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NOMINATIONS OF: HARVEY J. GOLDSCHMID PAUL S. ATKINS, DONALD L. KOHN BEN S. BERNANKE, AND PHILIP MERRILL

HEARINGS

BEFORE THE

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

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

NOMINATIONS OF:

HARVEY J. GOLDSCHMID, OF NEW YORK, TO BE A MEMBER OF THE U.S. SECURITIES AND EXCHANGE COMMISSION

PAUL S. ATKINS, OF VIRGINIA, TO BE A MEMBER OF THE U.S. SECURITIES AND EXCHANGE COMMISSION

DONALD L. KOHN, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE FEDERAL REVERSE SYSTEM

BEN S. BERNANKE, OF NEW JERSEY, TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PHILIP MERRILL, OF MARYLAND, TO BE THE PRESIDENT AND CHAIRMAN OF THE EXPORT–IMPORT BANK OF THE UNITED STATES

JULY 18, 30, AND OCTOBER 4, 2002

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C O N T E N T S

THURSDAY, JULY 18, 2002

Page

Opening comments of Chairman Sarbanes 1
Opening statements, comments, or prepared statements of:
Senator Gramm 4
Senator Dodd 5
Senator Allard 6
Senator Corzine 6
Prepared statement 24
Senator Enzi 7
Prepared statement 24
Senator Miller 13
Senator Carper 15

WITNESSES

John Warner, a U.S. Senator from the State of Virginia 1
George Allen, a U.S. Senator from the State of Virginia 2

NOMINEES

Harvey J. Goldschmid, of New York, to be a Member of the U.S. Securities and Exchange Commission 8
Prepared statement 25
Biographical sketch of nominee 27
Response to written questions of:
Senator Bunning 71
Senator Akaka 71
Paul S. Atkins, of Virginia, to be a Member of the U.S. Securities and Exchange Commission 9
Prepared statement 53
Biographical sketch of nominee 55
Response to written questions of:
Senator Bunning 72
Senator Akaka 72

ADDITIONAL MATERIALS SUPPLIED FOR THE RECORD

News article by Robert Novak, dated July 18, 2002 74

TUESDAY, JULY 30, 2002

Opening statement of Chairman Sarbanes 77
Opening statements, comments, or prepared statements of:
Senator Bunning 84
Prepared statement 93
Senator Gramm 87
Senator Reed 87
Senator Corzine 90
Senator Miller 92

Page

NOMINEES

Donald L. Kohn, of Virginia, to be a Member of the Board of Governors of the Federal Reserve System 79
Prepared statement 93
Biographical sketch of nominee 96
Ben S. Bernanke, of New Jersey, to be a Member of the Board of Governors of the Federal Reserve System 81
Prepared statement 106
Biographical sketch of nominee 108

FRIDAY, OCTOBER 4, 2002

Opening statement of Chairman Sarbanes 119

WITNESSES

Barbara Mikulski, a U.S. Senator from the State of Maryland 119
John Warner, a U.S. Senator from the State of Virginia 121

NOMINEE

Philip Merrill, of Maryland, to be President and Chairman of the Export-Import Bank of the United States 124
Prepared statement 129
Biographical sketch of nominee 130
Response to written questions of:
Senator Miller 144
Senator Santorum 144

ADDITIONAL MATERIALS SUPPLIED FOR THE RECORD

Letter submitted by Congressman Steny H. Hoyer, of Maryland, dated October 3, 2002 145
Letter submitted by Edmund B. Rice, dated October 3, 2002 146

NOMINATIONS OF: HARVEY J. GOLDSCHMID, OF NEW YORK AND PAUL S. ATKINS, OF VIRGINIA TO BE MEMBERS OF THE U.S SECURITIES AND EXCHANGE COMMISSION

THURSDAY, JULY 18, 2002

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

The Committee met at 10:05 a.m. in room SD–538 of the Dirksen Senate Office Building, Senator Paul S. Sarbanes (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN PAUL S. SARBANES

Chairman SARBANES. The hearing will come to order.

The Committee on Banking, Housing, and Urban Affairs convenes today to hold a hearing on two nominees to serve on the Securities and Exchange Commission—Professor Harvey Goldschmid and Paul Atkins. I am going to defer the balance of my opening statement because we have two of our colleagues here to present one of the nominees, and I know they have other pressing demands on their time.

Senator Warner, why don't we hear from you and then we will go to Senator Allen.

STATEMENT OF JOHN WARNER
A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Thank you very much, Mr. Chairman, Senator Gramm, Senator Dodd, Senator Enzi, colleagues. It is a privilege for me to be here today to introduce to this Committee, under the advise and consent procedure of the U.S. Senate, the President's nominee for the Securities and Exchange Commission.

Mr. Atkins has a vast and distinguished career in the private sector and several years of service at the Securities and Exchange Commission. Consequently, I and others strongly believe that he is eminently qualified to take on these important responsibilities, particularly at this critical time in the history of corporate America.

His background at the SEC and in the private sector enables Mr. Atkins to take a balanced approach, in my judgment, on reform

and accountability issues, working in the best interests of the private sector and the consumers alike.

At the height of the Congressional inquiry calling for increased corporate responsibility and reform on accounting standards, it is critical we confirm those individuals who will fill the existing vacancies in the Commission and do so in a balanced manner.

In the coming months, the Commission will be tasked with making important regulatory decisions. Consequently, I will put the balance of my statement in the record. I thank the distinguished Chairman and the Members of the Committee.

Chairman SARBANES. Good. We appreciate that very much, Senator Warner.

Senator Allen.

STATEMENT OF GEORGE ALLEN
A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator ALLEN. Thank you, Mr. Chairman. Thank you for your leadership on this Committee and for holding this hearing. It is good to see Senators Gramm, Dodd, Allard, and Enzi here as well.

I am before you this morning to offer my strong support for the confirmation of Paul Atkins, one of President Bush's nominees to be a member of the Securities and Exchange Commission.

I will discuss Mr. Atkins' strong qualifications in a moment. But Paul has his family here with him, his wife Sarah, two of his three sons, Peter and Stewart, and other members who are in the Washington area for a wedding this weekend. I am sure that will be a wonderful discussion at the wedding reception.

Mr. Chairman, Mr. Atkins is one of my constituents, a resident of Arlington, with a wonderful family. He has been nominated to the SEC at an important time. It is a hot time now, but it is going to be hotter on the SEC. You are jumping into a frying pan with the scandals this Committee has been addressing, trying to restore confidence and accurate accounting, accurate portrayals of the financial condition of a company, as well as corporate governance. Mr. Atkins is the right person at the right time to bring that experience, that knowledge, and especially bring the character that people want to see in making determinations on the SEC.

He is certainly coming in at a challenging time. But he has worked since leaving education on financial markets. He has worked in the private sector with the SEC to protect investors, as well as make sure that the private sector companies comply with SEC regulations. He has also worked at the SEC under two of its distinguished chairmen, Richard Breeden and Arthur Levitt. During his tenure on the Commission, he spearheaded a variety of initiatives that are truly relevant in today's market environment, focusing on investor communication, investor education, and efforts to improve corporate governance.

This is an important time for the SEC and I think that the SEC is one of the key players in making sure that confidence and proper governance are restored. And I think that this gentleman, Mr. Atkins, has all the qualifications one would want including experience and character to serve on the SEC and to serve our market system. I hope you will move very favorably, and he has my full support.

Thank you, Mr. Chairman.

Chairman SARBANES. Thank you, Senator Allen. And we thank both of our colleagues. I know you have other engagements and if you wish to excuse yourselves, please do so.

Senator WARNER. Mr. Chairman, could the nominee introduce his family at this time to the Committee? Would that be appropriate, Mr. Chairman?

Chairman SARBANES. Well, we were going to do that later.

Senator WARNER. All right.

Chairman SARBANES. No, no, no. Since you have raised the issue, why don't we go ahead and do it now?

Go ahead.

Mr. ATKINS. Okay. Thank you, Mr. Chairman.

With me here is my wife, Sarah, two of my sons, Stewart and Peter. For the sake of decorum, we left our 2 year old, Henry, at home.

[Laughter.]

My mother, Carla Atkins. My mother-in-law, Ethelmae Humphreys from Missouri. My brother Harold and his fiancee, Tracey Wyatt, who is from the great city of Baltimore. They are getting married this weekend, which is the reason why everyone is in town. My uncle and aunt, Burhard and Ute Gusovius.

Chairman SARBANES. Very good. Very impressive.

Senator GRAMM. A man whose mother-in-law is for him is all right.

[Laughter.]

Senator WARNER. I am out of here.

[Laughter.]

You are on your own.

Mr. ATKINS. Thank you.

[Laughter.]

Chairman SARBANES. Behind every successful man stands a surprised mother-in-law. Is that it?

Senator GRAMM. That is right.

[Laughter.]

Chairman SARBANES. Professor Goldschmid, do you want to introduce your family now here at the outset?

Mr. GOLDSCHMID. I would be delighted. My wife Mary is right here. With Mary are our two sons, Paul and Joey. I will mention my third son, Charlie, in the opening statement.

Chairman SARBANES. Very good. I will finish my statement, then yield to my colleagues who are with us.

The SEC, as Senator Allen just observed, plays a critical role in protecting investors, ensuring the integrity and efficiency of the securities markets. In recent months, the securities markets have experienced a severe erosion in public confidence. Investors have seen too many instances of faulty accounting, misleading stock recommendations, unreliable auditor certifications, and inadequate issuer disclosures, all of this at a time when the value of stocks has fallen significantly.

We are making an effort here in the Congress to address these problems. Just 3 days ago, the Senate passed the Public Company Accountability Reform and Investor Protection Act of 2002, which came out of this Committee, by a vote of 97 to 0 and we are now

going to conference with the House. The conferees were appointed yesterday.

I welcome the two nominees that are before us this morning. Professor Goldschmid is Dwight Professor of Law at Columbia Law School. He received both his BA and his JD degrees from Columbia. He has really never managed to get out of the confines of Columbia University.

[Laughter.]

He clerked for Judge Paul Hays of the Second Circuit Court of Appeals, practiced law with the firm of Debevoise & Plimpton. In 1970, he joined the Columbia Law School faculty and has continued teaching there ever since. In 1998 and 1999, he took a leave of absence from Columbia to serve as the General Counsel of the Securities and Exchange Commission. Professor Goldschmid has held numerous positions in legal associations, served on numerous legal panels, coauthored books on trade regulation, written many articles on securities law, antitrust, corporate law, and legal education.

Mr. Paul Atkins is a graduate of Wofford College and from Vanderbilt University School of Law, where he was on the Vanderbilt Law Review. He then went on to work with Davis Polk & Wardwell in New York and in Paris. From there, he went to work at the SEC, on the staff of the SEC, and eventually was Executive Assistant to Chairman Richard Breeden and then Counselor to Chairman Arthur Levitt. In 1994, he joined Coopers & Lybrand, which later became PricewaterhouseCoopers. And currently, he is the Principal of the Financial Services Regulatory Advisory Group at PWC. Mr. Atkins has published articles on the role of the compliance officer. He is coauthor of a book, *Generally Accepted Risk Principles.* And I am looking forward this morning to hearing the testimony of both of our nominees.

And I yield to Senator Gramm.

COMMENTS OF SENATOR PHIL GRAMM

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

Let me begin by thanking our nominees for their willingness to serve. This will be a very difficult time to be at the SEC. I have had the great privilege in my period of service on this Committee as a Member and Chairman and Ranking Member, to work with many great commissioners. I have had an extraordinarily high opinion of our last two chairmen. I sat on this Committee and listened as everyone lavished praise on Harvey Goldschmid for all the knowledge and experience he had. And now, you can hardly open a paper without criticism being made—who did I say?

Chairman SARBANES. Harvey Goldschmid.

Senator GRAMM. We are going to hear it for Harvey Goldschmid today. I mean Harvey Pitt.

Chairman SARBANES. Yes.

Senator GRAMM. And now, you can hardly open a paper without someone saying that the fact that Harvey Pitt did not just come in off the turnip truck, that he actually was engaged in representing various interests before the SEC. And of course, he was one of the most active general counsels and the youngest general counsel in the history of the SEC. Now all those things are a source of criti-

cism. Well, this is the same Harvey Pitt that was here. He, like his predecessor, Arthur Levitt, is doing an excellent job, in my opinion.

So that is the criticism that comes with public service. I just want to say that I appreciate people's willingness to serve the greatest country in the history of the world, and we appreciate it.

I look forward to working with both of you in your capacity when you are confirmed.

Chairman SARBANES. Very good.

Senator Dodd.

STATEMENT OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Thank you, Mr. Chairman. And let me extend my best wishes to both of you as well, and to welcome your families here, and these young men here. This is a very important moment to watch their father in a confirmation hearing.

I want to underscore the comments of both my Chairman and the Ranking Member in terms of the obligation to do whatever is possible to restore confidence in the marketplace in this country.

It will be a challenging time. Candidly, I cannot think of a more exciting time to be at the SEC. You are coming on when the expectations are going to be high, and rightfully so, that we do everything we can to rebuild what has been historically the great selling point, I have always said, of our markets.

We do not always offer the most attractive deals in the world. There are other countries that race to the bottom, to use Arthur Burns' line, when it comes to the regulatory process.

We have resisted that over the years, although some have tried to move us in that direction. And the fact that we have not has been an attractive quality about why foreign capital seeks to come to these markets historically. And it is why I am worried today that they are not because they, for the first time in years, feel as though our structures may not be what we have always claimed them to be. Everyone involved in this, the private sector, the President, the Congress, but principally the SEC will bear responsibility for helping us rebuild that sense of confidence.

I also agree with Senator Gramm. I did not know Harvey Pitt at all. I never really met him. I knew nothing about him, really. I heard his name mentioned. But, in my view, he hardly has been on the job. I think he came on the job in September. Enron broke in October. We focus our attention on personalities rather than what needs to be done to get us back on track. There may come a time when Harvey Pitt may be the wrong person for the job, but it is terribly premature and distracting for us to be talking about personalities rather than what needs to be done within the regulatory and legal schemes in order to rebuild the confidence necessary for us to attract capital to our markets again. So I am not going to join the chorus on the Harvey Pitt discussion. I would rather we focus our attention on what needs to be done as public policy people to straighten things out here, rather than to try and engage in the attacks on individuals.

Finally, let me just say to both of you here, and I think you both worked at the SEC so you have a good understanding. You are not coming in as complete outsiders here. In fact, you and I talked

about this yesterday, Mr. Goldschmid. And that is that you have been chosen by the President. That is a high honor.

But unlike a Cabinet officer, in my view, the SEC is in a special category. It is not unlike the Secretary of State or the Secretary of Defense, for different reasons. Here, the temptation of every White House is to have people get in line and support their policies. However, it is critically important at the SEC that you refrain from getting caught up in the day-to-day machinations or agendas that are set, both here in Congress and at the White House.

I would urge you to resist that, regardless of the Administration that is in office. The SEC is the organization that we really count on to provide that confidence. And if there is a sense that decisions are being made for a short-term political advantage rather than the long-term financial interests of our country, then the SEC is damaged. And if it is damaged and its credibility is in question, then everything else will be as well. So it is going to be critically important, if confirmed by the Senate, that you be pillars of the institution you have once worked for in terms of restoring the sense of confidence that this institution can do the job it has been asked to do historically.

With that, I welcome you. Thank you both for being willing to serve as well.

Chairman SARBANES. Good. Senator Allard.

COMMENTS OF SENATOR WAYNE ALLARD

Senator ALLARD. Thank you, Mr. Chairman. I would like to join my colleagues in congratulating you on your appointment by the President.

You do have a huge challenge in front of you. You are going to be under a microscope in every little thing that you do, not only your personal lives, but all your decisions on the Securities and Exchange Commission are going to be under a microscope. You are going to find yourself under a lot of pressure.

I am one who has felt that we need to have reform in the SEC. You are going to hear a lot of good ideas about what makes up good, reasonable reform. And so, you are going to have to put aside the chaff, look for the facts, act on behalf of what is best to restore the confidence in our markets. I think that is the real challenge. And the sooner we can get that confidence restored, the better.

I want to wish you both luck in carrying on your responsibilities and thank you for being willing to serve.

Chairman SARBANES. Very good.

Senator Corzine.

COMMENTS OF SENATOR JON S. CORZINE

Senator CORZINE. Thank you, Mr. Chairman. I appreciate your holding this hearing and going forward. We need some new blood, not because the people there are not doing a good job, but in my opinion, we just need to make sure we have an SEC that is fully staffed and attentive. It is an extraordinary institution. I have had plenty of personal experience and have great respect for it.

I am sure you all will be positive and worthy contributors. But I think there is an extraordinary need to do some of the kinds of things that Senator Dodd was talking about, bringing objectivity

and a fairness to this process that make our markets healthy and consistent with the principles of a Nation that people are innocent till proven guilty, as well as making sure there is a real check and balance to what goes on.

I hope that you will also be strong advocates to make sure that the SEC has the resources to be able to do the job that it is expected to do. Sometimes regulation and regulators who are presumed to have the ability to do something and then do not have the resources to really do it, set up a false sense of security that ends up undermining the quality of our financial markets.

So, I am pleased you all are here. I look forward to hearing your testimony and believe very much in the institution and think now, more than ever, the SEC has an extraordinary role to play in our society.

Thank you.

Chairman SARBANES. Thank you, Senator Corzine.

Senator Enzi.

COMMENTS OF SENATOR MICHAEL B. ENZI

Senator ENZI. Thank you, Mr. Chairman.

I am very pleased that we are beginning to move the nominees for the Commission forward. I believe that it is important for us to get all the Commissioners there to work on enacting the important legislation that we have been working on.

I would also say that both of our nominees have very accomplished records, and I am pleased both of them hold the Commission in high enough regard that they are willing to return to Government service. We thank you for that. You have had a taste of the outside and I know the sacrifices that are entailed in coming back into Government.

The issues facing the Commission will require a major undertaking. Reforms about the methods by which we review and discipline publicly traded companies, executives, and others associated with the formation of the capital markets are underway. And it is important that we have quality individuals with utmost integrity to fill these positions.

I want to join Senator Gramm in a few comments in support of Chairman Pitt. I have looked at some of the numbers of the work that he has generated already. He appears to have exceeded all previous years. Part of that is because we are in a bit more of a crisis now than we have been in previous years. But the activities that are going on now did not start now. They started earlier. And I am glad he is deeply involved in solving some of those problems.

I would ask that my complete statement be a part of the record. And I would also ask that a column by Bob Novak that appeared in today's *Chicago Sun-Times* also be a part of the record.

Chairman SARBANES. Without objection, so ordered.

Gentlemen, it is the practice of this Committee to place nominees under oath at their nomination hearing.

So I would ask both of you to stand now. 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. ATKINS. I do.

Mr. GOLDSCHMID. I do.

Chairman SARBANES. Do you agree to appear and testify before any duly-constituted committee of the U.S. Senate?

Mr. GOLDSCHMID. I do.

Mr. ATKINS. I do.

Chairman SARBANES. Thank you very much.

We would be happy to hear your opening statements. Professor Goldschmid, why don't we start with you and then we will go to Paul Atkins.

STATEMENT OF HARVEY J. GOLDSCHMID, OF NEW YORK
TO BE A MEMBER OF THE
U.S. SECURITIES AND EXCHANGE COMMISSION

Mr. GOLDSCHMID. Chairman Sarbanes, Senator Gramm, distinguished Members of the Committee, it is with great respect and pleasure that I appear before you today. I am honored to have been nominated to serve on the Securities and Exchange Commission.

I have introduced my wife Mary. She is on my right. She has been an extraordinary partner all through life. She may look a bit tired today. Normally she is radiant.

Chairman SARBANES. She is radiant today as well, I hasten to add.

[Laughter.]

Mr. GOLDSCHMID. She spent all day yesterday in the hospital with our oldest child Charlie, who we had hoped would be here. He had a back injury. It looked very dangerous for a while.

Thank God it turned out to be okay.

Chairman SARBANES. Good. We are relieved to hear that.

Mr. GOLDSCHMID. My other two children are here and are wonderful, too.

I come from a working class background. My father was a furrier and a postal worker. My parents believed in our financial markets, and, because of Social Security and their investments, retired to a relatively comfortable life in Florida. Our Nation, as this Committee has indicated, is now witnessing the most dramatic business scandals that have occurred during my professional life. On a very personal level, I feel the pain of the retirees and the investors whose futures have been jeopardized. If I am confirmed, I promise to do all I can to punish corporate wrongdoers, and to rebuild faith in the fairness and integrity of our markets.

The SEC is a great institution. In January 2000, after I left as General Counsel and returned to Columbia, I spoke with great pride of the decency, dedication, professionalism, and common commitment to doing the right thing of the SEC staff from top to bottom. I welcome the opportunity to return to the Commission. If the Senate confirms me, I will draw my inspiration from two great former chairmen of the SEC, William L. Cary and Arthur Levitt. Bill Cary, my treasured teacher and colleague at Columbia, was chairman during the Kennedy Administration. With independence and nonpartisanship, he reinvigorated the agency and initiated a process of reform that changed securities laws and financial markets enormously for the better. Arthur Levitt, my dear friend, you all know. As chairman, he was outspoken, courageous, uncommonly wise, and as he often put it, passionate about protecting investors.

Day by day, in his remarkably successful 8 year term, Arthur acted on his beliefs and in the public interest.

The Senate this week took a bold, balanced, and important step toward restoring investor confidence. I want you to know how much I appreciate the critical role that you, Chairman Sarbanes, and this Committee have played with respect to the Public Company Accounting Reform and Investor Protection Act of 2002. The Nation is very much in your debt for this piece of legislation, and for the oversight that you have provided for our financial regulatory system. I very much look forward to working with you, Mr. Chairman Senator Gramm, this Committee, and with Chairman Pitt and Paul Atkins, and my other new colleagues on the Commission. I feel confident that all of us working together can more than meet the current challenges.

Thank you, Mr. Chairman, Senator Gramm, Members of the Committee, for this opportunity to appear today. I would be happy, of course, to answer questions.

Chairman SARBANES. Thank you, Professor Goldschmid.

Mr. Atkins.

STATEMENT OF PAUL S. ATKINS, OF VIRGINIA

TO BE A MEMBER OF THE

U.S. SECURITIES AND EXCHANGE COMMISSION

Mr. ATKINS. Thank you, Chairman Sarbanes, Senator Gramm, and distinguished Members of the Committee, It is a very great honor for me to appear before this Committee today. I am deeply grateful for the confidence that the President has shown in me by nominating me to be a Commissioner, and I appreciate your courtesy in calling me before you today. And also in allowing me to introduce my family and relatives. I also want to thank in particular Senators Warner and Allen for their kind remarks on my behalf.

Thank you very much. I appreciate their support.

I have always regarded the Securities and Exchange Commission as one of the finest agencies of the U.S. Government. My 20 year career has centered on the financial markets and the SEC's oversight of them. I have reviewed the practices of companies that the Commission regulates, advised firms on complying with its regulations, and worked with the SEC to investigate and rectify situations where investors have been harmed. In fact, I had the privilege of serving as a Staff Member of the Commission for 4 years under two of the ablest chairmen that the SEC has had: Richard C. Breeden and Arthur Levitt. It is a personally meaningful coincidence that the actual term that I have been nominated to fill is the same one that both Chairman Levitt and Chairman Breeden held. If confirmed, I would be proud to continue their first-rate efforts to fight fraud through a vigorous enforcement program.

While at the SEC, I helped pursue policy initiatives that foreshadowed many of the issues affecting the markets today. Under Chairman Breeden, my primary responsibilities were managing his effort to improve corporate governance, shareholder communications, and strengthen management accountability through proxy reform. Under Chairman Levitt, I organized his outreach to individual investors through a series of investor town hall meetings,

consumer affairs advisory committee, and other investor education efforts, including brochures and other things.

Since leaving the SEC, I have continued my work in investor protection by promoting meaningful internal safeguards in the private sector. I have helped financial services firms improve their compliance efforts and have undertaken investigations into corporate fraud, at times in conjunction with the SEC and the Justice Department. In the course of this work, I have spoken directly with hundreds of defrauded investors and learned a valuable lesson in the process—that the impact of fraud and corporate misconduct is felt far beyond the headlines. For example, I have heard the Syracuse, New York, electrical union member tell me how he lost the downpayment on his house through a complex Ponzi scheme. And I have listened while a respected doctor broke down in tears when he described how his staff's pension fund lost thousands of dollars through the purchase of fraudulent securities.

Abstract commentaries about the evils of fraud in our financial markets pale in comparison to the direct, personal impact of these stories. I have no doubt that many Members of this Committee have experienced similar tragedies from constituents back home. We need to remember that these people had their property stolen from them, just as surely as they had been robbed on the street. It is professionally and personally gratifying to me that I had an opportunity to recoup even a small part of their stolen savings, pensions, and dreams.

If confirmed, I will bring to the SEC this important real-world perspective of how enhanced compliance, rigorous examinations, and thorough investigations can make a real difference for investor confidence that ultimately forms the foundation of our markets. Moreover, I believe I can make an important contribution to the Commission's ongoing efforts to improve its own programs and enforcement. The SEC is about to receive greatly enhanced resources as a result of the President's increased budget request and the work of many of you here in Congress. We must ensure that these resources are used wisely to protect investors to the maximum extent possible.

I know you have a vote coming up, so if I may just submit the rest of my remarks——

Chairman SARBANES. No, no. If you wish to complete it, go ahead.

Mr. ATKINS. Okay. Sorry. For many Americans, the SEC has long been just another Federal agency in Washington with an alphabet soup acronym. Today, however, the SEC is at the center of a crisis of trust in the markets that has dealt a serious blow to investor confidence. In recent months, those markets have been rocked by one corporate scandal after another, causing millions of investors to question the integrity of capital markets.

Investors need to believe that the auditors of public companies are unconflicted, ethical, and acting in the best interests of the shareholders. Investors also need to believe that corporate officers are honest and have the best interests of the companies and stockholders in mind, not just what is good for their wallets. They need to know that their representatives on corporate boards are actively guarding their interests. And, most of all, investors should be able

to rely on the financial reports issued by public companies to present a clear and accurate picture of the financial health of those companies.

Those beliefs have been shaken in recent months. The SEC's top priority is to work to restore those bedrock principles and the investor confidence that keeps our economy strong. With more than half of all Americans invested in the stock market, the SEC is entrusted with an enormous responsibility.

The President has issued a powerful call to reinforce the ethic of corporate responsibility. This Committee and the full Senate have taken important steps to restore investor confidence, as have the House and the SEC. Each of these important actors in this process must remain committed to work together to restore confidence in our capital markets by rebuilding a mutual trust among market participants, including investors, corporate executives, and auditors. If confirmed, I will dedicate my energy, experience, integrity, and independent judgment to achieving that goal. I believe strongly that the SEC is a vital line of defense in protecting individual investors, and I look forward to the opportunity to return that institution to serve that cause with Chairman Pitt and my fellow commissioners.

I look forward to working with you and thank you very much.

Chairman SARBANES. Thank you both for very fine statements.

We have a vote scheduled at of 10:45 a.m. Senator Gramm has indicated to me that he is not going to be able to return. So I am going to yield to him right in the beginning, and then I will be quite prepared to do that with other colleagues who may find themselves in a similar situation.

As Chairman, you have to be there at the beginning and you have to be there at the end.

[Laughter.]

So I am going to ask my questions a little later.

Senator Gramm.

Senator GRAMM. Well, Mr. Chairman, thank you very much for your kindness.

Harvey, you served on the Professional Ethics Executive Committee for the American Institute for Certified Public Accountants. Is that right?

Mr. GOLDSCHMID. That is correct, Senator.

Senator GRAMM. And in that capacity, you were paid by the accountants. Is that right?

Mr. GOLDSCHMID. I was paid by the AICPA, yes.

Senator GRAMM. Did you feel that that in any way compromised your integrity?

Mr. GOLDSCHMID. No, sir.

Senator GRAMM. You have done work for Merrill Lynch, for Lehman Brothers, for the National Association of Security Dealers, for the Nasdaq Stock Exchange, for the American Stock Exchange. Do you believe that corrupts your judgment or infringes on your independence in this job?

Mr. GOLDSCHMID. No, Senator, I do not. The Commission has a sensible prophylactic rule that says there will be a 1 year recusal for former clients. But I do not believe the work I did for former clients will affect my judgment.

Senator GRAMM. Well, let me say on this recusal thing, if I might, I believe people overdo this recusal business. I think that, at least it has been my experience in watching the process, that, if anything, people go too far. Clearly, if you are in some way tied economically to an interest in the present, that that represents a conflict of interest. If you are affected personally now, that reflects a conflict of interest.

But I am concerned about this view that the fact that you have ever been involved in an industry forever or for any extended period of time affects your judgment, I think that is a bad view.

I would just like to say for the record, that while I am sure there is some group somewhere that looks at your long association in this industry and says, they are getting ready to put someone on the Commission who has worked for all these companies that are doing business before the Commission and that is a bad thing, I want to tell you that I find it reassuring.

Mr. GOLDSCHMID. Well, thank you, Senator.

I think it is true that anyone who should be nominated for a commissionership at the SEC will have some potential conflict by way of his or her past career. One has to have had that experience.

My experience with the AICPA, of course, was as a public member of the oversight group, and that was serving basically in a public capacity, as I understood it. But we do have to be careful. It is critically important in Washington that we worry about conflict of interest and appearance. I do think the SEC's 1 year recusal period is a wise rule.

Senator GRAMM. Paul, you of course were with Coopers & Lybrand. You have been involved with two different accounting firms. We are in the process of changing legislation as it relates to those accounting firms. Again, I would just like to say that I think that is valuable experience. If you are confirmed, you are going to be working for the Securities and Exchange Commission and not those accounting firms.

Let me ask both of you, in terms of the SEC and working with this accounting board, I would like as my final question to ask both of you when the board is established it is going to be guided by the law we pass.

But as two people who I believe will be Members of the Securities and Exchange Commission, how do you see the Commission working with this board? And Harvey, let me start with you.

Mr. GOLDSCHMID. I hope closely and cooperatively. The SEC is a Government agency. It must take ultimate responsibility. And as I understand the bill, the Commission will be in a position to take ultimate responsibility for all that is done. The model is the NASDR—the National Association of Securities Dealers Regulation System. I think it will work very well. The trick is to make sure the members of the new board have the integrity, the decency, and the experience we need. But it is a very workable system.

Mr. ATKINS. Senator Gramm, I agree with Professor Goldschmid. I think you all crafted a very good solution, very easy solution, by piggybacking on Section 19. So, I do anticipate it being something like the way the SEC reacts with the NASD, interacts with that.

Senator GRAMM. Thank you, Mr. Chairman.

Chairman SARBANES. Thank you, Senator Gramm.

Is there any other colleague who has a time situation, because I would be happy to yield to them now before the vote starts.

Senator Miller.

COMMENTS OF SENATOR ZELL MILLER

Senator MILLER. I do not have any questions. I would just like to thank both these gentlemen for your willingness to serve, especially at this particular time. And I wish you well.

Mr. GOLDSCHMID. Thank you, Senator.

Mr. ATKINS. Thank you, Senator.

Chairman SARBANES. Senator Corzine.

Senator CORZINE. Yes. A follow up to Senator Gramm's question. Are you troubled at all that some disciplinary powers are housed in the oversight board?

Mr. GOLDSCHMID. Not at all, Senator. That is the way we do things with broker-dealers. Disciplinary matters go to the NASDR, and there are appeals to the Commission. That system has worked quite well. And I am not troubled at all as long as the Commission has the final say. There is an appeal process.

Senator CORZINE. Since I will not be returning, I want to beat the drum on one other thing. I presume you both are in support of pay parity for people at the SEC.

Mr. GOLDSCHMID. The words are absolutely yes.

Senator GRAMM. Well, now we are getting into an area of conflict of interest.

[Laughter.]

Mr. GOLDSCHMID. Senator Gramm, I remember kidding you at one point on that. Pay parity, which I know you have supported all through, will not cover commissioners, as I understand it.

Chairman SARBANES. Well, you certainly endeared yourselves at this moment to the people down at the SEC.

Senator Enzi.

Senator ENZI. Mr. Chairman, I am not sure what my situation will be after the vote. It depends on what the floor debate is. I am on the health committee as well.

Chairman SARBANES. So why don't you go ahead now.

Jon, did you want to continue?

Senator CORZINE. I just had one final question. I would be remiss if I did not ask how you felt about expensing of options.

Mr. GOLDSCHMID. Paul, do you want to take that?

[Laughter.]

Let me step back on that. Clearly, there should be a shareholder vote on options. It is a common ground today and developing. I agree with Chairman Greenspan that, economically, options should be expensed. There are complicated issues as to valuation. And my view is that this is an issue that should go to FASB to look at. But FASB should look at the expensing issue with the independent funding that your bill contemplates; FASB must have the ability to stand back and reach the right result.

Mr. ATKINS. I basically agree with that as well. I think this issue has been floating around since when I was at the SEC back in the early 1990's. The pros and cons of it have been debated. And I think it is best to leave it to FASB.

Chairman SARBANES. We want to strengthen the integrity of the decisionmaking process on these issues. And we think what the bill does by providing the independent funding for FASB, is a very significant and important step in helping to achieve that. That is one of the objectives of the legislation.

Senator Enzi.

Senator ENZI. Thank you, Mr. Chairman. And I want to thank both of the nominees for meeting with me individually and answering a series of questions I had in regard to the legislation. I appreciate the answers you gave and the insights that you offered.

On a little different issue, I would be interested in knowing what your position is in regard to setting stock exchange listing standards in the statute.

Mr. GOLDSCHMID. Well, I guess again stepping back, I thought the report and the proposal by the New York Stock Exchange was a very good one. It seems to me that the statute works fairly well, at least if I understand it, in giving the SEC power to make suggestions and recommendations to the exchange.

Listing standards are a basic method of working through corporate governance today in the United States. We used the listing standards approach when I was General Counsel in terms of audit committees. I think the bill provisions should work well.

Mr. ATKINS. I basically agree again. I think that, ultimately, you want to leave the discretion with exchanges. That helps with competition among the exchanges. But I think that you all have come up with a good balance.

Senator ENZI. Thank you. Senator Dodd and I are on the Subcommittee that deals with the securities laws. We have been contemplating doing a review of those laws. I wonder whether you would encourage or discourage us from doing that.

Mr. GOLDSCHMID. An academic can never say, "don't review."

[Laughter.]

The securities laws have, however, served us remarkably well. The 1933, 1934, and 1940 Acts were enacted in a very different time. But they have served the Nation very well. And they have been modernized continually by the broad rulemaking power that the SEC has, and then by various amendments over the years.

A review makes sense. These are older laws, last century laws. But the conservative in me says, be cautious. These laws have been an enormous advantage for the Nation in terms of the discipline, the accountability, and the quality of disclosure they have generally produced.

Mr. ATKINS. I agree with that. But I definitely think that it is time to look at these 70 year old laws which you have been speaking about.

The one thing to keep in mind, when you look at the petitions and the exemptive applications that come to the SEC, particularly with respect to laws that are both very broad and prescriptive, such as the Investment Company Act of 1940. Because of the SEC's broad rulemaking authority, it has been able to adapt the law over time. But it shows that the law itself does not necessarily apply to current conditions. So I think that speaks that it is a good time to review.

Senator ENZI. Thank you, Mr. Chairman.

Chairman SARBANES. Presumably, though, you both would agree with the observation that given the current turmoil that we are confronting, the fact that we are about to pass a significant piece of new legislation, which will have to be integrated into the system, that a thorough-going review of the securities laws probably should at least await a calming down of the current market and regulatory situation.

Otherwise, it seems to me, even if you have the very best of intentions, you are stirring up the pot at a time when we want it to settle, if possible. Do you have any reaction to that observation?

Mr. ATKINS. I agree completely with that. I think you can only allocate your resources so much. And so, take one thing at a time.

Mr. GOLDSCHMID. I agree with that, too. Clearly, there are priorities right now. And giving confidence to the markets by dealing with the present issues and implementing your bill is critical; these are the high priorities.

Bill Cary, when he was Chairman, set up a special study. And thinking about the markets in the future makes sense; it is an incredible time in terms of technology and globalization. But those are backburner issues compared to what is before us right now.

Chairman SARBANES. Very good.

Senator Carper.

STATEMENT OF SENATOR THOMAS R. CARPER

Senator CARPER. Thank you, Mr. Chairman. Thank you both for being here and your willingness to serve.

I missed the introduction of the family members, but we welcome all of you, too. And we want to thank each of you for your willingness to share these two men with the rest of us.

The first question I would ask of you is why you are willing to do this? You all have, I am sure, full plates. Why are you willing to do this?

Mr. GOLDSCHMID. I have asked myself that question.

[Laughter.]

Senator CARPER. You will probably ask yourself again in a few years from now.

Mr. GOLDSCHMID. I think that is absolutely right.

[Laughter.]

For me, it is not a good time for the family. Joey, our youngest, is in high school and it is inconvenient to come. Financially, we will not even talk about the consequences.

But I have been lucky in life. I have been fortunate. The family has done well. There is in me a give-back sense. This is a critically important time for the SEC and the national markets. In the end, I just felt that I could not say no.

Senator CARPER. All right.

Mr. ATKINS. Similarly, for me, since I have been at the SEC before, the opportunity to come back and use my experience both there and in what I have done since, especially at this important time, is really very important to me.

Senator CARPER. Good. Now I realize you do not want to be immodest in front of your families or us, or a national television audience, but why are you the right person for these posts at this time?

Mr. GOLDSCHMID. Well, I began teaching at Columbia in 1970. This has always been my area of study—corporate governance, securities, corporate law; I have been concerned with what to do, where the Nation should go, what makes sense.

I have been dealing with these issues all of my professional life. And then, of course, I spent time as General Counsel of the SEC in 1998–1999, as well as consulting at various other periods.

Senator CARPER. All right.

Mr. ATKINS. My experience is not as long-lived as Harvey's is, but similarly, for 20 years basically this has been my life, the securities markets and trying to help firms comply with the regulations and to protect investors through that.

And so, to be able to give back some of that experience and to help make things more effective, both inside the agency and outside, is what I would really like to do.

Senator CARPER. How would the SEC be different because you would serve on it?

Mr. GOLDSCHMID. Well, it is always hard to predict I hope the decisions will be fair, disciplined, important, and wise. We will push the agency in every way to do its best.

Senator Corzine correctly alluded to the need for greater resources. We, or at least I, will promise, and I am sure Paul will, too, to use those resources with every bit of effectiveness and wisdom that we can bring to it, and give the country the confidence that it needs.

Mr. ATKINS. Taxpayers and investors deserve the very best, and to have their resources used efficiently and effectively. That is what I really hope to accomplish there, to use my experience to help that.

Senator CARPER. One last question, if I could, Mr. Chairman.

We are now going to conference between the House and the Senate versions of what I call corporate governance legislation. There are some provisions in our bill that are different than the provisions in the Senate bill.

If you could just take a moment, each of you, and talk to us about the provisions that you think must emerge from the final compromise, or the principles, how they should emerge in the legislation that is the final compromise that goes to the President. What might some of those be?

Mr. GOLDSCHMID. It is a tough question. It may be a long moment, but, fundamentally, you must have the Accounting Oversight Board with the independent funding and staffing that the bill contemplates. It must have adequate resources. It must be able to do quality control studies and look at the accounting firms independently. It must be in a position to discipline effectively, which was not the case with the AICPA's oversight committee. I was part of that oversight group for the AICPA for over a year, and I said from the beginning, and I think people understood, that the disciplinary system did not work. We tried our best. There were honorable, decent people serving on what was the Professional Ethics Executive Committee. It did not work. We need a system of discipline and accountability that does work.

And so, those are the basic kinds of components, and you have them in the bill. Independence is also a critical element. The sepa-

ration of a large amount of consulting from the auditing process, with the ability to do that consulting for other nonaudit clients, is critical right now to making the system work. I also think the governance provisions of the bill are very good.

Generally as you can see, I am very high on what you have done.

Senator CARPER. Thank you.

Mr. Atkins.

Mr. ATKINS. I agree with the framework that you have put in for oversight over the accounting profession. I think it is a very well-balanced approach. And the funding that you are providing for the agency to help improve its information technologies program, for example, in some ways, the enforcement division cannot even comply with some of the requirements of courts in doing its filings because it does not have the scanning technology available to it.

So there are a lot of things that really need to be updated. And so, your addressing those issues I think is really timely.

Senator CARPER. Good. Well, I thank you for your responses and for your willingness to serve. Good luck. Make us proud.

Chairman SARBANES. We are going to have to recess for the vote. I have a few questions, a couple of such importance that I want to ask them when I return. So we will take a short break.

I do want to say just before we break up that Senator Carper asked, why would you want to do this? And I thought your answers were quite responsive to that.

But I just wanted to observe, this is a magnificent opportunity to be of service to the country. These are really troubled times and you both are people of competence and experience. You have both been in the SEC, which is a definite plus.

And this is a chance to come in and confront these serious problems that we are now experiencing, and in helping to resolve them, to make a major contribution to the country. Certainly to its economic life, and of course, its economic life impacts all other aspects of its life.

So, it is a very exciting and challenging time to become an SEC commissioner. And both of you have manifested in the past, have a concern about public interest, this is real chance to do something significant about it.

With that, we will take a short recess and I will return and resume the hearing.

[Recess.]

Chairman SARBANES. The hearing will come to order.

I want to ask both of you first about funding for the Securities and Exchange Commission.

In the extended hearings that we did in March that led up to reporting out the legislation that is now pending in the Congress, we heard from witness after witness that the SEC needs additional resources in order to effectively carry out its mission and protect investors.

John Whitehead, former Cochair at Goldman Sachs, told us, "I think the SEC is underfunded and has been for some years. When you consider the seriousness to the system of just one Enron, it is dangerous to fool around with the relatively small increases in budget that the SEC asks for."

David Walker, the Comptroller General of the United States, testified: "The SEC's ability to fulfill its mission is becoming increasingly strained due in part to imbalances between the SEC's workload and staff resources."

Over the last decade, securities markets have experienced unprecedented growth and change, and at the same time, the SEC has been faced with an ever-increasing workload and ongoing human capital challenges. Most notably, high staff turnover and numerous vacancies.

We asked the GAO to do a study, and they came in with a study, which, if you have not had a chance to review it, I commend to you, in March of this year: *SEC Operations—Increased Workload Creates Challenges.* They found that the SEC's limited staff resources have resulted in substantial delays in SEC regulatory and oversight processes which hampers competition and reduces market efficiencies.

In fact, we have heard from people in the securities industries complaining that the lack of resources at the SEC and the significant increase in their workload has lengthened the time period markedly within which certain clearances or decisions are reached, and that they find that handicaps their own ability to function. The GAO also noted that information technology issues needed additional funding.

Now here is where we are and I want to see how concerned you are about this problem and how committed you are to trying to do something about it.

The Senate Appropriations Committee, I think only yesterday, has reported out a $750 million budget for the SEC. That is a jump of about $300 million, actually, I think the SEC is terribly underfunded. I have thought that for many years.

But let me just ask you first, what is your own view of the issue in terms of the lack of adequate resources at the Commission to do its current job, let alone additional responsibilities which it will be called upon to undertake?

Mr. Atkins.

Mr. ATKINS. Mr. Chairman, I think that there is a lot to be done there in bringing it up to snuff, as you have alluded to.

I am sure if it is appropriated, it can be spent. Chairman Pitt has started a management review of the agency to try to prioritize and see where additional resources should be used. Offhand, there are many: Enforcement and—as I referred to earlier—IT systems, that can be upgraded. And I am sure that is what this study is going to come up with and help prioritize that. So, I agree. I think more resources are needed.

Mr. GOLDSCHMID. It is critical, Senator. I like your $776 million figure even better than the $750 million.

But there is no question about the immense need. It is a need for more lawyers and accountants. It is a need, and this goes to pay parity, to recruit experienced litigators and experienced people to help manage divisions. It is hard for people to live in Washington on what the SEC can now pay, particularly people with young families, particularly at that experienced level. We are losing people. We have lost them over the years. It is critical we get the money.

Technology is another area. That bill, that budgetary provision, and that action by the Appropriations Committee is absolutely essential to making the system work.

Chairman SARBANES. I am very concerned about the pay parity issue. We have been holding out that promise to people now for some period of time and we have not actually delivered on the promise. And I know there are people down there that are waiting—it is coming, it is coming—but it is not there yet. And it seems to me—how important an issue is the pay parity question?

Mr. GOLDSCHMID. For me, it is absolutely critical. Paul and I talked to senior staff yesterday, and they did indicate that a number of employees are holding out, hoping that it will be completely funded. If we continue to lose those first-rate lawyers of 10, 12, 15 years of service, or we cannot recruit and we need new litigators for all of these financial fraud cases, it will make the agency's job almost impossible. It is critical that we get pay parity funded.

Chairman SARBANES. Mr. Atkins.

Mr. ATKINS. I agree, although the SEC has had recently some means of meeting pay parity out of whatever resources that they have. That is what I understood yesterday they said, but it is not a permanent issue by any means. And I think they are taking from one bucket into another.

Chairman SARBANES. They have done a limited amount of it, but I do not think they have done any benefits. To the extent they have done it, it has been only on the salary.

Mr. ATKINS. I think you are right.

Chairman SARBANES. It is only part of the package, and that is a palliative in the short run, but it is not an answer in the long run. And we need to keep that in mind.

I also am appreciative of the study that the Chairman has undertaken. But when the Congress is prepared to give an agency a significant boost in its appropriation, for good reason here, I think it is clearly more than warranted, and when I am convinced in my own mind that whatever study you do will show the need for resources beyond even what the Congress is thinking of providing, the agency should go ahead and accept this and not say, well, let us finish the study first and then we will come and ask you because, by that time, we may have moved out of the budget cycle. You will be in the next budget cycle, which would throw it off for another 12 or 15 months or something. So there is a chance now to move, and we need to do it. If the commissioners do not advocate for the budget of the SEC, who is going to do it? You, in effect, have to be in the forefront. And I certainly hope that you all will assume that burden, so to speak.

Some of the SEC employees are organized. Therefore, there is a bargaining process that takes place. We keep hearing complaints that they do not feel that management is negotiating with them over contracts in as serious and as fair a fashion as they think is needed.

This is a source of some concern because you do not want to have labor/management unrest at the agency. That also would impede its ability.

I am just curious and I will ask you a general question. How would you respond to these expressions of concern that we have

been hearing? And generally, what is your view of the nature of the relationship that one should have with the employees, and the employee organizations?

Mr. ATKINS. It is vital to have a good relationship with the staff people at the SEC because they are the ones who are doing the work and they need to feel they are part of the process and need to feel like the management of the agency is responsive to them. So that is one thing that, personally, I am very committed to as far as, in my past and working with my staff, whether at the SEC or in the private sector. And I intend to carry that through to this new position.

Mr. GOLDSCHMID. Working out the collective bargaining agreement has taken a very long time. In our briefing yesterday, we were told that they are right at the end of the process. And it is critical we get there, too.

Morale is now weaker at the SEC. The agency has taken some pounding. We want our employees to feel good and to be treated right. It is very important that everyone at the SEC, from top to bottom, feel fairly treated and energized.

And I understand, Senator Sarbanes, what you said to both of us—this is a critical, difficult time, but it is also a time of large opportunities. The Commission is in the position to make a large difference by doing things right.

Chairman SARBANES. That is right. What we need to do down at the SEC is we need to get you enough resources so at least you can really move forward with the needed initiatives, and start operating in an environment in which you have adequate resources to do your job, you are not constantly constrained, as Mr. Atkins said, taking out of one pocket to pay another.

That is no way to run an organization, and anyone will tell you, if the fiscal constraints on you are that tight, it does not really lead to efficiency. It leads to inefficiencies. You ought not to have a loose budget. The budget has to be adequate to the task and people ought not to be spending a good deal of their time thinking how can we divert from one place where we need it into another place where maybe we need it a little more?

The other is to get the labor situation resolved so that everyone is pointing in the same direction and moving ahead. I am very anxious to accomplish that. We are just receiving the papers on the final nominee for the vacancy. And it is our intention to try to hold a further hearing next week on the other two nominees for the remaining vacancies.

The Senate will be in session next week and the following week before the August break. So that would give us an opportunity to do the hearing, reporting all the nominees and, with some good luck, get it through the Senate before the Senate leaves at the beginning of August, so that people would be able to move into their positions. So that is the timetable we are working on. I am hopeful it can be achieved.

Mr. Atkins, I have a couple of questions that I need to ask to you. Yesterday, the SEC announced a settled enforcement action against PricewaterhouseCoopers, and its broker-dealer affiliate, PricewaterhouseCoopers Securities, for violations of the auditor independence rules. They found that, because of these independ-

ence violations, the firm caused 16 public audit clients to file financial statements with the SEC that did not comply with the reporting provisions of the Federal securities laws.

Steve Cutler, who is the able SEC Director of the Division of Enforcement, said: "An auditor's objectivity is critical to the financial reporting process. Impairment of an auditor's independence undermines that process and erodes public confidence in our capital markets." He went on to say: "This case demonstrates the heightened risk of an audit failure when an accounting firm assists in and approves the accounting treatment of its own consulting fees."

And then went on to speak of the loss of objectivity and impartiality that you require of an independent auditor, which is, of course, an essential piece of the legislation that we have reported out of this Committee. One title is really devoted to auditor independence and so forth. In your duties at PricewaterhouseCoopers, did you provide any of the audit or consulting services that were the subject of the SEC action? Were you in any way involved in any of that?

Mr. ATKINS. No, sir, I was not involved in any of that.

Chairman SARBANES. Did you make any decisions involving how PricewaterhouseCoopers would conduct these audits or provide these consulting services at issue?

Mr. ATKINS. No, not at all.

Chairman SARBANES. And in your work, were you aware that PricewaterhouseCoopers was violating the auditor independence rules with respect to the clients that were the subject of the SEC action?

Mr. ATKINS. Not at all.

Chairman SARBANES. You had no knowledge of it and no responsibilities in this area, I take it.

Mr. ATKINS. It is a completely different part of the firm from me. So, I was not involved at all.

Chairman SARBANES. Actually, let me ask you this question because you are not an accountant. You are a lawyer.

Mr. ATKINS. Right.

Chairman SARBANES. And I say that benignly because I am a lawyer as well.

[Laughter.]

Tell me a bit about what it was you went to Pricewaterhouse—well it was Coopers & Lybrand originally.

Mr. ATKINS. At the time.

Chairman SARBANES. What you went there to do when you left the SEC. Was Richard Breeden the head of the unit at Coopers & Lybrand?

Mr. ATKINS. Richard Breeden was there and actually, when I was looking to leave the SEC, he basically called me up and said, you have to come and talk to us at Coopers & Lybrand.

Chairman SARBANES. Actually, Chairman Breeden gave some very powerful testimony to this Committee in the hearings that we held in March. He has been advising and counseling us as we have moved along here. He has very strong views about sustaining the integrity of the regulatory system.

But please go on.

Mr. ATKINS. Yes. And that is part of his record from even when he was Chairman of the SEC and before that, with respect to accounting issues.

But, anyway, basically, the idea was to do mock examinations of financial services firms and help with investigations by the SEC from a platform that the audit firm provides from an independent standpoint, versus law firms which are viewed more as advocates. So we can wear the white hats and be even-handed is the idea.

Chairman SARBANES. You actually were trying to enhance their ability to meet or to comply with the regulatory standards. Is that essentially what you were doing?

Mr. ATKINS. Exactly. We were trying to come in as independent examiners, basically, and work with broker-dealers, investment advisers, and investment companies to help them with investor protection, help them comply with SEC rules.

Chairman SARBANES. Let me ask you this question. And actually, Senator Gramm asked it in a way and he included Harvey within its ambit by reference to the consulting work that he had done for both the Institute of Certified Public Accountants and some of the investment houses.

But this appearance issue is constantly raised by people and raised in the press. And essentially, it says, here is someone who has worked for this large accounting firm, or in your instance, has consulted extensively. And now they are coming into the SEC and one of the challenges at the moment is how do we get the accounting profession back to being a real profession, if I may say so?

One of the sad things in all of this is that Arthur Andersen, which was founded by a man who was the model of rectitude in the profession and advocated these high standards of auditing and accounting behavior, and was succeeded by Leonard Spacek, who himself was even more a model of that, that this company which they established fell on such difficult times. It is really, in many respects, sad because they had built an institution that commanded great respect and of high quality, and of course, we know what has happened to it.

So the question then becomes, how can someone who is coming out of one of these major companies go into the SEC and then rule fairly and impartially on the matters that are to come before them?

I am the messenger here. I am reflecting things that are said or questions that are raised. And I am interested in how you would respond to that.

Mr. GOLDSCHMID. In my own case, Senator, as I indicated to Senator Gramm, my accounting role was that of a member of the AICPA's oversight board, the Profession Ethics Executive Committee. I was one of the first three public members. My job, as I understood it, was to represent the public in this disciplinary process, which, as I say, just did not work, although there were very decent, honorable people who were trying in all kinds of ways. I do not see any conflict or disability there.

It is quite possible, and I consult perhaps a day a week, not even that, it is quite possible to understand your clients, to advocate for your clients, and then to come to Washington and Government and step back from it and remember, what is critical to remember, that the public interest, and the protection of investors is what counts.

But as I said to Senator Gramm, prudent rules on conflicts, on appearances, the 1 year time-out, those all make sense, too. We have to be careful. We have to assure the public that we are going to do the job right.

Chairman SARBANES. Mr. Atkins.

Mr. ATKINS. Well, when you work at any institution, that does not necessarily mean that you have bought into whatever the organization does—all the different part of it.

As for me, when you are in a situation like that, you do see the good, the bad, and the ugly, as it were. So that can help in going into an oversight body like the SEC.

I am not an advocate any longer for the firm. I am leaving the firm. I am disassociating myself and severing my relationship. And I am now going to be back where I was before, 8 years ago at the SEC and filling a new role now at the Commission, instead of as staff to the chairman. So to take off one hat and go to the other, and having severed that relationship, ensures investors and taxpayers and you in your oversight role that I will be able to carry that, should I be confirmed, be able to carry that role forward.

Chairman SARBANES. Well, that is a good answer. We have a system where people move from the private sector into the public sector and then back to the private sector, and back and forth.

The real question is, when you go into the public sector, can you leave behind you as you have just indicated, leave behind you the private sector and assume your role as representing the public interest? Incidentally, we are around here to maintain oversight over that question. I should probably throw that into the mix.

Mr. ATKINS. That is highly appropriate.

Chairman SARBANES. Into the mix as well. Well, gentlemen, we very much appreciate your coming today.

Mr. ATKINS. Thank you.

Chairman SARBANES. I want to say to your families, this was a relatively easy hearing. It is not always like this. You both bring a great deal of competency to this assignment. It is important that we try to get the commissioners in place, and now that we have the full slate here from the Administration, we are moving forward as expeditiously as we can.

Thank you very much for coming.

Mr. ATKINS. Thank you.

Mr. GOLDSCHMID. Thank you, Senator.

Chairman SARBANES. The hearing is adjourned.

[Whereupon, at 11:35 a.m., the hearing was adjourned.]

[Prepared statements, biographical sketches of the nominees, response to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF SENATOR JON S. CORZINE

Mr. Chairman, I commend you for holding this timely hearing this morning. I want to start my remarks by congratulating Mr. Atkins and Mr. Goldschmid on their nominations and thank them for their willingness to serve—particularly during this turbulent period.

Mr. Chairman, enough has already been said about the crisis of confidence that has taken hold of our financial markets, bred skepticism about corporate governance practices, and created questions about integrity and transparency of corporate financial statements.

As we deal with these issues, I think its important for us all to understand that restoring the lost investor confidence cannot be accomplished solely through the enactment of new laws. Particularly if new and existing laws are not enforced. The responsibility of overseeing our markets and enforcing our securities laws lies squarely at the feet of the SEC.

The first paragraph of the SEC's mission outlines the fundamental purpose of the agency. It states:

"The primary mission of the U.S. Securities and Exchange Commission (SEC) is to protect investors and maintain the integrity of the securities markets. As more and more first-time investors turn to the markets to help secure their futures, pay for homes, and send children to college, these goals are more compelling than ever."

That statement has become even more poignant in these times. Many first-time investors have returned to stashing their money away under their mattresses, thousands of workers have witnessed their 401(k)'s savings—and their dreams of retirement—evaporate seemingly overnight, and millions of parents now wonder whether it is wise to "gamble" on their child's college education by investing in our markets.

Mr. Chairman, now more than ever, the public will be closely scrutinizing the integrity of those who not only run our public companies, but those who lead the agencies charged with their oversight. And while many have been critical of the SEC's leadership in taken on the myriad of challenges facing our markets, I think it is fair to say that the agency has been operating behind the eight-ball due to insufficient financial and personnel resources, and also because it has been operating without full membership of its Board.

Mr. Chairman, this hearing will allow us to learn more about the character of these nominees, who both come before the Committee with strong credentials. I look forward to Mr. Atkins' and Mr. Goldschmids' testimony, and to their response from questions of this Committee's Members. Thank you, Mr. Chairman.

PREPARED STATEMENT OF SENATOR MICHAEL B. ENZI

Thank you, Mr. Chairman, first of all, let me tell you that I am very pleased we are beginning to move the nominees for the Commission. I believe that we must get all of the Commissioners there to begin enacting some of these important reforms being legislated.

I would also say that both of our nominees have very accomplished records and I am pleased that both of them hold the Commission in high enough regard that they are willing to return to Government service.

The issues facing the Commission will require a major undertaking. Reforms about the methods by which we review and discipline publicly traded companies, executives, and others associated with the formation of the capital markets are underway. It is important that we find quality individuals with the utmost integrity to fill these positions.

I would like to say just a few words about Chairman Pitt. I have to say that Chairman Pitt and I may not always agree, but I believe the recent attacks on him to be unwarranted. Mr. Pitt has come under fire for having represented some of the accounting firms who have been criticized in recent restatements. But I believe Chairman Pitt's work in the private sector is a great asset to investors. We need individuals who are willing to work in Government who know and understand the industries they regulate. I do not want lifelong Government bureaucrats monitoring these companies.

These restatements did not all of a sudden appear when Chairman Pitt was confirmed. In most cases, they began during the late 1990's when companies became intent on not seeing the Internet bubble burst. I have to ask what was going on at the SEC while these companies were filing all of these false financial statements? What I imagine happened was that the companies, who are very familiar with who

is at the Commission and where the resources are being devoted, thought they could take advantage of the situation because no one was paying attention.

Just look at what has happened since Chairman Pitt has taken office. He has opened a record number of investigations of restatements filed by public companies. He has taken steps to break the relationship between research analysts and investment bankers. He has supported legislation that will increase penalties on corporate executives engaged in fraudulent behavior. And, he has indicated his support of this legislation, which by the way, I anticipate to be supported by the majority of the Senate later today.

The numbers are very clear. In Chairman Levitt's last year as Chairman, 503 total enforcement actions were filed. Already this year, Chairman Pitt has filed 415. Officer and Director Bars for 2000 were 38—this year so far 71. Subpoenaed enforcement proceedings in 2000 were 9—this year 18. The numbers go on and on. My point is that Chairman Pitt seems to be left cleaning up the mess his predecessor left in corporate America.

So, I offer my support for these actions taken by Chairman Pitt. Instead of attacking him, I am more concerned about what was happening at the SEC that bred this climate where executives felt compelled to engage in this unethical behavior. Why weren't some of these actions taken 3 or 4 years ago? Did the SEC Chairman not see the potential conflicts that could arise out of research analysts getting compensation based on investment banking business?

Therefore, I would say that I commend Chairman Pitt for the work he is doing. From what I understand, the actions he is taking at the SEC have struck fear throughout the corporate community that they had better get their act together.

I have a number of issues that I think the Commission needs to address in the near future. Not the least of which is implementing the accounting reform bill. In addition, the securities laws need a serious review. The National Market Structure must be evaluated and revamped. With technological advances that have been made, we cannot expect the markets to continue to operate on rules and laws that were developed 25 or 30 years ago. Also, the time seems to have passed the effectiveness of the current rules under which the Intermarket Trading System operates. I am looking forward to working with the Commission to address these and other problems.

Again, Mr. Chairman, thank you for moving the nominees along, and I look forward to working with you and the other Members of the Committee on issues affecting the securities industry.

PREPARED STATEMENT OF HARVEY J. GOLDSCHMID

MEMBER-DESIGNATE OF THE U.S. SECURITIES AND EXCHANGE COMMISSION

JULY 18, 2002

Chairman Sarbanes, Senator Gramm, Distinguished Members of this Committee, it is with great respect and pleasure that I appear before you today. I am honored to have been nominated to serve on the Securities and Exchange Commission.

Please allow me to introduce to you my wife Mary. She has more than supported and encouraged me; she has been an extraordinary partner in every aspect of my life. With Mary are our three sons, Charlie, Paul, and Joey, of whom we are very proud.

I come from a working class background. My father was a furrier and then went on to become a postal worker. My parents believed in our financial markets, and, because of Social Security and their investments, retired to a relatively comfortable life in Florida. Our Nation is now witnessing the most dramatic business scandals that have occurred during my professional life. On a very personal level, I feel the pain of the retirees and investors whose futures have been jeopardized. If I am confirmed, I promise to do all that I can to punish corporate wrongdoers, and to rebuild faith in the fairness and integrity of our financial markets.

The SEC is a great institution. In January 2000, soon after I left as General Counsel to resume my teaching duties at Columbia, I spoke with enormous pride of the decency, dedication, professionalism, and common commitment to "doing the right thing" that "motivated the SEC's staff from top to bottom." I welcome the opportunity to return to the SEC at this critical time for investors and our markets. If the Senate confirms me, I will draw my inspiration from the performances of two great past chairmen of the SEC, William L. Cary and Arthur Levitt. Bill Cary, my treasured teacher and colleague at Columbia, was Chairman during the Kennedy Administration from 1961–1964. He reinvigorated the agency and initiated a process

of reform that changed securities law and financial markets enormously for the better. Arthur Levitt, my dear friend, you all know. As Chairman, he was outspoken, courageous, uncommonly wise, and as he often put it, "passionate about protecting investors." Day by day in his remarkably successful 8 year chairmanship, Arthur acted on his beliefs and in the public interest.

The Senate this week took a bold, balanced, and important step toward restoring investor confidence. I want you to know how much I appreciate the critical role that you, Chairman Sarbanes and this Committee have played with respect, to the Public Company Accounting Reform and Investor Protection Act of 2002. The Nation is very much in your debt for this piece of legislation, and for the oversight you have provided for our financial regulatory process. I very much look forward to working with you Mr. Chairman, Senator Gramm, and this Committee, and with Chairman Pitt and my other new colleagues on the Commission. I feel confident that all of us working together can more than meet the current challenges.

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

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Goldschmid (LAST) Harvey (FIRST) Jerome (OTHER)

Position to which nominated: Commissioner, SEC Date of nomination: May , 2002

Date of birth: 6/5/1940 (DAY) (MONTH) (YEAR) Place of birth: New York, NY

Marital status: Married Full name of spouse: Mary Tait Goldschmid

Name and ages of children:

Charles	Maxwell	Goldschmid (26)
Paul	MacNeil	Goldschmid (24)
Joseph	Tait	Goldschmid (16)

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Columbia University School of Law	9/62 - 5/65	J.D., magna cum laude	5/65
Columbia College	9/58 - 5/62	B.A., magna cum laude	5/62

Honors and awards: **List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.**

1999 Chairman's Award for Excellence from the SEC (while serving as General Counsel); 1996 and 1997 Willis L.M. Reese Award for Excellence in Teaching, Columbia University School of Law;1984 awarded chair, Dwight Professor of Law, Columbia University; Articles Editor, Columbia Law Review; International Fellow, Columbia University; Phi Beta Kappa. In addition, please see curriculum vitae (Attachment C).

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Please see Attachment A.		

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

1. 7/1/70 to Present, Professor of Law, Columbia University School of Law, 435 West 116th St., New York, N.Y. 10027 (Dwight Professor of Law since 1984; Professor of Law 1973-84; Associate Professor of Law 1971-73; Assistant Professor of Law 1970-71).
2. 7/15/00 to Present, Of Counsel, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, N.Y. 10153.
3. 1/1/00 - 7/15/00, Special Senior Advisor to SEC Chairman Arthur Levitt (two days a week without compensation).
4. 7/1/98 - 12/31/99, General Counsel, United States Securities and Exchange Commission, 450 5th St., N.W., Washington, D.C. 20549.
5. 2/95 - 6/98, Of Counsel, Arnold & Porter, 399 Park Avenue, New York, N.Y. 10022.
6. 1/78 - 2/95, Of Counsel, Holtzmann, Wise & Shepard (no longer in existence).
7. 9/66 - 7/70, Associate, Debevoise & Plimpton, New York, N.Y.
8. 8/65 - 8/66, Law Clerk, The Honorable Paul R. Hays, United States Court of Appeals for the Second Circuit, New York, N.Y.

Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

1. Senior Special Advisor to SEC Chairman Arthur Levitt, 1/1/00-7/15/00.
2. General Counsel, Securities and Exchange Commission, 7/1/98-12/31/99.
3. Consultant, Federal Trade Commission, 1978-81, 1997-98.
4. Member, Task Force on High Tech/Innovation Issuers, Federal Trade Commission, 1995-96.
5. Consultant, Securities and Exchange Commission, 1997-98.
6. Consultant, Administrative Conference of the United States, 1971-74.

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Please see Attachment B.

Political affiliations and activities: List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

I have been a member of the Democratic Party during the last ten years.

Political contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

I made one $1,000 contribution (in 1995), three $500 contributions (in 2002, 2001, and 1997), and two $250 contributions (in 2000 and 1997), during the last eight years, to the Democratic National Committee (Federal Account); I made one $500 contribution (in 2002) and one $250 contribution (in 2001) to the Democratic Senatorial Campaign Committee; I made a $1,000 contribution to the Green for Senate Campaign (in 1998), and a $500 contribution to the Green campaign for City Advocate (New York City) in 1997.

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

Please see curriculum vitae (Attachment C).

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Question 1 at the bottom of this page.*

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization. I expect to return to Columbia University after completing government service. I have no agreement or plan to return to Weil, Gotshal & Manges after completing government service.

3. Has anybody made you a commitment to a job after you leave government?

No, except for my continued retention of tenure at Columbia University.

4. Do you expect to serve the full term for which you have been appointed?

Yes (I will take a two year leave-of-absence from Columbia University.)

*Upon confirmation, I will take an unpaid leave-of-absence from my position as Dwight Professor of Law at Columbia University. I will resign my position as "Of Counsel" to Weil, Gotshal & Manges. Upon confirmation, I will suspend all business activities of Harvey J. Goldschmid, P.C., of which I am the sole shareholder and employee, I will continue to participate in the medical and retirement plans of the firm. Pursuant to section 208, I will not participate personally and substantially in any particular matter that will affect the willingness or ability of any of these plans to fulfill their obligations to me.

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

Please see answer to page 8 item #2.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

Please see my letter to Barbara B. Hannigan, Ethics Counsel and Designated Agency Ethics Official, of the SEC, which is appended as Attachment D.

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None, except possibly for my representation of the NASD, Nasdaq, and Amex, with respect to a Master Agreement and Exhibits, as indicated in items # 8-10 of the attached "Schedule of Clients Where Billings Exceed Three Quarters of One Percent... During Each of the Last Three Years."

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None (I did, however, provide advice on legislation in 1998-99, while I served as General Counsel of the SEC; I also provided advice on legislation as a professor and a member of professional committees (e.g., as Chair of the Committee on Securities Regulation of the Association of the Bar of the City of New York).

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

Please see my letter to Barbara B. Hannigan, Ethics Counsel and Designated Ethics Official of the SEC, which is appended as Attachment D.

Civil, criminal and investigatory actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

I was a defendant in a civil tort action (automobile claim) brought by Olga Kovacevich in the Supreme Court of the County of New York. The claim was filed in June 1995, and after a settlement, was dismissed.

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None.

SOURCES OF INCOME LAST 3 YEARS

1. List sources and amounts of all income received during the last 3 years, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of U.S. income tax returns for these years may be substituted here, but their submission is not required.)

See page 9 -- Sources of Income Last 3 Years

(Add schedule itemizing each individual source of income which exceeds $500. If you are an attorney, accountant, or other professional, attach schedule listing all clients and customers whose billings exceeded three quarters of one percent of your gross billings during each of the last 3 years.)

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers.

Upon confirmation, I will take an unpaid leave-of-absence from my position as Dwight Professor of Law at the Columbia University School of Law. I expect to receive all compensation for services provided during the 2001-2002 academic year by July 1, 2002. Pursuant to its policy for full-time faculty members, Columbia will continue to provide tuition benefits for two of my children (who will be at the Law School) during the period of my leave. I will continue to participate in the TIAA-CREF Retirement Program of Columbia University.

Upon confirmation, as the sole shareholder and employee, I will continue to participate in the medical program and pension program of Harvey J. Goldschmid, P.C.; all other P.C. business activities will be suspended while I serve at the SEC. I will also continue to receive royalties on the 4th ed. of Cases and Materials on Trade Regulation (1997).

Signed: Harvey J. Goldschmid Date: 5/28/02

The undersigned certifies that the information contained herein is true and correct.

GPO : 1997 O - 62-050

Attachment A

(Generally covers past ten years or longer for memberships and offices that began prior to 1992, but have continued during past ten years).

a. Chair, Nominating Committee (2000-01), Chair, Audit Committee (1988-96), Chair, Budget and Finance Committee (1996-98), Chair, Committee on Securities Regulation (1992-95), Treasurer (1996-98), Chair, Executive Committee (i.e., Board of Directors, 1984-85, and a member of the Committee from 1981-86, 1996-98) of the Association of the Bar of the City of New York.

b. Chair, Board of Advisors, Program on Philanthropy and the Law of New York University School of Law (1992-94).

c. Vice Chair, The Greenwall Foundation (since 1999 and member of the Board of Directors since 1996).

d. Member, Legal Advisory Committee of the New York Stock Exchange (1997- 98), and Chair of the Advisory Committee's Subcommittee on Corporate Governance (1998).

e. Secretary-Treasurer (since 1996) and member of Board of Directors, American Association for the International Commission of Jurists (since 1969).

f. Advisory Board, Institutional Investor Project, Columbia University (1988-96).

g. American Bar Association Task Force on Lawyers' Political Contributions (1997-98).

h. Fellow of the American Bar Foundation (since 1992).

i. Board of Directors, National Center on Philanthropy and the Law (since 1996).

j. National Council, Washington University School of Law (since 1999).

k. Public Member, Professional Ethics Executive Committee of the American Institute of Certified Public Accountants (since 2000).

l. Advisory Board, American Antitrust Institute (since 2000).

m. Board of Directors, Transparency International -- USA (since 2001).

n. Advisory Board, Institute for Law and Economic Policy (since 2000).

o. Member of the Faculty of the Leyden-Amsterdam-Columbia Summer Program in

American Law (1996).

p. Member, Riverdale Yacht Club (since 1978).

q. Member, The Century Association (since 1979).

r. Member, The American Law Institute (since 1975).

s. Board of Directors, Riverdale Nature Preservancy (since 1993).

t. Board of Directors, Columbia Law Review (since 1992).

u. Treasurer and Director, The Association of the Bar of the City of New York Fund, Inc. (1996-98).

v. Member, Nonprofit Forum (since 1990).

w. Member, National Board of Visitors, University of Arizona College of Law (1995-99).

x. Chair, Legal and Compliance Advisory Committee, The Nasdaq Stock Market, Inc. (January - March 2002).

Attachment B

Books, Articles, Reviews, and Congressional
Testimony by Harvey J. Goldschmid

Books:

M. Handler, R. Pitofsky, H. Goldschmid & D. Wood, Cases and Materials on Trade Regulation (Foundation Press, 4th ed. 1997 & Supp. 2001).

M. Handler, H. Blake, R. Pitofsky & H. Goldschmid, Cases and Materials on Trade Regulation (Foundation Press, 1st ed. 1975, 2d ed. 1983, 3d ed.1990).

B. Bock, H. Goldschmid, I. Millstein & F.M. Scherer (ed.), The Impact of the Modern Corporation (Columbia University Press 1984).

M. Handler, H. Blake, R. Pitofsky & H. Goldschmid, Patents and Antitrust (Foundation Press 1983).

H. Goldschmid (ed.), Business Disclosure: Government's Need to Know (McGraw-Hill 1979).

H. Goldschmid, H. Mann & J. Weston (ed.), Industrial Concentration: The New Learning (Little, Brown & Co. 1974).

Articles, Reviews, and Congressional Testimony:

Address: Dealing With a Period of Dramatic Economic Change, in Proceedings of the 77th Annual Meeting of The American Law Institute 174 (2001).

Introduction: William L. Cary and His Living Legacy, 99 Colum. L. Rev. 1165 (1999).

Testimony (as General Counsel of the SEC) on "Loan Loss Allowances," Hearing before the Subcommittee on Financial Institutions and Consumer Credit of the House Committee on Banking and Financial Services, 106th Cong., 1st Sess. 9,82 (1999).

In Remembrance of Curt Berger, 99 Colum. L. Rev. 276 (1999).

Testimony (as General Counsel of the SEC) on the "Financial Services Act of 1999," Hearing before the House Committee on Banking and Financial Services, 106th Cong., 1st Sess. 236, 853 (1999).

Inside Trading: A New Cycle, in 2 30th Annual Institute on Securities Regulation 407 (1998).

The Fiduciary Duties of Nonprofit Directors and Officers: Paradoxes, Problems, and Proposed Reforms, 23 J. Corp. L.631 (1998).

Nonprofit Conversion Transactions: Existing Fiduciary Duties and Necessary Reforms, in The National Center on Philanthropy and the Law, Conversion Transactions C1-C16 (1996).

Capping Securities Fraud Damages: An Unwise Proposal in an Imperfect World, 38 Ariz. L. Rev. 665 (1996).

Harmonization of Corporate Law in Federal Systems: A United States Perspective, in I. Pernice (ed.), Harmonization of Legislation in Federal Systems 161 (1996).

Testimony on "Abandonment of the Private Right of Action for Aiding and Abetting Securities Fraud," Hearing before the Subcommittee on Securities of the Senate Committee on Banking, Housing, and Urban Affairs, 103d Cong., 2d Sess. 25, 69, 101 (1994).

Duty of Care and the Business Judgement Rule (Part IV of the ALI's Corporate Governance Project), in 1 Principles of Corporate Governance: Analysis and Recommendations 134-98 (American Law Institute 1994).

Is Antitrust Antagonistic to American Competitiveness, 93 Colum. L. Rev. 1572 (1993) (reviewing T. Jorde & D. Teece, Antitrust, Innovation, and Competitiveness (1992)).

Patient Care: Practice of a Profession or Conduct of a Business, ACP-Psychiatirc Update Program (1993) (with Dr. Joseph T. English and Dr. Robert Michels).

Securities Regulation, in M. Green (ed.), Changing America: Blueprints for the New Administration 616-30 (1992).

Azerbaijanian-American Symposium: The Road to Economic Renewal, 13 International Merger Law 2 (1991) (with Pitofsky).

Corporate Governance, Market Forces, and Other Ways of Encouraging Efficiency and Accountability in Public Corporations in the United States, in 4 Papers for Sino-American Economic and Civil Law Conference 1-21 (CLEEC ed. 1989).

A Time for Healing: Antitrust May Be on the Mend, 928 Conference Board Research Report 51 (1989).

Securities Regulation: The Securities and Exchange Commission, in M. Green & M. Pinsky (ed.), America's Transition: Blueprints for the 1990s 352-66 (1989).

Comment on the Policy Implications of the Georgetown Study, in L. White (ed.), Private Antitrust Litigation: New Evidence, New Learning 412 (1988).

Horizontal Restraints in Antitrust: Current Treatment and Future Needs, 75 Cal. L. Rev. 925 (1987).

Efficiency, "Yes"; but a Business-Judgment Standard, "No", 207 Conference Board Research Bulletin 24 (1987).

Tribute to Herbert Wechsler, 40 A.B. Rec. 468 (1985).

Management Discretion and Antitrust: Comment on the Unrealistic Search for Precision, 179 Conference Board Research Bulletin 21 (1985).

Duty of Care and the Business Judgment Rule (Part IV of the ALI's Corporate Governance Project), in Tentative Draft No. 4 of the ALI's Principles of Corporate Governance: Analysis and Recommendations 1-88 (1985).

Trends in Corporate Governance in the United States, 29 Conference Board of Canada Bulletin 4 (1985).

Comment on the Business Judgment Rule, 45 Ohio St. L. J. 632 (1984).

In Memoriam -- Professor William L. Cary, 83 Colum. L. Rev. 769 (1983).

The Responsibilities of Directors in Connection With Unfriendly Takeovers, in Thirteenth Annual Institute on Securities Regulation 131, 142-47 (1982).

Preliminary Report of the Second Circuit Judicial Conference Evaluation Committee and Remarks on the Report, 93 F.R.D. 684-87, 786-94 (1982).

Duty of Care and Business Judgment, in Tentative Draft No. 1 of the ALI's Principles of Corporate Governance and Structure: Restatement and Recommendations 127 (1982).

Comment on Antitrust in the Competitive World of the 1980's,

112 Conference Board Research Bulletin 24 (1982).

Testimony on "Impact of OMB-Proposed Budget Cuts for the Federal Trade Commission," Hearings before a Subcommittee of the House Committee on Government Operations, 97th Cong., 1st Sess. 264 (1981).

Remarks at the Memorial Proceedings for the Honorable Paul R. Hays, 635 F. 2d LXVI (2d Cir. 1981).

Introductory Remarks, in National Conference on Corporate Governance and Accountability in the 1980's 27 (ALI 1981).

Dangers in the Attack on Antitrust, N.Y. Times, March 8, 1981, at E 19, col. 1 (with Pitofsky).

Comment on the Discretionary Power of Large Firms, in the Economics of Firm Size, Market Structure and Social Performance 72 (J. Siegfried ed. 1980).

Criteria for an Enterprise System: A Dialogue, 77 Conference Board Information Bulletin 19 (1980).

The Governance of the Public Corporation: Internal Relationships, in Commentaries on Corporate Structure and Governance 167 (D. Schwartzed. 1979).

Testimony on "Amendment to the FTC Act Providing for Divestiture or Other Similar Relief," Hearings before the Senate Committee on Commerce, Science, and Transportation, 96th Cong., 1st Sess. 41 (1979).

Foreword to the Corporate Responsibility Symposium: Reflections on Directions, 30 Hastings L.J. 1247 (1979) (with Cary).

Review of E. Aranow, H. Einhorn & G. Berlstein, Developments in Tender Offers for Corporate Control, Colum. L. Observer (February, 1979).

Review of C. Brown, Corporate Directors and Managers: Separating Their Functions, Columbia Today 50 (June, 1976).

Testimony on "Corporate Rights and Responsibilities," Hearings before the Senate Commerce Committee, 94th Cong., 2d Sess. 241 (1976).

Summary Disposition, C.A.M.P.: The Second Circuit's Approach to Caseload Management, in 5 Appellate Justice 3 (Carrington ed. 1975).

The Role of the Outside Director in Assuring Adequate Corporate

Disclosure, in Fifth Annual Institute on Securities Regulation 12 (1974).

An Evaluation of the Present and Potential Use of Civil Money Penalties as a Sanction by Federal Administrative Agencies, in 2 Recommendations and Reports of the Administrative Conference of the United States 896 (1973).

Antitrust's Neglected Stepchild: A Proposal for Dealing With Restrictive Covenants Under Federal Law, 73 Colum. L. Rev. 1193 (1973).

The Greening of the Board Room: Reflections on Corporate Responsibility, 10 Colum. J. L. & S. P. 17 (1973).

Note, Modern Trends in Legal Education, 64 Colum. L. Rev. 710 (1964).

Attachment C

HARVEY J. GOLDSCHMID

Present Position: Dwight Professor of Law, Columbia University School of Law.

Age: 62 (born May 6, 1940).

Selective List of Professional and Scholarly Activities:

General Counsel (chief legal officer), United States Securities and Exchange Commission (1998-99). Special Senior Advisor to SEC Chairman Arthur Levitt (January 1 - July 15, 2000).

Reporter for Part IV (Duty of Care and the Business Judgment Rule), the American Law Institute's Corporate Governance Project (1980-93), Reporter, Second Circuit Judicial Conference Evaluation Committee (1980-82, 1988-89).

Chair,(i) Nominating Committee (2000-01), Chair, Audit Committee (1988-96), Chair, Budget and Finance Committee (1996-98), Chair, Committee on Securities Regulation (1992-95), Chair, Committee on Corporate Takeover Legislation (1985-86, 1988-91), Treasurer (1996-98), Vice President (1985-86), Chair, Executive Committee (i.e., Board of Directors, 1984-85, and a member of the Committee from 1981-86, 1996-98), and Chair, Committee on Antitrust and Trade Regulation (1971-74) of the Association of the Bar of the City of New York; (ii) Chair, Board of Advisors, Program on Philanthropy and the Law of New York University School of Law (1992-94); (iii) Chair, Section on Antitrust and Economic Regulation of the Association of American Law Schools (1976-78); and (iv) Vice Chair, The Greenwall Foundation (since 1999 and member of the Board of Directors since 1996).

Member,(i) Legal Advisory Committee of the New York Stock Exchange (1997-98), and Chair of the Advisory Committee's Subcommittee on Corporate Governance (1998); (ii) Secretary-Treasurer (since 1996) and member of Board of Directors, American Association for the International Commission of Jurists (since 1969); (iii) Advisory Board, Institutional Investor Project, Columbia University (1988-96); (iv) American Bar Association Task Force on Lawyers' Political Contributions (1997-98), (v) Fellow of the American Bar Foundation (since 1992); (vi) Board of Directors. National Center on Philanthropy and the Law (since 1996); (vii) National Council, Washington University School of Law (since 1999), (viii) Public Member, Professional Ethics Executive Committee of the American Institute of Certified Public Accountants (since 2000); (ix) Advisory Board, American Antitrust Institute (since 2000); (x) Board of Directors, Transparency International -- USA (since 2001); and (xi) The American Law Institute (since 1975).

Founding Director, Columbia University's Center for Law and Economic Studies (1975-78).

Consultant, Antitrust Policy, Federal Trade Commission (1978-81, 1997-98) and member Federal Trade Commission Task Force on High Tech/Innovation Issues (1995-96), Consultant, Securities and Exchange Commission (1997-98), and Consultant, Administrative Conference of the United States (1971-74).

Of Counsel, Weil, Gotshal & Manges (since July 15, 2000).

Honors and Teaching Abroad:

United States Securities and Exchange Commission, 1999 Chairman's Award for Excellence.

Columbia University School of Law, Willis L. M. Reese Award for Excellence in Teaching (1996 and 1997); Columbia University School of Law, Annual Excellence in Teaching Award (1983).

Member of the Faculty of the Leyden-Amsterdam-Columbia Summer Program in American Law, Amsterdam (1983 and 1989) and Leyden (1974 and 1996).

Member of the Faculty of the Salzburg Seminar in American Law and Legal Institutions (Summer, 1987).

Distinguished Lecturer, China University of Politics and Law, Beijing, China (Summer, 1986).

Prior Employment:

Dwight Professor of Law, Columbia University (since 1984); Professor of Law (1973-84); Associate Professor (1971-73); Assistant Professor (1970-71).

General Counsel, United States Securities and Exchange Commission (1998-99).

Associate, Debevoise & Plimpton, New York, New York (1966-70).

Law Clerk to Judge Paul R. Hays, Second Circuit Court of Appeals (1965-66).

Education:

J.D., magna cum laude, Columbia University School of Law, 1965; Administrative Board, Columbia Law Review (Articles Editor); International Fellow.

B.A., magna cum laude (history and government), Columbia College, 1962; Phi Beta Kappa.

Attachment D

Harvey J. Goldschmid
Columbia University School of Law
435 West 116th Street
New York, New York 10027
(212) 854-2654

May 24, 2002

Barbara B. Hannigan
Ethics Counsel and
Designated Agency Ethics Official
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Dear Ms. Hannigan:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Commissioner, Securities and Exchange Commission.

As required by 18 U.S.C. section 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any other person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to section 208(b)(1), or qualify for a regulatory exemption, pursuant to section 208(b)(2). I understand that the interests of the following persons are imputed to me: my spouse, minor children, or any general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

In order to avoid potential conflicts of interest under section 208, my spouse and I agree to divest our equity holdings in the publicly-traded companies listed on Attachment A. These divestitures will be made within 90 days of my appointment. Until these divestitures have been completed I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the financial interests of any of these entities, unless I first obtain a written waiver or qualify for a regulatory exemption. I agree not to exercise any derivative rights I may have against Enron Corp. I will write a letter to Enron stating that my spouse and I will opt out of any class action brought on behalf of Enron's shareholders and we will not otherwise bring an action against Enron. Finally, I will apply to the Office of Government Ethics for a Certificate of Divestiture for the sale of our ExxonMobil stock.

I understand that my spouse's and my interests in the equity holdings in the publicly-traded companies listed on Attachment B present a potential conflict of interest under section 208. I will not participate personally and substantially in any particular

matter that will have a direct and predictable effect on the financial interests of these entities unless I first obtain a written waiver or qualify for a regulatory exemption.

I also understand that the interests in registered investment companies listed in Attachment C present a potential conflict of interest under section 208(a). I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on my spouse's, my dependent child's or my financial interests in these investment companies, unless I first obtain a written waiver or qualify for a regulatory exemption. My spouse and I agree to divest, within 90 days of my appointment, any investment company listed on Attachment C that is not deemed to be diversified under 5 C.F.R. 2640.102. Until divestiture is complete I will not participate personally or substantially in any matter that would have a direct and predictable affect on the financial interests of the underlying holdings of the investment company within the area of concentration of such investment company unless I first obtain a written waiver or a regulatory exemption applies.

I further understand that the holdings in debt securities listed in Attachment D present a potential conflict of interest under section 208(b), although it has been determined that it is not necessary at this time for me to divest these interests. With respect to these debt securities, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the willingness or ability of the issuers to fulfill their obligations, or on the market value of the bond, unless I first obtain a written waiver or qualify for a regulatory exemption.

Upon confirmation, I will suspend all business activities of Harvey J. Goldschmid, P.C. ("the firm"), of which I am the sole shareholder and employee. I will continue to participate in the medical and retirement plans of the firm. Pursuant to section 208, I will not participate personally and substantially in any particular matter that will affect the willingness or ability of any of these plans to fulfill their obligations to me.

Upon confirmation, I will resign my position as "Of Counsel" to Weil, Gotshal & Manges ("Weil") and I will instruct Weil to stop using my name on its letterhead or otherwise. Upon my resignation, I will receive all compensation from Weil to which I am entitled for services rendered prior to my appointment. I will have no agreements or arrangements with Weil once I have resigned. For one year following my appointment, I will not participate in any matter involving specific parties in which Weil is a party or represents a party, unless I am authorized to participate under the provisions of 5 C.F.R. Part 2635, Subpart E.

Upon confirmation, I will take an unpaid leave-of-absence from my position as Professor of Law with the Columbia University School of Law ("Columbia"). I expect to receive all compensation for services provided during the 2001 - 2002 academic year by July 1, 2002. Pursuant to its policy for full-time law school faculty members, Columbia will continue to provide tuition benefits for two of my children during the period of my leave. Pursuant to section 208, I will not participate personally and substantially in any particular matter that is likely to have a direct and predictable effect on Columbia's

financial interests unless I first obtain a written waiver or qualify for a statutory exemption. My spouse and I will continue to participate in the TIAA-CREF retirement programs. In addition, my dependent child will continue to participate in the TIAA-CREF N.Y. College Savings Program. Pursuant to section 208, I will not participate personally and substantially in any particular matter that will affect the willingness or ability of TIAA-CREF to fulfill its obligations to my spouse, my dependent child or me.

Upon confirmation, I will also resign my positions with the organizations listed on Attachment E. For one year following my appointment, I will not participate in any particular matter involving specific parties in which any of these organizations is or represents a party, unless I am authorized to participate under the provisions of 5 C.F.R. Part 2635, Subpart E. I have resigned my positions with the Association of the Bar of the City of New York and the Nasdaq Stock Market, Inc. Upon confirmation, for one year from the date of these resignations, I will not participate in any particular matter involving specific parties in which either of these organizations is or represents a party, unless I am authorized to participate under the provisions of 5 C.F.R. Part 2635, Subpart E.

I will resign my position of vice-chair of the Greenwall Foundation, but I will remain on the board of directors. I will also remain on the board of directors of the National Center on Philanthropy and the Law. Finally, I will remain a member of the Washington University School of Law, National Council. I will not receive compensation for any of these three positions. Pursuant to section 208, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the financial interests of these organizations, unless I first obtain a written waiver or qualify for a regulatory exemption. Pursuant to 5 U.S.C. 205, I will not act as agent or attorney for any of these organizations before any department, agency, court, court-martial, officer, or civil, military, or naval commission in connection with any covered matter in which the United States is a party or has a direct and substantial interest.

My spouse provides economic consulting services through The Hired Gun, a sole proprietorship. Pursuant to section 208, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the financial interests of my spouse, unless I first obtain a written waiver or qualify for a regulatory exemption.

If confirmed as Commissioner, I will not participate in any particular matter involving specific parties which is likely to have a direct and predictable effect on the financial interests of a member of my household where it is determined that the circumstances would cause a reasonable person with knowledge of the relevant facts to question my impartiality in the matter, unless I am authorized to participate under the provisions of 5 C.F.R. Part 2635, Subpart E. In addition, for one year following my appointment, I will not participate in any particular matter involving specific parties in which to my knowledge a person for whom I have served as attorney within the last year

is or represents a party, unless I am authorized to participate under the provisions of 5 C.F.R. Part 2635, Subpart E.

Finally, I will provide the appropriate officials with a list of those interests I have retained (or may acquire) in order to support my efforts to avoid conflicts of interest. In addition, I will recuse myself from participation on a case-by-case basis in any particular matter in which, in my judgment, it is desirable for me do so in order to avoid the possible appearance of impropriety, despite the lack of any actual conflicts.

Sincerely,

Harvey J. Goldschmid

Attachment A – Publicly Traded Equity Securities to be Divested

Amgen, Inc.
Anadarko Petroleum Corp.
Bausch & Lomb, Inc.
Berkshire Hathaway, Inc.
Chase Capital Trust VII
Corning, Inc.
Walt Disney Co.
Enron Corp.
ExxonMobil
Ford Motor Co.
General Electric Co.
Global Crossing, LTD
Iomega Corp.
JP Morgan Chase & Co.
John Hancock Financial Services, Inc.
LCA Vision, Inc.
Lincoln National Corp.
Lucent Technologies, Inc.
Morgan Stanley DeanWitter Capital Trust
Metso Corp.
Nikko Cordial Corp.
Nova Measuring Instruments
PG & E Corp. (Pacific Gas and Electric)
Parexel International Corp.
Pfizer, Inc.
Pioneer Corp.
Rambus, Inc.
SK Telecom, Ltd.
SONICblue, Inc.
Toyota Motor Corp.
USG Corp.
Viacom, Inc.
Williams Communications Group, Inc.
Worldcom, Inc.- Worldcom Communication Group
Worldcom, Inc.- Worldcom MCI Group

Attachment B - Publicly Traded Equity Securities to be Held

Coca Cola Femsa SA
EMC Corp.
Enodis PLC
Invacare Corp.
Japan Airlines Co., Ltd.
Marubeni
Nippon Telephone & Telegraph Corp.
Nedcor, Ltd.
Procter & Gamble Co.
Silicon Storage Technology, Inc.

Attachment C – Registered Investment Companies

TIAA College Retirement Equities Fund
TIAA College Retirement Global Equities Fund
Schwab Government Money Fund
Schwab Value Advantage Bond Fund
Vanguard Hi-Yield Corporate Bond Fund
Emerging Market Telecom Fund*
Europe Fund
Japan Equity Fund*
ROC Taiwan Fund*
Southern Africa Fund
Alliance Korean Investment Fund*
Prudent Bear Fund
Van Kampen Asian Equity
IShares Canada Index Fund*
IShares Germany Index Fund*
IShares Japan Index Fund*
IShares Malaysia Index Fund*
IShares Taiwan Index Fund*
NASDAQ 100 Shares Index Fund
Charles Schwab NY Municipal Fund
Fidelity Diversified Int.
Janus Overseas/Worldwide
Salomon Smith Barney Money Fund
EWJ Japanese Index Fund*

* To be sold

Attachment D – Debt Securities

New York State Medical Care Facility Bond
U.S. Inflation-Index Bonds
Zero-Coupon Archer Daniel Midland Debenture
Chesapeake Potomoc Telephone W VA Debenture
News American Holdings Debenture
Southwestern Telephone Bond

Attachment E – Resignations (Charitable and Civic Groups)

American Association for the International Commission of Jurists
American Institute of Certified Public Accountants
American Antitrust Institute
Transparency International
Institute for Law and Economic Policy
Riverdale Nature Preservancy
Columbia Law Review

PREPARED STATEMENT OF PAUL S. ATKINS

MEMBER-DESIGNATE OF THE U.S. SECURITIES AND EXCHANGE COMMISSION

JULY 18, 2003

Mr. Chairman, Senator Gramm, Members of the Committee, it is a very great honor for me to appear before this Committee today. I am deeply grateful for the confidence that the President has shown in me by nominating me to be a Commissioner. I appreciate your courtesy in calling me before you today.

I have always regarded the Securities and Exchange Commission as one of the finest agencies of the U.S. Government. My 20 year career has centered on the financial markets and the SEC's oversight of them. I have reviewed the practices of companies that the Commission regulates, advised firms on complying with its regulations, and worked with the SEC to investigate and rectify situations where investors have been harmed. In fact, I had the privilege of serving as a Staff Member of the Commission for 4 years under two of the ablest chairmen that the SEC has had: Richard C. Breeden and Arthur Levitt. It is a personally meaningful coincidence that the actual term that I have been nominated to fill is the same one that both Chairman Levitt and Chairman Breeden held. If confirmed as Commissioner, I would be proud to continue their first-rate efforts to fight fraud through a vigorous enforcement program.

While at the SEC, I helped pursue policy initiatives that foreshadowed many of the issues affecting the markets today. Under Chairman Breeden, one of my primary responsibilities was managing his effort to improve corporate governance, enhance shareholder communications, and strengthen management accountability through proxy reform. Under Chairman Levitt, I organized his outreach to individual investors through an investor town hall program, a consumer affairs advisory committee, and investor education efforts.

Since leaving the SEC, I have continued my work in investor protection by promoting meaningful internal safeguards in the private sector. I have helped financial services firms improve their compliance efforts and have undertaken investigations into corporate fraud, at times in conjunction with the SEC and the Justice Department. In the course of this work, I have spoken directly with hundreds of defrauded investors and learned a valuable lesson in the process—that the impact of fraud and corporate misconduct is felt far beyond the headlines. I have heard a Syracuse, New York electrical union member tell me how he lost the down payment on his house through a Ponzi scheme. And, I have listened while a respected doctor broke down in tears when he described thousands of dollars of the pension fund for his staff (some of whom had been with him for more than 20 years) that were lost through the purchase of fraudulent securities.

Abstract commentaries about the evils of fraud in our financial markets pale in comparison to the direct, personal impact of these stories. I have no doubt that many Members of this Committee have experienced similar tragedies from constituents back home. We need to remember that these people had their property stolen from them, as surely as if they had been robbed on the street. It is professionally and personally gratifying to have had the opportunity to help recoup even a small part of their stolen savings and pensions.

If confirmed, I will bring to the SEC this important real-world perspective of how enhanced compliance, rigorous examinations and thorough investigations can make a real difference for investor confidence that ultimately forms the foundation of our markets. Moreover, I believe I can make an important contribution to the Commission's ongoing efforts to improve its own programs and enforcement. The SEC is about to receive greatly enhanced resources as a result of the President's increased budget request and the work of many here in Congress. We must ensure that these resources are used wisely to protect investors to the maximum extent possible, and I look forward to the opportunity to help achieve that if I am confirmed.

For many Americans, the SEC has long been just another Federal agency in Washington with an alphabet-soup acronym. Today, however, the SEC is at the center of a crisis of trust that has dealt a serious blow to confidence in our financial markets. In recent months, those markets have been rocked by one corporate scandal after another, causing millions of investors to question the integrity of the capital markets.

Investors need to believe that auditors of public companies are unconflicted, ethical, and acting in the best interests of shareholders. Investors also need to believe that corporate officers are honest and have the best interests of their companies and stockholders in mind, not just what is good for their own wallets. They need to know that their representatives on corporate boards are actively guarding their interests. And, most of all, investors should be able to rely on the financial reports issued by

public companies to present a clear and accurate picture of the financial health of those companies.

Those beliefs have been shaken in recent months. The SEC's top priority is to work to restore those bedrock principles and the investor confidence that keeps our economy strong. With more than half of all Americans invested in the stock market, the SEC is entrusted with an enormous responsibility.

The President has issued a powerful call to action to reinforce the ethic of corporate responsibility. This Committee and the full Senate have taken important steps to restore investor confidence, as have the House and the SEC. Each of these important actors in this process must remain committed to work together to restore confidence in our capital markets by rebuilding a mutual trust among market participants, including investors, corporate executives, and auditors. If confirmed, I will dedicate my energy, experience, integrity, and independent judgment to achieving that goal. I believe strongly that the SEC is a vital line of defense in protecting individual investors, and I look forward to the opportunity to return to that institution to serve that cause with Chairman Pitt and my fellow commissioners.

Thank you very much.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: ATKINS (LAST) PAUL (FIRST) STEWART (OTHER)

Position to which nominated: Commissioner, Securities and Exchange Commission Date of Nomination: 20 December 2001

Date of birth: 28 (DAY) March (MONTH) 1958 (YEAR) Place of birth: Erwin, North Carolina

Marital status: married Full name of spouse: Sarah Jane Humphreys Atkins

Name and ages of children:
Stewart (8)
Peter (6)
Henry (2)

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Vanderbilt University School of Law	1980-1983	J.D.	May 1983
Wofford College	1976- 1980	A.B.	May 1980
H.B. Plant High School	1973-1976	Diploma	June 1976

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Law and Policy Award, Securities and Exchange Commission (December 1992); Vanderbilt Law Review (1981-83), Senior Student Writing Editor (1982-1983); Best Brief Award, Moot Court Competition (1981); Phi Beta Kappa (1980); Blue Key (1979); Charles E. Daniel Scholarship (Wofford College, 1976-1980); National Merit Scholar (1976); Valedictorian, H.B. Plant High School, Tampa, Florida (1976)

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
The Florida Bar		1984 - present
New York Bar		1986 - present
Association of the Bar of the City of New York		1990 - present
Washington Golf and Country Club, Arlington, Virginia		1998 - present
Metropolitan Club in the City of Washington		2000 - present
Old Presbyterian Meeting House, Alexandria, Virginia		1998 - present
Atkins Family Trust Foundation	Trustee	1999 – present*

* will resign upon taking oath of office, if confirmed by the Senate

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A., summer law clerk (1981), Tampa, Fla.

Davis Polk & Wardwell, summer associate (1982), associate (1983-90), New York, NY (1983-86 and 1989-90), Paris, France (1986-89)

U.S. Securities and Exchange Commission, attorney-fellow and counsel to Chairman (1990-92), executive assistant to Chairman (1992-93), counsellor to Chairman (1993-94), Washington, DC

PricewaterhouseCoopers LLP, principal, financial services regulatory advisory services (1994-present), Washington, DC

Government experience:

List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

U.S. Agency for International Development – PricewaterhouseCoopers contract for advisory services on banking and securities issues for central and eastern Europe (1995)

U.S. Securities and Exchange Commission – employee (1990-94)

Published writings:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

P. Atkins and T. McAleer, "The Changing Role of the Compliance Officer," *Compliance Monitor* (London, June 2000, Vol. 12, No. 12)

P. Atkins and Karen Clark, "Compliance Officer's Disaster Planning," *NSCP Currents* (Nov/Dec 1999)

Generally Accepted Risk Principles (written with others at Coopers & Lybrand, 1996)

Political affiliations and activities:

List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None.

Political contributions:

Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

Please see attached Schedule A.

Qualifications:

State fully your qualifications to serve in the position to which you have been named.
(attach sheet)

Please see attached Schedule B.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes, I shall sever all connections with PricewaterhouseCoopers LLP upon taking the oath of office, if confirmed by the Senate.

2. As far as can be foreseen, state whether you have any plans after completing Government service to resume employment, affiliation or practice with your Previous employer, business firm, association or organization.

No, I have no such plans.

3. Has anybody made you a commitment to a job after you leave government?

No.

4. Do you expect to serve the full term for which you have been appointed?

Yes.

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other Continuing dealings with business associates, clients or customers who will be Affected by policies which you will influence in the position to which you have been Nominated.

Please see attached Schedule C.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

Please see attached Schedule D.

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None.

4. List any lobbying activity during the last 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by you responses to the above items.

Please see attached Schedule E.

Civil, criminal and investigatory actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

None.

Civil, criminal and investigatory actions:

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None.

Schedule A

Political Contributions

Date	Recipient	Amount
15 Jan 2002	Bush – Brogan 2002	$500
19 Oct 2001	Mark Earley	$1000
5 Oct 2001	Republican Party of Virginia	$1000
1 Oct 2001	Bret Schundler	$1000
24 Sept 2001	Neill A. Atkins	$500
13 Aug 2001	PricewaterhouseCoopers PAC	$500
29 Oct 2000	Rick Lazio	$1000
11 Aug 2000	Bush-Cheney 2000 Compliance Committee	$1000
11 Aug 2000	Rick Lazio	$1000
16 June 2000	Demaris Miller	$1000
9 June 2000	PricewaterhouseCoopers PAC	$600
18 Nov 1999	George W. Bush	$1000
23 Feb 1999	PricewaterhouseCoopers PAC	$500
24 Sept 1998	Demaris Miller	$1000
21 Apr 1998	PricewaterhouseCoopers PAC	$500
21 Apr 1998	Demaris Miller	$1000
24 Feb 1997	Coopers & Lybrand PAC	$550
11 Oct 1996	Coopers & Lybrand PAC	$500
12 Dec 1995	Jim Miller	$1000

Schedule B

Paul S. Atkins: Qualifications to Serve on Securities and Exchange Commission

- Lawyer by training with SEC public service background
  - Counsellor to Chairman Arthur Levitt, July 1993 – Nov 1994
  - Executive Assistant (chief of staff) to Chairman Richard C. Breeden, 1992-93
  - Attorney-Fellow and counsel to Chairman Richard C. Breeden, 1990-92
  - Associate, Davis Polk & Wardwell, New York and Paris, 1983-90
  - Currently principal (not a CPA or auditor) with PricewaterhouseCoopers in financial services regulatory advisory group helping financial services firms comply with SEC regulations

- At SEC focused on individual investor issues and corporate disclosure matters
  - Organized SEC's Consumer Affairs Advisory Committee in 1993
  - Developed SEC's original ***Invest Wisely*** brochures aimed at individual investors regarding the retail brokerage relationship (http://www.sec.gov/investor/pubs/inws.htm) and mutual fund investment (http://www.sec.gov/investor/pubs/inwsmf.htm)
  - Planned and organized "town hall" investor forum program in 1993-94
  - Spearheaded effort to improve proxy disclosures and modernize shareholder communications rules in 1991-92

- Since 1994 effectively furthered SEC's investor protection goals through private sector
  - Bolstering the compliance function of financial services firms by improving internal controls aimed at precluding wrongdoing (*e.g.*, frontrunning, unethical/illegal sales practices, soft dollar violations, unsuitable recommendations)
  - Undertaking mock SEC examinations of broker-dealers and investment managers
  - Performing at counsel's direction (at times including U.S. Attorney or SEC) internal investigations of possible regulatory violations at financial services firms
  - Acted as advisor to bankruptcy trustee in the investigation of the Bennett Funding Group, Inc., a leasing company that the SEC cites as the largest "Ponzi" fraud in U.S. history

- First-hand management experience
  - Served as "crisis CEO" of a $100 million time share and real estate finance company, the only surviving entity of Bennett Funding Group; tasks included instituting effective internal controls and rebuilding business for eventual sale by trustee

- Practical knowledge of securities regulations
  - 19 years of securities regulatory experience, including 7 years in private law practice
  - Law practice included wide range of public and private securities offerings, mergers and acquisitions, and bank and securities regulatory work

- International Experience
  - Served as chairman of the Working Group for Securities and Financial Investment of the International Action Commission for Saint Petersburg, Russia (1995)
  - Organized the SEC's International Institute for Securities Market Development, a training program for securities regulators in emerging markets
  - Resident for 2½ years as lawyer in Paris

Schedule C

If the Senate confirms me, then pursuant to the terms of the Partners and Principals Agreement of PricewaterhouseCoopers LLP and the firm's policies and practices, and in recognition of my past service to the firm, the firm will make a "withdrawal payment" (calculated based on my termination date, and to be paid to me before I take the oath of office) to settle capital accounts, partnership income (which includes participation in net profits, interest on capital accounts, and severance), and reimbursement for necessary and ordinary business expenses through the date of withdrawal. Under ERISA, payment of accrued retirement interest in Keogh and 401(k) plans will be distributed to me as soon as is practicable, following my withdrawal from the firm. I intend to roll over the assets of my retirement, Keogh, and 401(k) plans into self-directed tax-deferred retirement plans not related to PricewaterhouseCoopers LLP, as permitted by law.

Schedule D

Investments

Metropolitan Life Insurance Co.
Donnelly Corp.
Western Sierra Bancorp
Procter & Gamble
RPM Inc.
Genessee & Wyoming Inc.
Superior Uniform Group Inc.
Eastern Co.
Investors Title Co.
Met-Pro Corp.
Microsoft
Midwest Insurance Co. Ltd.
Del Laboratories Inc.
Capitol Bancorp. Ltd.
MFS Total Return Fund
Neuberger & Berman Genesis Fund
Northern Trust Short Term Fund
Nuveen Investment Quality Municipal Fund
Nuveen Premier Municipal Income Fund
RMA Tax-Free Fund Inc.
Centennial Tax Exempt Fund
Nuveen Insured Municipal Opportunity Fund
Nuveen Municipal Advantage Fund
Nuveen Insured Premium Income Municipal Fund
County of Allegheny PA Deferred Int bonds ser C
Allegheny County PA Sanitation Authority Sewer Rev bonds
Arkansas State Dev Finance Authority Comp Accretion bonds ser 1
Bellevue Wash Convention Center Authority Special Oblig Rev Bonds
Blue Ridge Regional Jail Authority VA bonds
Butler County OH Hospital Facilities Rev Bonds
Colorado Housing Finance Authority Bonds
Colorado Health Facilities Authority Retirement Facilities Revenue Bonds
Colorado Springs CO School District Nr 11 Bonds
Detroit Michigan Downtown Development Authority Tax Increment Revenue bonds
E-470 Public Highway Authority Colorado Revenue bonds
Elkhart IN Community Schools Building Corp bonds
Fairfax County VA Water Authority Revenue bonds
Houston Texas Water & Sewer System bonds
Illinois Health Facilities Authority Revenue bonds
Latrobe Boro PA Pkg Authority bonds
Lipan Texas Independent School District bonds
New York State Dormitory Authority Capital Appreciation bonds

North Penn PA School District bonds
Ohio Housing Finance Agency bonds
Paris Texas Comb Tax bonds
Skagit Valley Wash College Foundation Student Housing Revenue bonds
Southeastern Public Service Authority VA Revenue bonds
Texas Public Finance Authority State Preservation Board bonds
Upper Occoquan VA Sewer Authority bonds
Virginia Beach VA Development Authority bonds
Virginia Port Authority Port Facilities Revenue bonds
Waxahachie Texas Independent School District Capital Appreciation bonds
St. Louis MO Land Clearance Redevelopment Authority bonds
City of Chicago, Illinois, Capital Appreciation – City Colleges bonds
Chicago, Illinois, Park District Series B bonds
Forney, Texas, Independent School District Capital Appreciation bonds
Illinois State Dedicated Tax bonds due 12/15/17
Illinois State Dedicated Tax bonds due 12/15/19
Lingleville, Texas, Independent School District bonds
Terrell, Texas, Independent School District bonds
Metropolitan Life (whole life)
National Life of Vermont (whole life)

Former Clients:

Covington & Burling
Munger, Tolles & Olson LLP
Norinchukin Bank
Riker Danzig LLC
Roberts, Sheridan & Kotel
Shaw Pittman LLP
Shearman & Sterling
Skadden Arps Slate Meagher & Flom
Wilmer, Cutler & Pickering

Other clients during calendar year 2001 are not listed because enforceable contractual confidentiality provisions prevent disclosure. These names will be given to the SEC's Designated Agency Ethics Official for conflicts screening purposes.

Schedule E

As required by 18 U.S.C. section 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any other person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to section 208(b)(1), or qualify for a regulatory exemption, pursuant to section 208(b)(2). I understand that the interests of the following persons are imputed to me: my spouse, minor children, or any general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

In order to avoid a potential conflict of interest under section 208, I agree to divest my equity holding in an issuer that owns an entity regulated by the Securities and Exchange Commission. This equity holding is listed in Attachment A. This divestiture will be made within 90 days of my appointment. Until this divestiture has been completed, I will not participate personally and substantially in any particular matters that will have a direct and predictable effect on the financial interest of this entity, unless I first obtain a written waiver or qualify for a regulatory exemption.

I intend to retain my equity holdings in other issuers not owning entities regulated by the Securities and Exchange Commission. Those entities are listed on Attachment B. I understand that these equity holdings listed in Attachment B may present a potential conflict of interest under section 208(a). I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on my interests in these holdings, unless I first obtain a written waiver or qualify for a regulatory exemption.

I also understand that the interests in registered investment companies listed in Attachment C present a potential conflict of interest under section 208(a). I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on my or my spouse's financial interests in these investment companies, unless I first obtain a written waiver or qualify for a regulatory exemption.

I also understand that the holdings in debt securities listed in Attachment D present a potential conflict of interest under section 208(a), although it has been determined that it is not necessary at this time for me to divest these interests. With respect to these debt securities, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the willingness or ability of the issuer to fulfill its obligations or on the market value of the bond, unless I first obtain a written waiver or qualify for a regulatory exemption.

I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the ability or willingness of the insurance company listed on Attachment E to fulfill its obligation under my insurance policy, unless I first obtain a written waiver or qualify for a regulatory exemption.

Upon confirmation, I will resign from my position as principal with PricewaterhouseCoopers LLP (the "firm"). Upon confirmation, the firm will make a lump-sum payment to me to settle my capital account, retirement, severance, and other matters. Because my severance payment will constitute an extraordinary payment under 5 C.F.R. 2635.503, I will not participate in any particular matters in which the firm is a party or represents a party for two years, unless I obtain a regulatory waiver under section .503. Certain of the holdings in Attachment C are held in 401(k), Keogh and retirement plans sponsored by the firm, and will be settled and included in the lump-sum severance payment.

Upon confirmation, I will also resign my Trustee position with the Atkins Family Trust Foundation, in Arlington, Virginia. For one year following my appointment, I will not participate in any particular matter involving specific parties in which the Atkins Family Trust is or represents a party, unless I am authorized to participate under the provisions of 5 C.F.R. Part 2635, Subpart E.

My spouse is a consultant with TAMKO Roofing Products, Inc., in Joplin, Missouri. She also owns stock in this company. Pursuant to 18 U.S.C. 208, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on this company, unless I first obtain a written waiver or qualify for a regulatory exemption.

If confirmed as Commissioner, to the extent my disqualification is not required by 18 U.S.C. 208, I nevertheless will not participate in any particular matter involving specific parties which is likely to have a direct and predictable effect on the financial interests of a member of my household, where it is determined that the circumstances would cause a reasonable person with knowledge of the relevant facts to question my impartiality in the matter, unless I am authorized to participate under the provisions of 5 C.F.R. Part 2635, Subpart E. In addition, for one year following my appointment, I will not participate in any particular matter involving specific parties in which to my knowledge a person for whom I have provided services as a principal with PricewaterhouseCoopers LLP within the last year is or represents a party, unless I am authorized to participate under the provisions of 5 C.F.R. Part 2635, Subpart E.

Finally, I will provide the appropriate officials with a list of those interests I have retained (or may acquire) in order to support my efforts to avoid conflicts of interest. In addition, I will recuse myself from participation on a case-by-case basis in any particular matter in which, in my judgment, it is desirable for me do so in order to avoid the possible appearance of impropriety, despite the lack of any actual conflicts.

Attachment A to Schedule E – Publicly Traded Equity Securities Owning Entities Regulated by the Securities and Exchange Commission

Metropolitan Life Insurance Co.

Attachment B to Schedule E – Publicly Traded Equity Securities Not Owning Entities Regulated by the Securities and Exchange Commission

Donnelly Corp.
Western Sierra Bancorp
Procter & Gamble
RPM Inc.
Genessee & Wyoming Inc.
Superior Uniform Group Inc.
Eastern Co.
Investors Title Co.
Met-Pro Corp.
Microsoft
Midwest Insurance Co. Ltd.
Del Laboratories Inc.
Capitol Bancorp. Ltd.

Attachment C to Schedule E – Registered Investment Companies

MFS Total Return Fund
Neuberger & Berman Genesis Fund
Northern Trust Short Term Fund

Nuveen Investment Quality Municipal Fund
Nuveen Premier Municipal Income Fund
RMA Tax-Free Fund Inc.
Centennial Tax Exempt Fund
Nuveen Insured Municipal Opportunity Fund
Nuveen Municipal Advantage Fund
Nuveen Insured Premium Income Municipal Fund

Attachment D to Schedule E – Debt Securities

County of Allegheny PA Deferred Int bonds ser C
Allegheny County PA Sanitation Authority Sewer Rev bonds
Arkansas State Dev Finance Authority Comp Accretion bonds ser I
Bellevue Wash Convention Center Authority Special Oblig Rev Bonds
Blue Ridge Regional Jail Authority VA bonds
Butler County OH Hospital Facilities Rev Bonds
Colorado Housing Finance Authority Bonds
Colorado Health Facilities Authority Retirement Facilities Revenue Bonds
Colorado Springs CO School District Nr 11 Bonds
Detroit Michigan Downtown Development Authority Tax Increment Revenue bonds
E-470 Public Highway Authority Colorado Revenue bonds
Elkhart IN Community Schools Building Corp bonds
Fairfax County VA Water Authority Revenue bonds
Houston Texas Water & Sewer System bonds
Illinois Health Facilities Authority Revenue bonds
Latrobe Boro PA Pkg Authority bonds
Lipan Texas Independent School District bonds
New York State Dormitory Authority Capital Appreciation bonds
North Penn PA School District bonds
Ohio Housing Finance Agency bonds
Paris Texas Comb Tax bonds
Skagit Valley Wash College Foundation Student Housing Revenue bonds
Southeastern Public Service Authority VA Revenue bonds
Texas Public Finance Authority State Preservation Board bonds
Upper Occoquan VA Sewer Authority bonds
Virginia Beach VA Development Authority bonds
Virginia Port Authority Port Facilities Revenue bonds
Waxahachie Texas Independent School District Capital Appreciation bonds
St. Louis MO Land Clearance Redevelopment Authority bonds
City of Chicago, Illinois, Capital Appreciation – City Colleges bonds
Chicago, Illinois, Park District Series B bonds
Forney, Texas, Independent School District Capital Appreciation bonds
Illinois State Dedicated Tax bonds due 12/15/17
Illinois State Dedicated Tax bonds due 12/15/19
Lingleville, Texas, Independent School District bonds
Terrell, Texas, Independent School District bonds

Attachment E to Schedule E – Insurance Policies

Metropolitan Life (whole life)
National Life of Vermont (whole life)

RESPONSE TO WRITTEN QUESTIONS OF SENATOR BUNNING FROM HARVEY J. GOLDSCHMID

Q.1. Obviously we do not want to take anyone's rights or move so fast that we falsely accuse or jeopardize a case, but it is very important that the American people see that those who have broken the law in these latest accounting scandals are brought to justice quickly. In your role as a Commissioner will you commit to working toward that end?

A.1. Yes. If confirmed, I will do my utmost to ensure that the Commission enforces the securities laws in a swift and even-handed manner against those who violate them. Our Nation is now witnessing the most dramatic business scandals that have occurred during my professional life. As you suggest, it is essential that the Commission act quickly and decisively when its investigations uncover evidence of wrongdoing. I support the efforts of the Commission's Division of Enforcement in recent months to enforce the securities laws in "real time," and I am committed to the continued execution of thorough, fair, and efficient investigations and civil enforcement actions.

Q.2. Will you, as a Commissioner, do everything you can to see that when promulgating regulations, especially on this accounting bill where there is a difference of opinion between the SEC and Congress, that the SEC follows the intent of Congress?

A.2. Yes. It is the Commission's duty to exercise its rulemaking authority in a way that is faithful to the intent of Congress. If I am confirmed, I will work hard to ensure that every exercise of the Commission's regulatory authority, including its regulatory authority under the new accounting bill, is in accord with the intent of Congress.

RESPONSE TO A WRITTEN QUESTION OF SENATOR AKAKA FROM HARVEY J. GOLDSCHMID

Q.1. The use of soft dollars is opaque and not understood by most individual investors. In a 1998 report, the SEC defined soft dollar practices as arrangements under which products or services other than the execution of securities transactions are obtained by an adviser from or through a broker-dealer in exchange for the direction by the adviser of client brokerage transactions to the broker-dealer. Soft dollar transactions may result in conflicts of interest for advisers and have an impact on investors. What should be done to improve the transparency of soft dollar transactions?

A.1. Client brokerage is an asset of the client, not the adviser. However, investment advisers that manage client portfolios commonly receive soft dollar benefits—such as research, other products, or services—in exchange for directing their clients' trades to particular broker-dealers. Soft dollar arrangements have the potential to create conflicts of interest because the adviser has an incentive to select or recommend a broker-dealer based on the adviser's interest in receiving those benefits rather than on the client's interest in receiving the best execution of trades at the lowest possible rates. While the Commission currently requires advisers to disclose their soft dollar arrangements on Form ADV and to provide that Form to every client, it is my understanding that the Commission

has proposed revisions to Form ADV that would enhance the disclosure of the adviser's soft dollar arrangements and the conflicts of interest they present. If confirmed, I will support efforts to improve the quality of communications between broker-dealers, investment advisers, and their clients. Similarly, I will encourage the staff to consider ways of creating transparency in the increasing use of mutual fund brokerage to reward the sale of fund shares by broker-dealers.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR BUNNING FROM PAUL S. ATKINS

Q.1. Obviously, we do not want to take anyone's rights or move so fast that we falsely accuse or jeopardize a case, but it is very important that the American people see that those who have broken the law in these latest accounting scandals are brought to justice quickly. In your role as a Commissioner will you commit to working toward that end?

A.1. Yes. I believe that the SEC's enforcement role is a vital aspect of its mission. Investor confidence in the markets depends on a strong enforcement effort against those who have broken the rules. It is critical for investors to see that there is an effective, fair enforcer of the rules.

Q.2. Will you, as a Commissioner, do everything you can to see that when promulgating regulations, especially on this accounting bill where there is a difference of opinion between the SEC and Congress, that the SEC follows the intent of Congress?

A.2. Yes. As a creature of statute, the SEC derives its authority from Congress and as an independent agency, it is called upon to interpret and enforce the law. It is essential that the SEC abide by the intent of Congress in its regulatory and enforcement action. As a Commissioner, I will do everything that I can to ensure that my actions and the actions of the SEC comport with that intent.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR AKAKA FROM PAUL S. ATKINS

Q.1. I have a special interest in financial education along with several other of my colleagues on this Committee. In your statement you mention that while at the SEC you were involved in investor education efforts. What is your evaluation of the SEC's current investor education efforts and what could be done to enhance these programs?

A.1. I understand that the SEC's Office of Investor Education and Assistance (OIEA) has been pursuing a number of initiatives to reach investors. For example, in January 2002, the SEC launched a fake "scam" website to warn investors about fraud before they lose money.

When I was on the staff of the SEC, we produced the first brochures—called *Invest Wisely*—aimed at individual investors. I understand that the SEC has continued and expanded this effort. It produces and distributes educational materials in print, and the staff organizes and attends educational events directed at individual investors. In addition, each year Commission staff individually responds to thousands of investor complaints and questions.

In every facet of its investor education program, the Commission works closely in partnership with private organizations, trade associations, and other governmental agencies to leverage its resources and achieve greater impact for its educational materials. I look forward to reviewing the current status of the SEC's program in more detail and exploring with the Chairman, my fellow Commissioners and the staff ways in which to expand this very important effort of the Commission.

Q.2. What is your evaluation of the SEC's current investor education efforts and what could be done to enhance these programs?

A.2. Please see above response to Question 1.

Q.3. The use of soft dollars is opaque and not understood by most individual investors. In a 1998 report, the SEC defined soft dollar practices as arrangements under which products or services other than the execution of securities transactions are obtained by an adviser from or through a broker-dealer in exchange for the direction by the adviser of client brokerage transactions to the broker-dealer. Soft dollar transactions may result in conflicts of interests for advisers and have an impact on investors. What should be done to improve the transparency of soft dollar transactions?

A.3. Currently the Form ADV requires disclosure of soft dollar practices. In my term as Commissioner, I look forward to reviewing the state of communications between investment advisers, broker-dealers, and their customers to assure that there are appropriate disclosures of conflicts of interest and that the disclosure of other key elements of securities transactions are clear and easily understood by investors.

ROBERT NOVAK

SEC chief's critics way off the mark

July 18, 2002

BY ROBERT NOVAK SUN-TIMES COLUMNIST

By July 8, Securities and Exchange Commission Chairman Harvey Pitt had been the corporate corruption scandal's designated punching bag long enough to be on guard. Nevertheless, he was stunned when he read Sen. John McCain's op-ed column in that Monday morning's New York Times calling for his resignation.

The maverick Republican senator never had made a policy suggestion to Pitt. Indeed, the two men never have met. McCain was both riding and building the assault on Pitt by Democrats and the news media. In order to portray the SEC chairman coddling corporate swindlers, what he has done and what he has said have been grossly misrepresented.

This is the kangaroo trial of Harvey Pitt, once extolled as a model securities lawyer. In the mold of past political trials, the case against him is short on evidence and long on insinuation. The real target is George W. Bush, who faces this dilemma: Sack Pitt and admit keeping a fox in the henhouse, or retain him and feed the furor of his critics. Bush told Pitt last week that he is sticking with him.

McCain's July 8 essay calling for tighter government regulation of corporations demanded Pitt's head but devoted few of its 743 words to that end. With Pitt appearing "slow and tepid in addressing accounting abuses," wrote the senator, "he has not distanced himself enough from former clients." The sole basis for those claims: Pitt has not participated in 29 SEC votes, mostly involving former law clients.

McCain's staff picked up the information about the 29 recusals from a June 17 report by Bloomberg News. Neither the news service nor the senator noted that the SEC's workload exceeded 930 cases and that Pitt's two predecessors stayed out of many more cases--triple digits for each--their first year. After Pitt's one year of keeping hands off ex-clients ends next month, he told me, "I'll look at it case by case."

Following McCain's lead, critics have claimed Pitt's recusals cripple the SEC by depriving the five-member SEC of a majority. Actually, thanks to the Democratic-controlled freeze on Bush nominations, four SEC nominees (one sent to the Senate last December) now await confirmation.

On the other most frequently voiced criticism of Pitt, McCain has followed rather than led the crowd. Pitt's "first speech" as SEC chairman, McCain said on ABC's "Good Morning America" July 11, "was that accountants would a kinder and gentler SEC." Senate Majority Leader Tom Daschle, on CNBC's "Hardball" July 9, called for Pitt's dismissal and quoted him as saying: "We want a kinder and gentler SEC. We want to reduce the regulatory burden. We want to reduce the level of enforcement." In truth, Pitt never said what Daschle, McCain and many others claimed.

The newly confirmed Pitt last Oct. 22 mistakenly attempted a light touch in assessing the "risk" of addressing the accounting industry's governing council meeting in Miami Beach. The SEC, he said, "has not, of late, always been a kinder and gentler place for accountants and the audit profession, in turn, has not always had nice things to say about us." Instead of the pledges alleged by Daschle, Pitt only wanted a climate where rules could be made clear to accountants.

On the Fox News Network July 10, House Democratic Leader Richard Gephardt indicated Pitt was among "lobbyists for the accounting industry." That frequently applied label is also wrong. Pitt has never been a registered lobbyist and has never lobbied. As a lawyer, he often represented firms in formal proceedings before the SEC--which is not lobbying.

When Pitt was about to be confirmed unanimously by the Senate a year ago, liberal Democratic Sen. Charles Schumer declared: "He is without question the most talented and respected securities lawyer in the United States." Sen. Paul Sarbanes, the Banking Committee's Democratic chairman, praised Pitt's "extraordinary knowledge of federal securities laws"--attributing that asset partly to the clients he represented.

Harvey Pitt, the SEC's youngest general counsel ever at age 29, returned 26 years later with new recruits to breathe life and intensify oversight at a moribund commission. The political attack, he told me, "has had a devastating effect on this agency." That's the way Washington works.

Robert Novak appears on CNN's "Capital Gang" at 6 p.m. Saturday and "Novak, Hunt and Shields" at 4:30 p.m. Saturday and 10 a.m. Sunday. E-mail: novak evans@aol.com

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NOMINATIONS OF:
DONALD L. KOHN, OF VIRGINIA
AND
BEN S. BERNANKE, OF NEW JERSEY
TO BE MEMBERS OF
THE BOARD OF GOVERNORS OF
THE FEDERAL RESERVE SYSTEM

TUESDAY, JULY 30, 2002

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

The Committee met at 2:05 p.m. in room SD–538 of the Dirksen Senate Office Building, Senator Paul S. Sarbanes (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN PAUL S. SARBANES

Chairman SARBANES. The hearing will come to order.

I am very pleased to welcome before the Committee on Banking, Housing, and Urban Affairs this afternoon Donald Kohn and Ben Bernanke, who have been nominated by President Bush to be Members of the Board of Governors of the Federal Reserve System.

This hearing was originally scheduled for this morning. But the President had his bill signing with respect to the Investor Protection Corporate Accountability Act and therefore we put it off until this afternoon. I hope it did not inconvenience either of our nominees.

Both of these nominees are highly respected economists who, based on their records, appear to be well qualified to serve as members of the Federal Reserve Board of Governors.

Don Kohn is well known to Members of this Committee through his long service at the Fed. A graduate of the College of Wooster in Ohio, he received his Master's and PhD, in economics from the University of Michigan, and then has spent his entire professional career in the Federal Reserve System, first at the Federal Reserve Bank of Kansas City and then he came to Washington and has worked in a number of divisions of the Fed, including being the Chief of the Capital Markets Section. He was the Associate Director of the Division of Research and Statistics, Deputy Staff Director of the Office of Staff Director for Monetary and Financial Policy. From 1987 to 2001, he was Director of the Division of Monetary Affairs of the Fed. And since 2001, has been an adviser to the Board

for Monetary Policy. He has also been Secretary and Economist for the Federal Open Market Committee.

He is the Senior Career Monetary Policy Expert down at the Fed, widely respected for his expertise. And we are very pleased that not only, but I think the Fed staff, have been honored by this nomination to move from a career staff position to be a member of the Board of Governors.

Our research indicates, and I am not altogether vouching for its accuracy, that this has only happened three times previously in the history of the Fed, and this is the first time that it has occurred in the last 25 years. In our view, it is an honor that is well deserved.

Ben Bernanke is currently Howard Harrison and Gabrielle Snyder Beck Professor of Economics and Public Affairs at Princeton—my alma mater, I hasten to add——

[Laughter.]

——and serves as Chairman of Princeton's Economics Department. He received his undergraduate degree from Harvard in 1975, his PhD from MIT in 1979, and he then went to the west coast, where he was first an Assistant Professor of Economics and then Associate Professor at Stanford Business School, and came to Princeton in 1985 as a Professor of Economics.

He is the director of the program in Monetary Economics of the National Bureau of Economic Research and he is the Editor of the *American Economic Review*. Also highly respected as an expert in monetary policy and it is clear that he would bring very strong qualifications to the Board of the Governors of the Federal Reserve.

So we look forward to hearing the opening statements from our witnesses and having an opportunity for some questions.

It is the practice of this Committee to swear in the nominees. So before you give your statements, I would like to ask you to stand and take the oath.

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. KOHN. I do.

Mr. BERNANKE. I do.

Chairman SARBANES. Do you agree to appear and testify before any duly-constituted committee of the U.S. Senate?

Mr. BERNANKE. I do.

Mr. KOHN. I do.

Chairman SARBANES. Thank you very much.

Since we believe, at least continue to believe, to some extent, in the seniority system, and since Don Kohn has been at the Fed for some years and Ben Bernanke is just coming to the Fed, I think we will hear Don Kohn's statement first and then we will go to Dr. Bernanke.

And if either of you wishes, if you have members of your family here that you might want to introduce in your opening or in the course of your statement, we would certainly invite you to do that.

STATEMENT OF DONALD L. KOHN, OF VIRGINIA TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Mr. KOHN. Thank you very much, Mr. Chairman.

I would like to introduce the members of my family. This is my wife, Gail, sitting in the seat I used to occupy.

[Laughter.]

My son, Jeff, daughter-in-law, Sue Matthiesen, mother Pat, and niece, Zoey Kohn.

Chairman SARBANES. Good. Well, we are very pleased to have them here with us.

Mr. KOHN. Chairman Sarbanes and Members of the Committee, I very much appreciate your expeditious consideration of my nomination to be a Member of the Federal Reserve Board. I have enjoyed a productive working relationship with this Committee and its staff over a number of years. Should the Senate confirm my nomination to the Board, I very much look forward to continuing to work with you to promote a strong economy and a robust financial system that serves the needs of all Americans. I am most grateful to President Bush for this nomination and deeply honored by his judgment that my abilities and experience will help the Board to carry out the critical responsibilities you, the Congress, have entrusted to it. Having spent my working life at the Federal Reserve, I may be more aware than most nominees who come before you of both the challenges and the rewards of the position to which I aspire.

Our economy has made considerable progress over the last two decades toward the goals you have set for monetary policy of maximum employment, stable prices, and moderate long-term interest rates. We have enjoyed two exceptionally long economic expansions punctuated by relatively mild recessions, an inflation rate that has reached what many would consider to be a zone of price stability, and relatively low long-term interest rates that have helped to promote wider homeownership. Technological innovation, deregulation, and globalization, by fostering greater economic and financial flexibility and resiliency and more rapid increases in productivity, largely account for this favorable performance. But the conduct of monetary policy surely also has played a role in establishing a background conductive to economic vitality. This policy has been marked by a balancing of discipline and flexibility—the discipline of focusing on long-run price stability as a necessary precondition for maximum employment and moderate long-run interest rates, and the flexibility within that long-term discipline to counter disturbances to the economy and financial markets might threaten maximum sustainable employment as well as stable prices.

Going forward, in order to do its part in promoting good economic performance, the Federal Reserve will continue to be faced with the need to analyze and adapt to a dynamically changing economy and financial markets. Innovation and deregulation in markets and the globalization of finance are affecting the flow of funds between savers and spenders and the distribution of risks and returns in the financial system. These changes, in my view, have not detracted from the effectiveness of monetary policy, and they have increased both economic efficiency and financial stability. But they have also

opened the economy to new kinds of influences and they are altering the channels through which policy affects the economy. In just the last few years, our financial and economic stability has been challenged by crises originating in East Asia and Russia, and by huge variations in asset prices here and abroad as investors strove to peer through considerable fog to evaluate the implications of rapidly changing technologies and market structures. The significance of those asset price movements has been magnified by the growing importance of wealth to household financial conditions.

Policymakers have been required to decipher the shifting forces driving the economy and to adjust policy, sometimes rapidly, to provide a counterweight to developments that threatened to undermine economic performance. Where possible, those policy adjustments have been forward-looking—anticipating the effects of economic forces so as to forestall emerging instabilities. It is a process in which I have been deeply involved, working with policymakers and staff, and I would welcome the opportunity in a new role to bring my experience and expertise to bear on the difficult, but fascinating, issues that confront the Federal Reserve's conduct of monetary policy.

The increasing volume of finance flowing through securities markets, the spread of wealth to more Americans, and the growing prominence of global investors in our financial markets have put an additional premium on the ability of the Federal Reserve to explain its policy to the public. More people from more diverse backgrounds are making important decisions based on their expectations of policy actions and the effects of those actions. When savers and borrowers understand how the Federal Reserve sees the forces developing in the economy relative to its objectives, interest rates and other prices in financial markets are more likely to be set in a way that helps to achieve these objectives. I have worked extensively in my career at the Federal Reserve to help policymakers explain monetary policy. While we have made considerable progress in recent years, improving the clarity, completeness, and timeliness of our various public statements is an ongoing process that must be continued.

As the Congress recognized when it created the Federal Reserve, economic stability rests on a foundation of financial stability. In no area of Federal Reserve responsibilities do changing market structures pose a bigger challenge than in carrying out the supervision and regulation of banks and holding companies. Changes in the legislative framework for the financial sector in recent years have allowed consolidation within the banking sector and, now, between banking and other financial service providers, permitting markets to realize economies of scale and scope in the delivery of services. This consolidation, along with the proliferation of new instruments to price and trade various aspects of risk, I believe, promotes sounder, more diversified, institutions and a system in which both those supplying and using savings have many more alternatives. The regulatory implementation of these new laws needs to allow the markets to evolve with changing preferences and technologies, while preserving competition in the delivery of services and financial stability. It also must protect against the effective spread of the safety net beyond the core depositories for which Congress in-

tended special protection. No depository institution should be insulated from market forces by being considered too big to fail. But because banks do have access to the safety net, market signals are muted by moral hazard. Moreover, as institutions become more complex and deal in a great number of new instruments, markets and managers may find it difficult to evaluate some risks accurately, increasing the changes for unexpected losses. In order to promote efficient resource allocation and maintain financial stability, supervisors must anticipate potential problem areas and must put into place oversight structures that build on existing market signals and risk management and also simulate market pressures where those signals are inadequate.

The growing access to credit markets for all our citizens is another very positive development in our financial system. It has resulted from efforts to eliminate discriminatory practices along with the recognition by lenders that profitable opportunities exist in making credit available to those with lower income and wealth. But regulators, borrowers, and lenders are still adjusting to the expansion of the market. Many borrowers in the so-called subprime segment of the credit markets are having difficulty servicing the additional debt, more difficulty than lenders anticipated, resulting in the need for supervisory actions for a number of bank lenders. In addition, it has increased the opportunities for unscrupulous lenders to take advantage of less well-informed consumers. Clearly, efforts to educate credit users better should have important payoffs. More generally, the key in this area is to find the very difficult balancing point for regulation that allows the markets to generate the greatest number of legitimate alternatives for borrowers while proscribing clearly abusive practices.

Meeting these various challenges will require a strong Federal Reserve System. You have such an institution now. It is widely respected and relied upon, not only to follow the appropriate policies but for its advice in a variety of economic and financial matters. Although the Federal Reserve tends to speak with one voice, in my experience, decisions are preceded by healthy give-and-take among policymakers with diverse views supported by talented and dedicated staff. Should the Senate see fit to confirm my nomination, I am looking forward to adding my own perspective to that dialogue as a policymaker and will do my best to pass on to future generations an institution just as strong as the one its current and past leaders have bequeathed to this generation of Americans.

Thank you, Mr. Chairman. I would be pleased to answer any questions you might have.

Chairman SARBANES. Thank you very much.

Mr. Bernanke, we would be happy to receive your statement.

STATEMENT OF BEN S. BERNANKE, OF NEW JERSEY TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Mr. BERNANKE. Thank you, Mr. Chairman. I would like to start by introducing my support group—my wife, Anna, my son Joel, my daughter Alyssa, my brother-in-law, Victor Friedmann, his wife, Toni Jo Friedmann, and our neighbor, Todd Hunter.

Chairman SARBANES. Good. We are very pleased to have them here with us today.

Mr. BERNANKE. Thank you. Chairman Sarbanes, Senator Gramm, Members of the Committee, I am deeply honored to appear before you today as the President's nominee to serve on the Board of Governors of the Federal Reserve System. If I am confirmed to this important position, I will do my utmost to advance the economic well-being of all Americans.

The opportunity to serve at the Federal Reserve would be a great privilege, as it would allow me to apply in the public interest the fruits of a lifetime of thinking and writing about central banking and the economy. In my academic career of nearly 25 years, I have written widely on topics relating to monetary policy, banking and credit markets, economic growth and business cycles, macroeconomic history, and the statistical analysis of the economy, all of which bear directly on the work of the Federal Reserve. Moreover, over the years I have maintained close contact with the Federal Reserve System, as a consultant, visiting scholar, and adviser; and I have visited and advised the central banks of many industrialized and developing countries.

In various roles during my career, I have also learned how to work with people and to get things done. Among other duties, I have served for the past 6 years as Chair of the Princeton University Economics Department. I also served as the first Director of Princeton's new Center for the Study of Financial Markets; as the Director of the Monetary Economics Program of the National Bureau of Economic Research; as the Editor of the economics profession's leading research journal; and—last, but certainly not least—as a two-term elected Member of the Montgomery Township, New Jersey Board of Education.

One of the remarkable features of the Federal Reserve System is the wide range of its responsibilities, including not only the making of monetary policy but other important areas such as financial regulation and supervision, consumer protection, payments systems, international finance, and others. Although at present my greatest expertise is in monetary policy and macroeconomics, I am keenly interested in and broadly familiar with each of the Fed's other areas of responsibility, and if I am confirmed, I look forward to learning a great deal more. I particularly look forward to interacting with, and learning from, both colleagues on the Board and the Federal Reserve's able staff.

Let me turn briefly to issues of policy and the current economy. The Federal Reserve has considerable operational independence, but ultimately derives its legitimacy and powers solely from its legislative mandate. I would like to take this opportunity to strongly affirm my support for the monetary policy goals set for the Federal Reserve by Congress in the Federal Reserve Act: maximum employment, stable prices, and moderate long-term interest rates. While one can always hope to do better, I think the Federal Reserve has, on the whole, done a remarkably good job of promoting these three objectives over the past 20 years or so.

In my view, a key operational element in the Fed's success at achieving its tripartite objectives has been the Federal Open Market Committee's emphasis on keeping the rate of core inflation low

and stable. Low and stable inflation is intrinsically beneficial, as it reduces the need for households and firms to expend time and resources to protect themselves from the adverse effects of rapidly and erratically changing prices. Consistently low inflation also directly promotes the objectives of high employment and rapid economic growth, by providing a stable monetary environment in which firms and markets can function most efficiently. In a low-inflation environment, lenders are less concerned about erosion of their principal, and so nominal interest rates tend to be low.

Finally, a strong commitment to low and stable inflation, by moderating and anchoring the public's inflation expectations, actually enhances the ability of monetary policy to respond actively to short-run economic disturbances when necessary.

For example, during the past year, the Federal Reserve was able to cut interest rates quite aggressively without engendering significant inflationary pressures or igniting a wage-price spiral. Public confidence that inflation would be kept under control was essential to giving the Federal Reserve this heightened flexibility.

In my academic writings, I have argued that the efficacy of monetary policy at achieving its mandated objectives could be further improved by the Fed's adoption of an approach known as "inflation targeting." In anticipation of possible questions, let me say a bit more about this proposal. The main operational change under inflation targeting would be that the Fed, in consultation with the executive and legislative branches, would announce an explicit numerical objective for core inflation over the medium term, say 1 to 2 years.

For example, allowing for the upward biases in inflation measurement and a zone of safety to avoid accidental deflation in prices, an inflation target in the range of 1 to 2 percent per annum for the core PCE deflator might be a good initial choice, although some might reasonably disagree about either the number or the choice of index. As part of the targeting process, the Federal Reserve would report to Congress its expectations for future inflation, its reasons for any target misses, and its projected trajectory for bringing inflation to its targeted level.

It is important to stress that inflation targeting, as I interpret it, would not represent a major departure from the current practice of U.S. monetary policy or a change in policy objectives. Rather, its primary goal would be to build on policy successes of the past two decades by strengthening the Federal Reserve's institutional commitment to the approach used by the Fed under Chairman Volcker and Chairman Greenspan. As I discussed a moment ago, the center piece of this approach is an emphasis on keeping the rate of core inflation low and stable. Based on the experiences of a number of other countries that have adopted this model, I believe that an explicit inflation target would improve further the Fed's ability to reach all three of the goals set forth in the legislative mandate for monetary policy. Among the potential advantages of an explicit inflation target are increased stability of the public's inflation expectations, lower economic and financial uncertainty, increased central bank credibility, greater continuity and consistency of policy, and, importantly, enhanced accountability of the Fed. Although I am favorably disposed toward these incremental changes in the current

framework of U.S. monetary policy, I know that not everyone agrees with this view, and that there are important, substantive arguments to be made on both sides of the issue. I look forward to discussing these ideas with Federal Reserve colleagues and others interested in the making of monetary policy.

Turning finally to the current economic situation: In recent months, investors have been battered by sharp declines in equity prices, not only in the United States, but in many other countries as well. The losses in wealth are large and serious indeed. Equally serious and disturbing is the rash of corporate and accounting scandals that have certainly played a role in the stock market's plunge. Financial markets cannot do their job of efficiently allocating capital and sharing risk if investors do not feel that they are receiving accurate and timely information, or if they fear that those who should be stewarding their funds cannot be trusted to do so honestly. I fully support the efforts of Congress and the President to restore investor confidence in the accuracy and reliability of financial statements and in the trustworthiness of those who manage our corporations and financial institutions.

Although the fall in equity prices is frightening and dispiriting for many, I do not think distinctions need to be made. Saturation coverage by cable TV networks notwithstanding, the stock market is not the whole economy. While the gyrations of the Dow or Nasdaq attract the most attention, the broader economy—as reflected in the daily activities of American workers, managers, business owners, and entrepreneurs—has overcome a significant part of the effects of last year's recession and the September 11 terrorist attacks, and by most indications is continuing to grow. Most impressive is the fact that worker productivity continues to expand rapidly—at more than an 8 percent rate in the first quarter—despite adverse cyclical conditions. New capital and innovative technologies have both played an important role in this resurgence. To be sure, the cumulative decline in the stock market poses risks for economic growth over the rest of the year. Despite our current difficulties, however, we should not lose sight of the underlying strength of our economy.

To conclude, I am grateful for this opportunity to appear before this Committee. These are indeed challenging times for the United States, for our economy, and for the Federal Reserve itself. I look forward to contributing to the making and implementation of sound economic policies. If I am confirmed, I will devote myself to becoming a constructive and effective Member of the Board of Governors of the Federal Reserve.

Thank you. I will be pleased to answer any questions.

Chairman SARBANES. Well, I want to thank both of you for your statements. We will go into 5 minute rounds of questioning now, unless any Member has an opening statement he wants to make.

COMMENT OF SENATOR JIM BUNNING

Senator BUNNING. I would just like to put one into the record.

Chairman SARBANES. Without objection, so ordered.

I am interested in the question of the transparency of the decisionmaking of the Federal Reserve so that the public can gain a better understanding. I would just like to hear your views on how

important you think that is and what steps might be taken to improve the transparency of board decisions.

Mr. KOHN. Thank you, Mr. Chairman. I think it is absolutely crucial. As I indicated in my opening statement, the Federal Reserve has become more transparent over the years, announcing our decisions, giving reasons for the decision, announcing the votes now. I think we have improved the understanding of the financial markets and the public at large. We have helped the accountability of the Federal Reserve with you, the Congress, by becoming more open. When people understand what we are trying to do, when markets understand what we are trying to do, what issues we are dealing with, how we see the forces developing in the economy, they can evaluate that and they are more likely to anticipate our actions, to work with us to stabilize financial markets and stabilize the economy.

So, I think transparency is very crucial to the effectiveness of monetary policy and I believe there have been a number of studies coming out in recent years showing that the increased transparency at the Federal Reserve has, in fact, allowed markets to better anticipate what we are going to do and act in a stabilizing fashion. I do not have concrete proposals for what we could do next to increase our transparency. This is a subject that is under constant review at the Open Market Committee. Each step tends to be small and incremental, in part, because once you take it, you cannot take it back again. So you need to be sure that it is what you intend to do. I think we could increase the clarity of what we are saying, help people understand what it is. This is just something that we need to keep working at, make small steps, get the feedback from the market and the public as to what they would like and what works and does not work, and keep pushing at it.

Chairman SARBANES. Good. Dr. Bernanke.

Mr. BERNANKE. I agree with Dr. Kohn that transparency is very important for effective operation of monetary policy. It reduces uncertainty. It helps markets anticipate and respond more effectively to monetary policy changes. It is also important to educate markets and the public about what monetary policy is trying to do in order to improve decisionmaking. And finally, clarity and transparency are an important part of the accountability of the Federal Reserve in representing its goals and objectives and how it is going to approach those goals and objectives.

I want to commend the Federal Reserve. On the whole, there has been a remarkable movement over the last decade or so toward greater transparency in terms of releasing minutes, releasing transcripts, providing additional information about the so-called bias of policy and so on. I think there is more that could be done. One suggestion which I have already made in my statement was to announce an inflation target. Perhaps the minutes and other information could be redacted to allow them to be released more quickly. I would like to have some experience on the board before I make too many concrete recommendations.

Chairman SARBANES. That is a prudent point of view.

[Laughter.]

Mr. BERNANKE. But I think that, in general, my philosophy is that the more transparency that can be provided, the better, and I would work toward that goal.

Chairman SARBANES. I am interested in your statement—you have this inflation target. What is your unemployment rate target?

Mr. BERNANKE. There is no unemployment rate target, Senator because what we try to achieve is the greatest possible growth rate and the lowest possible unemployment that is consistent with an economy that is not overheating.

Chairman SARBANES. You are going to give an inflation target, but not an unemployment rate target.

Mr. BERNANKE. Because, conceptually, sir, we have a basic idea of what is the optimal inflation rate based on considerations——

Chairman SARBANES. Well, now, the European Central Bank has a target of inflation below 2 percent. But it has been running there a few tenths of a point higher than 2 percent.

But, at the same time the growth in employment figures have been disappointing, critics have been charging that the ECB is responding too timidly to the European economic slowdown. They argue that while it is important to maintain confidence that inflation will not grow too rapidly, it is also important to maintain confidence that output growth is being stabilized, since businesses make their hiring and investment decisions on expectations for growth.

If they lack confidence that the Central Bank, or if they feel that the Central Bank is too committed to an inflation target that will allow growth to stagnate, can't this result in lower growth and raise unemployment over a sustained period of time?

Mr. BERNANKE. I agree with the critics of the European Central Bank, Senator. The European Central Bank has a hierarchical target which places the inflation rate above any other objective. My view is that low inflation is in part an objective in itself, but it is also an instrumental means by which we achieve maximum employment and rapid economic growth.

I would take the view that an inflation target actually increases the flexibility and the ability of a central bank to respond to short-run economic disturbances to promote employment, to promote growth. That happens in two ways. First, low inflation tends to lead to long-run economic growth by creating a more stable monetary environment. But second, and I think very importantly, by maintaining low and stable inflation expectations, the Central Bank actually releases itself to have more ability to respond to short-run economic disturbances.

Chairman SARBANES. Well, let me ask you this question, then I will yield to my colleagues.

Mr. BERNANKE. Yes.

Chairman SARBANES. If the United States had inflation slightly above the personal target you have set out in your statement, but also had very weak output growth, how would you reconcile that situation? Particularly, how would you reconcile it with the legal mandate that has been given to the Federal Reserve by statute?

Mr. BERNANKE. I would attempt to restore the economy to its equilibrium level, which is the level which promotes maximum employment and growth.

I would not try to do that by creating artificial inflation or extremely high inflation. But I would try to turn the economy to its normal potential growth path as quickly as possible.

Chairman SARBANES. What would that mean in that instance, though, when the inflation is above your target rate, and yet, the output growth is very weak?

Mr. BERNANKE. I would not return inflation to its target at the expense of creating a deep recession in the economy. I would take a gradual approach and I would try to make sure that the economy was on a stable, maintainable, healthy growth path as part of that process.

Chairman SARBANES. Senator Gramm.

COMMENTS OF SENATOR PHIL GRAMM

Senator GRAMM. Your thesis is that a low inflation rate promotes an environment in which economic growth is maximized and unemployment is minimized. Right?

Mr. BERNANKE. That is correct, sir.

Senator GRAMM. Let me be brief, Mr. Chairman, because we are going to have a vote here in a minute and everybody is going to have trouble getting back.

Let me say, I think these are two excellent nominees. We have been blessed with a lot of good people on the Federal Reserve Board. The Federal Reserve Bank has become in the post-war period our most successful independent agency. And I want to thank both of you for your willingness to serve.

Let me say, in the case of Dr. Kohn, I do not think we should have staff members go on the board every day. But every once in a while, it is a good thing. It encourages good people to come to work at the Fed. It shows that you can literally come in at the bottom and end up at the top. It is unusual. But I think in that sense, it is a good thing.

So, I want to commend both of you. Let me stop because I know other people want to say something or ask a question before we have this vote in 6 minutes.

Chairman SARBANES. Senator Reed.

COMMENTS OF SENATOR JACK REED

Senator REED. Thank you very much, Mr. Chairman.

Mr. Bernanke, you say your thesis is low interest rates tend to promote economic growth. But there is an example of Japan, where interest rates have been very low and economic growth has been anemic.

As the author of *Japanese Monetary Policy—A Case of Self–Induced Paralysis* might you draw some conclusions or give us some insights about the differences?

Mr. BERNANKE. I would be glad to, Senator. I have in fact advised the Bank of Japan, I think their monetary policy is very poor.

One of the benefits of an inflation target is that it avoids deflation as well as excessive inflation. Their deflationary policies have been highly detrimental to their economy. They should set an inflation target. They have been called upon to set an inflation target of, say, 1 to 2 percent positive, not negative, inflation. They could achieve that if they had the will and the desire to do so.

Japan is an excellent example of a country without an inflation target which is allowing prices and the economy to drift without direction, without a frame of reference. And it is an excellent case study for exactly my point. Their performance is due almost entirely to very poor monetary policy which has been allowing prices to decline now for almost a dozen years.

Senator REED. Let me follow up. There has been some discussion in the financial press at least, of are there similarities to the Japanese experience here in the United States that, even though we are maintaining historically very low interest rates, our growth—we are in a recession—the growth is coming back somewhat feebly. What would you say to those types of discussions?

Mr. BERNANKE. Sir, while the Federal Reserve needs to pay close attention to the state of the economy and the state of inflation, I think the risks of the United States falling into a Japanese-style deflation trap are extremely small.

There are two reasons for that. First, our banking system is far sounder and it is not subject to the massive, nonperforming loan problem that the banks of Japan now face. Second, I believe the Federal Reserve, whether it has an explicit inflation target or not, fully understands the importance of maintaining or avoiding deflation in prices. And so, I think that we have the safeguards and the initial conditions that allow us to avoid such a trap.

Senator REED. Thank you. Dr. Kohn, why don't you comment on this line of questioning?

One other point that I would put in is that the presumption that we have a sound banking system is one that I share. But we have to consider the possible effects of the current downturn in corporate America—declining stock prices, bankruptcies, loans that were good 6 months ago, and now might be questionable. Dr. Kohn, your comments?

Mr. KOHN. Senator, I think we still have a sound banking system, even if it is facing some problems, and its bad loans are likely to get a little worse. The capital level of our banks is extremely high. They are very well capitalized.

I think even more than the soundness from a capital perspective, is the way our financial system and our economy operates relative to Japan's. It is a much more flexible, diverse financial system, so that if one type of institution has trouble, there are other sources of finance for most businesses and households, and that is a real strength. It is a much more flexible economy, much more adaptable economy.

And I would say another very big difference between the United States and Japan is that our legislators have stepped up to the problem and addressed the emerging issues, instead of trying to sweep them under the rug or ignore them and hope they go away.

So we have a political and an economic system that is more immune to difficult downward problems.

I completely agree with Dr. Bernanke's analysis that this is not really an issue in the United States for other reasons as well. The Federal Reserve, although we do not have an inflation target *per se,* is very aware of the risks of a soft economy enduring, of inflation getting lower and perhaps turning into deflation.

The FOMC has said in its minutes that it has addressed this issue and this problem, and will act aggressively to head off such a thing if it looks like it is occurring. My best guess is it is not occurring. The economy is growing and recovering. I do not think we have such a problem. But it is always at least a little bit of a risk, and the lower the inflation rate is, the bigger the risk is. But the FOMC is very aware of those risks.

Senator REED. Thank you, Mr. Chairman. I note that the votes are pending, so I will stop here. But just one final comment.

As Vice Chairman of the Joint Economic Committee, we have been very concerned about the quality of Federal financial statistics, and the ability to generate those statistics. And I would hope that, at the Federal Reserve, you two would share the interest in institutionally ensuring that we have even better numbers than we have today.

Thank you, Mr. Chairman.

Chairman SARBANES. I might note that Chairman Greenspan, who never recommends a spending program to the Congress, has recommended that we do better by the statistic. It is not a big item, but nevertheless—Senator Bunning.

Senator BUNNING. Thank you, Mr. Chairman.

This is for Dr. Kohn. As you know from our personal meeting, I have very big concern about having an independent governors board for the Federal Reserve. Given your long employment with the Fed, how can you assure me that you will be independent?

Mr. KOHN. Senator, you have my word for it. I have had a long association with the Federal Reserve, 32 years. I have worked closely with Chairman Greenspan for the last 15 years. I think one reason why he and other governors have found me a useful sounding board, someone they like to work with, is that I interact well with them and will tell them when I think their analysis is off, or when I think policy——

Senator BUNNING. That is my next question. So since we have a very short time, I am going to get more than one question in. Give me an example of when you either privately or publicly disagreed with the Chairman. And if privately, did you inform him of the disagreement?

Mr. KOHN. I have had a lot of private conversations with the Chairman as a staff member. I certainly have told him when I thought that, as I just noted, the analysis wasn't quite right. And I recognize that in my new role, that I will need to take these disagreements into the FOMC, into the Board, that it will be my job to persuade other voting members of the Board, of the FOMC, that my analysis is correct and they should do what I recommend.

Senator BUNNING. Last question, and this is for both of you.

Do you think the Chairman of the Federal Reserve should try to influence security markets or any other markets by coming to the market itself and trying to talk the market up or down, in his testimony before the Banking Committee?

Mr. KOHN. No, sir, I do not think that that is something he should be doing. I think he should be talking about the markets as they interact with monetary policy and our pursuit of our Congressional goals. So he cannot not discuss the markets, but he

should discuss them in the context of how they affect the pursuit of the goals.

Senator BUNNING. Doctor.

Mr. BERNANKE. As I have written in some papers, including one that was presented to the Federal Reserve's annual conference at Jackson Hole, Wyoming, I believe that the Federal Reserve should not attempt to target asset prices. It should respond at most to the influence of asset prices on the economy. That is, it should keep its eye on the economic ball, so to speak, and not try to influence or target asset prices.

Senator BUNNING. Do you think there is any more room right now for lowering of interest rates in the current circumstances we are sitting in?

Mr. BERNANKE. We are in a situation where, I would call it a vigilant optimism, is probably the right approach.

As I said in my statement, I think the economy is recovering. On the other hand, there is also no sign of inflation. So we can watch carefully and see how the economy progresses over the next quarter or two. We are getting GDP numbers tomorrow. If necessary, we certainly could do so.

Senator BUNNING. Doctor.

Mr. KOHN. Senator, I think we do have an economy that is advancing. There are a lot of positives in the outlook, including productivity growth, low interest rates already that stimulate consumption.

Senator BUNNING. Thank you.

Thank you, Mr. Chairman.

Chairman SARBANES. Senator Corzine.

COMMENTS OF SENATOR JON S. CORZINE

Senator CORZINE. Thank you, Mr. Chairman.

These are two extraordinary candidates. Anybody from New Jersey with a beard is okay with me.

[Laughter.]

Chairman SARBANES. A rather small club, though, isn't it?

Senator CORZINE. Yes.

[Laughter.]

And I think on top is joining that future recommendation.

I also have worked with Dr. Kohn for the better part of 20 years in my private career and find him an exceptional public servant with great judgment. And I assure you, Senator Bunning, if there is anybody who will speak his mind, it is Dr. Kohn. He just likes to do it out of the limelight.

Senator BUNNING. Will I know about it?

Senator CORZINE. I am sure that if you read the minutes carefully, you will find his opinions very clearly espoused.

Let me ask a general question which will lead to a specific. Both of you I would like to hear your comments on. Do you think our economy is over-regulated and is it stifling entrepreneurship?

Mr. BERNANKE. I will try this one first.

As an economist, I have a tremendous appreciation for the power of markets. Free markets are a tremendous source of wealth creation, the most tremendous source of wealth creation that has ever been created.

Free markets does not mean anarchy, though. Free markets have to be carefully monitored. There have to be ground rules that channel the energies of market participants toward constructive ends, that allow information to be revealed, and that allow markets to allocate resources in the most productive way.

In the U.S. economy, there are certainly areas where regulation no doubt is not optimal, and areas where regulation perhaps should be increased. On the whole, it is the most market-oriented and properly regulated economy in the world, and I think that is a major reason why our growth and our development has been so impressive.

Mr. KOHN. Senator, I do not think you can really generalize about the whole economy. You need to look at it on a market-by-market or situation-by-situation basis.

The economy has benefited enormously from the deregulation that has occurred over the last 30 years. I think it has freed up lots of markets to the benefit of consumers and businesses, particularly consumers. Think about airlines and trucking and things like that.

So, I think we should be continually looking for opportunities to allow those market forces to work and to work more, provided there can be seen to be enough competition in the markets so that the benefits of the market forces flow through to the consumers. That does not mean that all we should be doing is looking for deregulation. Things happen on occasion that suggest that——

Senator CORZINE. Let me ask a specific with regard to the derivatives market, and particularly with regard to energy, natural gas, and electricity markets. Derivatives particularly, but the markets themselves. Either or both.

Mr. KOHN. I do not really have any expertise in those markets, Senator.

I think before I would support additional regulation there, I would want a thorough analysis of what was going on and is going on. But I would not rule out that possibility if that is what that analysis showed.

Mr. BERNANKE. Derivatives are, on the whole, a very valuable tool. They allow all kinds of risk-sharing, various ways of financing various kinds of projects and so on. I would be very hesitant to do anything that would eliminate their use.

From the Federal Reserve's perspective, the Federal Reserve is trying to create very sophisticated monitoring systems that will appropriately assess capital charges against different types of derivative books.

Like Dr. Kohn, I am not very familiar with the energy situation. My impression is that there were some problems with the deregulatory process as well in the energy market which interacted with some of the risk-taking in derivatives. The same thing happened in the savings and loan industry. You had some deregulation, which was not the best, and it interacted with risk-taking on the part of individuals, to create a problem. So, I think the whole situation needs to be rethought. I do not think that derivatives are the center of the problem.

Senator CORZINE. Thank you.

Thank you, Mr. Chairman.

Chairman SARBANES. Senator Miller.

COMMENTS OF SENATOR ZELL MILLER

Senator MILLER. I think you answered the question that I had.

By the way, two very good nominees and thank you for your willingness to serve.

I was going to ask the question which I have asked Chairman Greenspan the last two times he has been with us, and he was very forthcoming in his reply. And that was, have either of you formulated a view on the Feinstein derivatives piece of legislation?

Mr. KOHN. I have not, Senator.

Mr. BERNANKE. Neither have I, sir.

Senator MILLER. I believe you need to be looking at it.

Thank you, Mr. Chairman.

Chairman SARBANES. I will say to my colleagues, of course we have a vote on and we need to go to the vote. I would be happy to come back if colleagues want to pursue the dialogue.

Otherwise, it is my intention to bring the hearing to a close. These are very important positions and the term actually is more than twice the term of a Senator, just to underscore the importance of these positions. But if not, it is my intention to bring the hearing to a close.

Let me say that I am appreciative that both of you in your statements made reference or set out the monetary policy goals that have been set for the Federal Reserve by the Congress in the statute. The Federal Reserve is a creature of the Congress—maximum employment, stable prices, and moderate long-term interest rates.

Occasionally, we get nominees who come before us and they do not really know the statutory standard that they are supposed to be putting into place in policy terms. It is encouraging, and reassuring, I guess would be a better word. It is reassuring, at least to this Member, that both of you have clearly integrated those statutory goals into your statements.

I spoke with Senator Gramm. We are going to try and see if we cannot put together a quorum of the Committee tomorrow to try to report you out. If we can do that, that would open up the possibility, although we do not control, of course, the floor calendar. But at least it would get you on the calendar and open the possibility that you might actually be confirmed by the Senate before the Senate leaves at the end of the week for the August recess. And that would then make it possible for you to move in and assume these assignments.

As I indicated at the outset, I agree with my colleagues that these are two very good appointments. I commend the President for making them, and we look forward to trying to get you on the job.

Thank you for being here.

Mr. KOHN. Thank you very much, Mr. Chairman.

Mr. BERNANKE. Thank you, Mr. Chairman.

Chairman SARBANES. The hearing stands adjourned.

[Whereupon, at 2:56 p.m., the Committee was adjourned.]

[Prepared statements and biographical sketches of the nominees supplied for the record follow:]

PREPARED STATEMENT OF SENATOR JIM BUNNING

I would like to thank you, Mr. Chairman, for holding this nomination hearing and I would like to thank our nominees for coming before us today.

I don't think it has been any secret that I have occasionally disagreed with the Chairman of the Federal Reserve, Dr. Alan Greenspan. I think he sometimes starts getting involved in things that he really is not supposed to worry about, instead of concentrating on monetary policy. To be fair, many times he gets involved and comments on things that are not under his job description because Members of Congress ask him for his opinion. I just wish he would decline to answer those questions.

I do think that there has been a problem at the Fed, one we are trying to correct. I believe there has not been a lot of independent thought over there. Obviously the Chairman is a very intelligent and well respected man. I am sure he can be very persuasive and possibly even intellectually intimidating to some especially when the rest of the Board is going along. But we think all of the board members are smart. We would not vote for them if we didn't.

What I want of the individual governors are strong people who will not be afraid to speak up when they think the Chairman is wrong. I want people who are not afraid to be the lone dissenting vote. We need strong, independent Fed governors who are willing to challenge the status quo and to make the hard call. We do not need governors who never question the chairman, or other board members, who will never take the contrary view.

This is a 14 year term we are voting on. If we screw it up, it will be a long time before we can fix it. Many of us won't around be here to fix it. If our two nominees can convince me that they will be independent voices who are not afraid to be the lone dissenter, they will have my support for their nomination.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF DONALD L. KOHN

MEMBER-DESIGNATE OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

JULY 30, 2002

Chairman Sarbanes, Senator Gramm, Members of the Committee, I very much appreciate your expeditious consideration of my nomination to be a Member of the Federal Reserve Board. I have enjoyed a productive working relationship with this Committee and its staff over a number of years. Should the Senate confirm my nomination to the Board, I very much look forward to continuing to work with you to promote a strong economy and a robust financial system that serves the needs of all Americans. I am most grateful to President Bush for this nomination and deeply honored by his judgment that my abilities and experience will help the Board to carry out the critical responsibilities you, the Congress, have entrusted to it. Having spent my working life at the Federal Reserve, I may be more aware than most nominees who come before you of both the challenges and the rewards of the position to which I aspire.

Our economy has made considerable progress over the last two decades toward the goals you have set for monetary policy of maximum employment, stable prices, and moderate long-term interest rates. We have enjoyed two exceptionally long economic expansions punctuated by relatively mild recessions, an inflation rate that has reached what many would consider to be a zone of price stability, and relatively low long-term interest rates that have helped to promote wider homeownership. Technological innovation, deregulation, and globalization, by fostering greater economic and financial flexibility and resiliency and more rapid increases in productivity, largely account for this favorable performance. But the conduct of monetary policy surely also has played a role in establishing a background conducive to economic vitality. This policy has been marked by a balancing of discipline and flexibility—the discipline of focusing on long-run price stability as a necessary precondition for maximum employment and moderate long-run interest rates, and the flexibility within that long-term discipline to counter disturbances to the economy and financial markets that might threaten maximum sustainable employment as well as stable prices.

Going forward, in order to do its part in promoting good economic performance, the Federal Reserve will continue to be faced with the need to analyze and adapt to a dynamically changing economy and financial markets. Innovation and deregulation in markets and the globalization of finance are affecting the flow of funds be-

tween savers and spenders and the distribution of risks and returns in the financial system. These changes, in my view, have not detracted from the effectiveness of monetary policy, and they have increased both economic efficiency and financial stability. But they have also opened the economy to new kinds of influences and they are altering the channels through which policy affects the economy. In just the last few years, our financial and economic stability has been challenged by crises originating in East Asia and Russia, and by huge variations in asset prices here and abroad as investors strove to peer through considerable fog to evaluate the implications of rapidly changing technologies and market structures. The significance of those asset price movements has been magnified by the growing importance of wealth to household financial conditions. Policymakers have been required to decipher the shifting forces driving the economy and to adjust policy, sometimes rapidly, to provide a counterweight to developments that threatened to undermine economic performance. Where possible, those policy adjustments have been forward looking-anticipating the effects of economic forces so as to forestall emerging instabilities. It is a process in which I have been deeply involved, working with policymakers and staff, and I would welcome the opportunity in a new role to bring my experience and expertise to bear on the difficult, but fascinating, issues that confront the Federal Reserve's conduct of monetary policy.

The increasing volume of finance flowing through securities markets, the spread of wealth to more Americans, and the growing prominence of global investors in our financial markets have put an additional premium on the ability of the Federal Reserve to explain its policy to the public. More people from more diverse backgrounds are making important decisions based on their expectations of policy actions and their effects. When savers and borrowers understand how the Federal Reserve sees the forces developing in the economy relative to its objectives, interest rates, and other prices in financial markets are more likely to be set in a way that helps to achieve these objectives. I have worked extensively in my career at the Federal Reserve to help policymakers explain monetary policy. While we have made considerable progress in recent years, improving the clarity, completeness, and timeliness of our various public statements is an ongoing process that must be continued.

As the Congress recognized when it created the Federal Reserve, economic stability rests on a foundation of financial stability. In no area of Federal Reserve responsibilities do changing market structures pose a bigger challenge than in carrying out the supervision and regulation of banks and holding companies. Changes in the legislative framework for the financial sector in recent years have allowed consolidation within the banking sector and, now, between banking and other financial service providers, permitting markets to realize economies of scale and scope in the delivery of financial services. This consolidation, along with the proliferation of new instruments to price and trade various aspects of risk, I believe, promotes sounder, more diversified, institutions and a system in which both those supplying and using savings have many more alternatives. The regulatory implementation of these new laws needs to allow the markets to evolve with changing preferences and technologies, while preserving competition in the delivery of services and financial stability. It also must protect against the effective spread of the safety net beyond the core depositories for which Congress intended special protection. No depository institution should be insulated from market forces by being considered "too big to fail." But because banks do have access to the safety net, market signals are muted by moral hazard. Moreover, as institutions become more complex and deal in a great number of new instruments, markets and managers may find it difficult to evaluate some risks accurately, increasing the chances for unexpected losses. In order to promote efficient resource allocation and maintain financial stability, supervisors must anticipate potential problem areas and must put in place oversight structures that build on existing market signals and risk management and simulate market pressures where those signals are inadequate.

The growing access to credit markets for all our citizens is another very positive development in our financial system. It has resulted from efforts to eliminate discriminatory practices along with the recognition by lenders that profitable opportunities exist in making credit available to those with lower income and wealth. But regulators, borrowers, and lenders are still adjusting to the expansion of the market. Many borrowers in the so-called subprime segment of the credit markets are having difficulty servicing the additional debt, more difficulty than lenders anticipated, resulting in the need for supervisory actions for a number of bank lenders. In addition, it has increased the opportunities for unscrupulous lenders to take advantage of less well-informed consumers. Clearly, efforts to educate credit users better should have important payoffs. More generally, the key in this area is to find the difficult balancing point for regulation that allows the markets to generate the

greatest number of legitimate alternatives for borrowers while proscribing clearly abusive practices.

Meeting these various challenges will require a strong Federal Reserve System. You have such an institution now. It is widely respected and relied upon, not only to follow the appropriate policies but for its advice in a variety economic and financial matters. Although the Federal Reserve tends to speak with one voice, in my experience decisions are preceded by healthy give-and-take among policymakers with diverse views supported by talented and dedicated staff. Should the Senate see fit to confirm my nomination, I am looking forward to adding my own perspective to that dialogue as a policymaker and will do my best to pass on to future generations an institution just as strong as the one its current and past leaders have bequeathed to this generation of Americans.

Thank you. I would be pleased to answer any questions you might have.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: **Kohn** (Last) **Donald** (First) **Lewis** (Other)

Position to which nominated: Member, Board of Governors of the Federal Reserve System

Date of nomination: 11 July 2002

Date of birth: 07 November 1942 (Day) (Month) (Year) **Place of birth: Philadelphia, Pennsylvania**

Marital Status: Married **Full name of spouse: Gail Liebensberger Kohn**

Name and ages of children: Laura Kohn – 35
Jeffrey Donald Kohn – 32

Education:

Institution	Dates attended	Degrees received	Dates of degrees
College of Wooster	9/60-6/64	B.A.	1964
University of Michigan	9/64-12/70	MA, Ph.D.	1971

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships and any other special recognitions for outstanding service or achievement.

Distinguished Achievement Award, The Money Marketeers of New York University - 2002
Distinguished Alumni Award, College of Wooster - 1998

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
American Economic Association		1965 – Present
Appalachian Mountain Club		1975 – Present
WETA		1975 – Present
Washington Area Bicycle Association		1977 – Present
Nature Conservancy		1985 – Present
National Wildlife Federation		1985 – Present
WAMU		1990 – Present
BoatUS		1991 – Present
Maryland Public Television		1994 – Present

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and inclusive dates of employment.

Financial Economist, Federal Reserve Bank of Kansas City, Kansas City, Missouri 1970 – 1975

Instructor, Park College, Parkville, Missouri 1973 – 1975

Economist, Government Finance Section, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 1975 – 1978

Instructor, University of the District of Columbia, Washington, D.C. 1976 – 1978

Chief, Capital Markets Section, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 1978 – 1981

Associate Director, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 1981 – 1983

Deputy Staff Director, Office of the Staff Director for Monetary and Financial Policy, Board of Governors of the Federal Reserve System, Washington, D.C. September 1983 – June 1987

Deputy Director, Monetary Policy and Financial Markets, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. June 1987 – October 1987

Director, Division of Monetary Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. October 1987 – July 2001

Advisor to the Board for Monetary Policy, Office of Board Members, Board of Governors of the Federal Reserve System, Washington, D.C. July 2001 – Present

Secretary and Economist, Federal Open Market Committee, Board of Governors of the Federal Reserve System, Washington, D.C. May 1987 – Present

Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part time service or positions.

Worked for the Federal Reserve System since 1970. See employment record above.

Published Writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

See attached publications list.

Political Affiliations and activities: List memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None

List of Publications
Donald L. Kohn*

"Thirty-two Years of Monetary Policy—Some Lessons Learned," The 26th Annual Distinguished Achievement Awards Dinner, The Money Marketeers of New York University, The Roosevelt Hotel, New York City, (June 2002); posted on website at *www.moneymarketeers.org*.

"Some Issues in Inflation Targeting: The View from Outside," *Inflation Targeting: Theories, Empirical Models and Implementation in Pacific Basin Economies,* edited by Myung-Chang Chung, The Bank of Korea, pp. 3-16, (January 2002).

"What Should the Federal Reserve Do as Treasury Debt is Repaid?" *Journal of Money, Credit, and Banking,* Vol. 34, No. 3 (forthcoming August 2002, Part 2).

"Whither Central Banking Research?, A Comment on Charles Goodhart: Whither Central Banking?" *Evolution and Procedures in Central Banking,* edited by David E. Altig and Bruce D. Smith, Cambridge University Press, (forthcoming 2002).

"Comments on 'Transparency and Accountability,'" *The Future of Monetary Policy,* edited by Adam Posen, Oxford: Blackwell Publishers, (forthcoming 2002).

"The Kohn Report on MPC Procedures: Report to the Non-executive Directors of the Court of the Bank of England on Monetary Policy Processes and the Work of Monetary Analysis," *Quarterly Bulletin Spring 2001*, Bank of England, Vol. 41, No. 1 (2001).

"Concluding Panel Discussion: The Role of Monetary Policy under Low Inflation," *Monetary and Economic Studies Special Edition,* Institute for Monetary and Economic Studies, Bank of Japan, Vol. 19, No. S-1, pp. 377-383 (February 2001).

"Comments on 'Forward-Looking Rules for Monetary Policy,'" by Andrew Haldane and Nicoletta Batini, *Monetary Policy Rules*, edited by John B. Taylor, National Bureau of Economic Research and Chicago Press (1999).

"Comments on 'Independence and Accountability,'" by Professor Mervyn King, Clive B. Briault, and Andrew G. Haldane, *Towards More Effective Monetary Policy*, Institute for Monetary and Economic Studies, Bank of Japan (1997).

"Measuring the Adjusted Monetary Base in an Era of Financial Change: Commentary," *Federal Reserve Bank of St. Louis Review*, Vol. 78, No. 6, pp. 45-49 (November/December 1996).

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* Does not include informal speeches and presentations to the public that did not involve printed text or result in published material.

"Commentary: What Operating Procedures Should Be Adopted to Maintain Price Stability?—Practical Issues," by Charles Freedman, *A Symposium Sponsored by the Federal Reserve Bank of Kansas City: Achieving Price Stability*, Jackson Hole, Wyoming, August 29-31, 1996, pp. 297-306 (1996).

"Comments on 'Inflation Indicators and Inflation Policy,'" by Stephen Cecchetti, *NBER Macroeconomics Annual 1995*, Cambridge and London: MIT Press, pp. 227-33 (1995).

"Comments on 'Monetary Aggregates Targeting in a Low Inflation Economy,'" by William Poole, *Conference Series No. 38: Goals, Guidelines, and Constraints Facing Monetary Policymakers*, sponsored by the Federal Reserve Bank of Boston, pp. 130-35 (1994).

"Financial Markets and the Design of U.S. Monetary Policy," *Sonderdruck Aus: Kolloquien-Beiträge 38 Finanzmärkte und Zentralbankpolitik*, pp. 73-92 (1994).

"The Stability of Financial Markets: Central Bank Responsibility," *Current Legal Issues Affecting Central Banks*, edited by Robert C. Effros, International Monetary Fund, Vol. 2, pp. 159-166 (1994).

"Commentary: The Role of Judgment and Discretion in the Conduct of Monetary Policy," *A Symposium Sponsored by the Federal Reserve Bank of Kansas City: Changing Capital Markets: Implications for Monetary Policy*, Jackson Hole Wyoming, August 19-21, 1993, pp. 197-203 (1993).

"Comments on 'Evaluating Policy Regimes: New Research in Empirical Macroeconomics,'" *Evaluating Policy Regimes: New Research in Empirical Macroeconomics*, edited by Ralph C. Bryant, Peter Hooper, and Cathryn Mann, Washington, D.C.: The Brookings Institute, pp.452-57 (1993).

"Price Objectives and Policy Requirements," *Price Stabilization in the 1990s*, edited by Kumiharu Shigehara, Bank of Japan (1993).

"Commentary: The Federal Reserve Policy Process," *Monetary Policy on the 75th Anniversary of the Federal Reserve System: Proceedings of the Fourteenth Annual Economic Policy Conference of the Federal Reserve Bank of St. Louis*, Norwell, Mass., and Dordrecht: Kluwer, pp. 96-103 (1991).

Financial Sectors in Open Economies: Empirical Analysis and Policy Issues, edited by Peter Hooper, Karen H. Johnson, Donald L. Kohn, David E. Lindsey, Richard D. Porter, and Ralph Tryon, Board of Governors of the Federal Reserve System (1990).

"Policy Targets and Operating Procedures in the 1990s," *Federal Reserve Bulletin*, Vol. 76, No. 1, pp. 1-7 (January 1990) and *A Symposium Sponsored by the Federal Reserve Bank of Kansas City: Monetary Policy Issues in the 1990s*, Jackson Hole Wyoming, August 30- September 1, 1989, pp. 129-41 (1989).

"An Overview of Problems of Monetary Policy," *Monetary Policy for a Changing Financial Environment*, American Enterprise Institute Studies, No. 495, Washington, D.C.: AEI Press; distributed by University Press of America, Lanham, Md. And London, pp. 1-7 (1990).

"Making Monetary Policy: Adjusting Policy to Achieve Final Objectives," *Monetary Policy and Open Market Operations*, Reserve Bank of Australia (1990).

"Monetary Policy in an Era of Change," *Federal Reserve Bulletin*, Vol. 75, No. 2, pp. 53-57 (February 1989).

"Discussant of 'Deregulation and Financial Products and Services,'" by Paul M. Horvitz, *Deregulation of Product Lines: Proceedings of a Colloquium at the Board of Governors of the Federal Reserve System*, (July 1982).

"Comments on 'Margins and Futures Contracts,'" *The Journal of Futures Markets*, Vol. 1, No. 2, pp. 255-257 (1981), with Galen Burghardt, Jr.

"Currency Movements in the United States, *Monthly Review, Federal Reserve Bank of Kansas City*, pp. 3-8 (April 1976).

"Interdependence, Exchange Rate Flexibility, and National Economies," *Monthly Review, Federal Reserve Bank of Kansas City*, pp. 3-10 (April 1975).

"Foreign Official Institution Holdings of U.S. Government Securities," *Monthly Review, Federal Reserve Bank of Kansas City*, pp. 11-20 (September-October 1974).

"Causes of Seasonal Variations in Interest Rates," *Monthly Review, Federal Reserve Bank of Kansas City*, pp. 3-12 (February 1974).

"Seasonal Variations in Interest Rates," *Monthly Review, Federal Reserve Bank of Kansas City*, pp. 3-10 (November 1973).

"Capital Flows in a Foreign Exchange Crisis," *Monthly Review, Federal Reserve Bank of Kansas City*, pp. 14-23 (February 1973).

"Minority Owned Banks," *Monthly Review, Federal Reserve Bank of Kansas City*, pp. 11-20 (February 1972).

"The Amended Bank Holding Company Act," *Monthly Review, Federal Reserve Bank of Kansas City*, pp. 11-20 (May 1971), with John F. Zoellner.

"West German Monetary Policy and Bank Portfolios, 1962-68," *A Dissertation*, The University of Michigan (1971).

"Briefings" to the Federal Open Market Committee at each meeting, Board of Governors of the Federal Reserve System, (July 1986 to present); published in *FOMC Transcripts* through 1996.

Political Contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify specific amounts, dates, and names of recipients.

None -

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

See attached sheet.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

My present employer is the Federal Reserve.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

See above answer.

3. Has anybody made you a commitment to a job after you leave government?

No

4. Do you expect to serve the full term for which you have been appointed?

Yes

Qualifications: State fully your qualifications to serve in the position to which you have been named.

I have worked in the Federal Reserve System at a variety of positions for 32 years, analyzing developments in financial markets and the economy and their implications for monetary and other Federal Reserve policies. Since 1986, I have served the Federal Reserve Board and the Federal Open Market Committee as the principal staff person on issues related to making and explaining monetary policy. In that capacity, I have consulted closely with those constructing the staff economic forecast for the Federal Open Market Committee and have been responsible for preparing materials analyzing monetary policy options and presenting that analysis at each FOMC meeting. In addition, I have had major staff responsibility for explaining policy to the public, preparing or overseeing drafts of FOMC minutes and semi-annual monetary policy reports to the Congress, and working closely with Board members on testimony and speeches on monetary policy. In consultation with the Federal Reserve Bank of New York, I have played a key role in monitoring and interpreting financial market developments to the Board and the FOMC. That role, together with my responsibilities for oversight of the administration of the discount window, has involved me in structuring the Federal Reserve's monitoring and response to adverse developments—and potentially adverse developments—in financial markets. In carrying out my responsibilities, I have consulted extensively with staff and decision makers at the Treasury, the Congress, other central banks, and international organizations.

As a consequence of this experience, and of my training, research, and analysis, I have become exceptionally knowledgeable about the economy, financial markets and monetary policy, and I am familiar with many of the issues surrounding the safety and soundness of banks and of the financial system more broadly. This expertise is widely recognized outside the Federal Reserve, as well as within the organization, and I have often been invited to participate in conferences and other meetings involving other central bankers and academics. I have written extensively on the conduct of monetary policy in the United States and have developed an understanding of policy practices abroad. Should I be confirmed, I anticipate bringing my experience and analytic capabilities to bear on monetary policy and the many other responsibilities of the Federal Reserve and on the public explanation of the Federal Reserve's decisions in these areas.

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past ten years in which you have engaged in for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None

5. Explain how you will resolve any conflict of interest that may be disclosed by your responses to the items above.

Civil, criminal and investigatory actions:

1. Give the full derails of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

None

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None

PREPAPRED STATEMENT OF BEN S. BERNANKE

MEMBER-DESIGNATE OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

JULY 30, 2002

Chairman Sarbanes, Senator Gramm, Members of the Committee, I am deeply honored to appear before you today as the President's nominee to serve on the Board of Governors of the Federal Reserve System. If I am confirmed to this important position, I will do my utmost to advance the economic well-being of all Americans.

The opportunity to serve at the Federal Reserve would be a great privilege, as it would allow me to apply in the public interest the fruits of a lifetime of thinking and writing about central banking and the economy. In my professional academic career of nearly 25 years, I have written widely on topics relating to monetary policy, banking and credit markets, economic growth and business cycles, macroeconomic history, and the statistical analysis of the economy, all of which bear directly on the work of the Federal Reserve. Moreover, over the years I have maintained close contact with the Federal Reserve System, as a consultant, visiting scholar, and adviser; and I have visited and advised the central banks of many other industrialized and developing countries.

In various roles during my career, I have also learned how to work with people and to get things done. Among other duties, I have served for the past 6 years as Chair of the Princeton University Economics Department. I also served as the first Director of Princeton's new Center for the Study of Financial Markets; as the Director of the Monetary Economics program of the National Bureau of Economic Research; as the Editor of the economics profession's leading research journal; and—last, but certainly not least—as a two-term elected Member of the Montgomery Township (New Jersey) Board of Education.

One of the remarkable features of the Federal Reserve System is the wide range of its responsibilities, including not only the making of monetary policy but other important areas such as financial regulation and supervision, consumer protection, payments systems, international finance, and others. Although at present my greatest expertise is in monetary policy and macroeconomics, I am keenly interested in and broadly familiar with each of the Fed's other areas of responsibility, and if I am confirmed I look forward to learning a great deal more. I particularly look forward to interacting with, and learning from, both colleagues on the Board and the Federal Reserve's able staff.

Let me turn briefly to issues of policy and the current economy. The Federal Reserve has considerable operational independence but ultimately derives its legitimacy and powers solely from its legislative mandate. I would like to take this opportunity to strongly affirm my support for the monetary-policy goals set for the Federal Reserve by Congress in the Federal Reserve Act: maximum employment, stable prices, and moderate long-term interest rates. While one can always hope to do better, I think the Federal Reserve has on the whole done a remarkably good job of promoting these three objectives over the past 20 years or so.

In my view, a key operational element in the Fed's success at achieving its tripartite objective has been the Federal Open Market Committee's emphasis on keeping the rate of core inflation low and stable. Low and stable inflation is intrinsically beneficial, as it reduces the need for households and firms to expend time and resources to protect themselves from the adverse effects of rapidly and erratically changing prices. Consistently low inflation also directly promotes the objectives of high employment and rapid economic growth, by providing a stable monetary environment in which firms and markets can function most efficiently. In a low-inflation environment, lenders are less concerned about erosion of their principal, and so nominal interest rates tend to be low. Finally, a strong commitment to low and stable inflation, by moderating and anchoring the public's inflation expectations, actually enhances the ability of monetary policy to respond actively to short-run economic disturbances when necessary. For example, during the past year the Federal Reserve was able to cut interest rates quite aggressively without engendering significant inflationary pressures or igniting a wage-price spiral. Public confidence that inflation would be kept under control was essential to giving the Federal Reserve this heightened flexibility.

In my academic writings, I have argued that the efficacy of monetary policy at achieving its mandated objectives could be further improved by the Fed's adoption of an approach known as inflation targeting. In anticipation of possible questions, let me say a bit more about this proposal. The main operational change under inflation targeting would be that the Fed, in consultation with the executive and legisla-

tive branches, would announce an explicit numerical objective core inflation over the medium term, say 1 to 2 years. For example, allowing for the upward biases in inflation measurement and a zone of safety to avoid accidental deflation in prices, an inflation target in the range of 1–2 percent per annum for the core PCE deflator might be a good initial choice, although some might reasonably disagree about either the number or the choice of index. As part of the targeting process, the Federal Reserve would report to Congress its expectations for future inflation, its reasons for any target misses, and its projected trajectory for bringing inflation to its targeted level.

It is important to stress that inflation targeting, as I interpret it, would not represent a major departure from the current practice of U.S. monetary policy or a change in policy objectives. Rather, its primary goal would be to build on policy successes of the past two decades by strengthening the Federal Reserve's institutional commitment to the approach used by the Fed under Chairman Volcker and Chairman Greenspan. As I discussed a moment ago, the centerpiece of this approach is an emphasis on keeping the rate of core inflation low and stable. Based on the experiences of a number of other countries that have adopted this model, I believe that an explicit inflation target would improve further the Fed's ability to reach all three of the goals set forth in the legislative mandate for monetary policy. Among the potential advantages of an explicit inflation target are increased stability of the public's inflation expectations, lower economic and financial uncertainty, increased central bank credibility, greater continuity and consistency of policy, and, importantly, enhanced accountability of the Fed. Although I am favorably disposed toward these incremental changes in the current framework of U.S. monetary policy, I know that not everyone agrees with this view, and that there are important, substantive arguments to be made on both sides of the issue. I look forward to discussing these ideas with Federal Reserve colleagues and others interested in the making of monetary policy.

Turning finally to the current economic situation: In recent months, investors have been battered by sharp declines in equity prices, not only in the United States but in many other countries as well. The losses in wealth are large and serious indeed. Equally serious and disturbing is the rash of corporate and accounting scandals that have certainly played a role in the stock market's plunge. Financial markets cannot do their job of efficiently allocating capital and sharing risk if investors do not feel that they are receiving accurate and timely information, or if they fear that those who should be stewarding their funds cannot be trusted to do so honestly. I fully support the efforts of Congress and the President to restore investor confidence in the accuracy and reliability of financial statements and in the trustworthiness of those who manage our corporations and financial institutions.

Although the fall in equity prices is frightening and dispiriting for many, I do think distinctions need to be made. Saturation coverage by cable-TV networks notwithstanding, the stock market is not the whole economy. While the gyrations of the Dow or Nasdaq attract the most attention, the broader economy—as reflected in the daily activities of American workers, managers, business owners, and entrepreneurs—has overcome a significant part of the effects of last year's recession and the September 11 terrorist attacks, and by most indications is continuing to grow. Most impressive is the fact that worker productivity continues to expand rapidly at more than an 8 percent rate in the first quarter—despite adverse cyclical conditions. New capital and innovative technologies have both played an important role in this resurgence. To be sure, the cumulative decline in the stock market poses risks for economic growth over the rest of the year. Despite our current difficulties, however, we should not lose sight of the underlying strength of our economy.

To conclude, I am grateful for this opportunity to appear before this Committee. These are indeed challenging times for the United States, for our economy, and for the Federal Reserve itself. I look forward to contributing to the making and implementation of sound economic policies. If I am confirmed, I will devote myself to becoming a constructive and effective Member of the Board of Governors of the Federal Reserve.

Thank you. I will be pleased to answer any questions.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: **Bernanke** (Last) **Ben** (First) **Shalom** (Other)

Position to which nominated: **Member, Board of Governors of the Federal Reserve System**

Date of nomination:

Date of birth: **13 Dec 1953** (Day) (Month) (Year) **Place of birth: Augusta, Georgia**

Marital Status: Married **Full name of spouse: Anna Friedmann Bernanke**

Name and ages of children: Joel (19), Alyssa (16)

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Harvard University	1971-1975	BA	1975
M.I.T.	1975-1979	Ph.D.	1979

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships and any other special recognitions for outstanding service or achievement.

Fellow, American Academy of Arts and Sciences, 2001-.

Guggenheim Fellowship, 1999-2000.

Fellow, Econometric Society.

Alfred P. Sloan Research Fellow, 1983-84.

Hoover Institution National Fellow, 1982-83.

National Science Foundation Graduate Fellow, 1975.

Allyn Young Prize (for best Harvard undergraduate economics thesis), 1975.

John H. Williams Prize (for outstanding senior in the Harvard Economics Department), 1975.

Phi Beta Kappa, 1975.

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
American Economic Association		
	Member	1979-present
	Editor, American Economic Review	2001-present
National Bureau of Economic Research		
	Research Associate	1980-present
	Director, Program in Monetary Economics	2001-present
	Coeditor, Macroeconomics Annual	1994-2001
Econometric Society	Fellow	1998-present
American Academy of Arts and Sciences	Fellow	2001-present

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and inclusive dates of employment.

Howard Harrison and Gabrielle Snyder Beck Professor of Economics and Public Affairs, Princeton University, 1996-present. Class of 1926 Professor of Economics and Public Affairs, Princeton University, 1994-1996. Professor of Economics and Public Affairs, Princeton University, 1985-1994.

Associate Professor of Economics, Graduate School of Business, Stanford University, 1983-1985.

Assistant Professor of Economics, Graduate School of Business, Stanford University, 1979-1983.

Morgenstern Visiting Professor, Department of Economics,New York University, Fall 1993.

Visiting Professor, Department of Economics, M.I.T., Fall 1983; academic year, 1989-90.

Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part time service or positions

Montgomery Township (NJ) School Board, 2 terms, 1994-2000.

Visiting Scholar, Federal Reserve System - Philadelphia (1987-89), Boston (1989-90), New York (1990-91, 1994-96).

Member, Academic Advisory Panel, Federal Reserve Bank of New York, 1990-.

Member, Academic Policy Committee, Federal Reserve Bank of Philadelphia, 2001- .

Member, U.S.-Israel Joint Economic Development Group (sponsored by US State Dept), 1997-.

U.S. Census Advisory Board, 1986-89.

Published Writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Publications: Articles

"Monetary Policy in a Data-Rich Environment", Journal of Monetary Economics. Forthcoming. With Jean Boivin.

"Is Growth Exogenous? Taking Mankiw, Romer, and Weil Seriously", NBER Macroeconomics Annual, 2001. Forthcoming. With Refet Gurkaynak.

"Should Central Banks Respond to Movements in Asset Prices?" American Economic Review, May 2001. With Mark Gertler.

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Political Affiliations and activities: List memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Registered as Republican.

No offices held or services rendered.

Political Contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify specific amounts, dates, and names of recipients.

None.

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

(1) I have been an academic for 23 years, and currently hold an endowed professorship at Princeton. I have written widely on monetary economics, macroeconomics, economic history, statistical analysis of the economy, and banking. I am well acquainted with forecasting methodologies and research. I have regularly taught macroeconomics and monetary economics at the undergraduate, master's, and Ph.D. levels, and am the coauthor of two successful college textbooks in macroeconomics. I have extensive experience editing and managing research journals, including the American Economic Review, which is by far the highest-circulation economics research journal in the world, and the NBER Macroeconomics Annual, which is a leading journal focusing on applied macroeconomic research.

(2) I have had regular contact with the Federal Reserve System (both at the Board in Washington and in several regional reserve banks) as a visiting scholar, advisor, and consultant. I have also regularly visited, advised, and consulted for many central banks and finance ministries in other countries, including (among others) Canada, Mexico, Chile, Argentina, Germany (both the Bundesbank and the European Central Bank in Frankfurt), Italy, Israel, China, and Japan. My research is used extensively by central banks around the world in economic analysis and policy formation.

(3) As chair of the Princeton economics department for the past six years, I have successfully managed and built up one of the top economics departments in the world. I also helped to create, and was the first Director of, the Bendheim Center for Finance at Princeton, which has rapidly become a respected center for research and education in finance. My experience on the Montgomery Township School Board made me more effective at working as part of a group toward achieving public objectives.

(4) A research associate of the National Bureau of Economic Research, I have been serving as the Director of the Program in Monetary Economics. I am a member of the NBER's business cycle dating committee.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

I will be on unpaid public service leave from my professorship at Princeton University. Princeton Unversity will permit me leave for two, possibly three years, after which I would have to resign. I will retain the editorship of the American Economic Review, a scholarly research journal, on an unpaid basis.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

If I were to leave government service within three years, I would have the option of returning to Princeton.

3. Has anybody made you a commitment to a job after you leave government?

No.

4. Do you expect to serve the full term for which you have been appointed?

Yes.

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

None.

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None.

4. List any lobbying activity during the past ten years in which you have engaged in for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None.

5. Explain how you will resolve any conflict of interest that may be disclosed by your responses to the items above.

N/A

Civil, criminal and investigatory actions:

1. Give the full derails of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

None.

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None.

NOMINATION OF PHILIP MERRILL, OF MARYLAND TO BE PRESIDENT AND CHAIRMAN OF THE EXPORT–IMPORT BANK OF THE UNITED STATES

FRIDAY, OCTOBER 4, 2002

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

The Committee met at 2:30 p.m. in room SD–538 of the Dirksen Senate Office Building, Senator Paul S. Sarbanes (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN PAUL S. SARBANES

Chairman SARBANES. The hearing will come to order.

The Committee on Banking, Housing, and Urban Affairs convenes this morning to take up the nomination of Philip Merrill to be President of the Export–Import Bank.

We have two of our colleagues here to introduce Mr. Merrill. And before I do my statement, I will go to them because I know they have other pressing engagements.

Senator WARNER. Mr. Chairman, one of our colleagues is due in another hearing, so, apart from seniority, I will yield to my good friend, Senator Mikulski.

Chairman SARBANES. Well, John, I was going to recognize home State preference, in any event.

Senator WARNER. Oh, I see.

[Laughter.]

It is your Committee. You can run it as you please.

[Laughter.]

Chairman SARBANES. Senator Mikulski.

STATEMENT OF BARBARA MIKULSKI A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MIKULSKI. Thank you very much, Senator Sarbanes, for having this hearing. And I thank the distinguished Senator from Virginia for yielding to me.

It is the Senators from the Potomac here today to introduce Phil Merrill to you. And as the senior Senator from Maryland, you know his background quite well.

For the record, I would like to ask unanimous consent that a letter from Congressman Steny Hoyer extolling the virtues of Mr.

Merrill as to why this appointment should be made, would be entered into the record.

Chairman SARBANES. Yes, I have Steny's letter here and it will be entered into the record. And when we have a little more time, I may even quote from it.

But please go ahead.

Senator MIKULSKI. Well, thank you. Senator Sarbanes, you have been a reformer on the Export–Import Bank and you have been a leader to ensure that this Bank meets the needs of the American foreign policy, promotes exporting jobs abroad, and really ensures management and fiscal responsibility.

Your reform philosophy on the Export–Import Bank I believe will be best carried out by Mr. Phil Merrill, who is being nominated by the President. Mr. Merrill brings an extraordinary career to this job, a career that covers both public service and the private sector.

First of all, the job requires someone who understands business, banking, and management. Mr. Merrill is an innovator, an entrepreneur and a successful businessman. And when one reviews his record, as we know, he has been a leader in publishing both the *Annapolis Capital,* the *Washingtonian* magazine, and the whole *Capital-Gazette* umbrella organization. Six newspapers in Maryland, as well as a magazine. So he knows how to meet a bottom line and he knows the stresses on business because of his interaction there all of the time.

At the same time, Mr. Merrill brings a great deal of background in the area of foreign policy. He has earned both a national and international reputation, serving in six Administrations. He served as an Assistant Secretary General of NATO. He was awarded the Distinguished Service medal, the highest civilian award at the Department of Defense. He has held other posts at the Department. He has even negotiated the Law of the Sea Conference, and I remember what a tidal mess that was.

Mr. MERRILL. Rubick's Cube.

Senator MIKULSKI. He served as a special assistant with the State Department and as a senior intelligence analyst, and we could go through a variety of work that he has done both at the Defense Department and at the State Department. Again, knowing foreign policy and making sure that there is sound management to implement our policy.

He also has a history, as does his entire family, Ellie and his three children are here with us today, Doug, Cathy, and Nancy, of being a philanthropist. Most of the philanthropy, has been very quiet and has been focused on education, the environment, and probably a lot of other things that we do not even know about but that it is somewhere in that thick brief.

What is clearly visible has been his role in education—The board at the Hopkins School of Advanced International Studies, the board of visitors at the University of Maryland. And not only being on boards, but essentially putting his own personal and family resources behind that.

He has recently endowed the University of Maryland with $10 million at the school of journalism to ensure competency in the field and also a framework of ethical journalism. Isn't it great that somebody is willing to put up $10 million so that journalists would

know how to write, be competent, and have an ethical framework? This is who we want in our Government.

And then, of course, he has been a staunch supporter, as has been the Chairman, of the Chesapeake Bay Foundation. For those of us who have worked with the Bay Foundation, we know they were in kind of frugal and limited facilities. Through Mr. Merrill and, again, the Merrill Foundation and the support of the entire family, has just created a new environmental framework, a new architecture, and a green building to operate.

So a successful businessman, a public servant with extensive experience in foreign policy, and a philanthropic heart that also is matched by, quite frankly, a contribution.

It is not about what your wealth does. The fact that you were willing to continue to be a giver, and what we see in Mr. Merrill is that he continually wants to give back to this great country that made his own success. I hope we move him unanimously through the Committee and the Senate.

Chairman SARBANES. Thank you very much. We appreciate that very strong statement on Mr. Merrill's behalf. And I know you have a conflicting engagement.

Senator MIKULSKI. Excuse me.

Chairman SARBANES. Senator Warner.

STATEMENT OF JOHN WARNER
A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. I am going to ask that my statement be placed in the record because that was a magnificent introduction by our colleague from the great State of Maryland, and she summarized so much of the pertinent information.

I join you today because I have been privileged to be a personal friend, but also in recognition of the silent but very important philanthropy that has been spread throughout the greater metropolitan area of Washington by both the nominee and his lovely wife, Eleanor, known to us as Ellie. And I might add, I think the record should reflect that this has been a husband and wife team for many years, both of them having served in public office.

Ms. Merrill was on Senator Keating's staff, and you and I recall that eminent Member of our institution of many years. And then she went on to the Department of State to serve in positions of communications.

So it has been a team effort to put together this extraordinary career, which has been recited by my colleague and more fully laid out in my biographical sketch.

But I did not know that you had worked on the Law of the Sea. When I was the Secretary of the Navy under Mel Laird, Eliot Richardson, and Jim Schlesinger, as the Department's representatives.

Chairman SARBANES. Those were the glorious days of the Navy, too.

Senator WARNER. That is right.

[Laughter.]

Mr. Chairman, we had 1,800 ships when I was Secretary.

[Laughter.]

But, anyway, that was an extraordinary challenge, Law of the Sea, and it did not unfold quite the way all of us wished, but who knows.

But this man is eminently qualified to take on this post, as the Chairman and our colleagues in the Senate know. And I would just conclude by saying that I think that America is fortunate that an individual who has done so many things diversified to prepare him for this important task, once again steps forward for public service.

So I urge the Committee to have this hearing completed, wrapped up, and hopefully, get to the floor. And I indicate to the Chairman, full willingness on our side of the aisle to follow the Chairman's instructions to expedite this nomination, such as can be confirmed before the unknown concluding date of this Congress.

Chairman SARBANES. Well, Senator Warner, thank you very much for that statement, and also for that offer to be helpful on the floor as we try to move the nomination through.

Senator WARNER. Yes.

Chairman SARBANES. The papers just came a couple of days ago, and we are trying to move along here.

Senator WARNER. Well, we are expediting a number in our Committee. And you know, having been around here a quarter of a century plus, it can be done.

Chairman SARBANES. Thanks very much, John.

Mr. MERRILL. Yes. And it is very kind of you, and kind of you to come personally.

Chairman SARBANES. Let me say at the outset that I regard this as a very important nomination. One of the major economic challenges our country faces is competition in international trade.

My own view is that as long as that competition is based simply on the price and quality of the goods and services being sold, I have every confidence that U.S. exporters can do very well.

However, it is not that simple. Other governments move in. They provide export subsidies to their companies in one way or another, and that places our exporters at a competitive disadvantage that they cannot be expected to meet on their own. They are just not on a level playing field.

The Export–Import Bank exists in part to help U.S. exporters level the playing field by matching the subsidies offered by foreign governments and allowing our exporters to compete on the basis of price and quality.

For that reason, I believe it is vital that the Export–Import Bank be led by someone of exceptional stature and experience who can assert the Ex-Im Bank's important role in U.S. trade policy.

The previous president, John Robson, certainly met that standard and I take a moment this morning to honor him and his contributions to the public interest of the country and to regret his untimely death.

Let me say, I am confident that the nominee before us today, Phil Merrill, can meet that standard as well. I know our nominee well. He is a leading citizen of our State, has had a long and distinguished record of service both to the State and to the Nation.

He received his undergraduate degree from Cornell University, later served on its board of trustees. He is a graduate of the program for management development at the Harvard Business

School. He worked as a reporter for the Newark Evening News, as a writer-reporter for WABD Channel 5 in New York, for J. Walter Thompson and company after service in the Army.

And from 1961 to 1967, worked for the Department of State as a Special Assistant to the Deputy Secretary of State, and Senior Intelligence Analyst in the Bureau of Intelligence and Research.

He attended the University of Chicago for a year on a Stevenson Fellowship. And then he acquired and became Chairman of the Board of Capital-Gazette Communications, publishers of the *Washingtonian* magazine, the *Annapolis Capital,* and a number of other newspapers in Maryland.

During this very successful business career, he left from time to time to do public service, Counselor to the Undersecretary of Defense for Policy in the early 1980's, Assistant Secretary General of NATO from 1990 to 1992. He received the medal for distinguished service in 1988 from the Secretary of Defense, which is the highest civilian honor given by the Department of Defense.

As others have mentioned, he has been involved in a number of very important philanthropic activities, working in the nonprofit sector, the Aspen Institute, the Chesapeake Bay Foundation, the Johns Hopkins University, the University of Maryland. It is a very long list and I will not go through all of it, but we welcome and commend that kind of citizen involvement, which contributes so much to the strength of our Nation.

I believe that Phil Merrill will bring to the position of President and Chairman of the Ex-Im Bank the kind of seasoned experience and senior leadership positions in both the private and public sectors that the Ex-Im Bank requires.

Earlier this year, the Congress, after a great deal of effort, but we finally succeeded in reauthorizing the Ex-Im Bank, through September 2006, and provided it with significant expanded authority. So its statutory mandate is there now for almost 5 years, as we look ahead into the future.

In a sense, that sets the stage for a new President to come in and carry out the Ex-Im Bank's mission with energy and imagination, and I am sure Phil Merrill will take full advantage of that opportunity, and we look forward to working with him in his important role.

Now I do want to put in the record the letter from Congressman Hoyer. Let me just read the first paragraph of it.

> Dear Mr. Chairman:
> I write to express my strong support for the nomination of Philip Merrill to serve as Chairman and President of the Export–Import Bank of the United States.
> Mr. Merrill has a long and distinguished career of public service, and I believe his experience and background make him an ideal candidate to lead that important organization.

And I also have a letter from the Coalition for Employment Through Exports, from Ed Rice, the President of that organization.

We work very closely with the coalition on a number of issues involving exports. In my opinion, they are a highly responsible organization. We have been privileged to have the benefit of their advice and counsel over the years, and I am going to take just a moment to read a fair part of this letter because the Coalition is ex-

tremely interested in the work of the Export–Import Bank. Its member companies embrace a lot of our major exporters.

Dear Mr. Chairman:

As the Committee considers the nomination of Philip Merrill to be Chairman and President of the Export–Import Bank, I write on behalf of our Coalition members to support Mr. Merrill's confirmation and to express our appreciation to you and your Committee colleagues for your expedited action on this matter.

In nominating Mr. Merrill, the President has chosen an individual who would bring a solid combination of experience and accomplishment in both the business world and Government service. Experience in both of these sectors is important in leading the Bank as it grapples with difficult issues related to globalization and U.S. competitiveness in world markets.

In addition, the Bank is also faced with implementation of the recently enacted changes in the Bank's statutory charter, which will require energetic and skilled leadership by a new Chairman. Mr. Merrill's long experience in business management and in a variety of sensitive Government assignments would be a particularly important asset in accomplishing these new mandates.

We continue to value the leadership that you and your Committee colleagues provide in overseeing and reauthorizing the Bank, and we look forward to working with Mr. Merrill should the Senate confirm him for this position.

Sincerely, Edmund B. Rice, President of the Coalition for Employment Through Exports.

And we are very pleased to have that letter, given the continuing and constant interest of the Coalition in the work of the Ex-Im Bank and the work of this Committee with regard to it, and it will be put in the record.

Now, it is the practice of the Committee of long standing to place nominees under oath. So, I am going to ask you to stand and take the oath.

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. MERRILL. I do.

Chairman SARBANES. Do you agree to appear and testify before any duly-constituted committee of the U.S. Senate?

Mr. MERRILL. I do.

Chairman SARBANES. Thank you very much. We would be happy to receive your statement, and if you want to introduce the members of your family that are here, we would be glad for you to do that as well.

STATEMENT OF PHILIP MERRILL, OF MARYLAND TO BE PRESIDENT AND CHAIRMAN OF THE EXPORT–IMPORT BANK OF THE UNITED STATES

Mr. MERRILL. Mr. Chairman, I first want to thank you and Senators Mikulski and Warner for those wonderfully gracious introductory statements and for your respective, let me say, prior attention to my family, and particularly to Ellie.

I call to the Chairman's attention that everytime that I have come into Government, the general consensus has been that when Ellie has taken over our company or our companies, they have done infinitely better than under my management.

[Laughter.]

And so, you may have the wrong Merrill here.

[Laughter.]

I also want to introduce my daughter Nancy and my daughter Cathy and her husband Paul Williams, who were kind enough to show up here today.

Mr. Chairman, I am very pleased to come before you, frankly, especially you, as you consider my nomination to be President and Chairman of the Export–Import Bank of the United States.

I want to thank President Bush for his confidence in nominating me for this position and if confirmed, I looked forward to working with you and with the other Members of the Committee to promote the Bank's basic function of promoting and creating U.S. jobs.

It is particularly interesting to me, or fortunate to me, to have the Chairman of the Committee, at least at this point, be from my home State of Maryland, and so, that is a fortuitous coincidence.

I know the Committee has my biographical information, so I will not go into the details of that, but ask that they be submitted separately.

It is with some mixed emotion that I appear before you today. The previous Chairman, John Robson, was a friend for more than two decades, and I, like you, am saddened by his death.

However, I am also honored and excited by the opportunity to serve our country again. If confirmed, I shall pursue, what I said here was with energy and enthusiasm, and I will now add imagination, to the challenges and opportunities that are presented in carrying out the mission of the Bank to support U.S. exports and U.S. jobs.

I am no stranger to the public policy arena or the Government process. So the question might be, why do you want to do this again? I will quote something that John Robson said in his confirmation statement: "I have never found a canvas as big to paint on as public service offers and I am particularly excited about the prospect of leading the Export–Import Bank."

I echo that sentiment.

If confirmed, this would be the seventh time I have taken the oath of office. Actually, the eighth, if one includes, as I do, the very first time as a private in the United States Army.

Each time I have felt the same mixture of inspiration, dedication, determination, and appreciation for everything this country has done for me, for my family, and for the cause of freedom and free institutions.

If confirmed for this position, I believe I would bring to the Bank:

—a record of successful business management and investment;

—extensive Government experience in international affairs and the ability to assess both political and commercial risk; and

—a strong desire and demonstrated willingness to serve our country.

The Export–Import Bank has enjoyed strong bipartisan Congressional support since its establishment under President Franklin Roosevelt. The Bank performs important roles in fostering American exports and thereby stimulating economic activity and job creation here at home.

The bipartisan support from the Congress and President Bush for passage of Ex-Im's 5 year reauthorization, for which I thank you, Senator, ensures that the Bank will continue to move forward to help U.S. exporters.

I note particularly the desire of Congress to devote resources to small- and medium-sized enterprises. I pledge to make every effort to carry out that charge and to assist these, as well as all other U.S. businesses in the highly competitive international markets of the 21st century.

If confirmed, I look forward to working with this Committee, the Congress, the career professionals at Ex-Im Bank, the Administration's trade team, the entire exporting community, and especially with the Chairman.

You have my commitment to continue close dialogue with this Committee and the Congress as the Bank adjusts its policy and operations to the challenge of the 21st century.

Mr. Chairman, I respectfully ask for your favorable consideration of my nomination and will be pleased to respond to your questions.

Chairman SARBANES. Well, thank you very much. I have just a few questions for the record.

First, you have been nominated for a term that expires on January 20, 2005.

Mr. MERRILL. That is right.

Chairman SARBANES. Is it your intention to serve out this term, if confirmed?

Mr. MERRILL. Absolutely, yes, sir.

Chairman SARBANES. Second, I want to talk about this tied aid credits and these market windows that some countries are using.

This has been kind of a running issue and in the latest authorization, I think we pretty well put it to rest because there was an internal dispute within the Administration between Ex-Im Bank and the Treasury.

The Congress I think resolved that dispute. I was on this Committee when we first put the war chest into place. That was an effort to arm the Ex-Im Bank so that it could counter what other countries were doing in support of their exporters.

We made an effort, of course, through the OECD to try to get rules that preclude some of the special financing so that the competition can remain on price and quality. But do you have a view about this whole issue about the tied aid war chest and the role it can play?

Mr. MERRILL. Well, Senator, yes, I do. From our point of view, we need it as a tool essentially to level the playing field. It is not a perfect world. If confirmed, I will work diligently with the Treasury Department to implement the tied aid procedures which have been mandated in the new Ex-Im Bank charter, which I have here. But this is really an OECD problem and we have to work with them to bring it under control.

Chairman SARBANES. Well, we have been doing that and that has been of some help. But we have to continue to counter.

Now something has developed that concerns us. Germany and Canada, in particular, are using a new tactic to undercut the OECD rules on export credit terms. They have set up, in effect, private enterprises, but essentially, government-sponsored, to supplement official export credits. They call those market windows, and they are currently at least exempt from the OECD rules. So they come in with that and they end up providing financing terms sig-

nificantly more attractive than what OECD rules allow. And the U.S. exporters are very much concerned about that.

Now we gave in the reauthorization to the Ex-Im Bank explicit authority to match market window's financing, which it previously did not have. It may be implicit, but it was an arguable question.

We gave them explicit authority to match it and we also directed the United States to seek negotiations for multilateral disciplines and transparency within the OECD credit arrangement encompassing market windows. But how important a problem do you think that this is?

Mr. MERRILL. Well, it is a very important problem. I am aware that Canada and Germany have pushed the limits to the uttermost in terms of making what they call private deals and are really public subsidies available. I think you have it right when you say—well, anything you say, I am going to say you have it right.

[Laughter.]

But in this particular case, I think you have it right when you say that they are a bigger problem by far than the rest of the OECD countries.

Nevertheless, it could spread. The key word is transparency, and that is what we have to push for. That requires us to cooperate with any number of other agencies, especially the Treasury.

Anyway, it is a big problem, I am aware of it, and I intend to pay very close attention to it and keep it down to the lowest possible amount that is humanly or administratively possible.

Chairman SARBANES. You have a particular opportunity to broaden the national consensus in support of the Ex-Im Bank and the push for exports. I know you will do this, but I hope that you will have an open door for the Coalition for Employment Through Exports that I mentioned, for the labor movement.

Properly presented, we ought not to have any split there because it is, as you said, you are for exports and jobs. You went right to it, and made the job connection.

A number of unions have actually been supportive of this export effort and they recognize the benefits that flow to their workers from it. Actually, export industries usually pay better. The pay scales are higher.

But you have the bully pulpit as the head of the Ex-Im Bank and therefore, a chance to work on developing this broad national consensus. And it is very important that you have an open door to all of these various groups to feel that they are in consultation with the Ex-Im Bank and that their concerns and that their advice and counsel is heard.

Mr. MERRILL. Senator, let me say that I have some experience in that area. Again, I agree with you that you have the benefit in this job and with this Bank of having the support of labor, as well as management.

That is a very analogous situation to which the Defense Department has found itself over the years because you have had any number of labor institutions very supportive of varying acquisition and production programs. I probably should stop there, but I will give you one anecdote.

I once invited the leaders of the 10 largest labor unions in the country to lunch with Cap Weinberger. Nine of them showed up.

We paid attention there to our supporters. By the way, the one who did not show was William Wimpensinger of the electricians. But all of the nine showed up, including the head of the National Maritime Union, where I have been a card-carrying member.

And so, I think the analogy is fairly precise. That is, the Bank is in the same fortunate position of needing, seeking, and having the support of both the business community, export community of the United States and the labor community of the United States. And I intend to take full advantage of it.

Chairman SARBANES. Very good. I have no further questions.

Let me just say that the Congress will clearly be in session next week. We do not know whether beyond that. And I am hopeful that we can consider those nominees the first part of next week and try to move things along.

We are anxious to get people into place before the Congress adjourns so that they can get on the job.

Mr. MERRILL. I am equally anxious and do not particularly want to wait 5 more months.

Chairman SARBANES. All right. Very good.

Mr. MERRILL. So I thank you for everything you have done.

Chairman SARBANES. The hearing stands adjourned.

[Whereupon at 11:45 a.m., the hearing was adjourned.]

[Prepared statements, biographical sketch of the nominee, response to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF PHILIP MERRILL

PRESIDENT AND CHAIRMAN-DESIGNATE OF THE
EXPORT–IMPORT BANK OF THE UNITED STATES

FRIDAY, OCTOBER 4, 2002

Mr. Chairman, Members of the Committee, I am very pleased to come before you as you consider my nomination to be President and Chairman of the Export–Import Bank of the United States. I would like to recognize the members of my family who are here today—My wife, Ellie, my daughter Nancy, and my daughter Cathy and her husband Paul Williams.

I want to thank President Bush for his confidence in nominating me for this position and, if confirmed, I look forward to working with this Committee, and Chairman Sarbanes from my home State of Maryland.

I know the Committee has my biographical information, so I will not go into the details of my qualifications but ask that they be submitted with this oral statement.

It is with some mixed emotion that I appear before you today. I have mixed emotions because the previous Chairman, John Robson, was a friend for more than two decades, and I am saddened by his death. However, I am also honored and excited by the opportunity to serve our country again. If confirmed, I look forward with energy and enthusiasm to the challenges and opportunities that are presented in pursuing the mission of the Bank to support U.S. exports and U.S. jobs.

I am no stranger to the public policy arena or the Government process. So the question might be, why do you want to do this again? I will quote something that John Robson said in his confirmation statement:

"I have never found a canvas as big to paint on as public service offers and I am particularly excited about the prospect of leading the Export–Import Bank."

I echo that sentiment.

If confirmed, this would be the seventh time I have taken the oath of office—actually, the eighth—if one includes, as I do, the very last time as a private in the United States Army.

Each time I have felt the same mixture of inspiration, dedication, determination, and appreciation for everything this country has done for me, for my family, and for the cause of freedom and free institutions.

If confirmed for this position, I believe I would bring to the Bank:

- A record of successful business management and investment.
- Extensive Government experience in international affairs and the ability to assess political and commercial risk.
- And of course, a strong desire and willingness to serve our country.

The Export–Import Bank has enjoyed strong bipartisan Congressional support since its establishment under President Franklin Roosevelt. The Bank performs important roles in fostering American exports and thereby stimulating economic activity and job creation here at home. The bipartisan support from the Congress and President Bush for passage of Ex-Im's 5 year reauthorization ensures that the Bank will continue to move forward to help U.S. exporters.

I note particularly the desire of Congress to devote resources to small- and medium-size enterprises. I pledge to make every effort to carry out that charge and to assist these as well as all other U.S. businesses in the highly competitive international markets of the 21th century.

If confirmed, I look forward to working with this Committee, the Congress, the career professionals at Ex-Im Bank, the Administration's trade team, and the entire exporting community. You have my commitment to continue close dialogue with this Committee and the Congress as the Bank adjusts its policy and operations to the challenge of the 21th century.

Mr. Chairman, Members of the Committee, I respectfully ask for your favorable consideration of my nomination and will be pleased to respond to your questions.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: **Merrill** **Philip**
(Last) (First) (Other)

Position to which nominated: **President, Export-Import Bank of the United States**

Date of nomination: **30 September 2002**

Date of birth: **28 April 1934** **Place of birth:** **Baltimore, MD**
(Day) (Month) (Year)

Marital Status: **Married** **Full name of spouse:** **Eleanor Pocius Merrill**

Name and ages of children:

Douglas Merrill, 11 Nov 1967

Catherine Merrill Williams, 20 March 1969

Nancy Merrill, 5 Jan 1974

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Cornell University	1951-55	B.A.	1955
Harvard Business School, Program for Management Development (PMD) 1963			

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships and any other special recognitions for outstanding service or achievement.

Medal for Distinguished Service, Department of Defense, 1988
Stevenson Fellow, University of Chicago, 1968
Cornell University, Quill and Dagger, Honorary Society, 1955
Regent Scholarship to Cornell, 1951-55

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
See Attachment 1		

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and inclusive dates of employment.

Newark Evening News, Reporter, Newark, NJ, 1955-56
WABD (Channel 5, NYC), Writer/Reporter, Night beat, 1957
United States Army, Private, Ft. Dix and Ft. Wadsworth, March 17-Sept. 16, 1957, Honorable Discharge
J. Walter Thompson Co., NYC, Marketing, 1957-60
National Broadcasting Co., Associate Producer, 1960-61
Dept. of State, 1961-67, Washington, DC
Special Assistant to the Deputy Secretary of State.
Senior Intelligence Anaylist for South Asia, Bureau of Intelligence and Research
University of Chicago, Stevenson Fellowship, 1968
1969-1981, Capital-Gazette Communications, Chairman of the Board. Publishing and Investing. Annapolis, MD
1981-83, Counselor to the Under Secretary of Defense for Policy, Department of Defense, Washington, DC
1984-89, Capital-Gazette Communications, Chairman of the Board. Publishing and Investing. Annapolis, MD
1990-92, Assistant Secretary General of NATO, Brussels, Belgium
1993-to date, Capital-Gazette Communications, Chairman of the Board. Publishing and Investing. Annapolis, MD

Attachment 1

Memberships and Organizations

Philip Merrill

Chairman and CEO

Capital-Gazette Communications, Inc. – Publishing and Investing company

Director or trustee of the following organizations:

- Aspen Institute
- Chesapeake Bay Foundation
- Johns Hopkins University
- Corcoran Gallery of Art
- Center for Strategic and Budgetary Assessments
- International Institute of Strategic Studies
- University of Maryland Board of Visitors
- Johns Hopkins School of Advanced International Studies
- Advanced Physics Laboratories (APL)
- American Council of Trustees and Alumni
- Johnson School of Management at Cornell University
- The University of Maryland Foundation
- Federal City Council
- World Affairs Council of Washington
- National Archives Foundation
- Merrill Foundation, President
- Capital Gazette Foundation, President

Philip Merrill Attachment 1

Memberships and Organizations

World Presidents' Organization	17 years
Chief Executives Organization	17 years
Chesapeake Presidents' Organization	17 years
Harvard Club of New York	20 years
Cosmos Club	20 years
Council on Foreign Relations	15 years
University Club	10 years
Army-Navy Club	10 years
Ocean Reef Club	6 years
Bristol Club (owners of Bristol boats)	10 years
West River Sailing Club	20 years
Chesapeake Bay Maritime Museum	20 years

Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part time service or positions.

Department of State, 1961-67
Department of Defense, 1981-83
Department of State, 1990-92
See employment record on page 2 for further detail

Part-time or advisory positions:
Department of Defense Policy Board
Department of Defense Business Board
President George H. W. Bush's Gulf War Air Power Survey (GWAPS). Commissioner.
President Reagan's Private Sector Survey on Cost Control in the Federal Government. Executive Committee
International Telecommunications Union. U.S. Representative

Published Writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

See Attachment C

Political Affiliations and activities: List memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None.

Attachment C

SPEECHES AND ARTICLES BY PHILIP MERRILL:

1. Are You Better Off? Headlines Suggest Our Economic Future Is in Peril. Actually, We're Better Off Than You May Think, and the Outlook Is Very Bullish. August 1996, *Washingtonian*

2. Bosnia: We Shouldn't Go, November 14, 1995, *The Wall Street Journal*

3. Real Diplomats, April 8, 1995, *The Washington Post*

4. Are We Spending too Much On Defense? March/April 1994, *The International Economy*

5. Old World Order: Not All Yanks in Europe Should Come Home, Spring 1993, *Policy Review*

6. Defending A New Relationship With the Former Soviet Union, RAND-Hoover Symposium, November 16-17, 1992

7. Muddling Through With Vision: NATO's New East-West Relationships, Center for National Security Negotiations, December 9-11, 1992

8. The Systematic Application of Research to Practical Ends, 25th Anniversary Celebration of the NATO Defence Research Group, March 3, 1992

9. How The Soviets Are Fooling Themselves, March 30, 1990, *Washingtonian*

10. Public Opinion Factors In Coping With Dissent on America's Role In The Third World, RAND Conference, April 12, 1985

11. Now Is The Time to Balance The Budget, December 1982, *Washingtonian*

Political Contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify specific amounts, dates, and names of recipients.

2002: $1,000 to Congressman Scott McInnis' Reelection Campaign Committee

2001: No contributions

For prior years, please see attached 5 pages.

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

Extensive experience in business and government. Please see attachment D, biography.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

If confirmed, I will resign from my position at Capital-Gazette Communications. While I will remain as a shareholder, I will play no active role in the management or operations of the company.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

I have made no plans or commitments.

3. Has anybody made you a commitment to a job after you leave government?

No.

4. Do you expect to serve the full term for which you have been appointed?

Yes.

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Attachment D

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PHILIP MERRILL
CHAIRMAN OF THE BOARD

1828 L Street, N.W., Suite 200
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202-296-3600 Fax 202-785-1822
pmerrill@washingtonian.com

2000 Capital Drive
Annapolis, MD 21401
410-268-5000 Fax 410-268-4643

BIOGRAPHICAL SKETCH

Philip Merrill is Chairman of the Board of Capital-Gazette Communications, Inc., which publishes the Washingtonian magazine, The Annapolis Capital, five other Maryland newspapers, and operates the Capital Investment Company. He is also Chairman of the Capital-Gazette Foundation and the Merrill Family Foundation.

An entrepreneur and investor, Mr. Merrill has combined publishing and public service throughout his career.

From 1990 to 1992 Mr. Merrill served in Brussels as Assistant Secretary-General of NATO. Prior to that he served on the Department of Defense Policy Board and as Counselor to the Under-Secretary of Defense for Policy. In 1988, the Secretary of Defense awarded him the Medal for Distinguished Service, the highest civilian honor that can be given by the Department.

Mr. Merrill has represented the United States in negotiations on the Law of the Sea Conference, the International Telecommunications Union, and various disarmament and exchange agreements with the former Soviet Union. He is a former Special Assistant to the Deputy Secretary of State, served as the State Department's Senior Intelligence Analyst for South Asia, and has worked in the White House on national security affairs. He has served in six administrations.

Mr. Merrill is a trustee of the Aspen Institute, the Chesapeake Bay Foundation, the Johns Hopkins University, and the Corcoran Gallery of Art. He is Vice-Chairman of the Center for Strategic and Budgetary Assessments and a U.S. Director of the International Institute of Strategic Studies. He currently serves on the Department of Defense Policy Board and the Department Business Board.

Mr. Merrill also serves on the University of Maryland Board of Visitors and on the boards of the Johns Hopkins School of Advanced International Studies, Advanced Physics Laboratories (APL), the American Council of Trustees and Alumni, the Johnson School of Management at Cornell, The University of Maryland Foundation, the Federal City Council, and the World Affairs Council of Washington.

He has served on numerous other boards including Cornell University, The Amos Tuck School of Business at Dartmouth College, the Washington Airports Task Force, and Genesco, a New York stock exchange company. He served on President Bush's Gulf War Air Power Survey and President Reagan's Commission on Cost Control in the Federal Government.

Mr. Merrill is a member of the Council on Foreign Relations, the Chief Executives Organization, and the World Presidents' Organization. For many years he chaired White House Fellow Commission regional panels.

He is a graduate of Cornell University and the Harvard Business School's Program for Management Development. He is a former fellow of the Institute for International Affairs of the University of Chicago.

Mr. Merrill and his wife, Ellie, have three children: Douglas, Cathy, and Nancy. They live on the Severn River near Annapolis, Maryland and maintain residences in Washington, D.C. and Aspen, Colorado.

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None except for standard pension plan set forth in my filing with the Office of Govenrment Ethics (OGE).

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

See Attachment A and B

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None.



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RESPONSE TO A WRITTEN QUESTION OF SENATOR MILLER FROM PHILIP MERRILL

Q.1. The renewable energy technology (RET) industry includes companies representing solar power, wind power, fuel cells, and modern biomass. As the domestic RET industry matures they believe that the growing energy needs in the developing world could provide huge export opportunities for U.S. companies. They believe the Export–Import Bank could assist the domestic RET industry with access to these markets. What has been the Ex-Im Bank's past and current experience with financing needs for renewable energy technology companies? What would be your view and the Bank's view of financing for RET companies in the future?

A.1. While I have not been briefed on specific transactions, I am aware that Ex-Im Bank has had a long-standing commitment to supporting renewable energy exports. Although a number of broad factors outside of Ex-Im Bank's control impact the renewable energy export market, Ex-Im Bank clearly can play a valuable role in promoting renewable energy exports. As evidence of the Bank's commitment to supporting such exports, earlier this year the Bank established an advisory committee to provide advice and recommendations to Ex-Im Bank regarding renewable energy export financing. I am optimistic that renewable energy export financing by the Export–Import Bank will increase in the future.

RESPONSE TO A WRITTEN QUESTION OF SENATOR SANTORUM FROM PHILIP MERRILL

Q.1. I understand the Export–Import Bank was contacted in July by Members of the House Financial Services Committee regarding allegations of fraud and money laundering by beneficiaries of Ex-Im guaranties. I am aware of allegations that Tyumen Oil Co., an Ex-Im Bank beneficiary, may be committing fraud and diverting profits by wiring funds through banks located in the United States to offshore entities. As you are aware, the "Maloney Amendment" in the recently enacted Ex-Im Bank Reauthorization Act of 2002 specifically provides for the Ex-Im Bank to "deny an application for assistance with respect to a transaction if the Bank has substantial credible evidence that any party to the transaction has committed an act of fraud or corruption in connection with a transaction involving a good or service that is the same as, or substantially similar to, a good or service the export of which is to subject of the application." Are you familiar with situations such as this, where beneficiaries of Ex-Im guaranties are alleged to be committing illegal actions and to have an undue impact on the economies of countries such as Russia? If confirmed as President of the Ex-Im Bank, do you believe this type of situation would warrant your attention? Do you believe there should be standards related to this to which Ex-Im beneficiaries should be held accountable?

A.1. While I have not been briefed on specific transactions, I am aware that Ex-Im Bank takes very seriously matters of fraud and corruption, in that such matters relate to creditworthiness. I believe that Ex-Im Bank should and does conduct due diligence with respect to fraud and corruption issues as they relate to Ex-Im Bank transactions. If confirmed, I assure you that all such matters would warrant my attention.

STENY H. HOYER
5TH DISTRICT, MARYLAND

CO-CHAIR
DEMOCRATIC STEERING COMMITTEE

COMMISSION ON SECURITY AND
COOPERATION IN EUROPE
www.hoyer.house.gov

Congress of the United States
House of Representatives
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HOUSE ADMINISTRATION

October 3, 2002

The Honorable Paul S. Sarbanes
Chairman, Senate Banking Committee
309 Hart Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

I write to express my strong support for the nomination of Philip Merrill to serve as chairman and president of the Export-Import Bank of the United States. Mr. Merrill has a long and distinguished career of public service, and I believe his experience and background make him an ideal candidate to lead that important organization.

Mr. Merrill has served in five previous administrations, holding positions in the White House, and the Departments of Defense and State. He has also represented the United States as the Assistant Secretary General of NATO from 1990-1992. The quality of his service was underscored in 1988 when the Secretary of Defense conferred upon him the Medal for Distinguished Service, the highest civilian honor given by the Department.

Mr. Merrill's commitment to public service has continued during his successful career in the field of publishing. The journalism school at the University of Maryland, College Park bears his name, as does an American diplomacy fellowship at Johns Hopkins University, and the Phillip Merrill Environmental Center serves as the home for the Chesapeake Bay Foundation.

I am proud to support Philip Merrill for the position of chairman and president of the Export-Import Bank of the United States, and I urge you to give his nomination your full consideration.

Thanking you for your consideration of this nomination and with warmest personal regards, I am

Sincerely yours,

STENY H. HOYER

CEE

Coalition for
Employment through
Exports, Inc.

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Suite 810
Washington, DC 20036

(202) 296-6107
FAX (202) 296-9709

October 3, 2002

The Honorable Paul Sarbanes, Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

As the committee considers the nomination of Philip Merrill to be Chairman and President of the Export-Import Bank, I write on behalf our Coalition members to support Mr. Merrill's confirmation and to express our appreciation to you and your committee colleagues for your expedited action on this matter.

In nominating Mr. Merrill, the President has chosen an individual who would bring a solid combination of experience and accomplishment in both the business world and government service. Experience in both of these sectors is important in leading the Bank as it grapples with difficult issues related to globalization and U.S. competitiveness in world markets.

In addition, the Bank is also faced with implementation of the recently-enacted changes in the Bank's statutory charter, which will require energetic and skilled leadership by a new Chairman. Mr. Merrill's long experience in business management and in a variety of sensitive government assignments would be a particularly important asset in accomplishing these new mandates.

We continue to value the leadership that you and your committee colleagues provide in overseeing and reauthorizing the Bank and we look forward to working with Mr. Merrill should the Senate confirm him for this position.

Sincerely,

Edmund B. Rice
President

CEE

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