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**CFTC/SEC ENFORCEMENT
PROGRAMS**

**Status and Potential Impact of
a Merger**

Statement of James L. Bothwell
Director, Financial Institutions and Markets Issues
General Government Division



CFTC/SEC ENFORCEMENT PROGRAMS:
STATUS AND POTENTIAL IMPACT OF A MERGER

Summary of Statement by James L. Bothwell,
Director, Financial Institutions
and Markets Issues

Enforcement of securities and futures laws is important to protect investors and ensure the integrity of the nation's securities and futures markets. Concerned about CFTC's enforcement reputation, the current CFTC Chairman initiated an internal review of the enforcement program shortly after becoming Chairman in October 1994. CFTC's review found serious problems in the overall management of the enforcement program, including problems in its organization, training, resources, and review process. These findings raised major questions about CFTC's ability to adequately perform its enforcement mission. The Chairman has launched a number of management initiatives to address some of the deficiencies. While these initiatives appear to be a positive step towards reform, GAO believes it is premature to judge their effectiveness since it will take some time before the initiatives will have a measurable effect.

A number of factors can influence the effectiveness of an enforcement program including the leadership and culture of the agency, the availability of resources, the quality of staff and training, and the nature of trading activities and the markets themselves. In comparing CFTC and SEC's enforcement programs, GAO found that SEC clearly has a larger program than CFTC in terms of budget, staffing, and enforcement activity. However, GAO could not compare the two programs' overall effectiveness because the programs' deterrent effect—the ultimate measure of their effectiveness—is hard to assess and the agencies differ in terms of the laws they enforce, the markets they regulate, and the types of violations they pursue. Rightly or wrongly, however, many market observers perceive CFTC's enforcement program as being less effective than SEC's.

Merging CFTC and SEC could yield a number of potential enforcement benefits such as: enhanced intermarket surveillance and enforcement activities, increased opportunities for training, additional resources to pursue futures related violations, and elimination of ambiguity about which agency has enforcement responsibility over derivative products. However, regardless of whether the agencies are merged or not, there would still be the need for attorneys and investigators with some specialized skills and expertise in futures and securities laws and markets. In addition, while effective enforcement of both futures and securities laws is important, it is only one of the factors that Congress needs to consider in evaluating whether to merge the two agencies.

Mr. Chairman and Members of the Committee:

We are pleased to be here today to contribute to your continued consideration of H.R. 718, the Markets and Trading Reorganization and Reform Act, a bill that would merge the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC). Our testimony responds to your request that we discuss the effectiveness of CFTC's enforcement program, compare it to SEC's enforcement program where possible, and describe the potential effects of a merger on CFTC's enforcement activities.

There are a number of factors that can influence the effectiveness of an enforcement program, including the leadership and culture of the agency, the availability of resources, the quality of staff and training, and the nature of trading activities and the markets themselves. At CFTC, for example, enforcement priorities are established by the Chairman and each enforcement action must be approved by the CFTC Commissioners. CFTC's current Chairman has stated that CFTC's reputation for enforcement is not as strong as she would like it to be, and she initiated an internal review of CFTC's enforcement program shortly after becoming Chairman. This review found serious problems in the overall management of CFTC's enforcement program, including problems in its organization, training, resources, and review process, that raised major questions about CFTC's ability to adequately perform its enforcement mission.

The Chairman has begun a number of management initiatives to address some of the problems identified by the internal review and CFTC officials expect many of these initiatives to take about 18 months to have a measurable effect. CFTC has requested a budget increase of over \$10 million to augment CFTC's resources, including \$3.9 million to fund 40 new enforcement positions. Although it now appears that CFTC will not get the total amount of the additional resources it has requested, it is likely that it will receive a sizable budget increase for fiscal year 1996.

Although some comparisons between CFTC's and SEC's enforcement programs are possible, it is difficult to compare the two programs in a substantive way because their deterrent effect—the ultimate measure of effectiveness—is hard to assess and the agencies differ in terms of the laws they enforce, the markets they regulate, and the types of violations they pursue. Without question, SEC's enforcement program is significantly larger than CFTC's in terms of its budget, staffing, and enforcement activity. Specifically, SEC's enforcement budget is roughly seven times larger than CFTC's and its enforcement staff has increased significantly since fiscal year 1990, while CFTC's enforcement staff has shown very little increase over this period. Although SEC clearly has a larger enforcement program than CFTC, it is difficult to determine whether SEC's program is a more effective deterrent than CFTC's. Rightly or wrongly, however, many market observers perceive CFTC's enforcement program as being less effective than SEC's.

Merging CFTC and SEC could yield a number of potential enforcement benefits. Intermarket surveillance and enforcement activities, for example, could be enhanced by having them housed in one agency. Current CFTC enforcement staff could also receive better training opportunities by taking advantage of SEC's larger and more organized internal training program for new attorneys and investigators. In addition, a merger could result in additional resources being available to develop and pursue futures-related violations and would eliminate ambiguity about which agency has enforcement responsibility over derivative products. However, enforcing current laws is likely to continue to require teams of investigators and attorneys with specialized expertise in both futures and securities laws and markets regardless of whether they are housed in one or two agencies. It is also important to note that the likely benefits to enforcement are only one factor that should be considered in the decision of whether to merge the two agencies.

To prepare this testimony, we reviewed CFTC's and SEC's enforcement missions, authorities, policies, and procedures. We analyzed budgetary data as well as data on investigations and cases from both agencies. We also reviewed the results of CFTC's internal review of its enforcement program and performed some limited verification. We interviewed current and past CFTC and SEC officials from headquarters and CFTC's Chicago and New York regional offices, as well as representatives of the Chicago Board of Trade, the Chicago Mercantile Exchange, and the National Futures Association. Finally, we reviewed our prior work that evaluated aspects of these agencies'

enforcement programs and reviewed academic and industry studies related to the issue of merging the two agencies. As you requested, we focused our review on the effectiveness of CFTC's enforcement program. We reviewed SEC's enforcement program primarily to compare and contrast the resources, caseloads, and procedural aspects of the agencies' programs.

INTERNAL REVIEW IDENTIFIED SERIOUS PROBLEMS

Shortly after assuming her position in October 1994, CFTC's current chairman initiated an internal review of CFTC's enforcement program. The review, headed by a former SEC staff person, was to identify ways to maximize the Enforcement Division's use of limited resources and to improve the program. The review, which was completed in March 1995, found serious problems in the overall management of the enforcement program, including problems in its organization, training, resources, and review process. Specifically, the review found the following:

- The organization had no clearly articulated program goals and no clear lines of authority, which contributed to tensions between attorneys and investigators, confusion about their respective roles, and an institutional culture that discouraged communication and teamwork.

- The enforcement staff lacked adequate training, which contributed to a lack of critical skills needed to investigate and litigate the wide variety of cases before CFTC.
- The program had inadequate resources to carry out its mission.
- The review process was cumbersome, which caused substantial delays in the progress of investigations and litigation.

CFTC'S ENFORCEMENT PROGRAM IS CHANGING

CFTC's current Chairman believes a regulatory agency's credibility is tied to its ability to conduct an aggressive enforcement program, and she has made strengthening CFTC's enforcement program her number one goal. Because the Chairman and the Commission must approve each specific enforcement action, including using subpoena power in investigations, naming each proposed respondent, and citing alleged violations, the Chairman's regulatory philosophy regarding enforcement affects the types of cases pursued. CFTC officials told us that pursuing investigations and bringing enforcement actions under previous Commissions was often difficult because market-oriented solutions rather than legal actions were emphasized. CFTC officials also told us that a tremendous amount of information--almost to the point of proving their cases--was required in order for the Commission to approve the use of subpoena power in formal investigations. According to CFTC officials, this requirement often resulted in very lengthy investigations

and, in some instances, stifled the investigative process because the information needed to establish a solid case could be obtained only by using a subpoena.

In response to preliminary results of the internal review, the current Chairman issued a November 1994 memorandum to senior enforcement staff that encouraged them to adopt a more aggressive approach to enforcement than had previously been the case.

Specifically, Enforcement Division staff were to (1) begin aggressively pursuing cases involving failure to supervise employees in the handling and disposition of customer funds; (2) undertake initiatives to identify and prosecute individuals who failed to comply with the Commodity Exchange Act's (CEA) registration requirements, regardless of whether fraud was involved; (3) view material omissions¹ as serious misconduct and, when applicable, include these violations in their cases; and (4) seek subpoena power at earlier stages of the investigative process and expect to provide less information to the Commission in seeking approval for subpoenas. CFTC enforcement staff told us that this memorandum showed the Chairman's commitment to a strong enforcement program and that the subsequent procedural changes have reduced the difficulty in bringing enforcement cases.

¹Material omission is the failure to disclose an item of material information that one has the duty to disclose. The standard for determining materiality under both Federal securities and commodities laws is that a substantial likelihood exists that disclosure of the omitted item of information would have substantially altered the total mix of information for the reasonable investor. See TSC Industries v. Northway (1976) 426 U.S. 438.

The Chairman has also taken other management initiatives in response to the findings of the internal review. Specifically, CFTC has begun to reorganize the Enforcement Division, to institute an in-house training program, and to expedite its process for reviewing the results of enforcement investigations and cases. These changes are intended to facilitate the enforcement staff's ability to investigate and prosecute cases. CFTC officials told us that they are trying to maximize the Enforcement Division's efficiency using current resources, but they will need significant additional resources to further strengthen the enforcement program.

CFTC Has Begun to Reorganize

Its Enforcement Division

CFTC has begun to reorganize its Enforcement Division because the internal review found that the Division did not operate as a cohesive unit in which information and resources were shared and used to achieve a common goal, thereby adversely affecting productivity. The Division's goals were not clearly articulated and no consensus existed among staff regarding the priorities or direction of CFTC's enforcement program. The internal review established that each headquarters unit² and, to a lesser extent, each regional office³ specialized in investigating only certain types of cases. This limited their flexibility and

²Headquarters staff were divided into three operating units: Manipulation and Trade Practice, State/Federal Liaison, and International Operations.

³CFTC's Enforcement Division has regional offices in New York, Chicago, Los Angeles, and a Southern Regional Office located in Washington.

made it difficult to staff investigations and cases efficiently. Also, the Division lacked clear lines of authority, which caused confusion among attorneys and investigators about their roles and responsibilities. Further, the culture of the Division discouraged communication and teamwork, contributing to staff frustration and poor morale.

The review also found that after adjusting caseload statistics to remove statutory disqualification cases,⁴ CFTC had a net loss of cases brought over the last 3 fiscal years and did not seem to be developing the more difficult cases necessary to provide effective deterrence. According to CFTC officials, the increase in statutory disqualifications was due to the Futures Trading Practices Act of 1992 requirement that all floor traders register with CFTC, effective April 1993. While these cases can prevent abuses by ensuring that unqualified individuals do not obtain futures trading privileges, they take little time to pursue. Our analysis showed that these cases took less than 5 percent of Enforcement Division staff time over the 3 years. According to CFTC records, the highest priority cases the Division pursues involve alleged fraud and trade practice abuses. Alleged fraud consistently accounted for the highest number of investigations opened and cases filed from fiscal year 1992 through 1994. However, CFTC opened only 4 trade practice investigations and filed 1 trade practice case in fiscal year 1994, a significant

⁴A person is subject to a statutory disqualification if the person has been denied registration as a broker, dealer, or other financial intermediary or has had such registration suspended or revoked because of prior violations of law. Grounds for a statutory disqualification under both federal securities and commodities laws include conviction of a crime involving fraud or other financial misconduct or an outstanding order by the SEC, CFTC, or other appropriate financial regulator denying the person authority to act as a financial intermediary.

reduction from the 17 investigations opened and 15 cases filed in 1993, and 12 investigations opened and 9 cases filed in 1992. The time spent investigating and litigating these cases was consistently more than 80 percent of total enforcement staff time over the period, although the percent of staff time spent on trade practice violations decreased from about 27 to 20 percent of the total.

To increase staff flexibility, clarify lines of authority, and improve communication within headquarters and with the regions, CFTC appointed a new Division Director in August 1995 and reorganized its Division headquarters. Also, in March 1995, CFTC announced its intention to restructure its regional office system so that the Chicago and New York regional offices would have greater autonomy. Each of these regional offices is to be headed by a Regional Director who is to report directly to the Chairman. According to CFTC, the primary goals of the regional reorganization are to decentralize the decisionmaking process, raise the profile and prestige of the agency in the two most important market centers, and enhance efficiency and productivity nationwide.

CFTC Has Begun to Enhance

Enforcement Training

The internal review established that CFTC had no formal program for training enforcement staff. It also had no formal handbook containing Enforcement Division procedures or policies concerning such issues as document preparation and retention and

basic investigative and testimony techniques for CFTC-specific cases. The review found that the Division relied almost exclusively on external training, which offered little with respect to investigating CFTC-specific cases and was of limited use in training entry-level attorneys. CFTC officials told us that the absence of a nationwide training program had a significant detrimental effect on the enforcement program. The internal review showed that in some cases, attorneys had to litigate cases with less than the best evidence available because inadequately trained staff had not completely developed evidence during their investigations.

To begin addressing the training deficiencies, CFTC developed a 2-1/2 day in-house training seminar to be provided annually to all the investigators and attorneys in the Enforcement Division. The first of these was in September 1995. The purpose of the seminar was to provide an overview of the investigative and litigation processes with special emphasis on the fundamentals of investigating specific violations, such as sales fraud and trade practice cases. In addition, CFTC developed and distributed to staff an Enforcement Procedures Manual that provides formal guidance on issues, such as maintaining case files, conducting testimony, and complying with privacy act requirements.

CFTC Has Begun to

Expedite Reviews

The internal review found that CFTC's process for reviewing the results of enforcement investigations and cases caused substantial delay in the progress of investigations and litigation. The process involved a sequential review and revision of key enforcement documents at various agency levels before CFTC decided on an enforcement matter. Enforcement Division staff told us that the internal review process was slow and difficult and adversely affected their ability to bring cases quickly. They said that when changes were made or actions did not go forward, attorneys did not always know which decisionmakers were involved or the rationale behind the changes.

To expedite the review process, CFTC officials told us they reduced the number of offices involved in reviewing enforcement products as well as the amount of information to be included in memoranda requiring decisions. They said they are trying to focus reviews on substantive issues and to increase the interaction between the team working on a case and the decisionmakers. They said that these changes have already reduced the length of time required to proceed with investigations and litigation.

CFTC AND SEC ENFORCEMENT PROGRAMS

ARE DIFFICULT TO COMPARE

Although it is difficult to make judgments and comparisons about overall effectiveness, we were able to compare CFTC's and SEC's enforcement programs in terms of budget, staffing, and enforcement activity. In each respect, we found SEC's enforcement program is significantly larger than CFTC's. For example, SEC's enforcement budget is roughly seven times larger than CFTC's. Specifically, in fiscal year 1995, about 31 percent, or nearly \$93 million, of SEC's \$297 million total budget was devoted to enforcement, compared to about 26 percent, or nearly \$13 million, of CFTC's \$49 million total budget. Further, since fiscal year 1990, SEC's enforcement staff increased significantly—by about 24 percent to 865 of SEC's 3,039 total staff—while CFTC's enforcement staff increased by only about 6 percent, to 145 of CFTC's 545 total staff. In fact, CFTC had 12 fewer enforcement positions funded in fiscal year 1995 than were funded in fiscal year 1992. Recognizing that it needs to significantly increase the resources available for enforcement, CFTC requested about \$59 million for its fiscal year 1996 budget, including funding for an additional 40 staff years for enforcement. It now appears likely, however, that CFTC will not be successful in receiving all of these additional budgetary resources.

As would be expected, there is also a wide disparity in the number of ongoing investigations and enforcement actions between the two agencies. For example, in fiscal

year 1994, SEC opened 560 investigations and had 1,426 investigations pending at the end of the fiscal year. In comparison, CFTC opened 54 investigations in fiscal year 1994 and had 94 investigations pending at the end of the fiscal year. Similarly, SEC opened 497 enforcement actions (cases) in fiscal year 1994 and had 578 actions pending at the end of the fiscal year. CFTC opened 43 enforcement cases in fiscal year 1994 and had 95 cases pending at the end of the fiscal year.

Although some comparisons between CFTC and SEC's enforcement programs are possible, it is difficult to compare the two programs in a substantive way because the deterrent effect of particular enforcement actions—the ultimate measure of effectiveness—cannot be reliably measured. Further, without knowing the universe of abuses actually occurring in the market, quantitative measures of enforcement efforts, such as the number and types of investigations opened or cases filed, do not provide conclusive evidence of program effectiveness. Low numbers of investigations or enforcement actions could mean that the enforcement program is working well because it is an effective deterrent, or it could mean that the program needs revision because it is not detecting abuses or punishing wrongdoers.

Comparing CFTC's and SEC's enforcement programs is also difficult because, while enforcement mechanisms are similar, the laws they enforce and the markets they regulate are different. When CFTC was established in 1974, it was largely patterned after SEC. Both agencies have similar mandates to preserve the integrity, fairness, and efficiency of

their respective financial markets, thereby protecting the public and promoting investor confidence. As a result, many of the enforcement techniques of the two agencies are similar. For example, both agencies operate nationwide programs to enforce compliance with their respective statutes and regulations, each has broad authority to investigate and prosecute alleged violations of the laws they administer, and both rely on self-regulatory organizations (SRO) to provide the primary defense against abuses in the marketplace.⁵ In addition, both CFTC and SEC tend to rely on the same kinds of sources to initiate enforcement investigations. Specifically, the top four sources of CFTC investigations were: complaints or inquiries from the public; matters that were internally generated by the division (for example, by reading news reports); referrals from another CFTC division; or referrals from an SRO. SEC relied on similar sources to open investigations.

The focus of CFTC and SEC enforcement efforts differs because of fundamental differences in the statutes they enforce and the industries they regulate. CFTC administers and enforces the CEA and Commission regulations while SEC administers and enforces several statutes, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940.⁶ As a result, CFTC does not have as wide a range of enforcement

⁵ The SROs include the futures exchanges and the National Futures Association for CFTC and the securities exchanges and the National Association of Securities Dealers for SEC. These organizations set and enforce rules for the participants in their respective markets.

⁶SEC also enforces the Public Utility Holding Company Act of 1935 and the Trust Indenture Act of 1939. Chapter 11 of the Bankruptcy Code requires SEC to participate in the federal courts for corporate reorganization proceedings involving substantial public

responsibilities as SEC does. Also, securities markets facilitate capital formation, and securities regulation focuses on disclosure by the individuals and firms that issue securities to raise capital. In contrast, futures markets are used to transfer the risk of price changes in an underlying cash commodity, and futures regulation focuses on the relationship between the futures market and the cash commodity. Further, basic differences exist in the relative need for customer protection, although this may be changing as individual investors represent a decreasing part of securities markets and risks increase for certain securities products. Futures contracts, due to their inherent leverage, are more volatile and risky than traditional securities, and the futures markets have been used primarily by more sophisticated investors. Securities markets, on the other hand, have involved substantial participation by the individual investors who government oversight has been designed to protect.

Because of these differences, the nature of prohibited activities and enforcement actions often differ. CFTC officials told us that SEC enforcement areas that have no direct counterpart at CFTC include securities offering cases and insider trading cases.⁷

Conversely, CFTC enforcement areas that have no SEC counterpart include speculative position limits, certain trade practice violations, cases in which futures contracts are

interest. The Securities Investor Protection Act of 1970 gives SEC certain responsibilities regarding the Securities Investor Protection Corporation.

⁷Securities offering cases involve the offer and sale of securities in violation of the registration provisions of the Securities Act of 1933. Insider trading violations occur when a person in possession of material non-public information engages in securities transactions or communicates such information to others who trade.

being illegally traded off an exchange, and violations of large trader reporting requirements.⁸ However, some types of enforcement actions can be the same in both markets. These include certain trade practice violations, such as frontrunning. They also include violations by registered entities (broker/dealers and futures commissions merchants, among others), such as fraud against customers and failure to supervise.

In sum, while SEC clearly has a substantially larger and more active enforcement program than CFTC, it is difficult to determine the relative effectiveness of the two programs. Rightly or wrongly, however, many market observers perceive CFTC's enforcement program as being less effective than SEC's.

POTENTIAL ENFORCEMENT BENEFITS

OF MERGING THE AGENCIES

Merging CFTC and SEC could yield several enforcement benefits, but many enforcement activities would still require specialized expertise. One potential benefit of merging CFTC and SEC could be improved monitoring of intermarket trading strategies and better

⁸A position limit is the maximum position in one commodity future (or option) or in all futures (or options) of one commodity combined, which may be held or controlled by one person as prescribed by CFTC or an exchange. Trade practice violations include a variety of techniques to avoid competitive order execution. By avoiding competition, floor participants may secure a better transaction price at the expense of other market participants, including customers and other traders. A large trader is one who holds or controls a position in any one future or option that equals or exceeds the exchange or CFTC-specified reporting level.

detection and prosecution of illegal intermarket trading. Some experts say that the current split of regulatory responsibility between CFTC and SEC results in uncertainty about regulatory jurisdiction over new products and that a single agency with oversight over the securities and futures markets may be better able to identify, address, and resolve surveillance and enforcement issues that arise across markets. One CFTC official commented to us that with separate regulators, companies can more easily find ways to escape oversight completely by structuring products or activities so that they are not covered by either regulator.

However, having separate regulators can also result in firms being exposed to the jurisdiction of both agencies. For example, in a December 22, 1994, enforcement action against BT Securities Corporation (BT Securities), a subsidiary of Banker's Trust Corporation and an SEC registrant, SEC found, among other things, that certain of the non-exchange-traded derivative products BT sold to Gibson Greetings, Incorporated, were securities within the meaning of federal securities laws. CFTC also participated in this action on the premise that the firm was a commodity trading adviser and thus subject to CFTC's oversight. The agencies jointly ordered BT Securities to pay a penalty of \$10 million because it fraudulently misrepresented and omitted material facts in connection with the sale of derivative products to Gibson Greetings, Incorporated. Merging the agencies would eliminate instances in which both CFTC and SEC assert jurisdiction through enforcement actions because of the differences that exist in their respective laws.

Other officials—both in CFTC and SEC—told us that the two agencies are currently working together to detect intermarket trading abuses and to resolve jurisdictional issues. And SEC's May 1993 Report on Intermarket Coordination⁹ stated that SEC and CFTC have made significant progress toward sharing data and information and coordinating investigative and prosecutorial functions with respect to intermarket frontrunning prohibitions. In addition, in March 1995, both chairmen testified before this Committee in some detail on their efforts to coordinate their activities.

Another potential benefit of merging CFTC and SEC could be better training opportunities for CFTC staff. Both CFTC and SEC staff told us that if the agencies were merged, some synergies would result from combining training. This would primarily be for training in basic enforcement procedures, such as developing testimony, taking a deposition, and serving subpoenas. However, the staff at both agencies said that there would still be a need for training that is specific to securities or futures activities. CFTC and SEC have already begun to share training resources, and SEC has recently opened its training programs to CFTC attorneys.

Ultimately, increasing the effectiveness of the enforcement of the CEA under a merged agency depends on the resources committed and the priority given to such activities.

Opinion is very divided on this subject. Some CFTC staff told us that a merger of CFTC

⁹Section 8(a) of the Market Reform Act of 1990 requires the heads of the Treasury Department, the Federal Reserve, SEC, and CFTC to submit an annual report to the Congress on, among other things, their efforts to coordinate regulatory activities.

and SEC could be a benefit because a combined agency might have more resources and more credibility and could, therefore, do a more effective job at looking into the markets in total. Those holding this view tended to cite CFTC's relatively small size and budget as a factor that limited the enforcement capabilities of CFTC. They also said that CFTC has public image problems that could be helped if it were merged with SEC, in that it is a little-known agency dealing with an industry that the public neither understands well nor cares much about. In contrast, SEC has a much higher profile with the public, which is based on its 60-year reputation as a tough enforcer of securities laws.

Other CFTC staff told us that they were concerned that a merger with SEC would result in fewer resources being devoted to enforcement activities in the futures markets. These people commented that because of the relative size of the two agencies, CFTC would be taken over by SEC rather than merged with SEC. They were concerned that the futures work could then be relegated to a small function within the merged agency that would suffer as other priorities crowded it out. Reflecting this position, the current CFTC Chairman told us that a merger would not necessarily result in a strengthening of CFTC's enforcement programs because, in her opinion, there is no guarantee that any additional resources would be shifted to futures-related work after a merger occurred. Despite the contrasting views on this issue, it is clear that the differences in our securities and futures laws and markets will continue to require some specialized expertise among both attorneys and investigators.

In conclusion, Mr. Chairman, CFTC 's own internal review found serious problems in its enforcement program and CFTC has begun making changes to address some of these problems. It has also requested a significant increase in its budgetary resources, partly to augment its Enforcement Division staff. However, it appears unlikely that CFTC will be receiving all of the additional resources it has requested, and it is too soon to assess the impact of its management initiatives. Thus, it is important for Congress to oversee CFTC's actions to ensure that the problems identified in its enforcement program are adequately addressed and that an effective enforcement program exists.

While it is difficult to make comparisons about the overall effectiveness of their respective enforcement programs, SEC has clearly had a larger and more active enforcement program, and merging CFTC and SEC could provide some enforcement-related benefits. However, differences in the laws governing the securities and futures industries and in the characteristics of those industries result in differences in the types of violations that occur. Thus, even in a merged agency, enforcement staffs are likely to continue to require some specialized expertise to enforce futures and securities laws. It is also important to note that while effective enforcement of both futures and securities laws is important, it is only one of the factors that Congress needs to consider in evaluating whether to merge CFTC and SEC.

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Mr. Chairman, this concludes my prepared statement. We will be pleased to answer questions.

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