

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

October 7, 2008

Via Electronic Transmission

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

Dear Chairman Cox:

More than two years ago, the Senate Finance and Judiciary Committees began an inquiry into the SEC's handling of the Pequot Capital Management investigation and the termination of Gary Aguirre. On August 24, 2006, you wrote, "The allegations of improper conduct in this matter are utterly inconsistent with the mission and professionalism of this agency—and as Chairman, I assure you that if they are proven true, the consequences will be swift and severe."

One year ago, Senator Specter and I issued our final report. Among other things, we found the following: (1) the decision of whether to take the testimony of John Mack, who was then under consideration to become the head of Morgan Stanley, was influenced by his prominence as an "industry captain" on Wall Street, (2) Gary Aguirre's resistance to this decision by his supervisors was an inappropriate factor in his termination, and (3) the SEC Inspector General's initial investigation of this matter failed to locate or consider documents and testimony contrary to the self-serving defense offered by SEC management.

In the year since our report was issued, there have been efforts underway to implement our broader policy recommendations. However, there have been no consequences—swift, severe, or otherwise—for those responsible. In fact, the SEC has continued to aggressively litigate with Mr. Aguirre, insisting it has done nothing wrong.

As you know, the SEC's new Inspector General has just concluded a two-year re-investigation of the Aguirre matter first initiated in 2006 at your request and in response to Congressional inquiries exposing the failures in the first Inspector General review. This new report finds, as did our report over a year ago, that the issue of taking Mack's testimony was inappropriately a factor in the decision to terminate Aguirre. The Inspector General has recommended disciplinary action against all three of the supervisors in Aguirre's chain of command who are still at the SEC.

I appreciate your assurances in our conversation yesterday that you are beginning administrative procedures to finally discipline those responsible. These steps are long overdue. However, it is hard to square your assurances with the SEC's public description of the report. The official statement issued by your staff grossly mischaracterized the Inspector General's findings. In order to leave the impression that the Inspector General had exonerated SEC management in the firing of Aguirre, the statement took one phrase out of context in a way that was extremely misleading.

The SEC statement read: "In this re-investigative report, the SEC Inspector General cited evidence that the Division of Enforcement 'had a legitimate basis for terminating' the attorney." In fact, the full statement from p. 187 of the Inspector General's report reads:

Moreover, *although* there was evidence that Enforcement had a legitimate basis for terminating Aguirre in his probationary period, the evidence also shows that few employees in Enforcement, even in their probationary periods have historically been terminated, and Enforcement management has tolerated much worse conduct on the part of Kreitman, and even Hanson (emphasis added).

Moreover, the report later states in its findings and recommendations section on p. 191, that "the OIG investigation finds that Enforcement failed in numerous respects in how it managed Gary Aguirre and allowed *inappropriate reasons to factor into its decision to terminate him*" (emphasis added). This sentence comes immediately before the recommendations for disciplinary action.

In light of these facts, I request that the SEC correct the record and refrain from distorting it in the future. If your response to the Inspector General's findings is to have any credibility, then the SEC cannot be seen to be twisting his words in an Orwellian attempt to deny that he found what he found. Two independent inquiries and two years down the road, the time for "swift and severe" consequences is long overdue. Thank you for your continued cooperation on these important matters. Any questions or concerns should be directed to Emilia DiSanto or Jason Foster of my staff at (202) 224-4515.

Sincerely,



Charles E. Grassley
Ranking Member

Cc: The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes
The Honorable David Kotz

The Honorable Arlen Specter
Ranking Member, Senate Committee on the Judiciary