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Many recent articles written by U.S. legal practitioners and law scholars in the wake of the financial crisis address regulatory reforms included in or omitted from the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")[1] and related agency initiatives. In contrast, this article focuses on institutional reforms—specifically those instituted at the U.S. Securities and Exchange Commission (SEC) since President Barack Obama took office in January 2009.[2] In that same month, President Obama appointed Mary Schapiro as the new Chairman of the SEC. She was summarily and unanimously confirmed by the U.S. Senate and sworn into office before month's end.[3] Less than one month later, Chairman Schapiro appointed Robert Khuzami the Director of the beleaguered and maligned SEC Division of Enforcement.[4] Together, Schapiro and Khuzami, along with other SEC leaders, began the process of reforming an agency under fire as a result of, among other things, its failure to earlier catch and punish Bernard Madoff and control behavior that contributed to the U.S. and global financial crises.

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In a recent article published in the *Villanova Law Review*,[5] I assessed the early reform efforts at the SEC in the Obama era from the vantage point of change leadership literature (a branch of business management scholarship). Change leadership literature, which is based on analyses of organizational change in for-profit business associations, makes a number of claims about change leaders and their efforts in promoting and accomplishing transformation in business firms. Although I began my inquiry and research with a pessimistic attitude about reform efforts at the SEC, I found that Chairman Schapiro and Director Khuzami exhibited attributes of capable change leaders and had engaged in activities consistent with successful change leadership.

This article updates the preliminary findings reported in the *Villanova Law Review* article in light of the enactment and initial phases of implementation of the Dodd-Frank Act (which was in the final stages of congressional action when work on the article was completed in the spring of 2010) and the subsequent change in the composition of Congress as a result of the mid-term elections in November 2010. I begin by identifying and assessing ongoing evidence of effective change leadership at the SEC in accordance with the framework used in my earlier article and continue by addressing the potential effects of shortfalls in SEC funding. The article then concludes by making tentative predictions about the future of institutional reform at the SEC in this new political environment.

Ongoing Evidence of Successful Change Leadership at the SEC

The *Villanova Law Review* article captures two elements from change leadership literature to frame an assessment of recent reform efforts at the SEC: the attributes of successful change leaders and the nature and quality of their actions. This part includes a brief summary of the salient points of each element and my earlier assessment of the SEC's reform leaders and efforts based on each element, followed by updated information benchmarking the SEC's transformation at the time work on this article was completed—almost one year later. The evidence I review here dates from May 2010 (when the basic provisions in the Dodd-Frank Act were reasonably complete) through early March 2011 and is drawn exclusively from public presentations and reports. Although public evidence on SEC reform efforts is, by its nature, incomplete and somewhat evanescent, it provides a window on the agency's transformation process.

The Attributes of Successful Change Leaders

Wartime Leaders

I first address the contention that successful leaders are "wartime leaders" who leverage difficult circumstances into targeted action through, among other methods, persuasive communication to and with those within the institution.[6] In the *Villanova Law Review* article, I assessed, based on publicly available resources, the leadership attributes of both Chairman Schapiro and Director Khuzami and concluded that:

> [w]hile it may be too early to tell, both do exhibit characteristics of wartime leaders. Both moved quickly to identify focused reform initiatives and begin implementing changes that addressed the existing lack of public confidence in the SEC; both have prioritized the implementation of reform proposals and focused the organization around those priorities, and both have shown persuasive communication skills. The SEC leadership has conducted a self-assessment of the Division of Enforcement as part of its reform strategy, and Director Khuzami has revisited the effects of the resulting decisions with the Division's employees. Current indications support the conclusion that both Chairman Schapiro and Director Khuzami are wartime leaders.[7]

Like wartime leaders, each identified and advocated persuasively for specific organizational change initiatives and took targeted actions to achieve the desired institutional adjustments. SEC staff members were engaged with and in the process; they knew about the change efforts and they aligned their collective energy behind those efforts.

Since I made those observations, compelling rhetoric about the need for and urgency of reform efforts has continued. At the CFA Institute Annual Conference in May 2010, Chairman Schapiro noted that part of the SEC's renewed mission of ensuring high-quality disclosures to investors "involves re-energizing, re-structuring and refocusing the SEC itself, so that we have the tools and skills necessary to analyze the data filed with us, and the resources and the will to punish those who provide false or misleading information."[8] Similarly, in July, she reminded us that SEC staff, "during the past 18 months, in addition to addressing a number of longstanding gaps in regulation, . . .worked to strengthen the SEC at every level and are hitting the ground running on financial regulatory reform."[9] More recently, congressional testimony given by Chairman Schapiro in February cataloged plans for new SEC offices required to be established under the Dodd-Frank Act.[10] Most recently, in March 2011, in testimony before two subcommittees of the U.S. House of Representatives Committee on Oversight and Government Reform, Chairman Schapiro highlighted key reforms that the SEC has accomplished under her leadership and indicated her support for ongoing change initiatives provided for in the Dodd-Frank Act:

> Although we have made progress in reforming the Commission, we continue to seek ways to improve our operations. Section 967 of the Dodd-Frank Wall Street Reform and Consumer Protection Act . . . directed the agency to engage the services of an independent consultant to study a number of specific areas of SEC operations. During the past four months, our staff has been fully engaged with the Boston Consulting Group (BCG), participating in interviews, providing documentation, and responding to questions. BCG's report will be released to Congress soon, and I expect that it will include recommendations that will identify additional efficiencies for the agency's operations. I look forward to implementing those and any others that will improve the way we operate and enhance our ability to fulfill our mission.[11]

The BCG report was released that same day.[12] Although the law mandated the assessment provided in the report, it has the capacity (like the earlier self-assessment of the Division of Enforcement) to reinforce communication lines relevant to targeted investments in reform.[13]

Problem-Finders

Research on change leadership also points to the importance of "problem-finders" in organizational change. Problem-finders are people who actively engage in questioning their organization as a means of identifying potential trouble or weaknesses in advance. They tend to exhibit one or more of seven characteristics, all of which involve a futuristic, forward-looking approach to leadership.[14] In the spring of 2010, when my work on the *Villanova Law Review* article was completed, public evidence of Chairman Schapiro's and Director Khuzami's problem-finding skills was somewhat equivocal. On the positive side, I noted that Chairman Schapiro and Director Khuzami initiated a self-assessment to identify problems in the Enforcement Division at the SEC before they create or allow failures in investor protection or market integrity.[15] Yet, there were no clear signs that a problem-finding mentality pervaded our SEC leadership.

The public evidence of problem-finding proficiencies in our SEC leaders continues to be mixed. In one recent article, a commentator queried whether Chairman Schapiro "has factored in the unintended consequences of the agency's new activist tilt,"[16] concluding:

> While it's not reasonable to require Schapiro and the SEC to ponder every conceivable ramification of their new activism, they should demonstrate that they are prepared not only to govern the financial system more forcefully, but also to cope with the less desirable results of that, as well as to celebrate the upside.[17]

Obvious defects in the agency that create perverse incentives continue to exist. For example, Chairman Schapiro and Director Khuzami have not remedied evident negative aspects of the SEC organization that create the potential for conflicting interests and agency capture.[18] In particular, the SEC and Chairman Schapiro have been criticized for allowing former SEC General Counsel David Becker to work on the Bernard Madoff affair after his disclosure that he inherited proceeds from an investment his mother made with Madoff.[19] Chairman Schapiro herself noted that she failed to look "around the next corner" in allowing Becker to continue to participate in the SEC's Madoff matters.[20] Also, the SEC staff may be beholden to the very businesses the SEC exists to regulate, since the logical (and most lucrative) job path for them is to move into compliance and other roles at investment banks, law firms, and large public company issuers after a few years of work at the SEC.[21] The failure of the SEC to address ongoing concerns about this employment pattern also may evidence a leadership failure to problem-find. However, the probable alternative to permitting staff to move into these highly paid private sector jobs, effectively forcing staff members to retain jobs as underpaid career bureaucrats, is unappealing for many (not to mention the effects this might have on attracting talent to SEC staff positions), and it may be unrealistic to expect that even a good change leader would constrain the natural tendency of staff to maximize personal financial benefits and status.

On the other hand, there is some evidence that Chairman Schapiro and Director Khuzami are forward-looking in their approach in a way that may indicate pervasive problem-finding abilities. For example, Director Khuzami has been praised for taking an approach that endeavors to deter, as well as punish, fraud.

> Khuzami's supporters say [he] has transformed the division into one focused on "bad behavior that's fresh" as opposed to fraud that occurred even during the housing bubble. While the SEC is still focusing on the Lehman bankruptcy, staff attorneys are looking for new cases and trying to close them quicker, because Khuzami believes speed has a greater deterrent value on would-be fraudsters.[22]

It still may be too soon to tell whether Chairman Schapiro and Director Khuzami have sufficient problem-finding acumen to enable true reform at the SEC. However, we can safely say that their actions indicate that they are paying heed to the past in constructing a better vision for the future.[23] They are widely praised as better leaders than their predecessors, even if they cannot yet be definitively labeled effective leaders of change.[24]

The Nature and Quality of the Actions of Successful Change Leaders

There is a vast literature on the patterns of activity that create successful transformation in organizations. In my *Villanova Law Review* article, I chose to address three scholarly perspectives on how change leaders successfully implement organizational reform. These three perspectives are summarized and illustrated in the pages that follow.

Full Implementation of John Kotter's Eight-Stage Framework

Successful change leaders understand and effectively employ recognized stages of successful organizational change. Harvard professor emeritus John Kotter has identified eight stages, ranging from the establishment of a sense of urgency about making change to the inculcation of change into the organization's culture.[25] I observed in the *Villanova Law Review* article that, in their early change efforts, both Chairman Schapiro and Director Khuzami appeared to engage Kotter's eight stages of successful organizational change. The first six stages were seemingly employed by each, perhaps even consciously. Specifically, I found public evidence that Chairman Schapiro and Director Khuzami established a sense of urgency about organizational change at the SEC, created a guiding coalition to implement change initiatives, developed a vision and strategy for the achievement of change, communicated the change vision within and outside the organization, empowered broad-based action to make the needed adjustments, and generated short-term wins to foster and sustain the necessary change momentum.[26] The last two stages—consolidating gains and producing more change and anchoring new approaches in the culture—appeared to be in process or at least contemplated.[27]

Now that almost a year has passed since that assessment, it is important to ask whether Chairman Shapiro and Director Khuzami are actively engaging the last two stages of Kotter's eight-stage pattern for successful organizational change. Is there a continued sense of urgency at the SEC . . . or complacency? In May 2010, Chairman Schapiro indicated that the SEC was, in fact, sustaining change efforts by consolidating the gains it had made and producing further change.

> The initial focus of my time at the SEC has been re-energizing the agency itself. We've changed our internal structure, breaking down silos that limited communications between and among offices and divisions and which contributed to missteps in the past.
>
> For the first time in years, our budget allows us to begin investing significantly in new technology. Our priority has been to create a system that can track, classify and correlate the thousands of tips and investigative leads we receive every month, and which are often the first step towards preventing or punishing fraud.
>
> We brought in new leadership, and they're bringing in new talent, across the organization.[28]

These remarks were echoed in (among other public presentations) a speech given by Chairman Schapiro in November 2010 and congressional testimony in March 2011.[29]

In addition, in July 2010, the SEC announced changes to the structure of its Division of Corporation Finance and the promotion of an internal candidate to the new position of Deputy Director for Policy and Capital Markets.[30] The Chairman's remarks and these announcements indicate that the SEC continues to focus on identifying and securing new leaders, promoting changes from existing leaders, recruiting new leaders, and removing structural barriers to continued change, all of which (according to Kotter) are attributes of an organization that is consolidating the gains it has made and producing further change.[31] Chairman Schapiro's overall efforts were praised in remarks made by SEC Commissioner Elisse Walter in September 2010.

> Our Chairman, Mary Schapiro, has worked tirelessly to bring to rest a number of long-standing issues . . . , and I, for one, am very thankful for all her hard work and proud to have served at her side as the Commission has accomplished so much. The song goes—What a Difference a Day Makes—but I would say (if I sang, you would run from the room in horror)—What a Difference a Year and a Half Makes.
>
> Yet, with each step that we take, it seems that there continue to be those who wish to fight the last fight. I want you to know that this Commissioner is committed to moving forward. As the investor's advocate, I believe that it is our job at the SEC to move forward with a 21st century investor protection mission.[32]

More recently, in March 2011, Chairman Schapiro noted the new leadership installed in various roles at the SEC and then offered in that vein that the SEC is "continuing to make significant progress in reforming how the SEC operates," before illustrating how the SEC would use appropriated funds in 2012.[33] It appears from these pubic presentations and reports that early changes at the SEC during the Schapiro chairmanship have been shored up and that the change momentum has continued.

Is the SEC anchoring new approaches in its culture, as described in the final stage of Kotter's model? An effective change leader needs to ensure that changes are being aligned with behavioral norms and values of and within units at the SEC. In the wake of very public criticism of the agency during the recent financial crisis, the prevailing norms and values at the SEC were in question. As a result, Chairman Schapiro had to, in effect, re-create a culture before she could root things in it. She responded to this need by expressly refocusing the agency around investor advocacy and protection and tied changes to those foundational values.[34]

> [B]y focusing on basics—strengthening our infrastructure and focusing on our core mission, we have made real progress. And, by matching the markets' commitment to innovation and progress with our own drive to protect investors and excel, we are becoming an ever-more effective advocate for investors, in a very complicated time.[35]

Investor advocacy and protection comprise additional values, such as transparency and fairness.[36] Investor advocacy and protection and their embedded values collectively constitute the central historical core of the SEC, dating back to the 1930s.[37] Institutional reform anchored in those values has a greater probability of success under Kotter's framework, and it appears that Chairman Schapiro has made strides in tying her vision for and actions involving institutional change to it.

Recently, SEC Commissioner Luis Aguilar reinforced and deepened Chairman Schapiro's message (linking reform to investor primacy) by denominating a set of five principles that underlie the SEC's investor advocacy and protection values in connection with the SEC's early implementation of the Dodd-Frank Act's provisions.

As the SEC moves to comply with the new requirements, I will articulate a few fundamental principles that should guide its decision-making. These are:

- Investor Protections Should Be Real and Verifiable;
- The SEC Must Always Actively Seek Investor Input;
- The SEC Should Resist the Trend Toward Establishing a Two-Tier Market;
- The SEC Should Use its Authority and Expertise; and
- The SEC Must Vigorously Enforce the Rules.[38]

This set of principles refines the SEC's historic investor advocacy and protection mission in the current environment and is further evidence of an express connection between the SEC's institutional and regulatory reform efforts and that mission. The principles signal a clear anchoring of new approaches in the fundamental elements of the culture of the agency.

Treatment of the Organization As a Living Being

The literature of change leadership also credits successful change leaders with treating the organization as a living creature rather than a machine.[39] An organization is a collection of individuals who have the capacity to act individually—with a certain amount of free will—rather than a system of people with narrowly defined and consistently executed roles.[40] Accordingly, change leaders must ensure comprehensive buy-in to the change vision and collective action to achieve it as among the individuals in the organization.[41]

In the *Villanova Law Review* article, I assessed the reform efforts of SEC leaders in this regard based on four principles.[42] First, I found that Chairman Schapiro and Director Khuzami understood that participation is not a choice (requiring two-way communication to achieve buy-in) and acted in a manner consistent with that principle.[43] Both leaders listened to staff concerns and responded with targeted reforms; they involved staff with their plans for change.[44] I also observed some evidence that Chairman Schapiro and Director Khuzami valued differences in reactions to change and leveraged the individual responses to their reforms into collective action; they seemed to acknowledge that life always reacts to directives rather than obeying them and to comprehend that each person's view of reality is unique and that there must be disclosure and dialog in order to assure forward momentum.[45] Finally, I noted that their overall approach recognized that successful change in organizations results from the creation of and support for new interconnections between and among those working in the institution, fully utilizing the collective expertise of the organization's constituents.[46] In these ways, Chairman Schapiro and Director Khuzami appeared to be treating the SEC as a living organism rather than a static machine.

There is evidence that this approach has continued through 2010 and into 2011. Public rhetoric indicates that SEC leaders continue to engage the staff in dialogue about institutional change, value and work with those with different perspectives, foster disclosure and dialogue about the change efforts, and connect and reconnect members of the SEC staff to each other to encourage and maintain reform. In an October Speech, SEC Commissioner Aguilar reminded the audience that Congress delegated the tough choices in how to implement various provisions of the Dodd-Frank Act to the Commissioners and staff.

> [I]t is the expertise of the Commission in the securities industry and in the investment adviser arena that will inform the development of these rules and requirements. It is the Commission staff that will write the text of the rules and provide the practical guidance of how this regime will work.[47]

The October speech substantially repeats, in this respect, remarks he made in an earlier speech at Loyola Marymount University.[48]

As change at the SEC has continued, Chairman Schapiro has shown that she has the capacity to alter her reform efforts in response to administrative and staff concerns. Over a year ago, she changed the reporting line for SEC economists from herself to a subordinate.[49] She lost two economists after making this decision, one of whom, the former chief economist, later said that the restructuring contributed to his decision to leave the agency.[50] In recent announcements, Chairman Schapiro has noted that the new chief economist will report directly to her.[51] This is strong evidence that she is not treating the SEC like a machine as she navigates institutional change.

Chairman Schapiro also has continued to connect the SEC back to itself as a means of ensuring the overall health of the SEC and the stability and continuity of its change efforts. In May 2010, she noted that she and other SEC leaders have "changed our internal structure, breaking down silos that limited communications between and among offices and divisions and which contributed to missteps in the past."[52]

The recent examination of SEC operations conducted by the Boston Consulting Group (BCG),[53] required under the Dodd-Frank Act, re-engaged the SEC's staff in the ongoing reform dialogue (by incorporating staff input[54]) and, in the process, accorded credit to diverse viewpoints, encouraged transparency and feedback relating to ongoing reforms, and reconnected members of the SEC staff to the agency and its efforts to transform itself.[55] Although the study was conducted by a third party engaged by the SEC rather than directly by the SEC leadership, the work done by BCG re-enforced and extended earlier work done by SEC leaders in their self-assessments of aspects of SEC operations. The common element of these efforts is staff engagement in the organizational change process, as opposed to top-down imposition of reforms—the treatment of the SEC as a living system, not a machine.

In sum, Chairman Schapiro and Director Khuzami have actively engaged the SEC staff in the change process by understanding that the SEC is a fluid collection of individuals rather than a predictable, mechanized system. They appear to be encouraging and maintaining reform efforts by following the four principles that underlie the treatment of an organization as an organic living thing: engaging the staff in dialogue about institutional change, valuing and working with those with different perspectives, fostering disclosure and dialogue about the change efforts, and connecting and reconnecting people in the SEC to each other.

Use of a Multi-Frame Analysis

The *Villanova Law Review* article summarizes and cites to a 1999 article written by Professors Lee Bolman and Terry Deal for yet a third construct for examining change leadership. In their article, Bolman and Deal set out four frames of analysis used by successful change leaders and assert that all four should be used in strategizing and implementing organizational change.[56]

The first frame, the "human resources frame," comprises an attention to "needs and skills."[57] In the *Villanova Law Review* article, I note that the training afforded to SEC staffers as part of the SEC's reform efforts showed an attention to the human resources frame.[58] The SEC's Web site indicates that training programs are ongoing and increasing in scope.[59] In a recent speech, Chairman Schapiro praised the efforts of the SEC staff during the past year.

> [O]ver the past year, I saw true public servants continue to perform under significant pressure and under an intense spotlight.
>
> I've seen them roll up their sleeves to figure out what caused the market disruption of May 6th. I've seen them bring some of the most complicated enforcement actions and reach record settlements. And, I've seen them work long hours to fulfill their new responsibilities for derivatives, hedge funds and credit rating agencies.[60]

Her attentiveness to training and motivating staff in the reform efforts arguably has been an important element in achieving and motivating continuing change.

The SEC also has focused on hiring to increase quality, supplement and deepen areas of expertise, and enhance diversity.[61] The appointment of Eileen Rominger as the Director of the SEC's Division of Investment Management is a prominent recent example.[62] Even given limited resources available for new personnel, the SEC undoubtedly will have to continue to hire new administrators and staff both to fill vacancies and to meet new regulatory needs in response to the Dodd-Frank Act.

The human resources frame has been significant in the SEC's reform efforts to date and continues to be a showcase item for Chairman Schapiro in describing operational changes. In recent congressional testimony summarizing these changes, she noted that, since her appointment, the SEC had "brought in new leadership and senior management in virtually every office, including the Commission's first Chief Operating Officer, . . . took steps to break down internal silos and create a culture of collaboration, . . . recruited more staff with specialized expertise and real world experience, expanded our training . . . ."[63]The human resources frame will remain in the spotlight as organizational change at the SEC continues.

The second frame in Bolman and Deal's model is labeled the "structural frame." It focuses on "alignment and clarity" in the organizational structure.[64] Structural changes at the SEC have been significant[65] and are ongoing. For example, the Office of Compliance Inspections and Examinations is overhauling its examination process as a result of a self-assessment and the Dodd-Frank Act.[66] In addition, Dodd-Frank's creation of the Investor Advisory Committee and Office of the Investor Advocate resulted in mandatory structural change at the SEC.[67] Structural change has been a central feature of Chairman Schapiro's reform efforts.

> We're continuing to make significant progress in reforming how the SEC operates. Since 2009, the agency has carried out a comprehensive review and restructuring of its two largest programs—enforcement and examinations—to ensure effective performance. The Enforcement Division has streamlined its procedures to bring cases more swiftly, removed a layer of management, created national specialized units, and added new staff with new skills to pursue complex fraud and market abuses. More recently, the SEC's examinations unit restructured its exam program after a top-to-bottom review, becoming more risk-based in its approach, enhancing staff training, and installing better systems to support examiners.[68]

Inevitably, the SEC will be compelled to continue to realign its regulatory configuration as the provisions of Dodd-Frank (including potentially implementation of the recommendations made in the BCG report[69]) and political changes in Washington take full effect, underscoring the ongoing importance of the structural frame.

The "political frame" is Bolman and Deal's third frame.[70] In analyzing organizational change using this frame, the change leader must be attentive to "conflict and arenas."[71] In the *Villanova Law Review* article, I assessed the SEC's leadership in employing this frame by looking at evidence of internal conflict at the SEC (of which there was little) and concluded that "[i]t is and will be important for Chairman Schapiro and Director Khuzami to react to the inevitable clashes that arise in their organizational change efforts by creating 'processes of negotiation and bargaining where settlements and agreements can be hammered out.'"[72]

At the time that earlier article was written and even later when the Dodd-Frank Act was passed, the interests of the executive and legislative branches and the SEC seemed to be well aligned. As noted at the outset in this article and as addressed below, that situation has now changed markedly. Conflict relating to the SEC's reform efforts has begun to arise from external sources—namely, Republicans in the U.S. Congress. Highly publicized issues that have created friction in the current political climate include the earlier-referenced handling of potential conflicts of interest involving former General Counsel David Becker's inheritance of funds generated from the illegal activities of Bernard Madoff and public reports regarding the use of agency computers by SEC staff to review pornographic material.[73] So far, there is no indication that SEC leaders have allowed brewing political conflict among the branches of government to permanently or substantially interrupt or reverse institutional reform. It remains to be seen whether political conflict will develop further and become entrenched and, if it does, whether Chairman Schapiro and other SEC leaders will be able to prevent a full-scale battle that derails organizational change. If they focus effectively on the political frame, SEC leaders will attempt to skillfully and constructively channel the discord to a confined arena as a means of insulting SEC institutional reform as much as possible from the political conflict. We are in the midst of observing the SEC leaders' engagement of the political frame in this new environment. It, too, will be in the forefront as reform continues.

The fourth and final frame for decision making by change leaders is the "symbolic frame," which addresses the need for change leaders to focus attention on the "meaning and purpose" that constituents see in and derive from the reform measures. The destruction of negative symbols like Bernie Madoff and other SEC enforcement and rulemaking failures has been important to early reform efforts at the SEC.[74] While continuing to focus on the destruction of these and other harmful reminders of institutional and regulatory breakdowns at the SEC before and in the financial crisis, reform at the SEC has also begun to center around an important positive symbol: a single, highly integrated market, with the same protections for all, regardless of sophistication or wherewithal.[75] This symbol embodies the SEC's core values of investor advocacy and protection.[76] To date, the SEC has been able to harmoniously and consistently position its institutional reform agenda in a manner that reifies this symbol.

The execution of the SEC's operations during the reform period, however, has not always taken full account of the importance of this symbol. In the eyes of some, for example, the SEC's settlement of its case against Goldman Sachs adversely impacted the symbol of a single market in which all are protected,[77] even though Goldman Sachs paid $550 million to settle the case and acknowledged wrongdoing.[78] The SEC's pursuit of Goldman Sachs in a civil enforcement action had been viewed by many as emblematic of the strength of its overarching pan-investor mission, and its settlement was viewed as compromising that mission and settlement of the case was viewed as compromising that mission. Professor Larry Mitchell eloquently expressed that view in an opinion piece published by the *Financial Times*.

> [T]he SEC's Goldman suit, launched only in April, seemed to signal that the agency was back in the fight. It was hoped that a victory against Goldman would do more than redress a fraud; it would set a wider regulatory precedent that its manner of doing business was socially and economically unacceptable. It would also have held out the possibility of beginning necessary cultural changes on Wall Street that might at least diminish the chances of future crises, while demonstrating that the SEC's concern with market safety and fairness was more important than recouping a few bucks for big boy banks.
>
> But once again, the SEC disappointed. The settlement, which was one of the highest paid by a US company, looks tough. But in truth, the SEC caved. It let Goldman, which decided that fighting the commission was not in its self-interest, effectively pay off the government with what amounted, in the long run, to pocket change. The SEC did so without making any management changes, or without a confession of all but

> the slightest regret. By accepting this settlement rather than holding out for a prosecution, or at least by fighting for a decent interval, the commission signalled it is still unwilling to carve out a wider regulatory role. More important, perhaps, it signalled to Wall Street that it has little to fear from SEC lawsuits.[79]

Not all commentators share Professor Mitchell's view, however. Some believe that the SEC's case against Goldman Sachs was weak and that the settlement was wise and enabled the SEC to gain political capital—or at least save face.[80] Still, coming less than one year after judicial and journalistic rebukes of the SEC's settlement of its enforcement action against Bank of America,[81] the SEC may have missed an opportunity to use its enforcement operations to support the symbolic core of its institutional reforms. SEC leaders may have failed to assess or miscalculated in their assessment of the symbolic frame. If the nature and effect of the SEC's operations are inconsistent with the nature and effect of its institutional reforms, the latter are unlikely to be successful. As organizational change continues, it would behoove the SEC to give additional weight to the symbolic frame in its continuing reform efforts and consider linkages between organizational changes and operational decisions.

The SEC's failure to fully shake off the devastating effects of Bernard Madoff's long-term, high-profile securities fraud scheme is further evidence that it needs to continue to focus on the symbolic frame to assure the success of its operational reforms. The recent disclosure of the financial interest of former SEC General Counsel David Becker in the Madoff affair has revived this negative symbol and presented obstacles to continued transformations in SEC operations. This shadow needs to be cast off as soon as possible, and SEC leaders have a role in achieving that result.

In the *Villanova Law Review* article, I noted that the SEC leadership appeared to have engaged in a multi-frame analysis and action plan. Training and hiring—focusing on human resources—was part of the reform effort. The SEC was restructured in a number of ways to better achieve reform objectives. And publicized facts suggest that Chairman Schapiro and Director Khuzami understood symbols—at least negative ones—that would be impacted by the changes they were making at the SEC.

As noted, there are ongoing signs that the SEC's leadership is paying attention to the four frames highlighted by Bolman and Deal. Evidence of a multi-framed approach includes continued attentiveness to training and other HR issues, a sustained focus on possible structural changes, and concern about the capacity of change to reinforce and destroy important symbols (despite confounding operational decisions). Perhaps the most serious concerns relate to the political frame. There is no firm evidence yet that change momentum at the SEC has been halted by current political conflict internal or external to the SEC, but the SEC's current funding issues threaten that change momentum. Given existing political realities, the pace of change at the SEC is likely to slow if the political conflict that underlies weak congressional support for the SEC continues or deepens. There is undoubtedly an ongoing need for leaders at the SEC to engage in multi-frame decision-making that takes all four of Bolman and Deal's frames into account.

Potential Effects of SEC Funding Shortfalls

The current Republican House of Representatives represents a potential impediment to successful reform at the SEC. The most serious threat is the failure of the current Congress to fully fund the SEC's organizational reforms, including those mandated under the Dodd-Frank Act. What a difference an election makes . . . .

In May 2010, before the passage of the Dodd-Frank Act, Chairman Schapiro urged independent funding for the SEC.

> A key provision in the legislation would provide independent funding for the SEC. It's a provision that guarantees independence, enables us to engage in long-term planning, and helps us to close the resource gap between us and the Wall Street firms we regulate.
>
> Most every other federal financial regulator is independently funded and I believe the one agency that is charged with protecting investors should be independently funded as well.
>
> I hope that Congress resists efforts by those in the financial world who would rather see us weakened, than strengthened.[82]

Arguments for authorization of self-funding for the SEC are compelling and precede the enactment of the Dodd-Frank Act.[83] Yet, the Dodd-Frank Act did not make the SEC a self-funded agency. Instead, it afforded the SEC certain new or preferential funding mechanisms, sources, and procedures.[84] Under the Dodd-Frank Act, the overall budget of the SEC was scheduled to increase substantially from 2010 through 2015 to allow for full implementation of the SEC's increased obligations.[85] Preparations for use of the anticipated funds began immediately.[86]

The planning for additional funds in those summer months gave way to planning for fiscal restraint in the late fall and winter, however. New hires, offices, and programs were curtailed when it became apparent that the Obama administration's plan for funding SEC institutional and operational reforms would be rejected by the new Congress.[87] Currently, the SEC is being funded under a continuing resolution that maintains the agency's support at October 2010 levels.[88] Among the unfunded organizational changes: certain mandates under the Dodd-Frank Act.[89] As many have pointed out, the burdens of the Dodd-Frank Act were foisted upon an SEC that already was underfunded given the scope of its mandate.[90] Although the SEC is meeting its obligations under some of its Dodd-Frank mandates, it is (at least in some cases) diverting funds from other projects to do so.[91] In addition, the SEC is behind on a number of its financial reform projects.[92] Funding levels currently endorsed by congressional Republicans represent significant threats to SEC operations, according to Chairman Schapiro.[93] The recently released report of BCG on the SEC's operations confirms the agency lacks adequate funding to accomplish its objectives under exiting law and regulation.[94] The SEC, having been revived by its change leaders and the provisions of the Dodd-Frank Act, has been set up for failure in the post-Dodd-Frank era.

As this article is being written, the funding situation has become dire. Interested persons and groups are beginning to step up and publicly plead with Congress to increase funding to the SEC to fulfill the promise of the Dodd-Frank Act. Of course, the SEC itself is among those urging additional funding for its operations. Chairman Schapiro, in particular, makes a compelling case. After making observations about trading volume, workforce size, and comparative technology budgets, she recently said the following:

> [W]hile we appreciate the need to find inefficiencies and leverage resources—which we have been doing and will continue to do—we also note that last year alone we sent the U.S. treasury nearly $300 million more in collected transaction fees than we spent. And, we will continue to pay our own way in future years.
>
> Furthermore, in the past year, we returned more than $2 billion to harmed investors—twice our annual budget.
>
> So we need to ask ourselves if we want our market analysts to continue to use decades-old technology to recreate market events or to monitor trading that occurs at the speed of light.
>
> We need to ask ourselves if we want our chief securities regulator to have to pull the plug on data management systems and on a digital forensics lab needed to recreate the data that sophisticated fraudsters leave on hard drives and iPhones.
>
> We need to ask ourselves if we want to turn away the influx of market and economic experts willing to complement our existing talent and join our ranks.
>
> These are the questions we're confronting even as we implement our new responsibilities for hedge funds, derivatives and credit rating agencies.[95]

The North American Securities Administrators Association has joined in the call for increased funding to enable the SEC to fulfill its obligations under the Dodd-Frank Act.[96]

Chairman Shapiro recently testified before Congress on President Obama's requested appropriations for the SEC.[97] If the current underfunding is not mitigated or corrected, the SEC will be forced to continue to rob certain programs, forego some rulemaking, enforcement, and other activities, and limit new reforms (including many under the Dodd-Frank Act). Republicans in Congress may effectively be able to achieve through the power of the purse what they cannot politically achieve through new legislation: a repeal of some or all of the Dodd-Frank Act.

> Republicans, who largely opposed Dodd-Frank, now control the House of Representatives, and many have already called for its repeal. If repeal isn't possible—and since Democrats still control the Senate and the White House, it isn't—then starving the SEC of money to enforce the law is a logical Plan B. Indeed, incoming House Majority Leader Eric Cantor recently said that denying funds to the SEC and other agencies is "what the American people are expecting." He stated: "We certainly have the power to go about denying [President Obama's] agencies the funding they need."[98]

In the face of a potential *de facto* repeal of the Dodd-Frank Act, the entire program of institutional and regulatory responses to the financial crisis is at stake. Although some of these responses may be unnecessary or inefficient, underfunding does not target these weaknesses. Instead, it nullifies reform haphazardly. This article does not aspire to addressing the many potential effects of that risky course of action. However, in light of the analysis I employ in the *Villanova Law Review* article and here, it seems important to briefly relate the SEC's current underfunding crisis to its institutional reform efforts. That is all I seek to do here.

The Future of Institutional Reform at the SEC

A lack of funding does not change the attributes of successful change leaders, but it does test them. Wartime leadership and problem-finding skills are, if anything, more important in a limited-resource environment. Similarly, the nature and quality of a successful change leader's actions are no different in an era of underfunding and arguably become even more important when financial support is lacking.

Yet long-term underfunding will prevent even informed and motivated change leaders from meeting their ultimate objectives for organizational transformation. At some level of underfunding over some period of time, the SEC will be unable to extend or even continue its institutional reform efforts. The decisions that the SEC Commissioners will have to make on where to invest limited financial, human, and technological resources will be exceedingly difficult and distract from the ability of the SEC to carry out its statutory mandate. The only continuing "reform" at the SEC under those circumstances would be more extreme cost cutting and austerity-oriented resource allocation.

Even if the SEC can continue to pursue some reforms in the absence of full funding, the probability for success of those reforms will be significantly diminished; it will become increasingly difficult for the SEC to anchor organizational change to the SEC's highest value—investor advocacy and protection—because support for that value will be weak. U.S. Senator Tim Johnson alluded to the SEC's potential decreased capacity for investor advocacy and protection when he offered the following comments after the Senate's December 2010 passage of the continuing resolution providing level funding for the SEC:

> I remain concerned with what passage of this measure, and the defeat of the annual appropriations bill last week, could mean to implementation of the Dodd-Frank Wall Street Reform law. The success of this law and its ability to protect consumers and investors hinges on Congress providing increased funding for agencies like the Securities and Exchange Commission and the Commodity Futures Trading Commission. Under this funding bill, these agencies could face a lack of resources that ultimately leaves investors more vulnerable.[99]

SEC Commissioner Luis Aguilar concurs with Senator Johnson's view that investors will suffer if the SEC does not receive additional funding.[100] "Our staff deserves a well-funded agency that provides the tools they need to protect investors and fulfill the agency's mission. Investors expect no less."[101] Inconsistencies between the actions of SEC leaders and the SEC's core values may threaten the success of recent and planned future organizational change.

In this difficult fiscal environment, the importance of assessing potential organizational changes using a multi-frame approach cannot be overstated. Changes in the SEC's reform plan are likely to have marked effects on human resources and the structure of the agency. The enhanced staff knowledge and skills in which the SEC has recently invested will be at risk, and revisiting structural issues at the SEC is likely to cause uncertainty and distrust. SEC leaders will have to guard against adverse effects in these areas as much as possible in order to have any lasting success with their reform agenda. Both the political frame and symbolic frame also will present challenges. It will be difficult for SEC Commissioners to constrain conflict arising out of inadequate funding so that it does not interrupt reform efforts, and (as already noted) changes in the SEC's plan for reform would certainly impact investor advocacy and protection and other key symbols. It will be challenging for SEC leaders to minimize both damaging effects arising from political controversy and negative impacts on important symbols.

The vicissitudes of politics and the congressional appropriations process are unlikely to destroy the SEC. After all, the SEC has faced significant budget challenges in the past and has survived (and gone on to thrive).[102] It seems that Chairman Schapiro, Director Khuzami, and others in leadership positions at the SEC are prepared to soldier on and accept the continuing challenges that change leadership presents, even if the SEC's reform plans are not adequately funded.

In and in the wake of the Dodd-Frank Act, Congress first rejected self-funding for the SEC and then failed to appropriate additional funds to the SEC to support institutional change. Congress appears to be throwing the proverbial baby out with the bathwater. By failing to fully fund the SEC's operations, Congress now threatens more than the reforms instituted in the Dodd-Frank Act. It also may derail successful organizational reform already in process at the SEC before the adoption of that Act—reform that directly responded to acknowledged weaknesses in the then existing regulatory framework. This seems like a needlessly perilous path.

Notes

1. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).
2. *See generally* U.S. Sec. & Exch. Comm'n, *The Securities and Exchange Commission Post-Madoff Reforms*, *http://www.sec.gov/spotlight/secpostmadoffreforms.htm* [hereinafter SEC, Post-Madoff Reforms](providing a list and descriptions of institutional reforms at the SEC since December 2008).
3. U.S. Sec. & Exch. Comm'n, *SEC Biography: Chairman Mary L. Schapiro*, *http://www.sec.gov/about/commissioner/schapiro.htm* (last visited Jan. 31, 2011).
4. U.S. Sec. & Exch. Comm'n, *Robert Khuzami Named SEC Director of Enforcement*, Feb. 19, 2009, *http://www.sec.gov/news/press/2009/2009-31.htm*.
5. Joan MacLeod Heminway, *Reframing and Reforming the Securities and Exchange Commission: Lessons from Literature on Change Leadership*, 55 Villanova L. Rev. 627 (2010), available at *http://ssrn.com/abstract=1688147*.
6. *Id*. at 637-38 (*citing* Judith M. Bardwick, *Peacetime Management and Wartime Leadership*, *in* The Leader of the Future 131 (Frances Hesselbein et al. eds., 1996).
7. Heminway, *supra* note 5, at 638-39.
8. Mary L. Schapiro, Chairman, U.S. Sec. & Exch. Comm'n, Remarks at CFA Institute 2010 Annual Conference (May 18, 2010) (transcript available at *http://www.sec.gov/news/speech/2010/spch051810mls.htm*) [hereinafter Schapiro, CFA Remarks].
9. Mary L. Schapiro, Chairman, U.S. Sec. & Exch. Comm'n, Moving Forward: The Next Phase in Financial Regulatory Reform, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce (July 27, 2010) (transcript available at *http://www.sec.gov/news/speech/2010/spch072710mls.htm*).
10. Mary L. Schapiro, Chairman, U.S. Sec. & Exch. Comm'n, Testimony on Implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act by the U.S. Securities and Exchange Commission, U.S. Senate Committee on Banking, Housing, and Urban Affairs (Feb. 17, 2011) (transcript available at *http://www.sec.gov/news/testimony/2011/ts021711mls.htm*) [hereinafter Schapiro, Implementation Testimony].
11. Mary L. Schapiro, Chairman, U.S. Sec. & Exch. Comm'n, Testimony on the Financial Management, Work Force Management and Internal Operations of the U.S. Sec. & Exch. Comm'n, Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs & Subcommittee on Government Organization, Efficiency and Financial Management of the U.S. House of Representatives Committee on Oversight and Government Reform (Mar. 10, 2011) (transcript available at *http://www.sec.gov/news/testimony/2011/ts031011mls-2.htm*) [hereinafter Schapiro, Internal Operations Testimony].
12. Press Release, U.S. Sec. & Exch. Comm'n, Statement From Chairman Schapiro on Independent Consultant Report of SEC Organization and Operations (Mar. 10, 2011) *at http://www.sec.gov/news/press/2011/2011-65.htm*.
13. *See infra* note 53.
14. Heminway, *supra* note 5, at 639.
15. *Id*. at 640-41.
16. Suzanne McGee, *Regulatory Fallout*, Portfolio.com, Aug. 6, 2010, *http://www.portfolio.com/industry-news/banking-finance/2010/08/06/wall-street-financial-regulatory-reform-and-mary-schapiro-sec-create-risk-of-unintended-consequences/*.
17. *Id*.
18. *See* Wayne Coffee & Nathaniel Vinton, *David M. Becker Declines to Testify, Not Subpoenaed to House Committee Hearing Related to SEC*, NYDailyNews.com, Mar. 8, 2011, *http://articles.nydailynews.com/2011-03-08/sports/28686434_1_helen-davis-chait*

man-sec-chairman-mary-schapiro-sec-director (quoting Michael Smallberg, an investigator with the independent Project On Government Oversight, on this point). *See also* Larry Doyle, *What's Really Going on at the SEC*, Business Insider, Mar. 10, 2011, *http://www.businessinsider.com/whats-really-going-on-at-the-sec-2011-3*.

19. *See* David S. Hilzenrath, *SEC Chair Says Ethical Issues Left To Counsel On Madoff Case*, Wash. Post, Mar. 10, 2011, A18 (noting that Republican lawmakers were criticizing the SEC in this regard).

20. *See* Sarah N. Lynch & Kevin Drawbaugh, *SEC Head Regrets Handling of Becker-Madoff*, Reuters, Mar. 10, 2011, *http://www.reuters.com/article/2011/03/10/us-sec-hearings-idUSTRE72866720110310*; Edward Wyatt, *S.E.C. Head Admits Misstep in a Madoff Ethics Issue*, N.Y. Times, Mar. 10, 2011, B3 (online copy available at *http://www.nytimes.com/2011/03/11/business/11sec.html?_r=1)*.

21. *See* Charlie Gasparino, *Khuzami Turning up the heat at the SEC*, FoxBusiness.com, Oct. 28, 2010*, http://www.foxbusiness.com/markets/2010/10/28/khuzami-turning-heat-sec/#ixzz1CzHAJXwK* (commenting that some people "wonder whether the agency is so structurally flawed—agents often eye higher paying jobs on Wall Street while at the agency, meaning they're less inclined to hammer possible future employers—that it can ever recover to become an effective tool against white collar crime.").

22. Gasparino, *supra* note 21.

23. *See generally* Melanie Waddell, *30 for 30 Interviews: Harry Markolpolous*, AdvisorOne, May 1, 2010, *http://www.advisorone.com/article/30-30-interviews-harry-markopolos* (describing both continuing problems and small steps forward at the SEC).

24. See Alain Sherter, *Wag the Reg: SEC Timed its Suit Against Goldman Sachs to Hide Stanford Screwup*, bnet.com, Sept. 23, 2010, *http://www.bnet.com/blog/financial-business/wag-the-reg-sec-timed-its-suit-against-goldman-sachs-to-hide-stanford-screwup/7682*.

25. John P. Kotter, Leading Change 30 (1996).

26. Heminway, *supra* note 5, at 642-51.

27. *Id.* at 651-52.

28. Schapiro, CFA Remarks, *supra* note 8.

29. Mary Schapiro, Chairman, U.S. Sec. & Exch. Comm'n, Testimony Before the Subcommittee on Financial Services and General Government, Subcommittee on Financial Services and General Government Committee on Appropriations of the U.S. House of Representatives (Mar. 15, 2011) (transcript available at *http://www.sec.gov/news/testimony/2011/ts031511mls.htm*) [hereinafter Schapiro, Appropriations Testimony]; Mary L. Schapiro, Chairman, U.S. Sec. & Exch. Comm'n, Brodsky Family Lecture at Northwestern University School of Law (Nov. 9, 2010) (transcript available at *http://www.sec.gov/news/speech/2010/spch110910mls.htm*) [hereinafter Schapiro, Brodsky Lecture].

30. U.S. Sec. & Exch. Comm'n, *SEC Adds Units to Oversee Financial Institutions, Asset-Backed Securities, New Financial Products and Trends*, July 16, 2010, *http://www.sec.gov/news/press/2010/2010-124.htm*; U.S. Sec. & Exch. Comm'n, *Paula Dubberly Named to New Deputy Director Position in Division of Corporation Finance*, July 16, 2010, *http://www.sec.gov/news/press/2010/2010-125.htm*.

31. Heminway, *supra* note 5, at 651-52.

32. Elisse B. Walter, Commissioner, U.S. Sec. & Exch. Comm'n, "What's Next?": Remarks Before The 2010 Fall Meeting of the Council of Institutional Investors (Sept. 20, 2010) (transcript available at *http://www.sec.gov/news/speech/2010/spch092010ebw.htm*).

33. Schapiro, Appropriations Testimony, *supra* note 29.

34. Schapiro, Brodsky Lecture, *supra* note 29.

35. *Id.*

36. Mary L. Schapiro, Chairman, U.S. Sec. & Exch. Comm'n, Keynote Address at the Compliance and Legal Society of the Securities Industry and Financial Markets Association 2010 Annual Seminar, May 6, 2010 (transcript available at *http://www.sec.gov/news/speech/2010/spch050610mls.htm* ("[W]e should be looking to the future by returning to proven principles of the past, like transparency and fairness—principles that empower investors to make rational decisions and give regulators the tools they need to prevent crises, without stifling growth.").

37. Troy A. Paredes, Commissioner, U.S. Sec. & Exch. Comm'n, Remarks at *The SEC Speaks in 2011* (Feb. 4, 2011) (transcript available at *http://www.sec.gov/news/speech/2011/spch020411tap.htm*) (crediting former SEC Chairman William O. Douglas with labeling the SEC as "the investor's advocate."). *See also* Donald C. Langevoort, *The SEC, Retail Investors, and the Institutionalization of the Securities Markets*, 95 Va. L. Rev. 1025-26 (2009).

38. Luis A. Aguilar, Commissioner, U.S. Sec. & Exch. Comm'n, An Insider's View of the SEC: Principles to Guide Reform (Oct. 15, 2010) (transcript available at *http://www.sec.gov/news/speech/2010/spch101510laa.htm*) [hereinafter Aguilar, Reform Principles]. *See also* Luis A. Aguilar, Commissioner, U.S. Sec. & Exch. Comm'n, Financial Regulatory Reform: The SEC Moving Forward (Sept. 21, 2010) (transcript available at *http://www.sec.gov/news/speech/2010/spch092110laa.htm*) [hereinafter Aguilar, Moving Forward] (same).

39. Myron Rogers & Margaret J. Wheatley, *Bringing Life to Organizational Change*, *in* Finding Our Way: Leadership For An Uncertain Time 83, 84-86 (Margaret J. Wheatley ed., 2005).

40. *Id.* at 86-87.

41. *Id.* at 88-89.

42. Heminway, *supra* note 5, at 653-56.

43. *Id.* at 653-54.

44. *Id.*

45. *Id.* at 654-55.

46. *Id.* at 655-56.

47. Aguilar, Reform Principles, *supra* note 38.

48. Aguilar, Moving Forward, *supra* note 38.

49. Jesse Westbrook, *SEC Economist Vacancies May Aid Legal Challenges of Dodd-Frank Law*, Boomberg.com, Nov. 24, 2010, *http://www.bloomberg.com/news/2010-11-24/sec-economist-vacancies-may-aid-legal-challenges-of-dodd-frank.html*.

50. *Id*.

51. *Id*. *See also* Jim Kim, *SEC Chief Economist Vacancy to Impede Dodd-Frank Rules*, FierceComplianceIT, Dec. 2, 2010, *http://www.fiercecomplianceit.com/story/sec-chief-economist-vacancy-impede-dodd-frank-rules/2010-12-02*.

52. Schapiro, CFA Remarks, *supra* note 8.

53. Boston Consulting Group, U.S. Securities and Exchange Commission: Organizational Study and Reform, Mar. 10, 2011, *http://www.sec.gov/news/studies/2011/967study.pdf* [hereinafter BCG Report].

54. *See* Schapiro, Implementation Testimony, *supra* note 10 ("During the past four months, our staff has been fully engaged with BCG, participating in interviews, providing documentation, and responding to questions.").

55. Paradoxically, however, the BCG Report also highlighted failures in the SEC systems for internal communication. *See, e.g.*, BCG Report, *supra* note 53, at 50-52. The BCG Report acknowledges that the SEC has made great strides in improving internal communication but notes that more is needed to optimize communication. *See id*. at 75. The recommended initiatives in the BCG Report include numerous suggestions for improving communication within the agency. *See id*., at 75-146 (scattered references throughout Part 6).

56. Lee G. Bolman & Terry E. Deal, *4 Steps to Keeping Change Efforts Heading in the Right Direction*, J. For Quality & Participation, May/June 1999, at 7.

57. *Id*.

58. Heminway, *supra* note 5, at 657.

59. SEC, Post-Madoff Reforms, *supra* note 2.

60. Mary L. Schapiro, Chairman, U.S. Sec. & Exch. Comm'n, Evolving to Meet the Needs of Investors: Address to Practising Law Institute's *SEC Speaks in 2011* Program (Feb. 4, 2011) (transcript available at *http://www.sec.gov/news/speech/2011/spch020411mls.htm*) [hereinafter Schapiro, Evolving to Meet Investor Needs].

61. *See* SEC, Post-Madoff Reforms, *supra* note 2; Luis A. Aguilar, Commissioner, U.S. Sec. & Exch. Comm'n, Recruiting the Best and the Brightest Means Striving for a Diverse Applicant Pool (May 3, 2010) (transcript available at *http://www.sec.gov/news/speech/2010/spch050310laa.htm).*

62. *See* Jessica Toonkel, *New SEC Executive's Background Could Bode Well for Fund Industry*, InvestmentNews, Jan. 23, 2011, *http://www.investmentnews.com/article/20110123/REG/301239978*.

63. Schapiro, Internal Operations Testimony, *supra* note 11. *See also* Schapiro, Appropriations Testimony, *supra* note 29.

64. *See* Bolman & Deal, *supra* note 56, at 7.

65. *See* Heminway, *supra* note 5, at 657.

66. *See* Joshua Horn, *Securities Litigation: SEC Assesses Progress Toward Agency Reform*, Westlaw News & Insight, Dec. 13, 2010, *http://westlawnews.thomson.com/Securities_Litigation/Blogs/Joshua_Horn_on_Securities/SEC_assesses_progress_toward_agency_reform/*; Nick Paraskeva, *Dodd-Frank Watch: SEC OCIE Head Outlines National Exam Program*, Complinet Complete, Dec. 28, 2010, *http://www.complinet.com/dodd-frank/news/analysis/article/sec-ocie-head-outlines-national-exam-program.html*; Schapiro, Evolving to meet Investor Needs, *supra* note 60.

67. *See* Aguilar, Reform Principles, *supra* note 38; Aguilar, Moving Forward, *supra* note 38.

68. Schapiro, Appropriations Testimony, *supra* note 29. *See also* Schapiro, Internal Operations Testimony, *supra* note 11.

69. *See* BCG Report, *supra* note 53.

70. Bolman & Deal, *supra* note 56, at 7.

71. *Id*.

72. Heminway, *supra* note 5, at 658 (footnote omitted).

73. *See* Jesse Hamilton, *SEC Faces Congress's Scrutiny on Spending, Ethics Questions on Pornography*, Bloomberg, Mar. 10, 2011, *http://www.bloomberg.com/news/2011-03-10/sec-faces-congress-s-scrutiny-on-spending-ethics-questions-on-pornography.html*.

74. *See* Heminway, *supra* note 5, at 658.

75. *See* Aguilar, Reform Principles, *supra* note 38; Aguilar, Moving Forward, *supra* note 38.

76. *See supra* notes 34-38 and accompanying text.

77. *See* Lawrence Mitchell, America Needs Regulators that Fight to Win, FT.com, July 22, 2010, *http://www.ft.com/cms/s/0/e56b67a6-95c5-11df-b5ad-00144feab49a.html#axzz1DDmBQl97* (registration required).

78. *See* Peter J. Henning & Steven M. Davidoff, *Weighing the Tradeoffs in the Goldman Settlement*, DealBook, July 16, 2010, *http://dealbook.nytimes.com/2010/07/16/weighing-the-trade-offs-in-the-gold man-settlement/*.

79. Mitchell, *supra* note 77.

80. *See* Henning & Davidoff, *supra* note 78; Kara Scannell & Susanne Craig, *SEC Split Over Goldman Deal*, WSJ.com, July 17, 2010, *http://online.wsj.com/article/SB10001424052748704229004575371601322076426.html*. Professor Mitchell acknowledges the possibility of weakness in the SEC's case, but he notes that that should have been assessed before bringing the action in the first place. *See* Mitchell, *supra* note 77.

81. Zachary A. Goldfarb, *Judge Says SEC Failed Investors*, Wash. Post, Sept. 15, 2009, *available at http://www.washingtonpost.com/wp-dyn/content/article/2009/09/14/AR2009091401671.html*.

82. Schapiro, CFA Remarks, *supra* note 8.

83. *See id*.; Joel Seligman, *Self-Funding for the Securities and Exchange Commission*, 28 Nova L. Rev. 233 (2004).

84. *See* Melissa Aguilar, *SEC Ramping Up to Implement Dodd-Frank Reforms*, ComplianceWeek, *http://www.complianceweek.com/sec-ramping-up-to-implement-dodd-frank-reforms/article/187405/* ("The Dodd-Frank Act makes changes to the SEC's funding structure, linking its appropriation with the fees it collects, creating a Reserve Fund, and requiring the agency to submit its annual budget requests concurrently to the Administration and Congress.").

85. *See* Bruce Carton, *How Can Congress Kill Dodd-Frank? By Underfunding It*, Securities Docket, Jan. 20, 2011, *http://www.securitiesdocket.com/2011/01/20/how-can-congress-kill-dodd-frank-*

by-underfunding-it/ ("Under the [Dodd-Frank] legislation, the SEC's budget was set to double in five years from its 2010 level of $1.118 billion").

86. *Id.*

87. Luis A. Aguilar, Commissioner, U.S. Sec. & Exch. Comm'n, Setting Forth Aspirations for 2011: Address to Practising Law Institute's *SEC Speaks in 2011* Program, Feb. 4, 2011, *http://www.sec.gov/news/speech/2011/spch020411laa.htm* [hereinafter Aguilar, 2011 Aspirations]; Peter Egwuatu, *Lack of Funds May Restrict SEC Plans—Schapiro*, Vanguard Online Edition, Dec. 29, 2010, *http://www.vanguardngr.com/2010/12/lack-of-funds-may-restrict-sec-plans-schapiro/;* Charles Riley, *SEC Starved for Reform Funds*, CNNMoney.com, Jan. 11, 2011, *http://money.cnn.com/2011/01/11/news/economy/SEC_funding/index.htm*.

88. Carton, *supra* note 85; Melanie Waddell, *Strapped SEC Will Struggle with Dodd-Frank Implementation, But Fiduciary Duty Rule Likely Remains on Track*, AdvisorOne, Dec. 28, 2010, *http://www.advisorone.com/article/what-lack-sec-funding-means-dodd-frank-sro-likelihood*.

89. *Id.*; Aguilar, 2011 Aspirations, *supra* note 87; Riley, *supra* note 87.

90. *See*, *e.g.*, Carton, *supra* note 85 ("The substantial new burdens [under the Dodd-Frank Act] imposed upon the SEC did not fall upon an agency with excess capacity or budget.").

91. Riley, *supra* note 87.

92. Doug Cornelius, The SEC, Funding, and Rulemaking, Compliance Building, Jan. 5, 2011, *http://www.compliancebuilding.com/2011/01/05/the-sec-funding-and-rulemaking/*.

93. *See* Mark Schoeff Jr., *Shapiro: SEC Budget Cuts Would 'Dramatically' Curtail Exams*, InvestmentNews.com, Mar. 16, 2011, *http://www.investmentnews.com/article/20110316/FREE/110319952*.

94. *See*, *e.g.*, BCG Report, *supra* note 53, at 39-41. The BCG Report recommends that Congress either better tailor funding to the required operations or scale back operations to better match desired funding. *See id.* at 5, 9-10, 147-52.

95. Schapiro, Evolving to Meet Investor Needs, *supra* note 60.

96. Joseph A. Giannone, *States Urge Congress Not to Water Down Dodd-Frank*, Reuters, Feb. 2, 2011, *http://www.reuters.com/article/2011/02/02/regulation-wallstreet-idUSN0223623920110202*.

97. *See* Schapiro, Appropriations Testimony, *supra* note 29.

98. Carton, *supra* note 85.

99. Tim Johnson, U.S. Senator, Johnson Comments as Senate Passes Continuing Resolution (Dec. 21, 2010), *http://www.johnson.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=6d114089-f490-4c04-856a-a5b3b558632c*.

100. *See* Aguilar, 2011 Aspirations, *supra* note 87.

101. *Id.*

102. *See*, *e.g.*, Joel Seligman, The Transformation of Wall Street 266-70, 291-92 (describing SEC budget constraints during the Eisenhower administration and a renewal of federal support during the Kennedy administration).