News Release

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SEC URGED TO AMEND FAIR FUNDS PLAN SO THAT ALL MONEY GOES TO THE INJURED

The Washington Legal Foundation (WLF) this week urged the Securities Exchange Commission (SEC) to amend its plan for distribution of funds collected from companies that engaged in unfair stock trading practices, to ensure that all such funds are distributed only to those who were injured by such practices.

In formal comments filed by WLF in response to the SEC's request for comments regarding its Fair Funds distribution plan, WLF argued that the proposed plan was deficient under the Sarbanes-Oxley Act (which established the Fair Funds for Investors program) because it did not provide for the distribution of $50-70 million of collected funds. WLF said it feared that unless such a provision is adopted, the SEC may decide to deposit those funds into the U.S. Treasury.

SEC collected the funds in question -- nearly $248 million -- as a result of settlements with seven New York Stock Exchange (NYSE) specialist firms. These firms make the markets for a variety of stocks traded on the NYSE. The SEC alleges, among other things, that the firms violated their duty to match executable public customer buy and sell orders, by improperly filling customer orders from the firms' own accounts. The SEC alleges that this practice deprived customers of the best available price. The SEC deposited the settlement funds into interest-bearing accounts, pending distribution to injured investors.

The SEC proposes that the funds be distributed to identified injured investors, along with interest computed through the date on which the specialist firms transferred funds to the SEC in 2004. The SEC estimates that $50-70 million will remain after all injured customers have been paid in this manner. The distribution plan gives no inkling of what is to happen to that $50-70 million; rather, it simply states that the SEC will determine "an appropriate use" for those funds at some unspecified future time.

In its comments filed with the SEC, WLF argued that the agency, by submitting a distribution plan that fails to specify how all funds are to be distributed, is violating regulations adopted pursuant to the Sarbanes-Oxley Act. *See* 17 C.F.R. § 201.1101(b)(5). WLF argued that any such funds should be earmarked solely for distribution to injured investors. For example, WLF suggested, those investors should be paid interest through the date of payment, and not simply (as provided in the proposed distribution plan) through the date in 2004 on which the specialist firms made their settlement payments to the SEC. WLF stated that it is possible that injured customers may assert damages other than those recognized to date by the SEC, or that other customers not identified by the SEC may assert that they have been injured. WLF argued that the SEC should retain left-over funds to ensure that such claims for damages can be covered. In no event should the SEC simply turn over any left-over funds to the U.S. Treasury, WLF asserted. WLF argued that federal regulations permit distribution of funds to the U.S. Treasury only if there is no feasible way to transfer the funds to injured investors.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending and promoting free enterprise, individual rights, and a limited and accountable government. In pursuit of those objectives, WLF has initiated its Investor Protection Program, a program designed to protect stock markets from manipulation and to protect employees, consumers, pensioners, and investors from stock losses caused by abusive litigation. As part of that program, WLF regularly monitors the SEC's implementation of the Fair Funds for Investors provision of federal law.

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For further information, contact WLF Chief Counsel Richard Samp, 202-588-0302. A copy of WLF's comments are posted on its web site, www.wlf.org.