



**SECURITIES AND
EXCHANGE COMMISSION**

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Opening Statement of
The Honorable Harold M. Williams, Chairman
Securities and Exchange Commission

at the

Commission's Consideration of the Staff's Proposal Concerning
Public Statements Inconsistent with Terms of Settlement

The next item on the agenda for this morning involves the Commission's consideration of whether it should establish a formal policy to deal with the problem of defendants who consent to the settlement of Commission enforcement proceedings, without admitting or denying the violations alleged, but later publicly deny that their conduct was improper. Every so often, the news media report a settlement of a Commission enforcement action by consent and, in the same article or shortly thereafter, quote the defendants as having claimed that the Commission's charges were baseless.

Public statements such as these are inconsistent with our rules and the policies underlying our rules. In addition, these denials may seriously misrepresent the true bases for settlements and thereby create a false impression of our enforcement program. More importantly, however, these self-serving statements could substantially undercut the effectiveness of public enforcement proceedings, and, in some cases, these statements may constitute separate violations of the federal securities laws.

At the present time, the Commission has no formal policy respecting public statements which appear to be inconsistent with Commission settlements, but the staff,

in certain cases, has raised this issue and suggested that defendants should not consent if they want to proclaim their innocence. In other cases, the staff has discussed or reviewed proposed press releases with defendants and on occasion has indicated that a broader public statement by the Commission may be necessary, or that the Commission might move to vacate the settlement, should the defendants insist on making public exculpatory statements. In a few cases, the staff has informally expressed its concern to the persons involved and suggested the possibility of a public retraction. Moreover, in one recent case, the Commission sought and obtained additional judicial relief in the form of a corrective mailing to shareholders.

With these concerns in mind, the staff was requested to prepare a proposal for Commission consideration which would examine possible responses to this disturbing practice. It should be stressed, however, that the Commission's purpose in airing this matter is not to inhibit criticism of the Commission or public discussion of its enforcement policies. On the contrary, concern is narrowly focused on the situation in which defendants or respondents enter into settlements "without admitting or denying" the Commission's allegations

and then proceed to issue a public denial. That spectacle, I believe, tends to bring the Commission, the courts, and the legal system generally into disrepute. Those who feel that their conduct was blameless and that the Commission was in error in alleging otherwise should make the same case in the courts as they do in the press.

The staff has suggested several alternatives, including the publication of a release setting forth the Commission's views; the reopening of appropriate cases for the purpose of presenting evidence -- and thus affording the parties an opportunity to litigate the issues and obtain findings with respect to the violations originally charged; and the publication by the Commission of facts or evidence pertinent to the charges made in the proceeding and the public statements of the defendants.

When the staff was originally asked to prepare a proposal in this area, I thought that a statement or release by the Commission would be helpful in calling attention to the importance of the Commission's rules and policies concerning settlements. Recently, however, the Commission has been successful in obtaining public retractions in some of the more egregious cases and in one well publicized case, has obtained additional judicial relief. In addition, on several occasions,

I have expressed my views on this matter and the news media have reported these concerns rather widely. Several of the resulting reports contained fairly extensive descriptions of our rules and policies and of the problems that arise when defendants make statements inconsistent with the terms of settlements. The reports also indicated that the Commission will review such statements and that we may take action in appropriate cases.

In view of the attention that this issue has received recently and the Commission's need to maintain its flexibility to respond in an appropriate manner in individual cases, it may not be necessary to take any further action at this time.