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**Remarks to
The Corporate Counsel Section
of the
New York State Bar Association**

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Washington, D.C.**

**"Fashioning Sanctions for Securities Law Violations:
The Need for Standards"**

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***/ The views expressed herein are those of Commissioner Lochner and do not necessarily represent the views of the other Commissioners or the Commission staff.**

I. INTRODUCTION

With the enactment of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Congress granted the SEC the most significant expansion of its enforcement powers since the Commission's creation, almost sixty years ago.

These new powers include the authority (1) to seek or impose money penalties for securities law violations, (2) to seek court orders barring individuals from serving as officers or directors of public companies, and (3) to bring administrative cease and desist proceedings against individuals and entities for any violation or threatened violation of the securities laws.

In granting these vastly expanded powers, Congress was motivated by, among other things, a desire to provide the SEC with increased flexibility to fashion sanctions that are appropriate for particular cases and that increase the deterrent effect of the SEC's

enforcement program.

Along with these expanded powers, of course, comes a heightened responsibility for the Commission to use them fairly and effectively.

When the Commission brings legal or administrative proceedings against any person or entity, it imposes potentially terrible costs on the party charged --- costs to reputation, legal defense costs, costs in time and costs in emotional resources --- all of which are incurred irrespective of whether the party charged is eventually proven innocent or guilty of the alleged violations. Thus, it is incumbent on the Commission before initiating a proceeding to be persuaded that it is correct, both in its view of the facts and in its view of the law.

There is a second responsibility of the Commission in enforcement actions; it is one incurred once an action is commenced. It is a responsibility that all administrative agencies bear --- that their procedures be fair and reasonable. As you may know, Commissioner

Schapiro is chairing a Commission Task Force on Administrative Proceedings that is examining issues related to implementation of the new Remedies Act. In particular, the Task Force is examining ways to make the Commission's administrative process as fair and expeditious as possible.

My topic today involves a third responsibility that I believe also should receive close attention in order properly to implement the SEC's new enforcement powers: the responsibility to impose sanctions fairly. With its new powers, the Commission now has an imposing array of sanctions from which to choose in achieving its enforcement objectives, as well as vast discretion in applying those sanctions. Making its sanctioning decisions fairly and effectively --- both with respect to its new and its traditional sanctions --- will be difficult, if not impossible, without standards to guide the Commission's discretion in applying those sanctions, and without articulating those standards in public.

II. THE NEED FOR STANDARDS

One might well ask why there is any need for the Commission to articulate standards in applying sanctions. After all, the Commission has functioned for nearly sixty years without more than partially articulating its sanctioning standards. The answer to this question is at least threefold.

First, I am not sure the Commission's disinterest thus far in fully articulating sanctioning standards has been altogether wise. If having clear public standards in sanctioning makes more sense than having unclear or unarticulated standards, as I believe it does, then the absence of clear public standards in the past is not necessarily a reason for the absence of standards in the future.

Second, as I mentioned at the outset, the Remedies Act has considerably changed the equation. Before passage of the Act, our sanctions were fewer and less varied, and focused to a larger extent on

regulated entities. The need to articulate clear standards was, correspondingly, less acute.

Third, I believe the public has shown signs of becoming increasingly impatient with the exercise of official power in nearly all its forms, and there is no reason to believe the Commission will never be an object of that impatience. There are few things which could be so damaging to the Commission or its enforcement program as the appearance that the Commission acts in an arbitrary or capricious fashion. Thus, it behooves the Commission, for the sake of its own future, to explicate, in a clear and forthright fashion, its intended use of its considerable discretion. This is particularly so when the Commission has the capacity to act as prosecutor, judge and jury, all under one roof.

Academic observers have commented on the need for administrative agencies to develop explicit standards to guide their discretion, particularly in light of the frequently broad grants of authority

given them by Congress.¹ For example, an influential 1979 report to the Administrative Conference of the United States on civil money penalties² was emphatic in recommending that administrative agencies develop as objective and detailed standards as possible to guide their use of the money penalty sanction.³

This report helped produce a recommendation by the Administrative Conference that agencies with authority to seek or impose money penalties should establish standards for determining appropriate penalty amounts for individual cases, and that agencies

¹ See, e.g., K. Davis, Discretionary Justice; A Preliminary Inquiry 52-96 (1969); Thomforde, Controlling Administrative Sanctions, 74 Mich. L. Rev. 709, 716-20 (1976).

² Colin S. Diver, Report to the Administrative Conference of the United States Concerning the Assessment and Mitigation of Civil Money Penalties by Federal Administrative Agencies 1 (May 1979). For a law review article based on this report, see Diver, The Assessment and Mitigation of Civil Money Penalties by Federal Administrative Agencies, 79 Col. L. Rev. 1435 (1979).

³ A passage in the report noting that civil money penalties had assumed a place of "paramount importance in the compliance arsenal of most federal regulatory agencies" was quoted by both the Senate and House reports on the Remedies Act in support of the SEC's need for money penalties. S. Rep. No. 337, 101st Cong., 2d Sess. 9 (1990); H.R. Rep. No. 616, 101st Cong., 2d Sess. 15-16 (1990).

should make their standards known to the public to the greatest extent possible through rulemaking or publication of policy statements.⁴ In light of the breadth of agency discretion, the Administrative Conference believed that publicly disclosed standards, and structures for the exercise of that discretion, were needed to improve the consistency, efficiency and openness of agency penalty determination processes.⁵

As a general matter, why is it important to have clear, public sanctioning standards?

An important benefit of such standards is that they help ensure that an agency exercises its authority in a fair and non-arbitrary fashion.

⁴ Administrative Conference of the U.S., Recommendation 79-3: Agency Assessment and Mitigation of Civil Money Penalties 24-25 (1979).

⁵ One regulatory authority that has adopted such standards is the Office of Thrift Supervision. It published a policy statement in 1990 that discusses the factors to be taken into consideration in deciding whether a civil money penalty should be imposed, and if so, in what amount. A civil money penalty matrix is provided that identifies fourteen different factors to be considered, and indicates quantitatively the effect of each factor on the penalty determination. OTS Regulatory Bulletin No. 18-3, Assessment of Civil Money Penalties Against Associations and Affiliated Persons: OTS Policy Statement (June 13, 1990).

A fundamental principal of administrative law, articulated in the Administrative Procedure Act⁶ and ultimately rooted in the constitutional guarantee of due process,⁷ is that agencies must act in a way that is not arbitrary or capricious. Articulated standards provide the basis for an agency to meet this fundamental constitutional responsibility.⁸

Fair sanctions require both consistency and proportionality.

Consistency means that wrongdoers in similar circumstances should

⁶ 5 U.S.C. §706(2)(A) (requires a reviewing court "to hold unlawful and set aside agency actions, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law")

⁷ See Duncan v. Missouri, 152 U.S. 377, 382 (1894) (due process of law secured if the laws "do not subject the individual to an arbitrary exercise of the powers of the government"); Bank of Columbia v. Okley, 17 U.S. 235, 244 (1819) (due process "intended to secure the individual from the arbitrary exercise of the powers of the government.")

⁸ See Morton v. Ruiz, 415 U.S. 199, 231 (1974) (generally-known standards can help avoid both the reality and the appearance of arbitrary action by an administrative agency); Silva v. Secretary of Labor, 518 F.2d 301, 311 (1st Cir. 1975) (clarification of administrative policy through rules or published announcements would protect against arbitrary action by agency in issuance of labor certificates to aliens); Environmental Defense Fund, Inc. v. Ruckelshaus, 439 F.2d 584, 598 (D.C. Cir. 1971) ("courts should require administrative officers to articulate the standards and principles that govern their discretionary decisions in as much detail as possible"); Holmes v. New York City Housing Authority, 398 F.2d 262, 265 (2d Cir. 1968) ("due process requires that selections among applicants [for public housing] be made in accordance with ascertainable standards").

be treated similarly. Thus, two law-breakers committing the same offense should generally have the same sanction applied. By proportionality, I mean that defendants in different circumstances should not be treated the same, and that more serious violations of the rules should be accompanied by more serious sanctions. For example, to state the obvious, the sanction for filing a Form 3 five days late should be substantially less severe, barring other facts, than the sanction for insider trading.

The need for explicit standards has been highlighted for the Commission by the warnings in recent years of two circuit courts of appeal.⁹ These courts have warned that there is an appearance that the SEC has imposed disproportionately harsher sanctions on new, smaller broker-dealer firms than on larger, established firms, thus

⁹ Blinder, Robinson & Co., Inc. v. SEC, 837 F.2d 1099, 1111-13 (D.C. Cir. 1988); C.E. Carlson, Inc. v. SEC, [1988-89 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶94,100, at 91,170 n.1 (10th Cir. November 7, 1988).

raising in concrete form the question of articulating sanctioning standards. Having given this warning, the United States Court of Appeals for the District of Columbia stated that:

"If the Commission believes that the alarms are false, then it should say so and explain why what might appear to be troubling systematic variances are in fact not such variances at all, or, alternatively, variances justified by the circumstances of [the] case."¹⁰

In the absence of articulated standards that encompass these legitimate factors and explain the disparities, after-the-fact and ad hoc explanations of the sanction in any particular case may not be very convincing.

There is another reason for having articulated standards in the application of sanctions. It is that without articulated standards, an

¹⁰ Blinder, 837 F.2d at 1112-13.

agency can never be reasonably sure that it knows what its enforcement priorities are with any degree of precision, and its enforcement priorities are at the crux of its legislative mandate. In fact, only those provisions of law which are enforced are, in one sense, the law. Thus, standards for sanctions are a critical tool for an agency to understand itself, and as well as for the world outside an agency to understand the agency.

Another advantage of articulating sanctioning standards would be the guidance that such standards could provide to courts and to administrative law judges, who also play significant roles in enforcing the securities laws. Courts are involved in the sanction-setting process not only through review of the SEC's administrative actions, but also through their independent power to sanction those who violate the securities laws. In administrative proceedings, administrative law judges must make the initial determination of what sanctions are in the public interest. The systematic and reasoned views on sanctions of the

agency statutorily charged with administering the securities laws would, I believe, receive due consideration from judges who are wrestling with these issues. This could contribute to a desirable consistency of sanctions imposed for securities law violations, regardless of the forum for determining the sanction.

Formulating standards to guide the Commission's sanctioning process could also provide increased guidance to the SEC staff and the private bar in settlement negotiations. While the staff is diligent in its efforts to gauge the commissioners' views on appropriate sanctions in any particular case, uncertainty inevitably remains, and that uncertainty may needlessly prolong settlement negotiations --- both because the staff lacks clear guidance and because the defense bar does not understand the sanctioning standards in effect at any one time. While absolute certainty is unattainable, articulating standards would at least ensure that the rules of the game were reasonably clear

and that all parties were focusing on the relevant factors. This could certainly increase the efficiency of settlement negotiations. Indeed, it might also clarify the process by which decisions whether to bring cases are made and, on the defense bar's side, whether to defend them or settle them.

Articulated sanctioning standards are also beneficial because they can increase the likelihood that sanctions will be accepted by defendants. The report to the Administrative Conference of the United States on money penalties, to which I referred earlier, notes that there is evidence to suggest that persons who feel they have been judged by objective and reasonable standards are less likely to dispute the result than those who do not.¹¹

Now it is claimed that the Commission has always articulated its sanctioning standards, at least partially and at least indirectly. A close

¹¹ Diver, supra note 2, 79 Col. L. Rev. at 1475.

and careful observer of the Commission, it has been said, can glean, in at least approximate form, the Commission's current sanctioning standards from a reading of all the complaints filed by the Commission and all Commission administrative proceedings, as well as all the speeches given by Commissioners and Commission staff relating to enforcement matters. If it is true that when one looks at both what we say and what we do, it is possible to figure out, roughly speaking, what sanctions the Commission is likely to apply in what sorts of cases, then the question is not whether we should articulate standards, but how we should do so. If we have standards that can be figured out, why restrict knowledge of what those standards are to a small segment of the bar which has the resources to track everything the Commission says or does. Why not simply state, in public, what the defense bar already knows? Why give an advantage to the wealthy and sophisticated wrong doer who can afford a more sophisticated and knowledgeable

attorney?¹²

One argument I have heard made against articulating sanctioning standards is that doing so will disadvantage the staff in its endless battle with those who violate the securities laws. This is alleged to be so because vagueness about what sanctions will be applied in a given case deters wrongdoers more than certainty about sanctions. I am not persuaded by this argument. It is not uncertainty over what the sanction will be that encourages lawlessness --- indeed the reverse may

¹² The legislative history of the Administrative Procedure Act supports the view that administrative agencies have an affirmative obligation to make their policies and procedures known to the general public to the fullest extent possible. For example, the Senate report accompanying the original enactment of the APA states that:

"The public information requirements of section 3 are in many ways among the most important, far-reaching, and useful provisions of the bill. For the information and protection of the public wherever located, these provisions require agencies to take the mystery out of administrative procedure by stating it. The section has been drawn upon the theory that administrative operations and procedures are public property which the general public, rather than a few specialists or lobbyists, is entitled to know or have the ready means of knowing with definiteness and assurance."

S. Rep. No. 752, 79th Cong., 1st Sess (1945), reprinted in S. Doc. No. 248, 79th Cong., 2d Sess. 198 (1946).

be true --- it is more likely either to be the uncertainty of being caught at all or the fact that, if caught, the sanction will be viewed by the potential wrongdoer as relatively inconsequential. To put it another way, compliance with the law is encouraged by communicating the notion that wrongdoers will be caught and those who are caught will be punished severely, not that lawbreakers who are caught may or may not be punished severely. In short, one encourages lawful behavior by doing just what Congress did when it enacted the Insider Trading Sanctions Act of 1984 and the Insider Trading and Securities Fraud Enforcement Act of 1988 and when it increased spending authority for the Commission's enforcement program. One encourages lawful behavior by increasing the penalties for wrongdoing and increasing the size of the staff of the Enforcement Division needed to track down the

wrongdoers.¹³

III. FORMULATING STANDARDS

Arguing that articulated standards are needed, of course, is much easier than actually developing the standards themselves. Securities cases often involve highly complex fact situations. A multitude of factors may affect the appropriate sanction in any particular case.¹⁴ Rigid sanctioning rules clearly are neither workable nor necessary, in my view. The goal of setting standards should be to strike the

¹³ I have also heard it argued that creating publicly articulated sanctioning standards will advantage lawbreakers because their clever attorneys will seize upon alleged failures by the Commission to follow its own standards as a reason for excusing their clients from liability altogether. Perhaps, in some cases, that would happen. But there are, it seems to me, fundamental values at stake here which are more important than whether any particular lawbreaker wriggles free from the Commission's net. At base, the argument against having public sanctioning standards because they would give wrongdoers an ability to claim the Commission hadn't followed its own rules is an argument against requiring governments to play by any rules at all.

¹⁴ Congress itself identified several factors relevant to the imposition of money penalties. Paragraphs (c) and (d) of Section 21B of the Exchange Act provide that the Commission may consider the respondent's degree of scienter, harm to other persons, amount of unjust enrichment, previous violations, deterrence, and the respondent's ability to pay. While too general to provide a great deal of guidance in making individual penalty determinations, these factors do indicate that Congress was concerned about the issue of standardless determination of money penalties.

appropriate balance between the objectivity necessary to achieve fairness and other goals, and the flexibility sufficient to tailor individual sanctions to individual cases.

A. Examples of Sanctioning Standards

One example of public sanction standard setting is, of course, found in the criminal code. It informs us that certain crimes can lead to certain kinds of sanctions. It tells us, for example, that our society views murder as a more serious crime than theft, and tells us this by providing more severe sanctions for the first crime than for the second.

Indeed, dissatisfaction with the variability of the application of sanctions under the criminal code led to the adoption of the United States Sentencing Commission's guidelines for sentences for criminal violations. The criminal sentencing guidelines are quite detailed and have quantified the determination of criminal sentences to a great extent.

The guidelines first divide all offenses into a number of different categories, such as offenses against the person, offenses against property, offenses involving drugs, and offenses involving fraud and deceit. These categories are further divided into subcategories, and a so called "base offense level" is assigned to each category according to the seriousness of the offense. The sentencing guidelines also identify specific offense characteristics --- such as risk of serious bodily injury or significant monetary loss --- that can increase the base offense level, and indicate the amount by which the base offense level should be increased when the characteristic is present. A sentencing table then shows the appropriate range of sentences for the particular offense level.¹⁵

¹⁵ For example, for a person convicted of an offense involving fraud or deceit, the base offense level would be six. If the offense involved more than minimal planning, indicating premeditation and intent, the offense level would be increased to eight. The sentencing chart then indicates that the appropriate sentence for offense level eight is a given number of months of imprisonment.

Now I am not arguing that the sentencing guidelines are perfect. Perfection, in this world, is unlikely to be attainable. I do think it is true that the sentencing guidelines, for all their imperfections, constitute an improvement over the standardless sentencing which preceded enunciation of the guidelines.

Another example of sanctioning standards is provided by the National Association of Securities Dealers' Guidelines for Determining Remedial Sanctions. The NASD's Guidelines include sixteen categories of NASD rule violations which broker-dealers may commit, and suggest starting point sanctions for each category. Also included in the Guidelines is a list of principal considerations that can mitigate or increase the starting point sanction for a particular violation.

For example, the starting point sanction for a broker-dealer recordkeeping violation is a fine of \$1000 to \$5000. Principal considerations in determining the specific sanction include the number

of violations, whether the records were intentionally inaccurate, and whether there were previous violations. If the violation involved a substantial number of unintentionally inaccurate records, the firm could be suspended from one to thirty days in addition to being fined. For intentional preparation of materially inaccurate records, the firm could receive a longer suspension or have its membership revoked.

These examples suggest to me that setting and articulating standards for sanctions is entirely possible at the Commission.

B. Preliminary Approach to SEC Standards

How can an agency begin to formulate sanctioning standards? There are, no doubt, a number of different approaches, but let me suggest one model. This model would focus on at least two important components of sanctioning standards. The first component is a classification of violations, with a starting point sanction assigned to each type of violation.

Classifying violations and assigning starting point sanctions would enhance consistency and proportionality by ensuring that, regardless of the identity of the defendant, the starting point sanctions for similar conduct would be similar, and the starting point sanctions for dissimilar conduct would be different.

The second important component of sanctioning standards in this model is an enumeration of the most important factors that can mitigate or increase the starting point sanction for a given type of violation, along with an indication of the relative importance of these factors.

The first component, classifying offenses and assigning starting point sanctions, obviously involves a large task. I believe it is possible, however, to provide some preliminary approaches to this task.

For example, it is relatively easy to distinguish between Commission rules concerning, for example, recordkeeping, on the one hand, and public disclosure on the other hand. And, in turn, it is

relatively easy --- as we move up the ladder from less critical to more critical rules --- to distinguish between public disclosure rules and traditional antifraud rules.

I mention recordkeeping rules as less critical not because they are the unimportant, or because they serve no useful purpose. Neither assertion would be correct. All I am attempting to do is, by example, to suggest how the Commission could begin to create a hierarchy of standards of conduct. What I am asserting is that being ten days late in the filing of a Form 10-K whose contents contain no surprises --- a recordkeeping matter --- is a less serious infraction than failing to make disclosure in the Form 10-K of material legal proceedings called for by Regulation S-K which could have a material effect on the prices of the registrant's securities. And that failing to make such disclosure of material legal proceedings is a lesser violation of law than creating an entirely fictitious corporation whose Form 10-K is part of a larger

fraudulent scheme.

Now we might have an interesting debate concerning whether there are circumstances in which filing a late Form 10-K could be as serious a matter as leaving out material legal proceedings, but conceding that possibility doesn't take away from the more general point --- it is possible to begin to stratify offenses and to begin to draw at least preliminary conclusions on the nature of the penalty applicable to each stratum. Thus, for example, a fine or a cease and desist order may be a more appropriate sanction for the late filing of a Form 10-K than for the failure to disclose those material legal proceedings in that Form 10-K.

Drawing the correct categories and drawing them carefully will require considerable effort. For example, simply creating a category for fraud and assigning a single sanction would be meaningless because of the wide range of conduct that would be encompassed by such a

category. Fraud that is the equivalent of theft of a customer's assets, such as a securities salesperson selling non-existent investments and pocketing the customer's money, may be substantially different than fraud that involves inadequate disclosure, such as failing to give appropriate emphasis to a material fact concerning a bona fide company and thereby perhaps painting somewhat too rosy a picture of the company's prospects.

It would be possible for the Commission to begin to stratify broker-dealer violations, much as the NASD has done, as noted earlier. And, it seems to me, it is, by analogy, possible to distinguish the less and the more serious violations of the Investment Advisers Act and the Investment Company Act as well. Indeed, I think there is an intuitive sense --- among those both in the bar and in the Commission --- as to what, at least in broad terms, would make sense in such a stratification.

I cannot, at this time, offer you a fully developed system of

distinguishing between less and more serious violations. But having said that is not the same as saying the effort is not worth making or cannot be successful. All I can offer at this point is that developing sanctioning standards in their broadest terms --- by classifying offenses and assigning starting point sanctions --- will require a clear notion of the goals of the SEC's statutory mandate,¹⁶ and how each sanction available to the Commission --- such as injunctions, money penalties, and disgorgement --- can further those goals. Though this task may be difficult, it does not make it any less worthwhile.

After a classification of violations with starting point sanctions is created, it is also necessary, in creating sanctioning standards, to enumerate the most important factors that will likely mitigate or increase

¹⁶ The securities laws typically require the SEC to impose sanctions that are in the public interest. The courts have stated that the purpose of the public interest standard is remedial. See, e.g., Beck v. SEC, 430 F.2d 673, 674 (6th Cir. 1970); Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963). That is, sanctions should be designed to protect investors, generally through prevention of future violations. See generally Thomforde, supra note 1, at 721-26.

the starting point sanctions, and to indicate the relative importance of these factors. The following is a list of factors that appear to have been important to the SEC's past determinations to mitigate or increase sanctions.

First, there are factors relating to the seriousness of the defendant's violative conduct. These include:

- * the defendant's degree of scienter -- whether the defendant's violation was intentional, knowing, reckless, or merely negligent;**
- * whether the defendant's violation involved a pattern of conduct or was only an isolated occurrence;**
- * whether the defendant played a primary role in the violative conduct or was merely a fringe participant;**
- * the amount of harm caused or threatened by the defendant's violation -- both to individual investors and generally; and**

- * the amount of unjust enrichment to the defendant derived from the violative conduct.**

A further important factor that affects sanctions is whether the defendant has committed previous violations of the securities laws or engaged in other types of improper behavior. Obviously, a history of violations will justify a much more severe sanction than would otherwise be imposed for the defendant's particular violation.

Another important factor that affects sanctions is the extent to which the defendant has taken voluntary action to address the alleged violation prior to its discovery, including:

- * whether and when the defendant voluntarily terminated his or her violative conduct;**
- * whether the defendant attempted to conceal the violation;**
- * the defendant's willingness to make restitution and otherwise redress the detrimental effects of his or her violative conduct;**

- * for cases involving entities rather than individuals, the defendant's willingness to adopt measures to prevent future violations; and**
- * the defendant's degree of cooperation in an investigation of the matter in question. ¹⁷**

Other factors that affect sanctions include:

- * the extent to which the defendant will have an opportunity, by the nature of his or her occupation, for example, to commit future violations;**
- and**

¹⁷ These factors should not be used, of course, in such a way as to have a chilling effect on those who defend themselves in good faith against the SEC's charges. Defendants should be able to disagree with the SEC as to the facts of a case, and the legal implications of those facts, and assert their legal and constitutional rights, including the right to assert their Fifth Amendment privileges, without their actions necessarily being construed as insufficiently remorseful and uncooperative, and justifying an increase in the otherwise appropriate sanction.

- * the defendant's age and health.¹⁸

Within any category of violative behavior, therefore, such factors would mitigate or increase the penalty. Given the same recordkeeping violation, for example, the penalty would be greater for the individual who intentionally and repeatedly violated the recordkeeping rule than for the individual who negligently failed to keep appropriate records in a single instance.

IV. CONCLUSION

I would like to conclude by freely admitting that developing a comprehensive set of sanctioning standards is a daunting task. In my view, however, the benefits of articulating standards more than justify the effort needed to develop them. Moreover, the impossibility of developing standards that are perfectly objective and entirely

¹⁸ In addition, as noted supra note 14, the Remedies Act provides that a respondent's ability to pay a money penalty is a factor which the Commission, in its discretion, may consider in determining whether such a penalty is in the public interest.

quantitative, or that incorporate every factor that can conceivably affect a particular case, is not a legitimate reason for failing to do the best job possible.

Thank you.