



**U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814**

COMMISSIONER NANCY A. NORD

**Further supplemental statement on the Commission's decision to provisionally
accept a civil penalty settlement with Williams-Sonoma, Inc.**

May 17, 2013

As we continue to exchange comments over a policy of including broad compliance program requirements in settlements—not just the reporting requirements tied to the underlying reporting violations, as I believe appropriate—it is welcome to read that Commissioner Adler disclaims the view “that prior voluntary recalls always present grounds for the inclusion of a compliance program.” Given that we now have imposed identical mandatory, commission-monitored compliance programs on two different companies with different histories specifically because of prior voluntary recalls, his statement is a useful first step in trying to give some clarity to when such programs will be required as a condition for settling a failure-to-report violation.

It also bolsters my belief that the adoption of a policy requiring broad-compliance-program provisions in settlement agreements should proceed through notice-and-comment rulemaking. Both the public and our staff (and *we*) should be able to identify the relevant factors that distinguish the past recalls that are more concerning from those that are less concerning (assuming for argument's sake that past recalls are even relevant). For example, the implications of this policy on our Fast Track program trouble me greatly. In Fast Track recalls, by definition the agency does not make a preliminary determination of an actionable risk. If such recalls will subject the company to some future penalty expansion, then the incentive for doing them is greatly reduced.¹ Also to be considered is that the older a recall is, the less likely that the attorneys on either side were focusing on the existence or adequacy of a compliance program, which makes present judgments of past adequacy dubious. These are just some of the many issues that have not been explored but should be before we push out this policy.

Our current approach of using privately-negotiated settlements to effect broad policy is troublesome on many levels. Rulemaking is preferable to taking a murky path that borders on inconsistency.

¹ Both companies affected by this new provision have participated in several Fast Track recalls. It would be unfortunate if the Fast Track recall process became less effective due to a new policy.