Introduction

Thank you for the opportunity to testify before this subcommittee with respect to my work for the Securities & Exchange Commission (SEC or Commission) as it relates to R. Allen Stanford and his affiliated companies as well as my experience as a whistleblower within the Commission. Since 1992 I have been employed by the Commission in its Fort Worth office. In my testimony I am stating my personal views which do not necessarily reflect the views of Commission staff, the Commission, or its Commissioners.

My Role with the Commission

I would like to begin my testimony by explaining my role at the Commission. Starting as a staff accountant my duties were to conduct examinations of registered broker-dealers and transfer agents. The examinations were designed to determine the registrants' compliance with the Securities Act of 1933 and the Securities Exchange Act of 1934, with particular emphasis on the anti-fraud provisions. I became a first line supervisor (branch chief) in 1997, where I became deeply involved in making many of the decisions regarding the direction of the Fort Worth broker-dealer examination program. In 2003 I was promoted to an assistant director position where I became responsible for running the broker-dealer program. In that role two first line supervisors as well as nine examination staff and one support person reported to me.

The Stanford Examinations

First, I would like to note that I am just a representative of the many highly experienced and skilled examiners who have done their best to protect all investors including those defrauded by Stanford. I know this may not provide comfort and certainly doesn't lessen the Stanford victims' losses in any way, but I and the examination staff truly care about being an advocate for the investor. Behind the public, impersonal face of a large institution like the SEC are many individuals that truly mourn your loss.

The intertwining of my career with Stanford started simply enough. In August 1997, I had just been promoted to the position of first line supervisor. One of my responsibilities was to select broker-dealers in the Fort Worth Region for examination. In an effort to familiarize myself with the registrants and to target high risk firms for examination, I began by reviewing the annual filings required by all registered broker-dealers. Stanford's filings immediately stood out in the review process because the firm was generating millions of dollars in revenue although it had only been in existence for two years. Furthermore, the firm had generated all of the revenue by engaging in a business model which typically offered very little revenue – selling certificates of deposit (CDs). In a more typical situation at the time, a broker-dealer would receive perhaps $50 to $100 for the sale or referral of a CD.

In August 1997, I assigned an experienced and highly skilled examiner to go to Houston to analyze Stanford's revenue stream, its methods of product distribution, and its sales practices. In only a week the examiner was able to collect enough evidence to suggest that Stanford was engaged in a fraudulent scheme – most likely a Ponzi scheme. Our conclusion was based on a significant capital infusion of funds into the broker-dealer, the source of which appeared to be investor funds. We also noted apparent

misrepresentations regarding the safety and security of the investments. It was highly unlikely that the high returns being paid to investors from the CDs along with the high recurring referral fees being paid to Stanford's broker-dealer could be generated without engaging in significant risk.

Before the end of September 1997, we reported our findings to enforcement in the Fort Worth office. Although the examiner, the associate regional director and I were anxious to get enforcement to act on our concerns, we were met with little enthusiasm. By January of 1998, when the associate regional director retired, we had yet to persuade enforcement to open an investigation. However, before the associate regional director left the Commission, she repeatedly reiterated her concerns to both the examination and enforcement staff. She also encouraged me to keep fighting for the Stanford investors.

In May 1998, after receiving an inquiry from another agency regarding Stanford's activities, enforcement decided to open a preliminary investigation. Then, in June of that same year, Fort Worth's investment advisory examination group started an examination of Stanford to, in part, follow up on the broker-dealer examination findings. By the beginning of July the investment advisory group also had substantial concerns regarding Stanford's business model.

In July of 1998, I was summoned to the office of the associate director for enforcement for a meeting. I recall that he discussed some of the reasons why a decision had been made to close the investigation, but I don't recall what any of those reasons were. Unfortunately, my clearest memory of that meeting is leaving his office feeling absolutely heartsick.

In November of 2002, the investment advisory examination group again conducted an examination of Stanford. The group found significant problems at the firm including failing to meet its fiduciary duty to clients. As I had in 1998, I was involved in multiple discussions with the investment advisory lead examiner about how obvious the fraudulent scheme seemed to be, but how difficult it seemed to get action from enforcement regarding this particular set of circumstances. In fact, rather than opening an investigation, enforcement advised the investment advisory examination group that it would be referring their findings to the Texas State Securities Board. I was disappointed in enforcement's decision. It made no sense to me that enforcement would refer such a complicated scheme to an agency which had a far more limited jurisdictional reach.

In approximately September of 2004, the associate director for examinations asked me to make Stanford an examination priority. This was the same associate director for examinations who was in place at the time of the 2002 examination program and he was gravely concerned about Stanford's activities. I considered this assignment to be a tremendous challenge. I had no doubt that we would find numerous indicia of fraud, but I was extremely concerned about how I could convince the same associate director of enforcement, who had declined to investigate Stanford three times earlier, that there was any reason to pursue an investigation this time? However, we both concluded that my concerns were trivial compared to our mission to protect the investing public.

In October 2004, two examiners who I considered to be some of the best in the Commission went to Houston and began another examination. Meanwhile, an attorney advisor assigned to the examination staff and I began to develop alternate strategies to pursuing the investigation so that we could

overcome any previous objections raised by enforcement staff. Since we could not gain access to financial records held in a foreign country, we worked with examiners to develop objective analytical methods to demonstrate what we believed to be the impossibility of Stanford's purported returns.

In March of 2005, as we were nearing completion of the examination, a summary of our findings and conclusions were presented at a regional regulators' meeting. The immediate reaction from both the Fort Worth regional director and the associate director for enforcement was decidedly negative.

Around the time of this fourth unofficial declination to pursue an enforcement investigation, the associate director for enforcement announced his imminent departure from the Commission. I decided that the best course of action was to wait until he departed the Commission to officially refer our findings.

Opening the Stanford Investigation

Within two or three weeks of the just mentioned meeting, when the associate director for enforcement departed, I referred the examination to an assistant director in enforcement who I believed would be more likely to tackle an investigation into Stanford. The assistant director immediately responded to the referral; however, he too, was also soon departing the Commission so it was referred to another assistant director in enforcement. The new assistant director initially reacted with great enthusiasm and even considered filing an emergency court action which would halt the apparent fraud immediately. However, he soon took on a much more negative view of the facts and circumstances. Eventually, enforcement asked us to refer the case to the self-regulatory organization FINRA. Although we complied with the request, we remained undaunted in our determination to move Stanford forward into an SEC investigation. Just as in the case of the referral to the Texas State Securities Board, it seemed difficult to imagine that an agency with a smaller jurisdictional net could be as well-equipped as the SEC to tackle such a significant investigation. We continued to work on developing legal theories and case strategies. Despite our efforts, in approximately October of 2005, the assistant director announced his decision to close what had been up to now only an informal, or preliminary, investigation.

I did not accept his decision. I implored the new acting regional director of the Fort Worth office as well as the new head of enforcement to keep the investigation open and moving forward. It was agreed that I and the assistant director of enforcement would each prepare a memo explaining our opposing viewpoints and discuss them at a meeting. I'd like to believe that I wrote a very compelling memo and that is why it was ultimately decided to keep the case open, but the truth is that where there are that many indications of fraud, it is easy to be persuasive.

It should be noted that despite the decision to move forward with the investigation, it took another eleven months with little activity occurring on the investigation before a formal investigation was finally opened.

Institutional Influences Affecting the Stanford Investigation

Before I discuss my views on the causes for the long delay of the Stanford investigation I want to take a moment to express my personal admiration for the enforcement staff members who were able to overcome significant obstacles and obtain the critical evidence necessary to bring an action against R. Allen Stanford and his companies. Their hard work has continued in both the current litigation and in efforts to build cases against others involved in the Stanford fraud. It would be difficult to imagine a more talented or dedicated group of professionals. I believe that the public is well-served by having such individuals devote their life's work to investor protection.

Much has been made of the former SEC-wide institutional influence that created an institutional bias against matters that were resource intensive and whose outcome was less than certain. Stanford was such a matter. There is no question that during the early Stanford timeframe, the Fort Worth office's management firmly believed that the office's success was measured strictly by the number of cases filed each year. Additionally, In Fort Worth, "beating" other offices by filing a greater number of cases was the highest goal. That is not to say that the Fort Worth staff did not bring meaningful cases; they did, and they should be credited for doing so. A prime example is the office's 2002 case against a Houston energy company, Dynegy Inc., for accounting improprieties involving special-purpose entities and "round-trip" or "wash" trades. Another example is the office's 2004 enforcement action against foreign-based oil companies Royal Dutch Petroleum Company and The "Shell" Transport and Trading Company, p.l.c., in connection with their overstatement of 4.47 billion barrels of hydrocarbon reserves. The companies paid a $120 million penalty.

The good news is that things are changing. In that regard, I want to commend Mr. Khuzami's recognition that the evaluation of an office's performance should include factors such as the quality, difficulty and programmatic significance of cases; the consideration of "quantity" has been placed in proper perspective. This can only encourage management decisions to be aligned with the public good.

I also want to express my appreciation to Mr. Khuzami for publicly acknowledging that the Commission could have taken a more imaginative approach to investigating Stanford. I urge Mr. Khuzami to carry that sentiment forward in the Commission's approach to investigating other novel situations. A culture that has greater appreciation for thinking "outside the box" will well serve the interests of investors.

Raising Concerns about a "Quick-Hit" Mentality in Examinations

Unfortunately, the mentality that motivated managers in Fort Worth to sometimes ignore the best interests of the public in favor of a race for numbers has not been limited to the enforcement program.

In Mid-2006, after nearly nine years of on-again off-again battling with enforcement regarding Stanford, a new Associate Director for Examinations was hired. In short order it became clear that the new Associate Director wanted to create a culture within the examination program that mirrored enforcement's emphasis on generating numbers. I feared the consequences of shifting from focusing on high risk examinations such as Stanford, to competing with other regional offices for statistical superiority. I expressed my concerns regarding this new approach, but my concerns were dismissed.

In the fall of 2007, the associate director for examinations announced her plan to have us conduct a new type of broker-dealer examination which would consist of interviewing a few senior personnel at brokerage firms over the course of a half day while reviewing limited, if any documentation. I found that plan to be nothing short of a subversion of the core mission of the examination program.

I had always focused Fort Worth's regional broker-dealer examination program on the primary goal of protecting investors by rooting out fraud and other serious issues. This approach was based on the same tried and true core principles espoused by Director di Florio, recommended by the SEC's Inspector General in the wake of the Madoff Ponzi scheme, and exemplified by the Fort Worth examination program's work on Stanford. For example, during my tenure in management in Fort Worth: Examinations were selected based on high risk brokerage practices;

- Examinations were staffed by capable, well-qualified examiners;
- There was meaningful interaction and coordination with the investment advisory examination group;
- There was regular and consistent communication with enforcement staff;
- There was frequent coordination with other regulatory agencies; and
- Examinations were completed in a timely, efficient, and well-documented manner.

These practices quickly identified concerns about Stanford and they were key in developing other significant cases. For example, in 2006, the broker-dealer and investment advisory examination teams along with input from FINRA's enforcement division devoted significant resources to the review of the sales practices and the investment products being sold to military members. We were successful in helping to bring not only an enforcement action against one of the largest brokerage firms selling to military members, but also our findings were instrumental in Congress's 2006 decision to enact the Military Personnel Financial Services Protection Act which prohibited future sales of periodic payment plans.

I, and one of the first line supervisors who worked at my direction, Joel Sauer, explained why these mini-examinations would offer no discernable value to the broker-dealer program. We already had extensive information on each firm through past examinations, through quarterly filings, and through the information provided by FINRA which conducted routine examinations on a regular, frequent schedule. Furthermore, such examinations would be at the expense of meaningful program priorities. The Associate Director stated that she wanted a significant increase in numbers and this is how we would do it. The Regional Director concurred with the Associate Director.

Since local management refused to even discuss our concerns, I contacted headquarters, about the Associate Director's examination proposal. Despite protracted resistance from the Associate Director, OCIE ultimately quashed the mini broker-dealer examinations for some of the same reasons that Mr. Sauer and I had initially expressed.

I paid a heavy price for complaining. First I received a Letter of Reprimand for not being supportive of the Associate Director's "program initiatives" and for contacting OCIE regarding the Associate Director's failure to follow OCIE guidelines. Two months later, in June 2008, I was transferred to a new position.

Mr. Sauer complained to the then Chairman, Executive Director and the Director for OCIE for the mistreatment I received. In response he received a Letter of Counseling, daily monitoring, and a Letter of Reprimand for complaining about the Regional Director and the Associate Director. The associate director and regional director made the situation so antagonistic that Mr. Sauer was eventually left the Commission. Only the year before Mr. Sauer had received an award for examination excellence, submitted by these same individuals.

I believe my new position was truly an attempt to drive me out of the Commission. I was assigned to report to the Regional Director (who retired last month) who would at times go weeks or even months intentionally avoiding any contact with me. At times I was not only ignored, but was actively rebuffed in my attempts to perform at a fully functioning level. My responsibilities and duties have generally been undefined and those that have been assigned are generally not commensurate with my pay grade and salary. I have been excluded from training and participation in management meetings or decisions.

Despite these limitations, I have done my best to be productive and effective as well as taking every advantage to learn and grow. I have become more involved in the enforcement investigative process. I have developed relationships with the public affairs office and become more extensively involved in investor education. I have organized training sessions for local staff and other regulators in the region on oil and gas fraud. I took advantage of the opportunity to lead or be involved in four examinations, two of which were with examiners in other regional offices. I'm proud to say that all four resulted in enforcement referrals and the respondents are in the process of settling charges with the Commission or are being actively investigated. There is no doubt in my mind, though, that my situation has diminished my ability to serve the investing public.

The Inspector General released a report in September, 2009 which recommended potential discipline for the associate Director and the regional director (who has since retired), for retaliating against Mr. Sauer and myself. The Commission has failed to discipline any one, at least not visibly, nor has there been any effort made to restore me to a position with similar duties and responsibilities to the one held before.

My situation should not be viewed in isolation. It is part of a cultural problem which continues to impact the Commission's effectiveness. As Mr. di Florio pointed out in his testimony before the Senate's Committee on Banking, Housing and Urban Affairs in September of 2010, in a self-assessment of OCIE it was concluded there was a need to create an environment for the staff to have open, candid communication and personal accountability for quality. I urge you to seek the trust of the staff by acting on those situations, such as the one in Fort Worth, where management has not fostered the desired environment.

I believe I have been very successful in serving the investing public. I have spearheaded many examinations that resulted in significant findings of fraud and monies recovered for investors. The types of cases I've worked on have varied from misconduct on the part of municipal officials, market manipulation, late trading in mutual funds, churning variable annuities, theft, selling inappropriate mutual fund share classes, issuer fraud in private securities, Ponzi schemes and misrepresentations and

omissions in the sale of securities to name just a few. I'm proud to say that I have worked on cases where I helped stop fraud against the elderly, military members, municipalities and public institutions, affinity groups and hard-working blue-collar and professional individuals.

Many have asked me why I haven't left the Commission over the course of the last several years. My answer has always been the same. I believe passionately in the mission of the SEC. I am proud to have devoted most of my professional life to the service of the investing public. I have tried to serve with honor and integrity. I am grateful for the many strong relationships I have developed with managers and staff throughout the Commission, which have kept me going through this difficult period. I am proud of the many accomplishments of the examiners and managers with whom I have worked all of these years. I hope I am fortunate enough to spend the remaining part of my career in the service of the Commission.