## Title II: DEMANDING ACCOUNTABILITY FROM WALL STREET

CHOICE Act 2.0 increases the existing maximum penalties under the Securities Act, the Exchange Act, the Advisers Act and the '40 Act. It also creates new penalty limits for certain egregious violations (those involving fraud, deceit, manipulation, reckless disregard of a regulatory requirement and result in, or create the risk of, substantial losses to others, *or* substantial pecuniary gains to the wrongdoer) at the greater of: (i) $300,000 for a natural person or $1,450,000 for any other person; (ii) three times the gross amount any pecuniary gain; or (iii) the amount of losses incurred by victims. Additionally, the legislation creates a new maximum penalty limit of three times the otherwise applicable limit for recidivists, defined as those convicted of securities fraud or other SEC actions within the preceding 5-year period. Section 211 of the Act would codify the SEC's authority to bring an action for violation of a federal injunction or an order obtained by the SEC, which typically occurs after a party enters into a settlement and stipulates that it will not violate the securities laws going forward. If that entity violates the securities laws again, this provision would arm the regulator with an additional mechanism to enforce the original agreement or order and prosecute that second violation. Previously, Section 211 provided regulators with the ability to bring actions to enforce agreements and orders under Section 211 with respect to cease and desist orders only.

Nearly across the board, CHOICE Act 2.0 would double the maximum penalties for violations by registered public accounting firms and associated persons of: (i) the Sarbanes-Oxley Act, (ii) the rules of the Public Company Accounting Oversight Board (the "PCAOB"), or (iii) securities laws relating to the preparation and issuance of audit reports and other auditor obligations and liabilities. An exception is with respect to the penalty for intentional/knowing conduct by entities other than "natural persons," where the legislation increases the maximum civil penalty from $15 million to $22 million.

CHOICE Act 2.0 would also amend the Exchange Act to increase the maximum civil penalty for "controlling person" liability in the context of insider trading from $1 million to $2.5 million. The Exchange Act would maintain the limitation that the penalty may not exceed "the greater of $2.5 million, or three times the amount of the profit gained or loss avoided as a result of such controlled person's violation."

Under Section 214 of CHOICE Act 2.0, the maximum civil monetary penalties available under Section 32 of the Exchange Act, which relate to willful violations of any of the Act's provisions or its rules and regulations, would be increased. The maximum penalty for violations by an individual would be increased from $5 million to $7 million.

CHOICE Act 2.0 would also increase fines and penalties under Section 30A of the Exchange Act, associated with issuers who attempt to bribe foreign officials. The maximum fine for any issuer who violates this provision would be doubled from $2 million to $4 million. The maximum civil penalty for an issuer associated with such violation would rise from $100,000 to $250,000, while the maximum penalty against culpable agents of that issuer spikes from $10,000 to $50,000.

CHOICE Act 2.0 would also revise Sections 308(a) of the Sarbanes-Oxley Act and 21F(a) of the Exchange Act pertaining to the use of "monetary sanctions" for the relief of victims. Section 308(a), which provides for the use of funds for the benefit of victims, would apply to any monies, including penalties, disgorgement, and interest "required" to be paid as the result of a violation of the securities laws or settlement of an action and any monies deposited into a disgorgement fund pursuant to Section 308(b).

The term "victim" would be given the same meaning as the term "crime victim" under Title 18 of the United States Code, namely, "a person directly or proximately harmed by as a result of the commission of a Federal offense."

Under Section 216 of CHOICE Act 2.0, the Government Accountability Office ("GAO") would be required, within two years of the statute's enactment, to submit a report to Congress regarding the "use by the SEC of the authority to impose or obtain civil money penalties for violations of securities laws" from June 1, 2010 to the date of enactment of CHOICE Act 2.0. The report must address the following topics:

- the types of violations for which civil monetary penalties were obtained;
- the types of persons on whom civil monetary penalties were imposed;
- the number and dollar amount of civil monetary penalties imposed, broken down by: (i) penalties imposed in administrative actions versus judicial actions, (ii) penalties obtained from issuers as compared to other persons, and (iii) penalties retained by the SEC versus those deposited with the U.S. Treasury; and
- for those penalties imposed on issuers, whether the violations resulted in economic benefit to those issuers, and the impact of the penalties on the issuers' shareholders.

CHOICE Act 2.0 would also increase the maximum amount of civil and criminal penalties that the federal banking regulators can impose from $1,000,000 to $1,500,000 under the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Home Owners' Loan Act, Federal Deposit Insurance Act, Federal Credit Union Act, Federal Reserve Act, Bank Holding Company Act, as well as various other provisions throughout Titles 18 and 31 of the United States Code.