

**NOMINATIONS OF: KEVIN WOLF,  
SURESH KUMAR, DAVID W. MILLS, DOUGLAS  
A. CRISCITELLO, THEODORE W. TOZER,  
ORLAN JOHNSON, AND SHARON Y. BOWEN**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON**  
**BANKING, HOUSING, AND URBAN AFFAIRS**  
**UNITED STATES SENATE**  
**ONE HUNDRED ELEVENTH CONGRESS**

SECOND SESSION

ON

NOMINATIONS OF:

KEVIN WOLF, TO BE ASSISTANT SECRETARY OF COMMERCE FOR  
EXPORT ADMINISTRATION, DEPARTMENT OF COMMERCE

SURESH KUMAR, TO BE ASSISTANT SECRETARY OF COMMERCE AND DIRECTOR  
GENERAL OF THE U.S. AND FOREIGN COMMERCIAL SERVICE,  
DEPARTMENT OF COMMERCE

DAVID W. MILLS, TO BE ASSISTANT SECRETARY OF COMMERCE FOR EXPORT  
ENFORCEMENT, DEPARTMENT OF COMMERCE

DOUGLAS A. CRISCITELLO, TO BE CHIEF FINANCIAL OFFICER, DEPARTMENT  
OF HOUSING AND URBAN DEVELOPMENT

THEODORE W. TOZER, TO BE PRESIDENT, GOVERNMENT NATIONAL  
MORTGAGE ASSOCIATION

ORLAN JOHNSON, TO BE CHAIRMAN, SECURITIES INVESTOR  
PROTECTION CORPORATION

SHARON Y. BOWEN, TO BE VICE CHAIR, SECURITIES INVESTOR  
PROTECTION CORPORATION

JANUARY 21, 2010

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TO BE ASSISTANT SECRETARY OF COMMERCE AND  
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**ORLAN JOHNSON, OF MARYLAND,  
TO BE CHAIRMAN,  
SECURITIES INVESTOR PROTECTION CORPORATION;**

**SHARON Y. BOWEN, OF NEW YORK,  
TO BE VICE CHAIR,  
SECURITIES INVESTOR PROTECTION CORPORATION**

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**THURSDAY, JANUARY 21, 2010**

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

The Committee met at 9:36 a.m. in room SD-538, Dirksen Senate Office Building, Senator Christopher J. Dodd, Chairman of the Committee, presiding.

**OPENING STATEMENT OF CHAIRMAN CHRISTOPHER J. DODD**

Chairman DODD. The Committee will come to order. I announced my retirement, and they took the gavel away.

[Laughter.]

Chairman DODD. The Committee will come to order this morning, and let me thank all of you for being here. Let me invite our witnesses, why don't you just take seats here to begin, and I am going to make a couple of opening comments. Then I am going to turn to my colleague and friend from Alabama for any opening comments he may have. Thank you. There, they gave the gavel back.

[Laughter.]

Chairman DODD. Who took the gavel? Who had this, by the way? Some of the young Turks here got the gavel.

Then what I will do is I will ask several of our colleagues here who want to introduce our guests and our nominees, and then we will proceed with the opening statements by the nominees themselves. So the hearing comes to order, and today we are meeting in open session to conduct a nomination hearing on seven of President Obama's nominees. These hearings are a crucial part of this Committee's oversight responsibilities, and I would like to thank the witnesses, first of all, for their willingness to appear before the Committee and their willingness to serve our country. We do not often say that enough. The fact that you are willing to step up and have your lives exposed obviously to the scrutiny of a vetting process is something—in fact, Senator Shelby and I were just having a casual conversation with each other coming through the door a few minutes ago talking about—we always talk about how we are going to reform this process to some degree to make it less agonizing for the people who are willing to serve our country in any administration, and so I am particularly grateful that all of you are working to go through this process and then to serve as well knowing that there are tremendous responsibilities in the jobs that you will be assuming.

Our first three witnesses are for the positions in the Commerce Department and will involve setting U.S. policy concerning the Government's dual role in exports—namely, the goal of promoting U.S. exports and economic growth, while at the same time protecting our national security through effective export controls.

Kevin Wolf, who will be introduced by our friend and colleague from Arkansas, Senator Lincoln, has been nominated to be the Assistant Secretary for Export Administration and, if confirmed, will be responsible for overseeing the Bureau of Industry and Security's export licensing system.

Our second Commerce nominee, Suresh Kumar, who will be introduced by Senator Menendez, our colleague from New Jersey, has been nominated to be an Assistant Secretary of Commerce and Director General for the U.S. and Foreign Commercial Service, and if confirmed, he will be tasked with leading a service comprised of hundreds of dedicated public servants who advocate on behalf of U.S. exporters and advance our economic interests throughout the United States as well as in 80 countries around the globe.

Mr. Mills, our last Commerce nominee, has been nominated to be the Assistant Secretary for Export Enforcement and, if confirmed,

will execute the Bureau of Industry and Security's export control policies. This position is especially important at a time of heightened security concerns and economic turmoil. Mr. Mills is an experienced attorney and distinguished public servant in the area for which he has been nominated. Mr. Mills spent 20 years in Government service, including 18 years supporting U.S. sanctions policy at the United States Treasury's Office of Foreign Assets Control. He has spent the past 3 years in private practice working OFAC cases as well as the anti-money-laundering audits, export control, and anti-boycott matters.

Our next nominee is Douglas Criscitello, who has been nominated to be the Chief Financial Officer for the Department of Housing and Urban Development. As CFO, he will be responsible for directly overseeing the accounting, budget, and financial management systems for HUD. As this Committee heard the testimony from HUD Secretary Donovan, the modernization of HUD financial systems is both a need and a priority for the administration. Mr. Criscitello has extensive public and private sector budget experience and has a particular specialty in Government finances and modeling the financial risk of credit programs. It is the hope of this Committee that Mr. Criscitello's extensive experience and leadership ability will reinvigorate the office of CFO so that it functions as more than an office to produce regular and accurate budget materials but, rather, that it begins the process of implementing the state-of-the-art financial technologies and practices that are so needed.

Next we have Theodore "Ted" Tozer, who will be introduced by Senator Brown, who has been nominated to be the President of the Government National Mortgage Association, otherwise known as Ginnie Mae, and as the head of Ginnie Mae, Ted will be managing an organization which is small relative to its rapidly expanding portfolio in importance to the housing market. Ginnie Mae is facing tremendous challenges and needs a leader with Mr. Tozer's experience. Ginnie Mae has grown enormously over the past 2 years as other sources of mortgage credit have dried up. Ginnie Mae needs a strong, experienced manager to lead it through this period of unprecedented growth.

And, finally, we have two nominees to serve on the Board of Directors for the Securities Investor Protection Corporation, known as SIPC. SIPC was created by Congress in 1970 to give investors certain protections against losses resulting from the failure of their stockbrokerage firms. In order to maintain investor confidence in the securities markets and their brokerage firms, SIPC must operate in a manner that is effective, efficient, and fair. This involves maintaining fund balances that are adequate and liquid so that SIPC can pay out investors' claims equitably and quickly. This requires appropriate corporate governance practices so that SIPC has adequate internal financial controls, transparent contracting protocols, and appropriate executive compensation practices, and its board members avoid conflicts of interest. It also requires educating investors broadly about the role of SIPC and the extent of SIPC's coverage.

In addition to being nominated to be a member of the board of SIPC, Orlan Johnson has been designated by the administration to

serve as the Chairman of the board of SIPC. Mr. Johnson has extensive private and public sector experience as well, is currently a partner in the business department of Saul Ewing in Washington, DC, where he works on a variety of issues, including mergers and acquisitions, corporate financing, and corporate governance. Mr. Johnson also has extensive Government experience, serving 9 years as the staff attorney and branch chief in the Division of Investment Management for the SEC.

Our final nominee is Ms. Sharon Yvette Bowen. She is currently a partner in the New York office of Latham & Watkins where she represents corporations, private equity firms, financial and institutional clients in a variety of corporate finance issues. She has been a member of numerous bar associations and boards, including the board of New York City's Economic Development Corporation, the New York State

Bar Committee on Minorities in the Profession, the American Bar Association House of Delegates, the Conference of Minority Partners at Majority Firms, and the New York Women's Bar Association Foundation. Ms. Bowen was recently recognized by the Metropolitan Black Bar Association as its 2006 Lawyer of the Year. She has also been selected as one of America's Top Black Lawyers by Black Enterprise.

So I look forward to hearing from our witnesses, and I thank them all for being a part of this. I am particularly intrigued on the SIPC issue. I know my colleagues are as well, having gone through the hearings we had on the Madoff scandal. And I met with a group—I think probably my fellow colleagues to one extent or another have as well. I met with a large group of my constituents, all, of course, who lost life savings. And these were not affluent people, by the way. These were people who worked in an orthopedic practice in Connecticut as secretaries, nurses, and others who invested everything in terms of their retirement tied up with the Madoff operation. And I have been curious and they have been curious as to whether or not SIPC can possibly be of any help to people like that. I know there has been some examination of that issue, but I cannot resist in my opening comments to talk about it because it has been devastating, what has happened to these folks. So we may get into that in the question period, but let me thank all of you.

Let me turn to Senator Shelby and then I will turn to my colleagues for some quick introductions.

#### **STATEMENT OF SENATOR RICHARD C. SHELBY**

Senator SHELBY. Thank you, Mr. Chairman. I will be brief. I know we have a lot of nominees here today. I want to help you any way I can to expedite these nominations, and that is why we are here today.

Chairman DODD. Thank you very much, Senator.

Let me first of all turn to Senator Lincoln. We welcome our colleague from Arkansas for some opening comments on Kevin Wolf, and then I will turn to Bob Menendez and Sherrod Brown.



**STATEMENT OF BLANCHE L. LINCOLN,  
SENATOR FROM THE STATE OF ARKANSAS**

Senator LINCOLN. Well, thank you, Chairman Dodd and Ranking Member Shelby and members of the Committee. I am very pleased to be here to introduce Kevin Wolf as the President's nominee for the Assistant Secretary of Commerce for Export Administration. I have been good friends with Kevin and his family for many years now, and I strongly support his nomination.

Many of you all will remember my predecessor, Senator Bumpers, who told me when I got here, he said, "I hope that you will know the Senate that I knew." He said, "Most of my good friends came from my colleagues," he said, "and so many of my best friends were Republicans." And he said,

It was because we spent time together as families and we grew together as families. We saw our children grow together. We spent time at lengthy band concerts and lengthy baseball games, and we had plenty of time to become good friends and have the kind of confidence in one another that you need as a good friend.

And those are many of the things that I have shared with the Wolf family, the time that we have spent watching our children grow up together, and it does make for an unusual bond and confidence in one another, and I certainly appreciated that and have appreciated the opportunity to get to know so many of my colleagues that way.

But I believe that there are few people in this country who could administer and improve the calls of export control enforcement better than Kevin. Kevin has worked with foreign and domestic companies for 17 years in precisely this area. His experience has made him an expert in the highly complex and technical arena of the U.S. export controls and sanctions. Sitting in those softball fields or baseball fields, as each of us got messages on our BlackBerrys, we had good conversations about many of the things that Kevin was faced with, and I was as well, and I began to understand much better what he did and the particular expertise that he had.

Kevin has handled some of the largest civil and criminal export control enforcement cases in this area. As a legal partner with the Bryan Cave firm, he has done a tremendous job. Because of his background, he knows better than most former prosecutors what works and does not work with companies to enhance compliance.

He has also proven that he can handle high-profile, sensitive matters as evidenced by his work on these cases and his role as the assistant special counsel for the Gingrich ethics investigation when he served a stint as the assistant special counsel to the House Ethics Committee in the 1990s.

Kevin is well respected by his peers and Government regulators. He is 100 percent committed to our national security and to our Government's economic growth. I know Kevin's unique combination of intelligence, technical expertise, experience, and patriotism will make him an outstanding Assistant Secretary, and I heartily endorse his nomination.

I thank you, Mr. Chairman, and the Ranking Member, Senator Shelby, and all of the members of the Committee for their consideration of his nomination, and I wish him well, as well as his family who is with him today, Barbara, Freddie, and Markus.

Thank you.

Chairman DODD. Well, thank you very much, Senator. We appreciate very much your being here this morning.

Mr. Wolf, you have got a hard act to follow to live up to that. [Laughter.]

Senator LINCOLN. Thank you, Mr. Chairman.

Chairman DODD. Bob?

#### **STATEMENT OF SENATOR ROBERT MENENDEZ**

Senator MENENDEZ. Thank you, Mr. Chairman. I am pleased to introduce to the Committee Suresh Kumar, the President's nominee for the post of Assistant Secretary of Commerce and Director General of the U.S. and Foreign Commercial Service. Mr. Kumar is an experienced professional in global trade. I believe he is the right man for the job. He has lived in Princeton, New Jersey, for quite some time now. He has worked for two of New Jersey's best-known corporations, Johnson & Johnson and Warner Lambert. He has balanced his private sector career with a belief in the importance of public service, establishing a successful student internship program with New Jersey businesses, which earned him a public service commendation from the New Jersey Senate.

Mr. Kumar's impressive resume is a model for the global economy in the 21st century. He has lived in six countries, speaks six languages, has served on numerous global international councils, boards, and expert advisory panels. Educated in India at Delhi University and Bombay University, where he received his master's in business administration and management studies, Mr. Kumar has established businesses in China and India for Warner Lambert and has been the head of Worldwide Consumer Pharmaceuticals and International Vice President for Johnson & Johnson.

But he has also given something back to the community, Mr. Chairman. As a special adviser at the Clinton Foundation, he worked on food security initiatives, agricultural output programs, loan and financing protocols in Rwanda, Kenya, and Tanzania. Mr. Kumar spearheaded initiatives to promote economic development and improve people's lives and livelihoods around the world. Most recently, he has been president and managing partner of KaiZen Innovation, LLC, a global management consulting firm, where he advised the Bill and Melinda Gates Foundation, the Alliance for a Green Revolution in Africa, and the African Development Bank.

That is a pretty impressive resume, Mr. Chairman. I think he will serve us well and the Nation well, and it is my pleasure to introduce to the Committee Mr. Kumar.

Chairman DODD. Well, thank you very much, and we welcome you again, Mr. Kumar. Thank you very much. Thank you, Bob.

Sherrod?

#### **STATEMENT OF SENATOR SHERROD BROWN**

Senator BROWN. Thank you, Mr. Chairman. Thanks for convening the hearing. Thank you for giving me the opportunity to introduce Ted Tozer, who is the nominee for President of the Government National Mortgage Association. He is joined by his wife, Sandy, today whom I met for the first time today.

Ted has tremendous expertise and experience in the unique nature of the secondary mortgage market, experience that will serve

Ginnie Mae well in his new position, as the Chairman said, in an operation that is growing in importance all the time. He currently serves as senior vice president of capital markets at National City Mortgage, now a part of the PNC Financial Services Group, a position he has held for some 20 years. Prior to joining National City, Ted served in various roles at one of Ohio's largest banks, Bank Ohio Mortgage Company and Bank Ohio National Bank. He served on the Board of Directors of the Ohio Mortgage Bankers Association from 1991 to 2001.

Throughout his career, Ted Tozer has been a leader of the Mortgage Bankers Association, serving as the MBA's Secondary and Capital Markets Committee chairman from 2002 to 2004. During his time he worked on the MBA Residential Board of Governors and worked with Ginnie Mae on major initiatives. So he is very familiar with the operations of Ginnie Mae. He understands its importance. And like so many who come in front of us, Mr. Chairman, as Presidential nominees and nominees in other ways, he has been very active—and people who believe in public service, he has been very active as a community volunteer, something that is so important for all of us.

Ginnie Mae serves a crucial function providing loan guarantees that help to make affordable housing finance options available to millions of low- and moderate-income households across our country. Ginnie Mae-eligible products and programs extend affordable credit to qualified Americans even through times of market decline and economic uncertainty. Unlike the other GSEs, Ginnie Mae does not buy or sell loans or issue mortgage-backed securities itself. It simply guarantees investors the timely payment of principal and interest issued by other Federal agencies. In today's difficult mortgage market environment, Ginnie Mae and its partners have demonstrated the importance of a stable and a consistent source of housing finance liquidity.

Ted Tozer is up for this job. As a community leader, as a long-time—three decades of experience in banking, I think that he will make a very—he is a very good nominee, and I support his candidacy.

Thank you.

Chairman DODD. Thank you very much, Senator, for those comments and remarks.

What I am going to do is I am going to have all of you stand, and I am going to have you take the oath, if you will do that for me, if each of you would raise your right hand as well. 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. WOLF. I do.

Mr. KUMAR. I do.

Mr. MILLS. I do.

Mr. CRISCITELLO. I do.

Mr. TOZER. I do.

Mr. JOHNSON. I do.

Ms. BOWEN. I do.

Chairman DODD. And do you agree to appear and testify before any duly constituted Committee of the U.S. Senate?

Mr. WOLF. I do.

Mr. KUMAR. I do.  
 Mr. MILLS. I do.  
 Mr. CRISCITELLO. I do.  
 Mr. TOZER. I do.  
 Mr. JOHNSON. I do.  
 Ms. BOWEN. I do.

Chairman DODD. Thank you. Please be seated.

Let me just say to all of you, since obviously we have got seven of you here this morning, if you would limit your remarks to around 5 minutes. I am not going to bang the gavel down, but—and that any other—whether it is the full testimony you want to provide or any other information you think would be worthwhile for the Committee to have, I will just announce right now we will include all of that in the record for you.

Then what I will do, I will begin in the order I have introduced you. We will begin with you, Mr. Wolf. And why don't you do this as well? Why don't you tell us who is here with you, your family, as well. If any of them have shown up here today, we would love to recognize it as well. It is a big day to be before a Senate Committee in a nomination process, and so it is an honor to have your families here with you. We know that you do not do these things in any endeavor in life without the support of your families. So I gather looking around the room that there may be some families here, and we welcome them as well. But if you have got any members here, we would like to welcome them as well. Mr. Wolf?

**STATEMENT OF KEVIN WOLF, OF VIRGINIA, TO BE ASSISTANT SECRETARY OF COMMERCE FOR EXPORT ADMINISTRATION, DEPARTMENT OF COMMERCE**

Mr. WOLF. Thank you very much. My wife, Barbara Kanninen, and my son, Frederick, and my other son, Markus, are here.

Chairman DODD. Good morning. You are missing school today.

Mr. WOLF. They are missing school today.

Chairman DODD. Do you want me to filibuster up here, keep this going all day?

[Laughter.]

Mr. WOLF. I am honored to have them here. Without their patience, I would not be here, in fact, and I also hope that my being here, if confirmed, will be a lesson for my two sons about the value of public service.

Chairman DODD. Good. I hope so as well. Thank you.

Mr. WOLF. Thank you. Chairman Dodd, Ranking Member Shelby, and members of the Committee, I am honored to appear before you today as the President's nominee for Assistant Secretary of Commerce for Export Administration. I appreciate the confidence President Obama and Secretary Locke have expressed in me. I am hopeful that I can earn your confidence as well. I look forward to working with you and your staff.

I want to thank Senator Lincoln for the very kind and thoughtful introduction. We have been friends for many years, and I have always valued her counsel and guidance. I am delighted that she could be here today.

Mr. Chairman, I recognize the importance of the obligation I will be undertaking if confirmed. The threats we face are diffuse but

very real. They include terrorism, non-state actors, the proliferation of weapons of mass destruction, and the several countries of concern. The Bureau of Industry and Security plays a critical role in countering these threats by regulating the flow of controlled goods, technology, software, and services. It does so primarily by working closely with the Departments of State, Defense, and Energy, and the intelligence community to evaluate thousands of export license applications a year. It also works with our international partners to develop controls to help, for example, stem illegal transshipments. This process and these relationships are the front line of defense against the export, re-export, and re-transfer of items to prohibited end uses, prohibited end users, and prohibited destinations.

Getting this right is very important. I realize that. And I commit to you that the Bureau will continue to do the best possible job in advancing U.S. national security, foreign policy, and economic objectives by ensuring an effective export control and treaty compliance system, while at the same time facilitating continued U.S. strategic technology leadership.

National security is the Bureau's top priority. It cannot, however, ignore the impact export controls have on U.S. industry. If controls become outdated or are not applied fairly, then they burden the economy without promoting security. Indeed, such controls could reduce our security if they force dual-use and military manufacturing and development to countries that do not have adequate export control systems.

I believe that I am well prepared to take on this responsibility. As an attorney with the international law firm of Bryan Cave, I have been working almost exclusively with export control, anti-boycott, and sanctions issues for nearly 16 years. My clients have been primarily small, medium, and large U.S. companies and their foreign affiliates. Most of my work has involved explaining to them how to comply with both the "law and the lore" of the often complex export control and sanctions regulations. If U.S. Government permission was required to engage in a proposed transaction, I would help them apply for and receive the necessary authorizations. I have also handled several high-profile and significant export control enforcement cases that have affected export control law, policy, and compliance practices. I thus have a deep understanding of the culture, concerns, and technologies of the American exporter and how these rules affect U.S. economic and national security interests. As a result of this work and my efforts to promote dialog over the years between industry and Government officials, I also have developed a deep respect for the career staff at the various Government agencies who administer the rules. I look forward to working with them, if confirmed.

My extensive background in this highly technical area will be vital to inspiring and leading the Bureau, administering the existing regulations fairly and efficiently, and working with the other agencies involved in the U.S. export control system. My background will also be vital to crafting and implementing, with the Under Secretary and the other agencies, the details of the significant export control reforms the President and the Secretary have announced are necessary to maintain our national security and economic

growth. I look forward to working with Congress during this process. In all of my efforts, I will, if confirmed, be committed to our Nation's security and the rule of law.

Thank you again for this opportunity to appear. I would be pleased to respond to any questions you might have.

Chairman DODD. Thank you very much for those comments.

I should have mentioned as well, too—and, again, I want you to know, just given that we are back from this break and people are busy here, we do not have a full complement of the Committee here for these hearings. And I am going to leave the record open for a few days so that members can submit some written questions they may have for all of you, if they have any. I would just urge you to respond as quickly as you can so we can move your nominations along very quickly as well.

Mr. Kumar, welcome again. That was a very kind introduction that Bob Menendez gave you and a very distinguished career as well, so we are honored that you are willing to serve. Do you have any family here with us today?

**STATEMENT OF SURESH KUMAR, OF NEW JERSEY, TO BE ASSISTANT SECRETARY OF COMMERCE AND DIRECTOR GENERAL FOR THE U.S. AND FOREIGN COMMERCIAL SERVICE, DEPARTMENT OF COMMERCE**

Mr. KUMAR. Yes, I will introduce them.

Chairman Dodd, Ranking Member Shelby, and distinguished members of this Committee, I am honored and humbled to come before you today as President Obama's nominee to be Assistant Secretary of Commerce and Director General of the U.S. and Foreign Commercial Service. I want to thank President Obama for the enormous trust he has placed in me with this nomination and Secretary Locke for his support.

Over the past few weeks, I have had the pleasure of meeting members of this Committee and your staff. Thank you for your hospitality. If I am confirmed by this Committee and your colleagues in the Senate, I look forward to working closely with you.

I am particularly grateful to Senator Menendez from my home State of New Jersey for his gracious introduction here today.

Let me take this opportunity to introduce you to the members of my family who have joined me here today: my wife Sheila, my daughter Pooja, and my son Aditya.

Sheila, my college sweetheart, has provided me her unshrinking support through a global journey that has spanned three decades and five countries. Sheila is amazing. Not only is she a distinguished business executive in her own right, but she has also managed to raise our two wonderful children.

Our daughter Pooja is a physician who is pursuing her passion for public health. She has served the underprivileged in remote corners of the world—from working with displaced people from Azerbaijan to East Timor, and vulnerable children from the streets of Kolkata to the Congo.

Our son Aditya has been a management consultant who has also worked with the homeless in America and victims of child labor in Asia. He has had the honor of interning for this distinguished body, the U.S. Senate, in the office of the late Senator Ted Kennedy. He

now has the distinct pleasure and privilege of serving in the White House.

I would be remiss if I did not mention my parents, Colonel Sundaram and Vasantha, who instilled in our entire family the importance of public service. Although they cannot be present here today, they are watching these proceedings via webcast from their home in Delhi.

As I prepared these remarks, I could not help but reflect on what an incredible journey this has been for me from Mumbai, India, to the U.S. 16 years ago. I stand before you as a first-generation immigrant and a testimony to our great country. If confirmed, you will have given me the opportunity to repay a small measure of debt to a country that has already given me so much.

In my 30 years in the international business community, I have seen firsthand the immense possibilities, potential, and prosperity that follow global trade. In the past several years as an international development consultant, I have worked with civil society and nonprofit organizations to improve lives and livelihoods and support small and medium enterprises in establishing sustainable and scalable businesses. I have worked for multinational and local companies across six countries, culminating in my position as the head of Worldwide Consumer Pharmaceuticals for Johnson & Johnson. Through my work, I have seen the tremendous opportunities for U.S. businesses to more fully engage in Africa, Asia, and Latin America.

The value and values of free and fair trade are embedded in my DNA. I pledge to help American enterprise enhance its competitiveness and grow its global footprint; to increase U.S. exports and help create jobs; and to protect our interests, patents, and intellectual property that are so critical to encourage innovation and support technological advancements particularly in emerging technologies in the environment, energy, and health care sectors. These are the priorities that have been articulated by Secretary Locke for the Department of Commerce, and I am humbled by the opportunity to work daily to advance them.

International trade has always been a proven path to global prosperity. With 95 percent of the world's consumers living beyond our borders, we must encourage, nurture, and support U.S. companies, particularly small and medium businesses, to export goods and services into foreign markets. We must grow our exports to stimulate the economy and create and sustain American jobs. These are challenges, but they also present tremendous opportunities. That is why I am so excited by the prospect of leading the U.S. and Foreign Commercial Service at this pivotal moment in time.

If confirmed, I will work closely with this Committee and your colleagues in Congress to expand U.S. exports and advance U.S. commercial interests abroad, to forge new economic ties for America overseas, and to ensure that America maintains its leadership in the global economy while advancing U.S. national security interests through a renewed focus on commercial diplomacy.

Mr. Chairman, I thank you for your consideration of my nomination and for the opportunity to address any questions that you and your colleagues might have. Thank you.

Chairman DODD. Thank you very, very much, Mr. Kumar, and welcome to your family. What a wonderful example you are setting to these remarkable children of yours, as well, who are doing so well. We thank them for being with us today.

Mr. KUMAR. Thank you, sir.

Chairman DODD. Thank you for your very generous comments, as well, about what I think is the greatest reason of our success as a country in many ways, is the fact that we have been a welcoming people, and if we ever lose that status, I think we lose the essence of who we are in many ways, and you are a wonderful example of the wisdom of that open process over the years that have invited so many people to be a part of our—you made the choice to be with us. Most of us here had no choice in the matter.

[Laughter.]

Chairman DODD. And so we are particularly pleased with people who make that choice, and thank you immensely.

Mr. KUMAR. Thank you, sir.

Chairman DODD. Mr. Mills?

**STATEMENT OF DAVID W. MILLS, OF VIRGINIA, TO BE ASSISTANT SECRETARY OF COMMERCE FOR EXPORT ENFORCEMENT, DEPARTMENT OF COMMERCE**

Mr. MILLS. Chairman Dodd, Ranking Member Shelby, Members of the Committee, I am honored to appear before you today as the President's nominee for the position of Assistant Secretary of Commerce for Export Enforcement. The President has my heartfelt gratitude for the trust and confidence he has placed in me. I would also like to express my appreciation to Secretary Locke, with whom I look forward to serving, if confirmed for this position.

I would be remiss if I did not also thank my parents, Eugene and Dorothy Mills of Lee, New Hampshire, for their unstinting and unwavering love and support over the course of my life, without which I would not be before you today.

I had the privilege of starting my first permanent position with the executive branch at the Department of Commerce and served there as an Attorney Advisor in the Bureau of Export Administration beginning in 1985. At that time, I had the opportunity to assist in the implementation of the 1985 Amendments to the Export Administration Act as well as the implementation of the South African Anti-Apartheid Act in 1986. I am delighted at the prospect of returning to this agency should I be confirmed and in assisting its able and dedicated personnel in carrying out their continuing mission that is so vital to our national security.

If given the opportunity to serve in the capacity for which I have been nominated, I also look forward to drawing upon the experience I gained during the 18 years I served at the Office of Foreign Assets Control at the U.S. Treasury Department. As a member of OFAC's Chief Counsel's Office, I provided legal support and review for licensing, interpretive and enforcement matters arising under the various economic sanctions programs for which I was responsible, working closely with Department of Justice attorneys in both the Civil and Criminal Divisions.

I also served as OFAC's Chief of Policy Planning and Program Management. In that role, I was responsible for reviewing all



warning letters, penalty actions, and settlements of alleged sanctions violations, and for preparing recommendations on the disposition of enforcement matters for the Director.

I also supervised the drafting and issuance of OFAC's first set of comprehensive economic sanctions enforcement guidelines in 2003 as well as the semi-annual reports to Congress on the administration and enforcement of sanctions programs, and I am happy to say not one of them was late.

As Chief of Licensing at OFAC, I gained invaluable managerial experience, ensuring timely response to requests for licenses and interpretive rulings, coordinating interagency review when required, and reducing an initial backlog of licensing requests from 1,400 to 100 pending cases. In 2005, I was awarded the Meritorious Service Medal by the Secretary of the Treasury.

If confirmed, I look forward to the opportunity to coordinate compliance and enforcement efforts with my former agency, as well as other agencies with important roles to play, including the Departments of Justice, Homeland Security, State, and Defense.

More recently, since 2007, I have worked in private practice, first at Baker, Donelson, Bearman, Caldwell and Berkowitz, a regional law firm present in five Southern States and DC, and then at DLA Piper, a global law firm with a presence in more than 60 cities throughout the United States and in more than 25 countries. Through my participation in several extensive internal investigations involving both civil and criminal matters, I have gained a deeper appreciation of the challenges that companies face, most of which are attempting in good faith to comply with often complex regulatory regimes.

I believe that the enforcement of those regimes must not only be fair and firm, but also as clear and transparent as possible in order to advance both our national security and foreign policy interests and our economic potential through export promotion. Finally, in those instances where good faith is not a factor, I commit to vigorously enforcing our nation's laws to ensure that those who flout the rules are caught and punished.

Thank you again for this opportunity to appear before you. I would be pleased to respond to any questions you may have.

Chairman DODD. Thank you very much, Mr. Mills.

Mr. Criscitello, thank you again for joining us.

**STATEMENT OF DOUGLAS A. CRISCITELLO, OF VIRGINIA, TO BE CHIEF FINANCIAL OFFICER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

Mr. CRISCITELLO. Thank you, Chairman Dodd. Let me start off by introducing my family in the back here, my wonderful wife, Linda—

Chairman DODD. Can we see you? Stand up.

Mr. CRISCITELLO. My wonderful wife, Linda. She has been putting up with me since our high school days back in Binghamton, New York, and my three—

Chairman DODD. You are going to be the next witness we have. [Laughter.]

Mr. CRISCITELLO. My terrific kids, Lindsay, Sammy, and Kyle.

Chairman DODD. Terrific. Welcome. We are glad you are here with us today.

Mr. CRISCITELLO. OK. Well, Chairman Dodd, Ranking Member Shelby, and distinguished Members of the Committee, my name is Doug Criscitello and I would like to thank you for the opportunity to appear before you today. I know the Committee is really busy right now and I appreciate the opportunity to be here.

I am absolutely humbled and honored to be the choice of President Obama and Secretary Donovan to serve as the Chief Financial Officer at the U.S. Department of Housing and Urban Development. If confirmed, I look forward to being part of the team at HUD that will work with you and your staffs to address the significant housing and community development needs of our nation.

For the past 24 years, I have dedicated my career to governmental budgeting and financial management, with a particular emphasis on Federal credit programs, financial management, and budgeting. I have served in a number of different positions in that area at both the Federal and local levels of government. My most recent position in government was in New York City as the founding Executive Director of the New York City Independent Budget Office. IBO is an agency that was modeled after the Congressional Budget Office here in Washington to provide objective, nonpartisan analysis of fiscal issues facing New Yorkers.

While at IBO, I concentrated initially on establishing the agency—I was the first employee there—and establishing IBO as a credible, nonpartisan voice on the many budgetary matters facing New York. And that was no easy task in that city. I am sure, as you all know, everyone in New York seems to have a very strong point of view.

IBO's mandate was broadly aimed at enhancing official and public understanding of fiscal issues facing New Yorkers, which allowed me to work on a range of issues, and that role required me to think creatively about how to make governmental budgeting understandable to elected officials and to citizens, doing things like originating the concept for the Federal Taxpayer Right to Know Act, a bill introduced by Senator Schumer and enacted in 1999 to provide citizens with detailed information about how their taxes are spent.

Prior to my IBO position, I spent 9 years as a career civil servant in the Federal Government focused on financial management and budgeting. At the Small Business Administration, I led efforts to help that agency implement two of the most important financial management statutes of the 1990s, the Chief Financial Officers Act and the Federal Credit Reform Act.

Before working at SBA, I served as a Budget Examiner at the Office of Management and Budget in the Housing, Treasury, and Financial Institutions Division. I held a similar position at the Congressional Budget Office before that, where I learned the importance of providing impartial financial and budgetary analysis to elected officials to empower them to make informed legislative decisions. My primary areas of responsibilities at both OMB and the CBO involved credit programs, economic and community development, and budgetary analysis.

Since 2000, I have worked in the private sector as a consultant and service provider to the government. At JPMorgan, I worked in the Government Institutions Group, where I provided operational and financial advisory services to a host of Federal agencies, including HUD and SBA. That position allowed me to enhance my understanding of the capital markets, including how they can be used to help accomplish public policy goals.

At PricewaterhouseCoopers, I helped the firm establish a financial services—a Federal financial—I am sorry—helped the firm establish a public sector financial services practice aimed at supporting Federal financial stabilization initiatives. I also worked with a number of financial credit agencies, including HUD, on engagements involving credit reform implementation and various other financial management matters.

Clearly, expanded programs and increased levels of funding have occupied management at HUD over the past year while the ongoing work of promoting sustainable home ownership, community and urban development, and access to affordable housing has continued. If confirmed by the Senate, I will work to ensure transparency and accountability of these programs through an effective financial management and internal controls program aimed at deterring waste, fraud, and abuse of taxpayer dollars.

Key priorities will include providing timely and reliable financial information for use by both executive and legislative branch officials and ensuring the Department's financial management program continues to get a clean bill of health from its auditors.

I would like to conclude by saying again how truly honored I am to be before this Committee. I have worked with HUD's programs for many years and am aware of at least some of the financial management and budgetary challenges facing the Department. If confirmed, I look forward to working with you to help HUD achieve its mission in a way that advances our economic recovery prospects while ensuring that taxpayer money is spent wisely.

Thank you, and I look forward to your questions.

Chairman DODD. Thank you very much. That is a wealth of experience you bring to this job, and I know they are going to be very excited to have you working with them, so we thank you very much for your willingness to come back into public service for our country.

Mr. CRISCITELLO. Thank you.

Chairman DODD. Mr. Tozer, welcome.

**STATEMENT OF THEODORE W. TOZER, OF OHIO,  
TO BE PRESIDENT, GOVERNMENT NATIONAL MORTGAGE  
ASSOCIATION**

Mr. TOZER. Thank you. I would like to take this opportunity to introduce my wife, Sandy, and recognize her for the 29 years we have been married and the incredible support she has given me—

Chairman DODD. Sandy, where are you? Why don't you stand up so we can see you back there, Sandy. Nice to see you. Thank you for being here with us.

Mr. TOZER. Chairman Dodd, Ranking Member Shelby, and distinguished Members of the Committee, I want to thank you for the

opportunity to appear before you today and thank you to all of the Members of the Committee and their staffs whom I have met over the past 2 weeks. And thank you, Senator Brown, for your kind words.

I am honored and humbled by the confidence that President Obama and Secretary Donovan have shown in me by my nomination to this position at such a critical juncture in the history of housing. My 30 years' experience in the mortgage capital markets has uniquely prepared me to manage the Ginnie Mae, if confirmed. An effective President of Ginnie Mae must balance the needs of all three major stakeholders: The issuers, investors, and the U.S. Treasury.

I began my career managing the operations of BancOhio National Bank's broker-dealer operation and its asset and liability management function. During the 6 years I managed the broker-dealer, my responsibilities included compliance, accounting, trade settlement, customer security safekeeping, and risk management. During this phase of my career, I developed a good understanding of what was involved in running a trading floor and was able to be part of the initial phase of interest rate risk management by the banking industry.

My experience working in the investment community has prepared me to work closely with the investor base of Ginnie Mae Securities to help educate the investor communities on the various Treasury-guaranteed mortgage programs. This education is critical in keeping the cost as low as possible to the borrowers.

During the last 24 years, I have managed the capital markets for National City Mortgage Company. My responsibilities included daily pricing of loan products, managing interest rate risk of loans being held in inventory for future sales, designing loan products that are salable into the capital markets, delivery and settlement of loan pools, and negotiating the sale of loan pools into the capital markets. My experience at National City allows me to develop a broad knowledge of the mortgage company's operations. I was required to balance the needs of the sales force, the servicing department, and mortgage investors. During my 24 years in the mortgage banking industry, I developed strong relationships with the capital market managers, whose companies account for 80 percent of Ginnie Mae's issuances.

During my career, I worked closely with the FHA Commissioner and the FHA Chief Risk Officer, two mortgage industry leaders with whom I will work closely if I am confirmed as President of Ginnie Mae. These relationships were developed by participating on Fannie Mae and Freddie Mac's National Lender Advisory Boards, serving as Chairman of the Mortgage Bank Association Capital Markets Committee, as well as the Mortgage Bank Association Residential Board of Governors. Serving in these roles allowed me to understand the needs of the mortgage bank industry as a whole.

I have also developed strong relationships with Wall Street mortgage traders, which has increased my understanding of how they view mortgages and their value. If confirmed, these experiences and relationships will help Ginnie Mae fulfill its responsibilities to both educate investors about loan program modifications and to be

a capital markets advisor to the Federal housing agencies. Having a President of Ginnie Mae with capital markets expertise is more critical now than ever as the government uses various loan programs to stabilize the housing market.

If confirmed, I will in an efficient and risk-averse manner work to make Ginnie Mae a strong foundation for execution of housing policy.

Thank you for your consideration of my nomination and I look forward to answering the questions you may have.

Chairman DODD. Thank you very, very much. We appreciate your willingness to serve, as well.

Mr. Johnson, we thank you for, again, your willingness to be a part of this administration and to serve and we thank you for your appearance here today.

**STATEMENT OF ORLAN JOHNSON, OF MARYLAND, TO BE  
CHAIRMAN, SECURITIES INVESTOR PROTECTION  
CORPORATION**

Mr. JOHNSON. Thank you, Mr. Chairman. Chairman Dodd, Ranking Member Shelby, and members of this distinguished Committee, I would like to thank you for taking the opportunity to allow me to appear before you today and consider my nomination to be the Chairman of the Securities Investment Protection Corporation. I am deeply grateful to President Obama for nominating me to this important position. In addition, I also appreciate the time that Members of the Committee have already taken to meet with me, and if confirmed, I look forward to working with the Committee to address the challenges in ensuring the adequate protection of investment accounts and general investor confidence in the United States financial markets.

With the Chairman's indulgence, I would like to take a moment to introduce my family that is here today.

Chairman DODD. Please.

Mr. JOHNSON. I would like to introduce my wife, Zina, who is here supporting me, as she always has in our nearly 20 years of marriage. I would also like to recognize my daughter, Nia Johnson, who is not here today. She is an eleventh grader at Blue Mountain Academy and couldn't be here. But my two sons are here, Adam Johnson, who is in eighth grade, and my youngest son, Jair, who is in fifth grade. The two are missing school but didn't seem overly concerned.

Chairman DODD. Would you stand up so they can see you? Where is your wife? Is that Zina and the boys? Missing school again today, too, huh?

[Laughter.]

Mr. JOHNSON. Yes.

Chairman DODD. You owe me big time.

[Laughter.]

Chairman DODD. I could have scheduled this on a Saturday.

[Laughter.]

Mr. JOHNSON. Thank you, Mr. Chairman. It is indeed an honor and a privilege. I have had approximately 20 years of experience working on complex corporate and securities transactions, both at major law firms and in the public sector. As you note, I am cur-

rently a partner at Saul Ewing in Washington, DC, where my practice focuses on general corporate matters, business transactions, and Federal and State securities laws.

Prior to being with Saul Ewing, I had a chance to be with the New York-based law firm of Milbank Tweed, where I co-headed the regulatory practice here in Washington, DC. For nearly 10 years, I was with the Securities and Exchange Commission, both as a Staff Attorney and as a Branch Chief, and in that opportunity I had to do numerous audits of investment advisors and energy companies in conjunction with public State utility commissions and also with the Federal Energy Regulatory Commission.

I have also been given a great opportunity to stay on the cutting edge of securities issues by having an opportunity to teach securities regulation at Howard University School of Law for over 15 years. And as a result, I have had an opportunity to not only to stay on top of current issues, but also to get some wisdom of young people in the classroom, as they have ideas in this area, as well.

As you are all well aware, SIPC's primary goal is really to protect individual investors from financial hardships and to insulate the economy from disruptions which can follow the failure of major financial institutions. I think SIPC has and should continue to stand as the first line of defense in protecting investors when such failures occur and act swiftly to eliminate so much as possible these risks that are associated with customer losses.

If confirmed, I look forward to continuing and expanding SIPC's work in the areas of investor education and ensuring that its current rules and regulations provide adequate safeguards to protect investors in this ever-evolving global financial market. I believe that the Act that supports SIPC provides the framework that can be and should be used to guide the protection of investment accounts, not just in the U.S., but also may act as a framework for worldwide financial markets. If confirmed, I would view my role as being a principal advocate for robust investor protection.

Mr. Chairman and Members of the Committee, I thank you again for your consideration of my nomination and look forward to answering any questions that you may have.

Chairman DODD. Thank you, Mr. Johnson, very, very much.

Ms. Bowen, thank you for being with us. You are at the end of the line here. You have been very patient—

Ms. BOWEN. I am happy to do so.

Chairman DODD.—and we appreciate that very much. So thank you again for your willingness to serve and a very distinguished career and record you have had, as well. So we are honored you are here with us.

**STATEMENT OF SHARON Y. BOWEN, OF NEW YORK, TO BE  
VICE CHAIR, SECURITIES INVESTOR PROTECTION  
CORPORATION**

Ms. BOWEN. Thank you. Chairman Dodd, Ranking Member Shelby, and other distinguished Members of the Committee, I am honored to have been nominated by President Obama to serve as Vice Chair of the Securities Investor Protection Corporation. I want to thank the Members of the Committee and their staff for meeting with me and making time for this nomination hearing today.

I also would like to take this opportunity to briefly introduce my family members who are here with me today. My husband, Larry Morse, who has been a constant supporter and friend since we first met at the University of Virginia. My sister, Sheila Taylor, and my nephews, Vincent, Junior, and Victor Bowen. Although other members of my family could not be here today, I want to acknowledge and thank them for their abundant and unconditional love and support.

I have practiced in the corporate securities and finance areas of the law for more than 25 years. I am fortunate to be a member of the legal profession and to do what I love. My interest in finance, law, and business started during my early years, even before I knew that there was a place called Wall Street. After receiving a degree in economics, I attended business and law schools at the Northwestern University. I then moved to New York and began my career as a corporate attorney.

My expertise in securities and corporate law and deep interest in our financial markets provided great background for me to address the challenges SIPC currently faces. When I read about the state of the economy and the financial markets at the formation of SIPC, I found many common themes we also face today. Yet at the same time, our current environment is vastly different and far more complicated. Even the sheer growth in the volume of customer accounts, let alone the types of securities within those accounts, could not have been imagined 40 years ago.

I look forward to bringing my deep knowledge of securities and corporate law to my role as Vice Chair of SIPC, should I be confirmed. I look forward to working with you and helping to improve our protection of investors.

Thank you again for your time and consideration. I am happy to take questions.

Chairman DODD. Well, thank you very, very much. Again, congratulations on our nomination—

Ms. BOWEN. Thank you.

Chairman DODD.—and again, your willingness to be a part of the administration to serve.

As I said earlier, there will be some written questions, I am sure, from other members. There are only three of us here right now, so I will just take a few minutes on some questions and begin with Mr. Wolf, if I can, and then sort of work down, based on time, and turn to Senator Shelby and Senator Johnson, as well, for any comments they may have.

I wonder if you might, Mr. Wolf—we have had a lot of interest here, Senator Shelby and I and this Committee over the years, we have jurisdiction over a lot of these issues. We wrestled with trying to strike this balance between expanding markets obviously, which are critically important to our economic growth, and a time in which we live, obviously, with technology can also impose some risks to us all. So we never get it perfectly right and it has got to be a dynamic process, because as technology improves and becomes more available, to what extent, then, do you try and put restraints on it, competition, all of these factors that have to be weighed in making these decisions.

So I wonder if you might just begin by giving us some sense of what priorities should be considered in modernizing our cold war-era export licensing system, since a lot of it originated during those times. A lot has changed since the end of the cold war, obviously, that puts additional pressures on those decisions. And what else do you think can be done to enhance our security? If you had to make a choice between those two—I think all of us would agree that while we would like to see expanding business opportunities—if granting licenses in certain technologies exposes our country to additional risks, I think all of us would clearly opt for the choice of protecting our security. So give us some idea of what you think the priorities ought to be and how we ought to handle this.

Mr. WOLF. Thank you. Excellent question that goes right to the heart of the matter. I don't necessarily see it as a question of—can you hear me now?

Chairman DODD. We have had a lot of improvements in technology, but obviously not this here.

Mr. WOLF. Speaking of technology—

[Laughter.]

Mr. WOLF. No, I don't necessarily see it as a question of balance. I see it as a question of national security. It doesn't necessarily mean in the course of identifying those goods, technology, software, and services that have implications or uses with respect to weapons of mass destruction, for example, or of issuing for the countries of concern, but I do see the economic side coming in and having rules that, as you put it, are modern, are up to date, that take into account the realities that were no longer in the cold war, and you achieve the economic efficiencies, you achieve the economic growth, you achieve the economic benefits by having regulations that are modern, that face today's threats, that deal with today's threats, that are clear, that are understandable, that are transparent, and that take into account the wisdom and the experience of all the various agencies involved in this, the Departments of Defense, Departments of State, Energy, and the intelligence communities.

So the priorities that I would bring to this is keeping that in mind and adhering to the rule of law so that the rules are understandable and clear and working primarily with respect to keeping the lists up to date and having a process in place where the various lists of items controlled are consistent with the modern reality.

Chairman DODD. Well, good. Let me—you know, we recently did the ability to pass unanimously out of our Committee dealing with Iran sanctions, and one of the provisions of that legislation deals with the transshipment of sensitive U.S. technologies through third countries that end up in Iran and our concern about those practices.

And second, let me ask you, as well, as part of the same question, how does this foreign availability standard help level the playing field for U.S. companies without compromising our security, as well? They are different questions, but I would like you to address both, if you could.

Mr. WOLF. Thank you. Both very good questions. Again, with respect to the transshipment issue, it is as much a matter of policy as it is enforcement. Even with respect to the rules that exist, it is vital that foreign parties involved with U.S. goods and tech-



nology and derivatives of U.S. goods and technology are aware of and abide by the rules governing them so that items going through one country don't end up in prohibited destinations.

I have read your legislation and will be happy to and continue working with your staff on the various carrots and sticks that go with trying to encourage our counterparts in other countries to enforce their own domestic export control regulations to accomplish the broader common interest.

Chairman DODD. Good.

Mr. WOLF. With respect to the——

Chairman DODD. Foreign availability.

Mr. WOLF.—foreign availability question, it is very important that foreign availability be taken into account with respect to all of the changes that will occur with respect to the regulations as they become modern. It is, however, not the sole criteria. There are going to be circumstances where unilateral controls are important, where foreign availability isn't the determining factor, but given the process that already exists, it is something that absolutely must be taken into account when deciding any individual licensing situations and any alterations to the existing regulations.

Chairman DODD. Well, good, and I appreciate your answer on that, as well. Under the Defense Production Act, again, which this Committee has jurisdiction over, during emergencies, the Commerce Department helps instruct private companies to set aside commercial orders so the government contracts are prioritized, enabling FEMA to better respond to these disasters. The President recently signed into law a reform measure that Senator Shelby and I wrote together mandating greater government coordinating in this area. How would you respond to the GAO's criticism that prior to our bill's enactment, U.S. agencies failed to coordinate or prepare in advance of emergencies? Do you think that was legitimate?

Mr. WOLF. Thank you. I am an export controls and sanctions expert and the Defense Priorities and Allocation System will be something that I will need to come up to speed on. I look forward to working with your staff on it, working and taking into account and taking seriously the reports of the GAO study.

Chairman DODD. Well, I appreciate that and would like to hear back from you on that, as well, as you analyze it.

Mr. Kumar, again, thank you for your willingness to serve. I mentioned the dedicated public servants that you are going to be supervising. They are just remarkable people and doing a very difficult job advocating on behalf of U.S. exporters, advancing our economic interests. What are some of the key challenges facing these public servants in increasingly the global marketplace and how does the Commerce Department respond to those challenges and what efforts can be made, in your view, to expand American small business access to critical markets?

I should point out, I am a great advocate of the Export-Import Bank and part of it, I became more aware of it because my wife, Jackie, was the Vice Chairman of the Export-Import Bank for a number of years and worked as the Chief of Staff of that agency for some time. It is a job-creating agency, in many ways, to expand markets and create opportunities. But today, it seems we have got

to do a lot more. They have done a lot, I must say, in small business areas, but I would love to hear your thoughts.

You have got the private sector experiences as well as global knowledge and information, so share with us some ideas and thoughts on how we might expand this.

Mr. KUMAR. Thank you, Chairman Dodd, for the opportunity to address something very close to my heart. Expanding business across the world can never be done by just one person or one entity and you have just touched upon the fact, the tremendous resources which are available to U.S. companies through the Commercial Service and the wonderful network of Commercial Service public servants across the world, as also the Eximbank and the SBA.

If this Committee would confirm me, I would look forward to working very closely with all these different resources the government has at its disposal and make that available specifically to small and medium enterprises to build constructive plans and engage productively in those markets. If I am confirmed, I know what can be done. I have seen it firsthand running businesses, and I know what resources are required by small and medium enterprises which may not have the wherewithal of major American corporations.

So I look forward to the opportunity of working closely with your staff, understanding through them what your constituents need, and unleashing, if you may, the power of all the resources which we have to make a constructive engagement all over the world.

Chairman DODD. Well, I appreciate hearing that, and I think you can bring some special talents to this. In a time when obviously credit is not as available to these smaller businesses, we have all heard from our small business communities in all of our States about the difficulty they are having, and obviously that is a separate matter we have to work on, but there are opportunities out there internationally. And again, you don't have to travel the world today to have access to contracts and opportunities.

Today, the information technology has made a lot of this readily available on your computers screen in your very office, wherever you may reside in the country, and how we can enhance that and expand that and educate our small business community about how they can take advantage of this. It seems terribly complicated. They don't have the ability to speak six different languages, as you do, but they don't need to today. There are ways in which they can access this without having to go through all of that, and it seems to me it is a wonderful opportunity for us and we need to expand that.

I think every one of us up here would be very excited about some ideas that you can bring to us on how we can help promote and advance that idea. So I encourage you to really jump into that, because you can make—you are not going to make all the difference, but in a tight credit market, expanding contract opportunities globally can do an awful lot for businesses that never imagined that someone might be interested in their service, their product that they offer. So I really encourage you to step up with that, if you could.

Mr. Mills, let me just—and then I will turn to Senator Shelby. I am taking a lot of time, and I apologize. I wrote some legislation,

again, along with my Committee members here, which was later signed into law that raised civil fines in the area of strengthening and deterrent effects on U.S. trade restrictions, and we increased those fines from \$50,000 to either \$250,000 or twice the amount of the transaction. In addition, we raised criminal penalties from \$1 million with a maximum jail sentence of 20 years in these areas.

I wonder if, in your view, these penalties have enhanced our sanctions and export enforcement tools. I know you have some knowledge about all of this, so I would be curious as to your reaction to this, as to whether or not we have gone too far, it is not far enough? Are they having the desired effect, in your view?

Mr. MILLS. I think that this Committee and the Congress made a tremendous contribution by passing that legislation and I have watched my former agency with great interest as they have implemented new enforcement guidelines to supercede the ones that I was responsible for back in 2003. I think that the enhanced penalties provide a huge deterrent against violation of the sanctions and export control laws given that BIS is operating under the same authority at this point.

I think the way that OFAC, the Office of Foreign Assets Control, has parsed it out in terms of dividing possible violations among those that are egregious and those that are non-egregious, and then accordingly, they have a scale and 12 different factors that you look at, is an instance where they provide a very transparent scheme for ensuring that each case is dealt with properly, and if needed, those enhanced penalties are available, but in most instances, they probably won't have to go that high. It would be judged on a case-by-case basis.

Chairman DODD. In that regard—and then this will be the last because it goes to that authority, as well—there have been criticisms, as there always are, over not doing enough, but one of the criticisms that has been raised is that key export control authorities were allowed to lapse in the last number of years, including provisions of the Special Deputy U.S. Marshal status to Commerce agents and requirements our government discourage compliance with foreign boycotts against allies, Israel being one that this issue has been raised with.

I wonder if these issues, the important priorities of the Commerce Department's Bureau of Industry Security and what enforcement priorities should there be for BIS.

Mr. WOLF. In the realm of those responsibilities that I would have if I am confirmed, I would want to guarantee that the enforcement agents were on a co-equal footing with their counterparts in other agencies and had all the tools that they needed to enforce the regulations.

Chairman DODD. Is that a legitimate criticism, or is that—about letting these areas lapse in this area, or is that just talk?

Mr. WOLF. I think that the criticism is legitimate insofar as the enforcement agents do not have the same authorities that their counterparts are able to exercise and that that is certainly something that could be addressed in legislation.

Chairman DODD. But, in your view, it needs legislation, then?

Mr. WOLF. Yes.

Chairman DODD. Well then, again, I think we would welcome some ideas and thoughts in that regard, as well.

Mr. WOLF. Certainly.

Chairman DODD. OK. Senator Shelby?

Senator SHELBY. Thank you, Mr. Chairman.

Mr. Tozer, yesterday, HUD announced many changes to FHA lending, including increasing mortgage insurance premiums, increasing downpayment requirements for high-risk borrowers, and increasing enforcement on FHA lenders. What do you think will be the impact of these changes on the health of not only FHA, but also on the health of FHA loans that make up most—a lot of the mortgage-backed securities for which Ginnie Mae guarantees the timely payment of principal and interest? Have you thought about that?

Mr. TOZER. Basically, my feeling—again, I have not gotten a chance to have a lot of conversations with the Commissioner and his staff about it, but my feeling is that the co-issue of home ownership should be sustainability and putting people into a home that they can basically make their payments and stay current on and to minimizing their chance of foreclosure. So I think anything that is done to create a system where the borrower can continue to make their payments and be put in a home that they can spend as long as they want to spend in it and not have problems with the financial ability to pay, I think it is critical. So anything that is done to do that, I think the whole system is better off in the long run.

Senator SHELBY. What do you, based on your experience, what opportunities and challenges do you believe face the next head of Ginnie Mae?

Mr. TOZER. From my perspective as an issuer—again, I have not had an opportunity to really spend a lot of time with the Ginnie Mae staff—the staff is very dedicated, but I think just the sheer growth. They have gone from really being a very small piece of the mortgage industry to now, because of FHA and VA becoming a bigger piece of the market because of the low downpayment potential in those programs, I think it is the growth and trying to deal with the issues of counterparty risk with their issuers and just understanding the market and becoming a major player. I think that is probably the biggest challenge.

But the people that I worked with when I was an issuer, they are very dedicated, a good foundation. I am looking forward to working with them, if confirmed, to move the agency to that next level to really make it a very solid operation that can support the housing market as a whole.

Senator SHELBY. But you had explosive growth here. In 2009, FHA's share of the mortgage market was 30 percent.

Mr. TOZER. Right.

Senator SHELBY. The 2 years prior to that, their market share was 3 percent.

Mr. TOZER. Right.

Senator SHELBY. So you have really grown and those challenges will be with you to handle the growth, will it not?

Mr. TOZER. It will be, and I am really, if confirmed, excited about taking on. With my 30 years, I have worked with Ginnie Mae, worked with the various capital markets, and that is what I am ex-

cited about, helping them move to that next level and making them a really good, world-class operation that they deserve to be.

Senator SHELBY. Mr. Criscitello, would you describe some of the challenges that you see facing HUD and how you plan to address some of these challenges? Specifically, what new approaches would you take in addressing the problems, and HUD has got some real problems?

Mr. CRISCITELLO. Yes, definitely and I would just echo Mr. Tozer's comments on some of those challenges. I would say the largest challenge, at least from an FHA and Ginnie Mae perspective, is balancing the need to mitigate risk while continuing to serve under—while continuing to support underserved communities and also while continuing to foster our economic recovery.

Senator SHELBY. What about the staffing problems? You are going to have challenges there, too.

Mr. CRISCITELLO. Sure. You know, it is interesting. Back in the 1990s, I acted as the CFO at the Small Business Administration and sort of the mantra at that time was doing more with less. Well, the loan guarantee programs at SBA really caught on in the 1990s and they were becoming increasingly popular and we were handling increases in the ten to 15 percent a year range. We thought that was a profound increase. But given the statistics that you just cited, that was nothing compared to what FHA and Ginnie Mae are up against. These are tremendous increases.

So it is going to be important—in the past, just looking back, a microcosm of this problem at SBA in the 1990s, we looked to how do we handle these rapidly expanding programs, how do we measure and mitigate financial risk, ensure appropriate accounting and financial controls, and also developing a budget was a—big challenges.

Senator SHELBY. Mr. Wolf, getting into your area and pick up on what Senator Dodd was raising, in 2008, the U.S. House found that the State Department had inadequate resources and staff to properly review commercial licenses for military exports in a timely and thorough manner. Do you think that the Department of Commerce has the resources and staff necessary to integrate non-U.S. actors to create a more effective global export control and treaty compliance, or do you not know yet?

Mr. WOLF. Well, thank you for the question. It is an important question and I hope to find out, if confirmed, the status. I know that it is an important task and you need resources and manpower, engineers, expertise in order to do so. So I look forward to learning more about the budget and the status of the funding.

Senator SHELBY. I will direct this question to Mr. Mills and to you, Mr. Wolf. What measures do you intend to implement to ensure that your agency becomes more effective in deterring efforts to divert sensitive U.S.-made dual-use items to Iran and to China? Senator Dodd was also in this area with you. Mr. Mills, how can you be more effective there? It is a challenge, a big one worldwide.

Mr. MILLS. I think, first and foremost, to ensure that the enforcement agents and their counterparts at the Export Control Offices overseas have the tools that they need to investigate potential violations and follow through on that and that the process is efficient, that the resources are properly allocated in this regard, and that

the focus is on the points of diversion. I am very intrigued by the draft legislation out of this Committee and I think that that is an excellent focus to have.

Senator SHELBY. Thank you.

Mr. Johnson, when Congress created SIPC in 1970, many, as you well know, many brokerage firms were stand-alone entities. Today, many brokerages are subsidiaries within large, complex financial institutions. As this Committee works toward comprehensive reform of our financial system, one of our important challenges is to determine how to most effectively resolve large complex financial institutions that fail with minimal disruption to the financial system and at minimal cost, I hope, to the taxpayers. It may become necessary to modify—we don't know yet—some of SIPC's authorities.

You were nominated because of your extensive background working with complex financial firms. What do you think are some of the major issues that you would suggest that the Committee focus on as we plan for the potential failure of large complex broker-dealer firms in the future?

Mr. JOHNSON. Well, I think there are a couple of things, Senator Shelby, that we would have to focus on, in particular, if confirmed, probably three primary areas that I would like to focus on. One area is going to be investor education, the ability to almost take the show on the road, to let investors really have a better concept of their protections that they have available under SIPC.

Secondarily, I think even the current full-scale examination of current rules and regulations that we have in place. I have had a chance to work in that area both at the SEC on a number of items and was even part of a group, and I don't know if it is an oxymoron, where we received an award for regulatory simplification.

[Laughter.]

Mr. JOHNSON. So it is an area that I think and I believe that SIPC is looking forward to really creating a task force that will start to kind of reevaluate exactly all the rules and regulations. It has been a number of years since something of that nature has taken place, and I think that you start out in that area, and that in and of itself, I think, helps you to really find out if you have all the adequate tools in place for investor protection, because at the end of the day, this is an agency whose primary role is to protect investors.

The last thing I would point to is really what I would call the export of the intellectual capital that currently exists at SIPC, the ability to be able to utilize some of these rules and regulations from an international standpoint as other countries look to figure out how to handle these issues, as well. Many of the issues we are dealing with are no longer just domestic. They are global issues. And if we were in a position to have what I would call transparent rules and regulations that can go across lines from a cross-border standpoint, I think it would help to simplify things.

I would mention that the transaction that SIPC spent a lot of time with dealing with the collapse of Lehman Brothers in large part was really grand in scope, over 130,000 accounts that had to be dealt with. It is one of those situations which crossed State

lines, obviously, international lines. And for all intents and purposes, a pretty seamless transaction in terms of moving groups from one organization to another. So I think the framework is in place, but I think what we will end up doing is doing an evaluation to make sure we have adequate safeguards in place.

Senator SHELBY. Ms. Bowen, as you are well aware, SIPC does not offer to investors the same blanket protection that the FDIC provides to bank depositors. Despite efforts to educate individual investors, which he just alluded to, about what SIPC covers and what it does not cover, many people are confused about SIPC's role here. Do you have—have you thought about this? Do you have any specific ideas on how to improve SIPC's investor education initiatives? He has alluded to this. It is very important. And how will you measure the success of these ideas, because a lot of people, I think, thought that there was just blanket coverage there.

Ms. BOWEN. Right.

Senator SHELBY. Do you want to comment on that?

Ms. BOWEN. Yes, definitely. And certainly, there was a lot of confusion as to what SIPC does do and does not do, and some of that, frankly, from the educational perspective, I think you could work on a parallel basis with the SEC and other regulatory agencies that play the role of enforcement, who have the powers to investigate. So I think one of the ways to sort of enhance it, it is not just SIPC by itself, but we have a regulatory regime which you, of course, are examining right now.

I think the other thing we should probably do is to see how we got to where we are today. I think one of the best ways to solve problems is to understand why we are where we are today, and I think, frankly, 40 years ago, there was just no way, given the sort of the limited mandate of the statute, that it could have contemplated that the types of securities, what constitutes customer accounts, whether that is an individual, whether they are feeder funds, those types of issues. I see why they are very confusing, because the statute does not define those very issues that are confusing, including how you would calculate net equity.

I think once we clarify those items that are really—some of those issues are farther apart right now, and I think, frankly, having clarity on those items will go a long ways in enhancing education, as well.

Chairman DODD. Thank you very much.

Senator JOHNSON?

Senator JOHNSON. [Presiding.] Ms. Bowen, after the massive investor fraud perpetrated by Madoff and Sanford, there has been a closer scrutiny of SIPC and the types of investments it covers. In your opinion, what are the weaknesses with SIPC's structure? Is the SIPC coverage limit of \$500,000 per account still appropriate?

Ms. BOWEN. Again, as I alluded to, I think it is not, quote, "a SIPC problem" as much as it is a definitional problem and an interpretation of what the statute was intended to do. Again, I think you should not—we should not look at this as a SIPC item alone. It should be looked at in tandem with other regulations that are in place.

I totally agree with you. The confusion from where we are today led to a lot of the frustration that we have seen, some of the frus-

trations that were alluded to at the very beginning. So I think just a real examination of what it is that SIPC should be covering, I think will go a long way in sort of clarifying that.

Senator JOHNSON. Mr. Kumar and Mr. Wolf, I have a question for you which is a bit parochial, but what set of steps will you take to assist agricultural producers and other residents from rural States like South Dakota in accessing international markets?

Mr. KUMAR. Thank you, Senator, for that question. While I have spent 30 years of my life building global businesses for major American corporations, the last 5 years of my life have been entirely devoted to rural markets, working with small holder farmers, albeit in a different country, Africa. Through that experience, I have seen the unique need of rural markets and what can be accomplished by even working on such ideas such as export of organic agriculture product, canned products, juices, *et cetera*.

If confirmed by this Committee, I will have—or you will give me the opportunity to work with the network of commercial and trade specialists across the Commercial Service and I am excited of the reality that they have deep networks even in rural markets, often staffed—the USEACs are staffed by experts from that community who understand those markets. I look forward, if confirmed by this Committee, to work closely with them and with your own staff to understand better the opportunities, the needs of your constituents and the farming community in South Dakota, and I would really look forward to that opportunity.

Senator JOHNSON. Mr. Wolf?

Mr. WOLF. With respect to the Bureau of Industry and Security, the primary role will be, or is to carve out exceptions for agricultural products in humanitarian and related circumstances for countries subject to U.S. economic sanctions. So my role would be—and I look forward to working with your staff on this—ensuring that those exceptions are consistent with the national security and foreign policy guidelines set up by the Departments of State, Defense, the White House, and the Congress so that those exemptions allowing for the export of agricultural commodities are consistent with the larger policy.

Senator JOHNSON. Mr. Tozer, what, if any, steps will Ginnie Mae need to make in response to FHA's announced criteria changes?

Mr. TOZER. Really, nothing. Ginnie Mae—actually, to some degree, it would actually be a benefit to Ginnie Mae because the idea of having loans that do not go into foreclosure and that go their whole term as far as payment is actually a positive to the investor base of mortgage-backed securities versus having loans that are going to foreclosure and have to pull out of pools. So actually, any steps taken by FHA to make the homeowner more able to make their payment and more stable is a positive to the Ginnie Mae program as well as the FHA program.

Senator JOHNSON. Senator Menendez?

Senator MENENDEZ. Thank you, Mr. Chairman, and let me thank you all for your willingness to serve, as Chairman Dodd said.

I have some specific questions for Mr. Johnson. Mr. Johnson, Madoff victims are deeply concerned about the recent actions by SIPC, and in particular by the trustee, Mr. Picard, and I want to ask you about some of those concerns. First, they are concerned



about the speed with which Madoff victims have been repaid, with many of them still not paid and some of their claims actually being litigated. What is your view of the progress or lack thereof that SIPC has made in taking care of Madoff victims?

Mr. JOHNSON. Thank you, Senator Menendez. Obviously, we are all well aware of the complexities when you are unwinding these complex corporate vehicles. I think SIPC has been operating in what I would call deliberate speed. The ability to really be able to kind of get your arms around all of this process on a worldwide basis is going to be a considerable job. I do think that there are going to continue to be concerns as we move forward, because many of the issues that we are dealing with in the Madoff matter are going to be those of first impression, in large part.

But I think that SIPC has what I would call the track record of showing that it has the ability in handling what I would call large-scale activities. In particular, I just previously mentioned the handling of the Lehman Brothers situation, which was large in scope and in breadth, and am feeling fairly confident that we will be able to move forward with deliberate speed in terms of taking care of investors—

Senator MENENDEZ. Well, if you speak to the Madoff victims, they don't particularly have that view, and I would like to elicit from you a commitment that if you are confirmed by the Senate, that you will meet with a group of representatives of the victims to get a different view about where SIPC is and listen to what their concerns are so that as the Chairman, you might very well have an opportunity to improve where we are headed here.

Mr. JOHNSON. Senator Menendez, you do have my commitment on that. I believe in order to be successful in this area, you have to be willing to take all points of view. As mentioned earlier, one of the things that we will have to also take into consideration is whether or not the rules and regulations that we currently have in place provide the adequate safeguards. It has been a number of years since we have had a chance to take what I would call a full-scale view of the laws that support SIPC and I think that is one of the first orders of business, as well.

Senator MENENDEZ. I appreciate it and would look forward to your review of it and any responses we need legislatively to help you do the job.

Let me ask you, Madoff victims are concerned about how SIPC has used clawback litigation to retrieve money from victims to contribute to the general pool or victims' funds. In your view, should SIPC use these clawbacks, and if so, under what circumstances?

Mr. JOHNSON. It is difficult to really come to a final conclusion on that. Obviously, many of the issues regarding clawbacks and things of that nature are still being handled by the courts. But I will say that I think the primary goal of SIPC will always be to do what is necessary for the protection of all investors that are involved, making sure that we are not in a position where we are simply protecting those that may have been early to the game as opposed to those that have come at a much later point in time.

I do think that there has to be a certain sensitivity as you deal with issues of this nature. One of the things that we want to make sure is that we are continuing to follow the rules and regulations

that we have, and also be willing to figure out how to be flexible whenever possible, because obviously the definition of the organization by its nature is to be involved in the protection of its investors.

So from a clawback provision standpoint, I think that is something that will have to continue to be looked at. I haven't had a chance to see what I would call all of the confidential and internal workings of how these decisions were made. But in taking into consideration the final rulings of the court and then having an opportunity to look at those issues, I am hoping to be able to draw some fairly adequate—

Senator MENENDEZ. Well, I hope you, and as for that fact, Ms. Bowen, are going to look at this, also the whole question of what, in essence, is the net equity. You know, it just seems to me we are in a position where victims find themselves even further behind in the process as it is unfolding. It is a difficult situation, and maybe, yes, to some degree that of first impression, but it just seems to me that the victims shouldn't ultimately be further victimized because of a process that ultimately puts them in a worse position than they should have or would have been.

I really—I will send you some questions, both of you, on that issue. I would like to have your responses in writing as it relates to that.

Finally, if I may, to go to Mr. Wolf or Mr. Mills, I also sit on the Senate Foreign Relations Committee. I have real concerns about having sensitive U.S. technology fall into the hands of countries that weren't supposed to get those technologies. I want to get a sense—for example, transshipment of sensitive technology to Iran continues to be a problem and it seems that the United Arab Emirates has been a major hub for illegal transshipment of goods to and from Iran. How can you enforce export control laws to prevent sensitive items and technologies from making their way to Iran? Particularly, what can be done to prevent aircraft and spare parts from being illegally reexported to Iran from third countries? That is something I would really like to get a sense.

Mr. WOLF. It is primarily an enforcement question, so I will defer.

Mr. MILLS. Yes. I think at the front end, when the Office of Export Enforcement performs a supporting role in the evaluation of pending license applications to conduct pre-license checks on potential end users in countries to attempt to guard against diversion of these products and technology to Iran and other countries and that that is a critical role that is played in the licensing process, and then the post-shipment verification to the Export Control Officers that are stationed abroad, including the UAE, to follow up and ensure that the items that were exported or reexported are done so in accordance with the terms of the license. And I think that the, as I said earlier, that ensuring that these agents have the proper tools to perform their function is critical.

I think that the pending legislation that this Committee has produced is very much on point on that regard with respect to diversion concerns, so I look forward to working with your staff and this Committee in that regard.

Senator MENENDEZ. Finally, Mr. Chairman, I did say when Daniel Hill testified before the Committee in October, he indicated that

the Bureau of Industry and Security only had five agents—five agents—overseas working on end-user verifications issues related to the diversion of sensitive goods, I hope that we are going to look at that and strengthen that reality, because five agents just simply cannot deal with the breadth and scope of what we need to ensure that sensitive technology does not get reexported illegally to other countries, particularly countries that wish us ill. That is something I look forward to hearing from you——

Mr. WOLF. If I may, thank you.

Senator MENENDEZ. Thank you, Mr. Chairman.

Senator JOHNSON. Thank you all for your testimony and commitment to public service.

With that, this hearing will be adjourned.

[Whereupon, at 11:06 a.m., the hearing was adjourned.]

[Prepared statements and responses to written questions supplied for the record follow:]

**PREPARED STATEMENT OF KEVIN WOLF**

NOMINEE FOR ASSISTANT SECRETARY OF COMMERCE FOR EXPORT ADMINISTRATION,  
DEPARTMENT OF COMMERCE

JANUARY 21, 2010

Chairman Dodd, Ranking Member Shelby, and Members of the Committee, I am honored to appear before you today as the President's nominee for the position of Assistant Secretary of Commerce for Export Administration. I appreciate and am humbled by the confidence President Obama and Secretary Locke have expressed in me. I am hopeful that I can earn your confidence as well. Should I be confirmed, I look forward to working with you and your staff.

Thank you Senator Lincoln for the kind and thoughtful introduction. We have been friends for many years and I have always valued your counsel and guidance. I am delighted that you could be here today.

I also want to thank my wife, Barbara Kanninen, and my two sons Fred and Markus. Without their support and patience, I would not be here today. I also hope that my nomination and, if confirmed, government service will be a valuable lesson and guide to my sons as they think about their futures. Public service is an honor and a privilege.

Mr. Chairman, I recognize the importance of the obligation I will be undertaking if confirmed. The threats we face are diffuse but real—principally terrorism, non-state actors, the proliferation of weapons of mass destruction, and the several countries of concern. The Bureau of Industry and Security plays a critical role in countering these threats by regulating the flow of controlled goods, technology, software, and services. It does so primarily by working closely with the Departments of State, Defense, and Energy, and the intelligence agencies, to evaluate thousands of applications a year. It also works with our international partners to develop controls to help, for example, stem illegal transshipments. This process and these relationships are the front line of defense against the export, reexport, and re-transfer of items to prohibited end-uses, prohibited end-users, and prohibited destinations. I commit to you that if I am confirmed, the Bureau will continue to do the best possible job in advancing U.S. national security, foreign policy and economic objectives by ensuring an effective export control and treaty compliance system, while at the same time facilitating continued U.S. strategic technology leadership.

While national security is the bureau's top priority, it cannot ignore the impact export controls have on U.S. industry. If controls become outdated or are not applied fairly, then they burden the economy without promoting security. Indeed, such controls could reduce our security if they force dual-use and military manufacturing and development to countries that do not have adequate export control systems.

I am well prepared to take on this responsibility. As an attorney with the international law firm of Bryan Cave LLP, I have been working almost exclusively with export control, antiboycott, and sanctions issues for nearly 16 years. My clients have been primarily small, medium, and large U.S. companies and their foreign affiliates. Most of my work has involved explaining to them how to comply with both the "law and the lore" of the often complex export control and sanctions regulations. If U.S. Government permission was required to engage in a proposed transaction, I would help them apply for and receive the necessary authorizations. I have also handled several high profile and significant export control enforcement cases that have affected export control law, policy, and compliance practices. I thus have a deep understanding of the culture, concerns, and technologies of the American exporter and how these rules affect U.S. economic and national security interests. As a result of this work and my efforts to promote dialog between industry and government officials, I have also developed a deep respect for the career staff at the various government agencies who administer the rules. I look forward to working with them, if confirmed.

If I am confirmed, my extensive background in this highly technical area will be helpful in inspiring and leading the Bureau; administering the existing regulations fairly and efficiently; and working with the other agencies involved in the U.S. export control system. My background will also be helpful in crafting and implementing, with the Under Secretary and the other agencies, the details of the significant export control reforms the President and the Secretary have announced are necessary to maintain our national security and economic growth. I look forward to working with Congress during this process. In all of my efforts, I will, if confirmed, be committed to the rule of law, transparency, and advancing the use of modern technology.

Thank you again for this opportunity to appear before you. I would be pleased to respond to any questions you may have.

**PREPARED STATEMENT OF SURESH KUMAR**

NOMINEE TO BE ASSISTANT SECRETARY OF COMMERCE AND DIRECTOR GENERAL  
OF THE U.S. AND FOREIGN COMMERCIAL SERVICE, DEPARTMENT OF COMMERCE

JANUARY 21, 2010

Chairman Dodd, Ranking Member Shelby, and distinguished Members of the Committee, I am honored and humbled to come before you today as President Obama's nominee to be Assistant Secretary of Commerce and Director General of the U.S. and Foreign Commercial Service. I want to thank President Obama for the enormous trust he has placed in me with this nomination and Secretary Locke for his support.

Over the past few weeks, I have had the pleasure of meeting Members of this Committee and your staff. Thank you for your hospitality and generosity in taking the time to share your insights and perspectives on the economic landscapes of your home states. If I am confirmed by this Committee and your colleagues in the Senate, I look forward to continuing this dialog and working closely with you and your staffs.

I am particularly grateful to Senator Menendez from my home state of New Jersey for his gracious introduction here today. Let me also take this opportunity to introduce you to the members of my family that have joined me here today—my wife Sheila, my daughter Pooja, and my son Aditya.

Sheila, my college sweetheart, has provided me her unshrinking support through a global journey that has spanned three decades and five countries. Sheila is amazing—not only is she a distinguished business executive in her own right, but she also managed to raise our two wonderful children.

Our daughter Pooja is a physician who is pursuing her passion for public health. She has served the underprivileged in remote corners of the world—from working with displaced people from Azerbaijan to East Timor, and vulnerable children from the streets of Kolkata to the Congo.

Our son Aditya has been a management consultant who has worked with the homeless in America, as well as victims of child labor in Asia. He had the honor of interning for this distinguished body, the U.S. Senate, in the office of the late Senator Ted Kennedy. Nine years, three cities and two coasts later he is back in DC with the distinct privilege of serving in the White House.

I would also be remiss if I did not mention my parents—Colonel Sundaram and Vasantha—who instilled in our entire family the importance of public service. Although they cannot be present here today, thanks to technological advancement that makes the world a global village, broadband and bandwidth permitting, they are watching these proceedings via webcast from their home in Delhi.

As I prepared these remarks, I could not help but reflect on the incredible journey from Mumbai, India, via Indonesia, Singapore and Canada that brought me to the United States 16 years ago. I stand before you as a first generation immigrant and a testimony to our great country. It has provided me and my family the opportunities most could have only dreamed about. If I am confirmed for this position, you will have given me the opportunity to repay a small measure of the debt to a country that has already given me and my family so much.

In the 30 years that I have been actively engaged in the international business community, I have seen firsthand the immense possibilities, potential, and prosperity that follow global trade. In the last several years as an international development consultant, I have worked with civil society and nonprofit organizations to improve lives and livelihoods and support small and medium enterprises in establishing sustainable and scalable businesses. I have worked for multinational and local companies across six countries, culminating in my position as the Head of Worldwide Consumer Pharmaceuticals for Johnson and Johnson. Through my work in emerging economies, both as a businessman and as a development consultant, I have seen the tremendous opportunities for U.S. businesses to more fully engage in Asia, Africa, and Latin America.

The value *and* values of free and fair trade are embedded in my DNA. I have a deep appreciation for the unique challenges that face U.S. businesses seeking to expand overseas. If I am confirmed, I pledge to help American enterprise enhance its competitiveness and grow its global footprint; to increase U.S. exports and help create jobs; and to protect our interests, patents and intellectual property that are so critical to encourage innovation and support technological advancements particularly in emerging technologies in the environment, energy and healthcare sectors. These are the priorities that have been articulated by Secretary Locke for the Department of Commerce, and I am humbled by the opportunity to work daily to advance them.

If confirmed, I will leverage my experience and passion in international business to maximize the efforts of the U.S. Commercial Service in increasing the global competitiveness of the American business community, with a particular focus on small and medium enterprises. I will work tirelessly with the wonderful trade professionals throughout the extensive global network of U.S. Export Assistance Centers in over 100 U.S. cities and in U.S. embassies and consulates across 77 countries to increase U.S. exports, and by doing so, to create good American jobs.

International trade has always been a proven path to global prosperity. Very simply, by increasing U.S. exports, we will be creating good, high paying American jobs. The current economic climate makes it even more compelling to prioritize and pursue this course. With 95 percent of the world's consumers living beyond our borders, we must encourage, nurture and support U.S. companies, particularly small and medium businesses, to export goods and services into foreign markets. We must grow our exports to stimulate the economy, create and maintain American jobs and to help reduce our trade deficit. These are challenges, but they also present tremendous opportunities—that is why I am so excited by the prospect of leading the U.S. Commercial Service at this pivotal moment in time.

If I am confirmed, I will work closely with this Committee and your colleagues in Congress to expand U.S. exports and advance U.S. commercial interests abroad, to forge new economic ties for America overseas, and to ensure that America maintains its leadership in the global economy while advancing U.S. national security interests through a renewed focus on commercial diplomacy.

Mr. Chairman, I thank you for your consideration of my nomination and for the opportunity to address any questions that you and your colleagues might have.

#### **PREPARED STATEMENT OF DAVID W. MILLS**

NOMINEE FOR ASSISTANT SECRETARY OF COMMERCE FOR EXPORT ENFORCEMENT,  
DEPARTMENT OF COMMERCE

JANUARY 21, 2010

Chairman Dodd, Ranking Member Shelby, and Members of the Committee, I am honored to appear before you today as the President's nominee for the position of Assistant Secretary of Commerce for Export Enforcement. The President has my heartfelt gratitude for the trust and confidence he has placed in me. I would also like to express my appreciation to Secretary Locke, with whom I look forward to serving if confirmed for this position. I would be remiss if I did not also thank my parents, Eugene and Dorothy Mills of Lee, New Hampshire, for their unstinting and unwavering love and support over the course of my life, without which I would not be before you today.

I had the privilege of starting my first permanent position with the executive branch at the Department of Commerce, and served there as an Attorney/Advisor at the Bureau of Export Administration beginning in 1985. At that time, I had the opportunity to assist in the implementation of the 1985 amendments to the Export Administration Act, as well as the implementation of the South African Anti-Apartheid Act in 1986. I am delighted at the prospect of returning to this agency should I be confirmed, and in assisting its able and dedicated personnel in carrying out their continuing mission that is so vital to our national security.

If given the opportunity to serve in the capacity for which I have been nominated, I also look forward to drawing upon the experience I gained during the 18 years I served at the Office of Foreign Assets Control of the U.S. Treasury Department. As a member of OFAC's Chief Counsel's Office, I provided legal support and review for licensing, interpretive, and enforcement matters arising under the various economic sanctions programs for which I was responsible, working closely with Department of Justice attorneys in both the Civil and Criminal Divisions. I also served as OFAC's Chief of Policy Planning and Program Management. In that role, I was responsible for reviewing all warning letters, penalty actions, and settlements of alleged sanctions violations, and for preparing recommendations on the disposition of enforcement matters for the Director. I also supervised the drafting and issuance of OFAC's first set of comprehensive economic sanctions enforcement guidelines in 2003, as well as the semiannual reports to Congress on the administration and enforcement of sanctions programs.

As Chief of Licensing at OFAC, I gained invaluable managerial experience ensuring the timely response to requests for licenses and interpretive rulings, coordinating interagency review when required, and reducing an initial backlog of licensing requests from 1,400 to 100 pending cases. In 2005, I was awarded the Meritorious Service medal by the Secretary of the Treasury. If confirmed, I look forward

to the opportunity to coordinate compliance and enforcement efforts with my former agency, as well as other agencies with important roles to play, including the Departments of Justice, Homeland Security, State and Defense.

More recently, since 2007, I have worked in private practice first at Baker, Donelson, Bearman, Caldwell & Berkowitz, a regional law firm present in five southern states and DC, and then at DLA Piper, a global law firm with a presence in more than 60 cities throughout the United States and in more than 25 countries. Through my participation in several extensive internal investigations involving both civil and criminal matters, I have gained a deeper appreciation of the challenges that companies face, most of which are attempting in good faith to comply with often complex regulatory regimes. I believe that the enforcement of those regimes must not only be fair and firm, but also as clear and transparent as possible, in order to advance both our national security and foreign policy interests and our economic potential through export promotion. Finally, in those instances where good faith is not a factor, I commit to vigorously enforcing our nation's laws to ensure that those who flout the rules are caught and punished.

Thank you again for this opportunity to appear before you. I would be pleased to respond to any questions you may have.

# **PREPARED STATEMENT OF DOUGLAS A. CRISCITELLO**

NOMINEE FOR CHIEF FINANCIAL OFFICER,  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

JANUARY 21, 2010

Chairman Dodd, Ranking Member Shelby, and distinguished members of the Committee, my name is Doug Criscitello, and I thank you for inviting me to appear before you today. I know how busy this Committee is, and I very much appreciate the opportunity to appear before you.

Before I go any further, I would like to introduce my family: my wife, Linda, who has been putting up with me since our high school days in Binghamton New York, and our terrific children, Sammy, Kyle and Lyndsay. I am humbled and honored to be the choice of President Obama and Secretary Donovan to serve as the Chief Financial Officer for the U.S. Department of Housing and Urban Development (HUD). If confirmed, I look forward to being part of the team at HUD that will work with you and your staffs to address the significant housing and community development needs of our Nation.

For the past 24 years, I have dedicated my career to governmental budgeting and financial management with an emphasis on Federal credit programs and community development issues. I have served in a number of financial management positions at both the Federal and local levels of government. My most recent position in government was as the founding Director of the New York City Independent Budget Office (IBO), a municipal government agency modeled after the Congressional Budget Office (CBO) to provide nonpartisan, objective research and analysis of NYC's budget. While at IBO, I concentrated on establishing the agency as a credible, non-partisan voice on city budget and policy matters—no easy task in a city where seemingly everyone has a strong point of view. IBO's mandate is broadly aimed at enhancing official and public understanding of fiscal issues facing New Yorkers, which allowed me to work on a diverse range of issues. That role required me to think creatively about how to make governmental budgeting understandable to citizens—doing things like originating the concept for the Federal Taxpayer-Right-To-Know Act, a bill introduced by Senator Schumer and enacted in 1999 to provide citizens with detailed information about how their taxes are spent.

Prior to my IBO position, I spent 9 years as a career civil servant in the Federal Government focused on financial management and credit programs. At the Small Business Administration (SBA), I led efforts to help that agency implement two of the most significant financial management statutes of the 1990s: the Chief Financial Officers Act and the Federal Credit Reform Act. Before working at SBA, I served as a budget examiner at the Office of Management and Budget (OMB) in the Housing, Treasury and Financial Institutions Division. Before OMB, I held a similar position at CBO, where I learned the importance of providing impartial financial and budgetary analysis to elected officials to empower them to make informed legislative decisions. My primary areas of responsibility at both OMB and CBO involved credit programs, economic and community development issues, and budgetary analysis.

Since 2000, I have worked in the private sector as a consultant and service provider to the government. At JPMorgan, I worked in the bank's Governments Institu-

tions Group, where I provided operational and financial advisory services to Federal credit agencies such as HUD and SBA. That position allowed me to enhance my understanding of the capital markets including how they can be used to help accomplish public policy goals. At PricewaterhouseCoopers (PwC), I helped the firm establish a public sector financial services practice to support Federal financial stabilization initiatives. I also worked with a number of Federal credit agencies, including HUD, on engagements involving credit reform implementation and various other financial management matters.

Clearly, expanded programs with increased levels of funding have occupied management at HUD over the past year while the ongoing work of promoting sustainable homeownership, community and urban development, and access to affordable housing has continued. If confirmed by the Senate, I will work to ensure transparency and accountability of these programs through an effective financial management and internal controls program aimed at deterring waste, fraud and abuse of taxpayer dollars. Key priorities will include providing timely and reliable financial information for use by both executive and legislative branch officials and ensuring the Department's financial management program continues to get a clean bill of health from its auditors.

I would like to conclude by saying again how honored I am to be before this Committee. I have worked with HUD's programs for many years and am aware of at least some of the financial management and budgetary challenges facing the Department. If confirmed, I look forward to working with you to help HUD achieve its mission in a way that advances our economic recovery prospects while ensuring that taxpayer money is spent wisely.

Thank you and I look forward to your questions.

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#### **PREPARED STATEMENT OF THEODORE W. TOZER**

NOMINEE FOR PRESIDENT,  
GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

JANUARY 21, 2010

Chairman Dodd, Ranking Member Shelby, and distinguished Members of the Committee, I want to thank you for the opportunity to appear before you today. Thank you to all the Members of the Committee and their staffs who met with me over the past 2 weeks. I also want to thank Sandy, my wife of 29 years, for supporting me throughout my career.

I am honored and humbled by the confidence that President Obama and Secretary Donovan have shown in me by my nomination to this position at such a critical juncture in the history of housing. My 30 years experience in the mortgage capital markets has uniquely prepared me to manage Ginnie Mae, if confirmed. An effective President of Ginnie Mae must balance the needs of all three of its major stakeholders: issuers, investors, and the U.S. Treasury.

I began my career managing the operations of BancOhio National Bank's broker/dealer operation and its asset and liability management function. During the 6 years of managing the broker/dealer, my responsibilities included compliance, accounting, trade settlement, customer security safekeeping, and risk management reporting. During this phase of my career, I developed a good understanding of the running of a trading floor and was also able to be a part of the initial phase of interest rate risk management by the banking industry.

My experience working in the investment community has prepared me to work closely with the investor base of Ginnie Mae securities and to help educate the investment communities on the various Treasury-guaranteed mortgage programs. This education is critical in keeping the costs as low as possible to the borrower.

During the last 24 years, I have managed the capital markets for National City Mortgage Co. My responsibilities included daily pricing of loan products; managing the interest rate risk of loans being held in inventory for future sale; designing loan products that are sellable into the capital markets; delivery and settlement of loan pools; and, negotiating the sales of loan pools into the capital markets. My experience at National City allowed me to develop a broad knowledge of the mortgage company's operations. I was required to balance the needs of the sales force, the servicing department, and mortgage investors.

During my 24 years in the mortgage banking industry, I have developed strong relationships with the capital market managers whose companies account for over 80 percent of Ginnie Mae issuances. During my career, I have worked closely with the FHA Commissioner and the FHA Chief Risk Officer, two mortgage industry leaders with whom I will work very closely if confirmed as President of Ginnie Mae.



These relationships were developed by participating on Fannie Mae and Freddie Mac National Lender Advisory Boards, and serving as chairman of the Mortgage Bankers Association Capital Markets Committee, as well as the Mortgage Bankers Association Residential Board of Governors. Serving in these roles allowed me to understand the needs of the mortgage banking industry as a whole.

I have also developed strong relationships with Wall Street mortgage traders, which has increased my understanding of how they view mortgages and their value. If confirmed, these experiences and relationships will help Ginnie Mae fulfill its responsibilities both to educate investors about loan program modifications and to be a capital markets advisor to Federal housing agencies. Having a President of Ginnie Mae with capital markets expertise is more critical now than ever as the government uses various loan programs to stabilize the housing market.

If confirmed I will, in an efficient and risk-adverse manner, work to make Ginnie Mae a strong foundation for execution of housing policy. Thank you for your consideration of my nomination, and I look forward to answering any questions you may have.

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**PREPARED STATEMENT OF ORLAN M. JOHNSON**

NOMINEE FOR CHAIRMAN, SECURITIES INVESTOR PROTECTION CORPORATION

JANUARY 21, 2010

Chairman Dodd, Ranking Member Shelby, and Members of the Committee, I would like to thank for the opportunity to appear before you today as you consider my nomination to be the Chairman of the Securities Investment Protection Corporation. I am deeply grateful to President Obama for nominating me to this important position. In addition, I also appreciate the time Members of this Committee already have taken to meet with me, and if confirmed, I look forward to working the Committee to address the challenges in ensuring adequate protection of investment accounts and general investor confidence in the United States financial markets.

It is indeed an honor and a privilege for me to be here. With the Chairman's indulgence I would like to introduce my wife Zina Johnson who is here supporting me today as she always has in everything that I do in our nearly 20 years of marriage. I would also like to recognize my daughter Nia Johnson, who is not here today and is a Junior at Blue Mountain Academy in Pennsylvania, and my two sons who are here today, Adam who is in eighth grade at Sligo Elementary School and my son Jair who is in fifth grade at the Dupont Park elementary school. I have always been blessed by their love and support.

For more than 20 years, I have had the opportunity to work in the area of complex corporate and securities transactions at major law firms and in the public sector as both a staff and supervisory attorney at a major securities regulatory government agency. I have had the opportunity to remain on the cutting edge of recent novel securities issues in both private practice and in area of academia.

I am currently a Partner in the law firm of Saul Ewing LLP. My practice focuses on general corporate matters, complex business transactions and Federal and state regulatory issues in business and securities transactions, including proxy solicitations, bankruptcy reorganizations and equity and debt offerings. I have also engaged in investigations of investment advisers with state securities commissions and numerous SEC audits of energy companies in conjunction with state and local public utility commissions and the Federal Energy Regulatory Commission.

Prior to joining Saul Ewing, I was with the international and Wall-Street based firm of Milbank, Tweed, Hadley & McCloy, LLP where I served as co-head of its regulatory practice in the Washington, DC office. Prior to Milbank, I served for over 9 years as a Staff Attorney and Branch Chief in the Division of Investment Management for the United States Securities and Exchange Commission.

In addition to my work in both the public and private sectors, since 1994, I have served as an adjunct professor of law at my alma mater Howard University School of Law, where I have taught Securities Regulation classes in connection with the fundamentals of Federal and state securities laws, including the 1933 and 1934 Acts and the Investment Company Act of 1940.

As you are well aware, SIPC's primary goal is to protect individual investors from financial hardship, to insulate the economy from the disruption which can follow the failure of major financial institutions. SIPC has and should continue to stand as the first line of defense in protecting investors when such a failure occurs, and act swiftly to eliminate, as much as possible, the risks associated with customer loss.

If confirmed I look forward to continuing and expanding SIPC's work in the areas of investor education and ensuring that its current rules and regulations provide

adequate safeguards to protect investors in this ever-evolving global financial market. I believe that SIPA provides the framework that can and should be used to guide the protection of investment accounts not just in the US, but in many other world financial markets. If confirmed, I would view my role as being a principal advocate for robust investor protection.

Mr. Chairman and Members of the Committee, I thank you again for your consideration of my nomination, and I look forward to answering any questions you may have.

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**PREPARED STATEMENT OF SHARON Y. BOWEN**

NOMINEE FOR VICE CHAIR, SECURITIES INVESTOR PROTECTION CORPORATION

JANUARY 21, 2010

Chairman Dodd, Ranking Member Shelby and other distinguished members of the Committee, I am honored to have been nominated by President Obama to serve as Vice Chair of the Securities Investor Protection Corporation. I want to thank the Committee members and staff for meeting with me and making time for this nomination hearing.

I would like to take this opportunity to briefly introduce my family members who are here with me today. My husband, Larry Morse, who has been a constant supporter and friend since we first met at the University of Virginia, my sister, Shelia Taylor, and my nephews, Vincent, Jr. and Victor Bowen. Although other members of my family could not be here today, I want to acknowledge and thank them for their abundant and unconditional love and support.

I have practiced in the corporate, securities and finance areas of the law for more than 25 years. I am fortunate to be a member of the legal profession and to do what I love. My interest in finance, law and business started during my early years, even before I knew there was a place called Wall Street. After receiving a degree in Economics, I attended business and law schools at Northwestern University. I then moved to New York and began my career as a corporate attorney.

My expertise in securities and corporate law and deep interest in our financial markets provide a great background for me to address the challenges SIPC currently face. When I read about the state of the economy and financial markets at the formation of SIPC, I found many common themes we also face today. Yet, at the same time, our current environment is vastly different and more complicated. Even the sheer growth and volume of customer accounts, let alone the types of securities within those accounts, could not have been imagined 40 years ago.

I look forward to bringing my deep knowledge of securities and corporate law to my role as Vice Chair of SIPC, should I be confirmed. I look forward to working with you in helping to improve our protection of investors.

Thank you for your time and consideration. I am happy to answer any questions.

**RESPONSE TO WRITTEN QUESTIONS OF SENATOR SHELBY  
FROM KEVIN WOLF**

**Q.1.-1.** During the hearing, you pointed out that “it is vital that foreign parties involved with U.S. goods and technology and derivatives of U.S. goods and technology are aware of and abide by the rules governing them so that items going through one country don’t end up in prohibited destinations.” At a recent international seminar of government and private experts on export control and non-proliferation, it was suggested that foreign compliance with U.S. re-export rules may improve if contracts between U.S. manufacturers and foreign re-sellers of their products uniformly required compliance with those rules. The contracts would need to specify substantial liquidated damages for violations—and these contract rights would need to be regularly and vigorously asserted and enforced. Recent cases, involving diversion of microprocessors to Iranian missile and nuclear entities, are instances when such contract rights could have been asserted—and if asserted, could have served as a deterrent for other would-be diverters.

Based on your experience, do you think such an approach would bring practical non-proliferation benefits?

**A.1.-1.** I agree with the basic premise of the question that export control compliance clauses are a “best practice” and should be encouraged. Indeed, in my experience, they are a common element of contracts involving the sale of goods, technology, or software across borders. If they are tailored to the type of export control issues potentially created by the transaction and the parties’ level of export control understanding, they can aid compliance and have practical non-proliferation benefits because they serve an educational function. Parties that may not have known about or be experienced in dealing with the potentially applicable export control rules are, with the clause, informed of or reminded of a regulatory compliance obligation that exists in connection with the sale.

As a practical matter, however, the liquidated damages element of such clauses are rarely enforced by the parties for a variety of reasons. Parties also tend to resolve their disputes in other ways. In any event, the reminder that a U.S. Government investigation (which can be time-consuming and costly for both the exporter and consignee) could occur or that denial orders or criminal penalties could be imposed if the export control rules are violated tends to have, in my experience, more of a deterrent effect than the possibility of having to pay liquidated damages. This does not mean, though, that they do not serve an educational, thus compliance, purpose in bringing attention to the export control issues associated with the proposed transaction.

**Q.1.-2.** What are potential challenges, if any?

**A.1.-2.** If company compliance programs do not include a requirement to train business and contracts personnel regarding the meaning and significance of such clauses, the clauses do not have an educational value and can become, for compliance-related purposes, meaningless “boilerplate.”

**Q.1.-3.** How could BIS encourage such practice by U.S. exporters?

**A.1.-3.** BIS should continue to encourage the use of export control compliance clauses by including a discussion of the issue and sample clauses in its educational outreach efforts and documents describing export control compliance program best practices. These materials could include sample clauses for exporters to work with and would have practical non-proliferation benefits if they emphasized the need for parties to tailor their clauses to the export control compliance issues potentially created by the goods, technology, software, countries, end-uses, and end-users at issue. Many companies will choose not to include the liquidated damages element of such clauses in their contracts for a variety of reasons. For example, many companies have general policies against accepting such clauses for business and competitive reasons and the laws of some countries may limit the use of such remedies. The option of including such clauses can nonetheless have an educational, thus non-proliferation, benefit for the reasons described above.

**Q.2.-1.** For a number of years, BIS has operated under significant constraints, limiting the agency's ability to hire and retain quality staff and hampering access to resources needed to pursue its key national security mission.

In your opinion, what effect has the recent resource constraints had on the licensing/enforcement function at BIS?

**A.2.-1.** I am not in a position to determine what impact recent budget constraints have had on the licensing and enforcement functions at BIS. It is my understanding that, until recently, BIS had been operating under a continuing resolution and as a result there have been few new hires. If confirmed, I will work to identify the licensing personnel and supply needs of BIS's Export Administration and, if needed, work to ensure that resources are made available. Additionally, I will work with my counterpart who is responsible for BIS's Export Enforcement to ensure that future budget requests include the appropriate funds to meet future licensing and enforcement needs. If confirmed, I will commit to seek out ways to use the resources that are available efficiently and to the greatest impact for export control compliance.

**Q.2.-2.** In your opinion, what does the licensing and enforcement function at BIS require to do a better job, in terms of manpower and other resources?

**A.2.-2.** I am not in a position at this time to determine what resources will be required for the licensing function at BIS to do a better job. If confirmed, I will review the resources required and those currently available to determine what additional resources might be needed.

**Q.2.-3.** If confirmed, what measures would you implement to remedy these shortcomings?

**A.2.-3.** If confirmed, I will assess the personnel and supply needs of BIS's Export Administration and work to empower that office's management to hire the necessary personnel to support Export Administration's needs. I will also review the feasibility of detailing of personnel to those offices most in need of support, particularly those offices with licensing responsibilities.

**Q.3.** In 2007, BIS launched the “Validated End-User” (VEU) program, which allows select foreign companies to receive controlled dual-use goods without otherwise-required export licenses. Since its inception, the program has been criticized as posing a national security risk while not being of much use to exporters.

In your opinion, has the program been designed and implemented effectively and securely? Do you believe it should continue, and if so, how would you modify the program to improve its operation?

**A.3.** The VEU program is premised on the fact that the companies allowed to participate in it have a history of civilian end use and have robust, transparent, and verifiable export control compliance programs. Thus, in principle, the program is effective as it reduces the licensing burden on BIS and the companies and secure as it achieves the same or better level of export compliance that would have been achieved through the individual licensing of particular transactions. In my view, its existence also appears to be an important part of U.S.-China trade relations.

Without access to the information pertaining to the parties involved or that would like to participate in the program, I am not in a position to say whether the program has been designed and implemented effectively and securely. If confirmed, I commit to review its effectiveness and security and, if necessary, make recommendations for its revision.

**Q.4.** Last summer, a GAO study demonstrated that export controls on sensitive dual-use goods can be easily circumvented by domestic sales and subsequent shipments out of the country. Recent enforcement cases show that this technique is widely used for illicit procurement to China and Iran.

If confirmed, what measures would you seek, by BIS and by industry, to address such domestic procurement schemes?

**A.4.** If confirmed, I commit to work with BIS’s Export Enforcement to review current measures to address this issue and revise BIS’s efforts as appropriate.

I also commit to ensure that BIS will do what it can to ensure that American companies are aware of the “Know Your Customer” and red flag guidance that exists in the regulations, which note that various elements of the regulations are dependent upon a person’s knowledge of the end-use, end-user, ultimate destination, and other facts pertaining to a transaction or activity.

Another key element of stopping such domestic procurement schemes is vigorous enforcement actions against those companies that “self blind,” *i.e.*, willfully cutoff the flow of information that comes into the company in the normal course of business. Company personnel and individuals need to know and be reminded that consciously disregarding facts indicating a potential export control violation will not insulate them from prosecution.

**Q.5.-1.** The Commerce Department has emphasized the use of “trusted” companies and countries as a way to reduce export licensing and facilitate trade. At the other end of the spectrum is Commerce’s “Entity List,” which is meant to be the key nonproliferation tool helping industry to identify risky foreign buyers. According to BIS, the Entity List “undergoes continual review and revision.” But

a quick glance at the List shows that many of the entities have been on it for almost 10 years without an address or key aliases. There have even been cases when BIS has identified an alias for an Entity List company in a press release (<http://www.bis.doc.gov/news/2007/china07202007.htm>), but then failed to add that alias to the Entity List itself. Also, recent additions to the Entity List have targeted known diverters and trans-shippers but not end-users linked to missile and WMD programs.

Based upon your experience, do you believe the Entity List effectively identifies the “risky” end-users? If not, how would you improve it?

**A.5.-1.** Without access to the information pertaining to the listed companies or the intelligence regarding companies that should be listed, I am not in a position to say whether the list effectively identifies “risky” end-users. I do know, however, that BIS’s attention to listing companies and individuals that are involved in diversions, illegal transshipments, violations of export control rules is a critical part of the export control compliance system. Companies with effective compliance programs rely on this information when making decisions about potential transactions. The list and efforts to expand the list are also central to the need to have more targeted end-user and end-use specific controls rather than those based solely on country-specific controls. If confirmed, I will work to ensure that the Entity List effectively identifies end-users of concern based on the data and intelligence available to BIS.

**Q.5.-2.** In your opinion, has BIS been trying to find additional identifying information for listed entities and failed, or has it simply not made an effort to review and update poorly described entities?

**A.5.-2.** BIS has recently increased the number of individuals on the Entity List. In addition, as part of the recent expansion of the Entity List, BIS, and its inter-agency partners, have committed to an annual review of all of the entities on the Entity List to keep the list up to date. If confirmed, I will review the existing process and the potential for revisions to the Entity List.

**Q.5.-3.** Will you commit to updating the address and alias information of all entities that have been on the list for 3 years or longer within your first 6 months in office?

**A.5.-3.** My understanding is that there is an inter-agency review committee, the End-User Review Committee (ERC), made up of representatives from the Departments of Commerce, State, Defense, Energy, and, when appropriate, the Treasury. The Export Administration Regulations (EAR) now require the ERC to review the listing of all of the entities on the Entity List at least once a year. If confirmed, I will work to ensure that the Entity List contains, to the extent possible and within the scope of this inter-agency process, the correct, relevant, and required information about the listed entities.

**Q.5.-4.** Will you commit to review, if confirmed, the missile and WMD programs of countries represented on the Entity List, and to identify any additional entities in those countries that need to be added to the List for proliferation reasons?

**A.5.-4.** If confirmed, I will work to review the missile and WMD programs of countries represented on the Entity List and add any additional entities as appropriate to address proliferation concerns.

**Q.5.-5.** Based on your extensive experience counseling companies on export control compliance, are there changes that could be made to the Entity List, whether in format or content, that would simultaneously make it easier for U.S. companies to comply with the law, and make it harder for the entities on the List to get controlled U.S. technology?

**A.5.-5.** A prominent part of the BIS website is a link called “Lists to Check.” It collects together in various downloadable formats the lists companies need to be aware of and check as part of their export compliance program. In my experience, different types of companies with different types of export control compliance programs find this link and the multiple ways in which the information in it can be downloaded to be useful. If confirmed, I will nonetheless review with BIS personnel ways in which the lists can be made even more user-friendly, budget permitting, for companies that want to or otherwise should screen their exports against the lists.

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**RESPONSE TO WRITTEN QUESTIONS OF SENATOR SHELBY  
FROM DAVID W. MILLS**

**Q.1.-1.** During the hearing, you expressed support for pending legislation, produced by this Committee, regarding destinations of diversion concern. In fact, sometime prior to this legislation, the “destinations of diversion concern” concept was raised by the Bureau of Industry and Security as a regulatory proposal.

Do you agree that implementing this as a regulation as soon as possible would decrease the risk of sensitive goods being diverted to Iran?

**A.1.-1.** I believe that any effort to decrease the risk of sensitive U.S. dual-use goods being diverted to Iran is worthy of serious consideration. If confirmed as the Assistant Secretary of Commerce for Export Enforcement, I will make it a top priority to closely study this issue and review any previously generated studies on this matter in order to make an informed decision.

**Q.1.-2.** If so, will you support implementing the “destinations of diversion concern” proposal immediately through regulations?

**A.1.-2.** As you know, one of the most critical priorities of the Bureau of Industry and Security is to prevent illicit diversions to Iran. To that end, Bureau of Industry and Security (BIS) currently has several programs in place toward achieving that goal. If confirmed, after conducting the critical review and assessment described above, and immersing myself in the current strategies employed by BIS, I will have vastly improved information from which to make these judgments.

**Q.2.-1.** For a number of years, BIS has operated under significant constraints, limiting the agency’s ability to hire and retain quality staff and hampering access to resources needed to pursue its key national security mission.

In your opinion, what effect has the recent resource constraints had on the licensing/enforcement function at BIS?

**A.2.-1.** I understand that recent resource challenges have had an adverse impact on filling several personnel positions and on some basic support resources needed to execute BIS's mission. My understanding is that unfilled positions range from BIS special agents and export control officers to analysts required to produce quality leads and in depth case support for BIS's special agents. I have not had an opportunity to determine what the resource constraints have meant to BIS's functions. However, if confirmed, I plan on immediately reviewing and assessing the impact that these shortfalls have caused, as well as what steps have been taken and need to be taken to address them.

**Q.2.-2.** In your opinion, what does the licensing and enforcement function at BIS require to do a better job, in terms of manpower and other resources?

**A.2.-2.** I believe BIS needs to ensure it maintains a viable force level and presence domestically and overseas. BIS also needs to provide quality analytical support that will ensure its special agents are focused on the most pressing threats and are provided the support to successfully enforce the laws and regulations so that our most critical dual-use items do not fall into the hands of entities that threaten our national security. As noted above, if confirmed, I will carefully review the available and required resources needed to carry out these functions.

**Q.2.-3.** If confirmed, what measures would you implement to remedy these shortcomings?

**A.2.-3.** As noted above, if confirmed, I will review BIS's enforcement needs, including possible shortcomings. The review will focus on issues such as ensuring the personnel and funding mix is appropriate for the mission, ensuring BIS has the right skill sets and job series for the functions to be performed; and ensuring BIS employees are provided the proper training to successfully perform their jobs.

**Q.3.** In 2007, BIS launched the "Validated End-User" (VEU) program, which allows select foreign companies to receive controlled dual-use goods without otherwise-required export licenses. Since its inception, the program has been criticized as posing a national security risk while not being of much use to exporters.

In your opinion, has the program been designed and implemented effectively and securely? Do you believe it should continue, and if so, how would you modify the program to improve its operation?

**A.3.** The "Validated End-User" (VEU) program was designed to facilitate trade to civilian end-users who have reliable and robust export compliance programs, while minimizing risks to national security. If confirmed, I will review the VEU program with the other cognizant BIS officials and determine whether adjustments are needed to ensure that the program is implemented consistent with those objectives.

**Q.4.** Last summer, a GAO study demonstrated that export controls on sensitive dual-use goods can be easily circumvented by domestic



sales and subsequent shipments out of the country. Recent enforcement cases show that this technique is widely used for illicit procurement to China and Iran.

If confirmed, what measures would you seek, by BIS and by industry, to address such domestic procurement schemes?

**A.4.** Purchasing commodities represented as “domestic sales” is a tactic which has been employed by exporters to obtain items they are seeking for illegal shipment abroad without applying for an export license. It is my understanding that the BIS, through its Office of Export Enforcement (OEE), maintains a robust outreach program with industry that includes disseminating guidance on how to guard against illegal exports emanating from transactions represented as “domestic sales.” During these outreach visits, OEE special agents discuss the importance of knowing their customers and watching for any red flags indicating that sensitive U.S. commodities, technology and software may be exported contrary to the national security and foreign policy interests of the United States. Such guidance is intended to serve as a tool for the exporting community to use while employing due diligence regarding business relationships and decisions.

Although presented in the context of “export” transactions, those guidelines can also be used when screening business transactions presented as purely domestic. As such, the guidance can be used to screen a wide range of transactions, not solely those represented as exports. Furthermore, BIS endorses as a “best practice” that industry include a statement on the purchase order that items are controlled under the Export Administration Regulations and may require a license prior to being exported out of the United States, and encourages business to have customers certify in writing prior to the sale that the items are not for export. During these visits, special agents also encourage industry to contact OEE regarding any abnormal circumstances involved in a transaction so that it can be assessed as a possible diversion. Numerous referrals have emanated from such outreach activities.

If confirmed, however, I will review this issue with the other cognizant BIS officials to determine if additional actions are warranted.

**Q.5.-1.** A key aspect of BIS efforts to prevent diversions of dual-use goods (including to Iran) are the Export Control Officers (ECOs) placed in strategic locations around the world. The ECOs are tasked, among other duties, with carrying out inspections to ensure that dual-use goods exported from the United States are indeed in their declared locations and uses, and have not been diverted. However, only five ECOs have been in place—one each in Beijing, Hong Kong, Moscow, New Delhi and Abu Dhabi, United Arab Emirates. BIS has contemplated adding another ECO in China and one in Southeast Asia (for diversion points like Malaysia).

In your experience, do you believe that this small number of BIS inspection officials (despite some assistance they receive from other Embassy personnel) is sufficient to prevent diversions to unauthorized end-users and end-uses, including to Iran and China?

**A.5.-1.** From my perspective, the mission of trained special agents at the ECO positions is a critical component to effective export control enforcement and licensing. The current locations appear to be located at the most critical embassies to provide the best coverage to ensure dual-use technologies are not diverted to activities that are counter to our national security and foreign policy interests. If confirmed, I will focus on filling any vacancies in a timely manner. Additionally, I understand that BIS did receive funding and is currently staffing the posting of a new ECO position at Singapore that will have regional responsibilities in Singapore, Malaysia, and Indonesia. This will provide additional coverage in an area that is a large transshipment point for world trade. Finally, while BIS does not have a large ECO footprint, it is my understanding that BIS does have the ability to send teams of agents to those countries that do not have ECO coverage to perform multiple End-Use Checks in areas that need additional emphasis.

**Q.5.-2.** If confirmed, what do you intend to do to increase the number and quality of pre-license checks, post-shipment verifications and other anti-diversion inspections?

**A.5.-2.** If confirmed, I will review the existing end-use check program to assess whether the number and quality of checks needs to be revised.

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**RESPONSE TO WRITTEN QUESTIONS OF CHAIRMAN DODD  
FROM ORLAN JOHNSON**

**Study of SIPA and SIPC**

**Q.1.** After the failure of the Madoff and Stanford firms, some investors and observers are concerned that the extent of SIPC coverage is too narrow. Also, some have questioned the adequacy of the SIPC funding. Do you support a study of SIPA and SIPC that would have the ability to make recommendations to Congress?

**A.1.** As I testified at my confirmation hearing on January 21, 2010, I am in favor of creating a task force that will be charged with examining all aspects of SIPC's operations with a view toward potential legislative proposals for Congress. It is my understanding that SIPC last engaged in such an exercise in 1978, and that task force resulted in major substantive amendments to the Securities Investor Protection Act ("SIPA"). I believe that another such review is long overdue, and I would anticipate that such a review will address issues related to the adequacy of SIPC's current funding levels. I also understand that SIPC has requested from Congress an increase in the credit line provided by the Treasury, through the Securities and Exchange Commission, from the current \$1 billion to \$2.5 billion. The current credit line has not changed since SIPA was passed in 1970.

**SIPC Funding**

**Q.2.** After the Madoff and Lehman failures, do you believe that the SIPC is adequately funded to pay for current and future losses? Do you think any changes need to be made to the funding of SIPC? If confirmed as Chairman, would you pledge to monitor and support the fund in order to maintain an adequate balance or notify

the Committee if legislative changes are needed to adequately maintain the fund?

**A.2.** I believe that the issues surrounding funding adequacy need to be addressed. It is my understanding that SIPC's customer protection program is a major topic at virtually every SIPC Board Meeting, and that assessments are now based on net operating revenues of each SIPC member, as opposed to a flat fee. This change in assessment should garner over \$480 million in 2010. The current board of SIPC has set a new "target balance" for the SIPC Fund of \$2.5 billion, to match the proposed increase in the Treasury credit line. These revised methodologies of assessments are scheduled to remain in effect until that target is achieved. If confirmed, I would continue to monitor and support the current and possibly future assessment methodologies required to maintain an adequate SIPC Fund, and I would notify the Committee if legislative changes are required.

### **SIPC Internal Financial Controls**

**Q.3.** In 2003, the SEC found that SIPC had inadequate controls over the fees and expenses awarded to trustees and their counsel. In 2004, the GAO stated that "To address SEC's concern, SIPC is in the process of enhancing its controls for reviewing and assessing fees." Subsequently, SIPC has addressed the inadequacies. If confirmed as Chairman, would you seek to maintain strong internal financial controls at SIPC?

**A.3.** I am aware of the GAO report that addressed the SEC's concerns regarding SIPC's controls over the fees and expenses awarded to trustees and their counsel. I believe that the bedrock of any financial organization is strong institutional controls, and if confirmed, I pledge to maintain rigorous controls in order to maintain high levels of investor confidence.

### **SIPC Investor Education**

**Q.4.** What is your view of the accuracy of the public understanding of the SIPC's function? Do you feel that there is investor confusion or ignorance over SIPC's role? Do you think there is a need for greater investor education in this regard?

**A.4.** As with most complex financial rules and regulation, it is somewhat difficult to ensure that the average investor is aware of his or her protections under the law. However, it is my understanding that SIPC has used a variety of methods to educate investors, including well-received television and radio public service announcements. There is always more work to do in the area of investor education, and if confirmed, I will work to ensure an expansion of those efforts.

### **Goals as SIPC Board Member**

**Q.5.** As a potential SIPC Board Chairman, what issues would you focus on to improve the organization or its function?

**A.5.** If confirmed as Chairman of the SIPC Board, I would focus on assessing four primary areas: (1) investor education and the efficiency of SIPC's core mission of processing claims, (2) sharing information with our international partners in the global financial mar-

kets to hopefully create more seamless cross border protection of investors, (3) additional uses of technology including the digitizing of financial records to assist in SIPC's core mission, and (4) maintaining a high level working relationship with the SEC and the other self-regulatory organizations.

### **SIPC Relationship with the SEC**

**Q.6.** As a potential SIPC Board Chairman, what relationship do you intend to pursue with the Securities and Exchange Commission, including the Division of Trading and Markets, and with this Committee and its staff?

**A.6.** As someone with nearly 10 years of experience as a staff attorney and Branch Chief at the Securities and Exchange Commission, it has been my view that SIPC and the SEC have had a very professional working relationship at both the staff level and the highest levels of both organizations. Complex matters such as Lehman, Madoff, and Stanford would never be resolved without clear and continual communication between the SEC and SIPC. If confirmed, it would be my intent to make contact with the Chairwoman Shapiro as one of my first orders of business. I have had the opportunity to work with Chairwoman Shapiro while at the SEC and expect that we would have a very strong working relationship. It is also my understanding that SIPC's current Chairman, SIPC's President and Chief Executive Officer, and SIPC's General Counsel have had numerous substantive meetings with the SEC over the last 18 months, and I would anticipate that, if confirmed, such meetings would continue to occur.

Regarding SIPC's relationship with both the SEC Division of Trading and Markets and the Senate Banking Committee, if confirmed, I would be dedicated to a high level of cooperation, and I would expect the same from SIPC's President and CEO and SIPC's General Counsel.

### **SIPC and Pension Plan Participants**

**Q.7.** What is your view of whether and under what circumstances beneficiaries of pension plans or investors in feeder funds that are customers of broker-dealers should be covered by SIPC?

**A.7.** The extension of SIPA protection to (1) individual pension plan participants and/or (2) investors in feeder funds will clearly have to be part of the issues to be addressed in any task force report. There may be some merit to the extension of coverage to beneficiaries of pension funds, but the issues become far more complicated when it comes to examining investor protections for indirect investors who are generally affiliated with hedge funds. The possible regulation of hedge funds in the securities area has been an ongoing discussion for the past few years, and any final resolution of this issue in SIPA should at a minimum take into consideration possible regulations from the SEC or other self-regulatory organizations.

**RESPONSE TO WRITTEN QUESTIONS OF SENATOR MENENDEZ  
FROM ORLAN JOHNSON**

**Q.1.** Madoff victims are concerned about the speed with which they have been repaid, with many still not paid and some with claims currently being litigated. What is your view of the progress, or lack thereof, SIPC has made in paying Madoff victims? If confirmed, what will you do to improve the efficiency with which SIPC pays Madoff victims?

**A.1.** From an outsider's point of view, it appears that the speed of processing certain Madoff claims has not progressed as quickly and smoothly as other matters handled by SIPC. If confirmed, reviewing this matter and seeking potential solutions would be a high priority.

Based on my understanding so far, it appears that at least some of the delay has been due to the very unique sets of circumstances presented by the Madoff case. The fraudulent activities of Mr. Madoff went on for nearly 30 years. Initially, the trustee was not in complete control of many of the records that did exist, because the United States Attorney had control of the records on an active crime scene investigationsite. In addition, the records were not originally in a digital or searchable format making it difficult to transfer accounts to other brokerage firms. Additionally, in an effort to give all potential claimants a fair and reasonable opportunity to make their case for a potential claim, it is my understanding that SIPC and the trustee in the Madoff matter encouraged every possible claimant to file a claim, even if the claim was somewhat doubtful under the law. This obviously resulted in far more claims than there are accounts.

If confirmed as Chairman, I pledge to review every aspect of the claims review process to determine whether it can be expedited.

**Q.2.** Madoff victims are concerned about how SIPC has used "clawback" litigation to retrieve money from victims to contribute to the general pool for victims' funds. In your view, should SIPC use these "clawbacks" and under what circumstances? Should either SIPC or Congress change the "clawback" policy for Madoff victims or not? Why?

**A.2.** To the best of my knowledge, the use of "clawbacks" has been a part of every bankruptcy, Ponzi Scheme, and SIPA case. Under certain circumstances, clawbacks have even been congressionally mandated and can provide a reasonable path to the equitable resolution for all investors that have been the victims of a Ponzi Scheme. Nevertheless, I believe that clawbacks have to be used on a case-by-case basis. Small investors, in particular, should be given the right to make their case that the clawback provisions would be financially detrimental to their current situation and that they should be exempted from such action. I believe that trustees should use reasonable discretion and common sense in deciding whether to apply clawbacks to certain investors—this should not be a one-size-fits-all solution.

I believe that this is also an issue that should be addressed to a task force that will review SIPC's operations. Before recommending any change in the law, I would want to examine the results of this review and the results of the Madoff case.

**Q.3.** Madoff victims are concerned that it's not fair to reimburse them based on what they originally invested, rather than what they believed their investment had grown to. This concerns what the proper definition of "net equity" is, and is currently being litigated by SIPC in bankruptcy courts. Do you believe Madoff victims should be reimbursed based on their original investment or their latest statement? Why?

**A.3.** The proper definition of "net equity" can be subject to both reasonable and differing interpretations. To the best of my knowledge, bankruptcy courts, previous SIPA cases, and cases involving other Ponzi Schemes, regardless of whether they arose under SIPA, have generally utilized the "money in less money out" principle. As noted above, the Madoff matter has very unique circumstances, and we must guard against utilizing any methods that would allow the perpetrator of an illegal scheme to determine what a claimant will receive. I believe that after the bankruptcy courts rule on this issue, SIPC should review its current methodologies to determine if the money in less money out principle is the appropriate for future activities.

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**RESPONSE TO WRITTEN QUESTIONS OF CHAIRMAN DODD  
FROM SHARON Y. BOWEN**

**Study of SIPA and SIPC**

**Q.1.** After the failure of the Madoff and Stanford firms, some investors and observers are concerned that the extent of SIPC coverage is too narrow. Also, some have questioned the adequacy of the SIPC funding. Do you support a study of SIPA and SIPC that would have the ability to make recommendations to Congress?

**A.1.** I do support such a study of SIPA and SIPC to address a number of items, in addition to a review of its coverage and adequacy of funding. I believe that we all benefit from hearing different perspectives on how to better formulate the rules and policies that enhance the mission of SIPC.

It is my understanding that SIPC has requested an increase in the credit line from its current level of \$1 billion to \$2.5 billion. If confirmed, I plan to seek more information about this request and whether it is the appropriate level. Of course, any changes in SIPC's role would affect the level of funding required.

**SIPC Funding**

**Q.2.** After the Madoff and Lehman failures, do you believe that the SIPC is adequately funded to pay for current and future losses? Do you think any changes need to be made to the funding of SIPC? If confirmed as Chairman, would you pledge to monitor and support the fund in order to maintain an adequate balance or notify the Committee if legislative changes are needed to adequately maintain the fund?

**A.2.** If confirmed as Vice Chair of SIPC, I will monitor and support the adequacy of the fund and would notify Congress if I feel legislative action is warranted. I would also work with the SEC and any other appropriate regulatory authority. Having adequate funding is at the core of SIPC's ability to carry out its mandate. Further,

monitoring the fund is good governance and should be a routine process.

### **SIPC Internal Financial Controls**

**Q.3.** In 2003, the SEC found that SIPC had inadequate controls over the fees and expenses awarded to trustees and their counsel. In 2004, the GAO stated that “To address SEC’s concern, SIPC is in the process of enhancing its controls for reviewing and assessing fees.” Subsequently, SIPC has addressed the inadequacies. If confirmed as Chairman, would you seek to maintain strong internal financial controls at SIPC?

**A.3.** If confirmed, I would seek to maintain strong internal controls and would routinely examine them to see if there are ways to improve them. I believe that making this process transparent is good governance and would also increase investor confidence in SIPC.

### **SIPC Investor Education**

**Q.4.** What is your view of the accuracy of the public understanding of the SIPC’s function? Do you feel that there is investor confusion or ignorance over SIPC’s role? Do you think there is a need for greater investor education in this regard?

**A.4.** I believe there is a need for greater investor education. I understand the public’s frustration and confusion, which in large part goes to the core of the debate of SIPC’s role. The public’s misperception that SIPC was an insurance fund added to this confusion. As we study SIPC’s role, I believe we should also examine ways to better educate and communicate with investors. As part of increasing investor education, we should have periodic public forums to directly communicate with investors. If confirmed, I would examine ways to further simplify communications in SIPC’s brochures, website, and investor materials that accompany brokerage account statements.

### **Goals as SIPC Board Member**

**Q.5.** As a potential SIPC Board Chairman, what issues would you focus on to improve the organization or its function?

**A.5.** Your questions highlight many of the key issues that I hope to examine, if confirmed. These include clarifying the role of SIPC and what it covers, determining the adequacy of its funding, implementing rigorous internal controls, and communicating to the public in a simple and comprehensive way. I also believe that our focus on investor education should be in tandem with the investor education materials and forums of the SEC, FDIC, FINRA and other regulatory authorities.

### **SIPC Relationship with the SEC**

**Q.6.** As a potential SIPC Board Chairman, what relationship do you intend to pursue with the Securities and Exchange Commission, including the Division of Trading and Markets, and with this Committee and its staff?

**A.6.** If confirmed, I look forward to having a strong working relationship with the SEC, its Division of Trading and Markets and with your Committee and its staff. I think this is even more impor-

tant today as the regulation of the financial market is being examined in a comprehensive way. Effective communication, accessibility, and sharing of ideas with these working groups will result in better solutions. It is my understanding that SIPC has had many such substantive meetings and has a strong working relation with the SEC and your Committee. If confirmed, I hope to further strengthen these relationships.

### **SIPC and Pension Plan Participants**

**Q.7.** What is your view of whether and under what circumstances beneficiaries of pension plans or investors in feeder funds that are customers of broker-dealers should be covered by SIPC?

**A.7.** I believe that defining those circumstances would be a key part of the study of the SIPA and SIPC. Pension plans and feeder funds of the type we have today are vastly different from the customers of the 1960s. When the Ira Haupt brokerage firm was collapsing during that time, there were actual securities sitting in a vault, which were owned by specific named individuals. Today, determining who is the customer is a key issue. One's expectation of a fiduciary obligation of a trust holding one's pension account may be different from one's expectations when one gives investment control to an entity such as a hedge fund. It is these types of distinctions that need to be studied and clarified. Such examination should also be mindful of SIPC's key role of protecting customer accounts.

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### **RESPONSE TO WRITTEN QUESTIONS OF SENATOR MENENDEZ FROM SHARON Y. BOWEN**

**Q.1.** Madoff victims are concerned about the speed with which they have been repaid, with many still not paid and some with claims currently being litigated. What is your view of the progress, or lack thereof, SIPC has made in paying Madoff victims? If continued, what will you do to improve the efficiency with which SIPC pays Madoff victims?

**A.1.** I understand the dissatisfaction of the Madoff investors, both with respect to the length of time involved in the payment of claims as well as the determination of the amount of those claims. A three-decade ponzi scheme of the magnitude of the Madoff case is a huge challenge. Reconciling non-existent customer accounts with false customer statements would be challenging under any scenario. In addition, unlike customer accounts in the Lehman case, no Madoff customer accounts could be transferred to a solvent brokerage firm.

If confirmed, addressing this issue would be a high priority. There are a number of ways we may be able to improve the efficiency of paying claims. First, the claims process should be examined to see if there are steps we can take to speed the process. In the case of fraud, such as in the Madoff case, we should determine if there is a way to work in tandem with any criminal investigation involving an examination those records. We should consider whether we could devote more resources upfront in terms of manpower and technology. We should also look at whether SIPC can improve its responsiveness in communicating with each investor.



**Q.2.** Madoff victims are concerned about how SIPC has used “clawback” litigation to retrieve money from victims to contribute to the general pool for victims’ funds. In your view, should SIPC use these “clawbacks” and under what circumstances? Should either SIPC or Congress change the “clawback” policy for Madoff victims or not? Why?

**A.2.** The trustee in a bankruptcy proceeding has powers to recover funds from fraudulent conveyances, including through the use of “clawbacks.” These powers are subject to a review by the court. Nevertheless, I can certainly understand why investors may be concerned about the use of clawbacks. If confirmed to serve as Vice Chair of SIPC, I would hope to study this issue further before determining whether changes to SIPC’s clawback policy are necessary with respect to the Madoff case.

**Q.3.** Madoff victims are concerned that it’s not fair to reimburse them based on what they originally invested, rather than what they believed their investment had grown to. This concerns what the proper definition of “net equity” is, and is currently being litigated by SIPC in bankruptcy courts. Do you believe Madoff victims should be reimbursed based on their original investment or their latest statement? Why?

**A.3.** How we define “net equity” is a key issue for SIPC that must be clarified. As in the case of the clawback determination, it is important that all investors are treated fairly, and that no investor is unjustly enriched. This process should always be transparent, and no victim should feel as if he or she has been unfairly treated differently than others who are in the same group of claims. Because the bankruptcy court is currently addressing the definition of “net equity,” I would await the court’s decision before recommending a course of action on this issue. The bankruptcy proceeding is a proper forum for all parties to have an opportunity to be heard. This forum also provides transparency, which is important in resolving these difficult issues.