

WASHINGTON- Congressman Spencer Bachus (AL-6), Ranking Member on the House Financial Services Committee, made the following statement today during the Capital Markets Subcommittee hearing entitled "SEC Oversight: Current State and Agenda."

"Thank you, Mr. Chairman, for convening this morning's hearing to examine the important work that the Securities and Exchange Commission is doing to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. This is Chairman Schapiro's first appearance before the Financial Services Committee since she was sworn in and we welcome you here today. Already in her short tenure as the agency's Chief Executive she has embarked on an ambitious regulatory agenda and an equally important review of the SEC's internal operations.

"There's a strong need for regulatory reform. However, I am very concerned that the guiding principle of all of the Administration's proposals-whether it's health care, energy or financial services-is heavy handed intervention in what has traditionally been the private market. In each of these areas, the key theme is rationing. The Administration wants to create a government health insurance option that will ration health care and limit choice. The cap and tax plan will significantly ration energy use. And with financial services, the Administration wants to ration credit to consumers and businesses.

"For example, the proposed Consumer Financial Protection Agency appears to function as a contract approval and credit rationing agency. According to Treasury Secretary Geithner at last week's hearing, the government will be looking at private derivatives transaction to determine if they were spuriously customized to avoid a clearing house. How can the government possibly look at the tens of thousands of daily derivatives transactions to determine if the intention is to avoid clearing? If a derivatives trade is ruled invalid and has to be unwound, what happens to the contractual rights of the counter party? I worry Mr. Chairman that we are asking the regulators to be experts in behavioral psychology.

"If the SEC had no one able to understand Bernard Madoff's trading strategy, how are they possibly going to be able to understand a private corporation and its counterparty's decision to mitigate business risk? What the Administration is doing is turning the SEC into the IRS, where fear of second guessing causes decisions to be made based on fear-fear of excessive punishment and fear of having to prove the unprovable rather than basing decisions on sound business judgment.

"I have other concerns as well. The \$65 billion Madoff Ponzi scheme has shaken public confidence in the SEC's enforcement and investor protection regime. However, the investor protection proposal released by the Administration last Friday does not fix the underlying problems with SEC oversight. The proposal would require the SEC to establish a fund to pay whistleblowers for information that leads to enforcement actions and results in financial awards. Was Harry Markopolos, the Madoff whistleblower, interested in compensation? For almost ten years, he was interested in preventing Bernard Madoff from perpetrating the largest financial fraud in U.S. history and he was ignored.

"While we will not know the full extent of the SEC's internal failures in the Madoff case until the SEC Inspector General's August report, Chairman Schapiro should not wait for that report to begin reforming the agency. The SEC needs to eliminate the Office of Compliance, Inspections and Examinations - which for years failed to investigate the Madoff fraud - and return its functions to the Divisions of Investment Management and Trading and Markets. Additionally, to promote real investor protection, the Commission needs to leverage the expertise and resources of existing and potentially new self-regulatory organizations to fill regulatory gaps.

"Mr. Chairman, House Republicans support necessary reforms to stop the financial chicanery that made the Madoff scandal, as well as Bear Stearns, Lehman Brothers, AIG, Stanford Financial and the Reserve Fund, possible. Many of these episodes could have been avoided if proper oversight and enforcement had been applied. The House Republican regulatory reform plan addresses the current gaps in investor and consumer protection through strengthened anti-fraud enforcement, amplified investigative and enforcement powers for regulators and increased restitution for victims. However, overly broad changes to current law that will punish all public companies, broker-dealers, mutual funds, money market funds, investment advisers or end-users of over-the-counter derivatives is the wrong course and one that I cannot support.

"Chairman Schapiro, we look forward to working with you to ensure that investors are protected, and that regulation is fair, thorough and consistent while remaining flexible enough to promote innovation and growth so that all market participants, companies and products can efficiently access the U.S. capital markets. I hope that we can work together to address these concerns, and I thank you for being here this morning."