation markets. SEC Chairman Cox said that the SEC is broadly reviewing how hedge funds value such transactions, alluding to the recent collapse of hedge funds investing in such instruments. He noted that the SEC and banking regulators have their interests aligned to work on a solution, and he emphasized that 12 new SEC investigations were underway in the area. SEC Chairman Cox believed that the Division of Enforcement is combating many of the problems by bringing more actions than ever, giving tougher penalties, and contributing more settlement money to shareholders through the use of "fair funds." Section 404 of the Sarbanes-Oxley Act of 2002 was highlighted by several Committee members who contended it has led to increased costs and harm for small companies. The Commissioners were unanimous in affirming that they had already provided all contemplated rulemaking under the statute and that nothing further was planned.

In other remarks, including the Commissioners' joint statement, SEC Chairman Cox stressed a new plain English initiative to change mutual fund disclosure and noted that the SEC is concerned that investors who invest through 401(k) plans are not made adequately aware of all the fees they will pay. He said that the entire SEC is excited about the use of the internet and technology to make filings more interactive for investors. He then provided a live demonstration of a new online system, showcasing with ease and simplicity the analysis of executive compensation data through interactive comparisons. The SEC believes the new interactive system will also eventually allow investors to quickly compare mutual funds by expense ratios, performance records, and other important information.

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