

October 7, 2008

Dear Mr. Kotz,

You issued a report yesterday about how the Pequot investigation was mishandled by the SEC enforcement division. You focused on the director's communications with outsiders about those investigations and you noted that she did not talk to the staff actually investigating the matter before she talked to lawyers representing those under investigation.

In addition to what you found regarding the Pequot investigation, you should look into how this course of conduct replayed itself in the case of the collapse of Bear Stearns in March. The enforcement director gave information to the GC of JP Morgan Chase (himself a former SEC enforcement director) about the state of the various SEC investigations into Bear. The GC had called the director to get assurances and inside knowledge from the SEC to help Morgan's negotiating position (i.e., how much to bid). This inside information, gotten through a personal relationship, would be critical in helping Morgan put together a low-ball bid to Bear and the US Government: Morgan could cite litigation (as well as valuation) uncertainties, while having the assurance that (at least from the SEC) the risk of litigation was not really that great. This could have materially affected the amount of guarantees that Morgan was able to negotiate from the Federal Reserve.

Contrary to her own policy that she put in place herself following the Pequot controversy, the director made representations about the investigation without talking to staff. During that weekend, she never attempted to talk to the staff doing the investigation.

This additional information goes to the heart of the problems that you correctly focused on. It also shows that the enforcement leadership does not appreciate the problems with this conduct, even when they instate procedures to avoid it.

Cc: Sen Grassley