



U.S. SENATE COMMITTEE ON

Finance

SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

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For Immediate Release

Tuesday, August 22, 2006

Grassley calls on SEC to respond to congressional inquiry

WASHINGTON — Sen. Chuck Grassley is continuing to press the Securities and Exchange Commission to provide information in response to a request he made earlier this month with Sen. Arlen Specter regarding the regulatory agency's review of a prominent hedge fund.

The text of the August 21 letter from Grassley to the SEC Chairman follows below. A copy of the Grassley-Specter letter is posted at <http://finance.senate.gov>.

August 21, 2006

The Honorable Christopher Cox
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairman Cox:

On August 2, 2006, Senator Specter and I sent a formal request for documents and information from the Securities and Exchange Commission (SEC) regarding events surrounding the investigation of the hedge fund Pequot Capital Management (PCM) and allegations that this investigation was suspended for political reasons. By letter dated August 4, 2006, you pledged your continued cooperation with this Congressional inquiry and appointed Richard Humes, Associate General Counsel at the SEC as our point of contact for continued inquiries into this matter. Pursuant to your letter, members of my staff contacted Mr. Humes on August 9, 2006, to discuss the request for production of documents and the scheduling of interviews with requested staff members.

During the conversation between Humes and my staff a number of issues were discussed, including the timeframe for the requested documents and interviews. Mr. Humes informed my staff that SEC policy required full commission approval before any documents can be disclosed or any interviews scheduled and that the earliest this would be possible is the date of the next scheduled SEC meeting, August 29, 2006. Mr. Humes reiterated this position in a letter dated August 9, 2006, memorializing the conversation held between our staffs. While I am pleased with the prompt initial response from SEC, I have serious concerns about indications that the

SEC plans to impose unnecessary delays on Congress' ability to get to the bottom of this important matter.

In my view, Congress' ability to obtain information in a timely manner should not be hindered by the arbitrary calendar of pre-scheduled SEC meetings. Therefore, I request that you use whatever procedures are necessary to obtain whatever authorization is necessary between scheduled meetings in order to comply with our requests. In particular, the Commission has already authorized SEC staff to make two documents available for staff review: (1) the SEC/IG's closing memorandum in the Aguirre matter, and (2) a two-page summary memorandum regarding the status of the underlying investigation Aguirre alleges was halted for political reasons. My staff and Judiciary Committee staff have reviewed these documents at SEC, but were not allowed to retain copies. I request that the SEC provide copies of these two documents immediately so that Senator Specter and I may review them personally and so that staff may use them to prepare for witness interviews.

Additionally, I am concerned about the position taken by your staff that SEC regulations prohibit employees from "disclosing" information about ongoing investigations. These investigations (both the underlying PCM matter as well as the IG's inquiry into Aguirre's firing) were closed or inactive at the time Congress started its inquiry. Re-opening these investigations after Congress begins to ask questions and then citing the fact that they are active as a pretext to deny or delay Congressional requests is unacceptable. It gives the appearance of a sort of gamesmanship that would be inconsistent with your previous pledges of full cooperation. While SEC regulations state that any non-public information shall not be "disclosed," the regulations also clearly allow for the Commission to, "provide nonpublic information in its possession to any of the following persons if the person receiving such nonpublic information provides such assurances of confidentiality as the Commission deems appropriate." [1] Further, this regulation provides for the disclosure of nonpublic information if the "person" requesting the information is "a federal, state, local or foreign government." [2]

As a Constitutional body of the federal government, the United States Senate, Committees of the Senate, and members of the Senate clearly fall within the definition provided in 17 CFR § 240.24c-1(b)(1) of the SEC regulations. Moreover, Senate rule XXIX recognizes procedures for the review of confidential, nonpublic documents by the Senate and Committees thereof. Regardless of how these regulations might be interpreted, longstanding Constitutional precedent clearly establish that independent agency regulations cannot prohibit the disclosure of information to the United States Senate acting pursuant to its oversight responsibilities. In fact, even in the context where there is a statutory prohibition on public disclosure, unless it explicitly refers to Congress "courts have consistently held that agencies and private parties may not deny Congress access to such information on the basis of such provisions." [3] In other words, "Release to a congressional requestor is not deemed to be disclosure to the public generally." [4]

Another of my concerns with the response from SEC's Office of the General Counsel is its citation of Securities and Exchange Commission v. Wheeling-Pittsburgh Steel Corp. [5] SEC has cited Wheeling-Pittsburgh in response to the letter sent by Senator Specter and me to highlight concerns at the SEC that defense counsel for potential targets of SEC enforcement actions may try to argue that compliance with legitimate Congressional oversight requests are evidence of improper political influence on the SEC investigation.

Raising this case is ironic, given that the focus of our inquiry is whether the SEC allowed political influence to derail its investigation in the first place. If the SEC were genuinely interested in protecting its Enforcement Division from improper political influence, one would have expected its Inspector General to conduct a more thorough investigation of Aguirre's allegation that he was prevented from taking the testimony of John Mack because of Mack's "political clout." Instead, the IG closed its inquiry, claiming it found no evidence that SEC officials had referenced Mack's political clout. Contrary to the IG report, however, documentary evidence of such statements exists and corroborates Aguirre's claims.

Senator Specter and I share your goal of ensuring that ongoing enforcement actions are free from political influence. In fact, that is the very purpose of our inquiry. As such, it is nothing like the Wheeling case, in which a Senator used his position on behalf of one company by pressuring the SEC to investigate one of its competitors. Rather than an attempt to exert improper political influence on an investigation, this inquiry is the opposite: an attempt to investigate allegations of improper influence. If you are aware of any evidence that the Congressional interest in this matter is motivated by anything other than a legitimate exercise of our Constitutional oversight responsibilities, please let us know what it is. Otherwise, the SEC must refrain from implying that we have an improper purpose by citations to cases like Wheeling.

I thank you in advance for your continued cooperation as we review this important matter. Our request letter originally asked that production begin by August 15, 2006. That has not occurred. Accordingly, please have your staff coordinate as soon as possible to ensure that you can expedite the production of documents and witnesses. The individual contacting our staff should be prepared to schedule interviews with the requested SEC staff members.

Sincerely,
Charles E. Grassley
Chairman

Cc: The Honorable Paul S. Atkins
The Honorable Roel C. Campos
The Honorable Annette L. Nazareth
The Honorable Kathleen L. Casey
The Honorable Walter Stachnik, Inspector General
The Honorable Arlen Specter, Chairman, Senate Committee on the Judiciary

[1] 17 C.F.R. § 240.24c-1 (2006)

[2] Id.

[3] Congressional Research Service, *Investigative Oversight: An Introduction to the Law, Practice and Procedure of Congressional Inquiry*, p. 21 (citing *F.T.C. v. Owens-Corning Fiberglass Corp.*, 626 F.2d 966, 970, (D.C. Cir. 1980); *Exxon Corp. v. F.T.C.*, 589 F.2d 582, 585-86 (D.C. Cir. 1978), cert denied, 441 U.S. 943 (1979); *Ashland Oil Co., Inc. v. F.T.C.* 548 F.2d 977, 979 (D.C. Cir. 1976)).

[4] Id.

[5] 482 F. Supp. 555(W.D. Pa 1979), vacated and remanded on other grounds, 648 F.2d 118 (3d Cir. 1981).

