

# United States Senate

WASHINGTON, DC 20510

August 2, 2006

## Via Electronic Transmission

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

Dear Chairman Cox:

As members of the United States Senate, and as Chairman of the Committee on Finance and Chairman of the Committee on the Judiciary, we write today continuing our oversight of matters related to the Enforcement Division of the Securities and Exchange Commission (SEC).

On April 17, 2006, Senator Grassley and Senator Shelby wrote to you regarding allegations that an investigation of insider trading by the hedge fund Pequot Capital Management (PCM) had been suspended for political reasons. In response to that letter, Linda Thomsen met with Finance Committee staff and provided a confidential briefing on May 3, 2006, regarding the status of ongoing investigations. During this briefing, SEC staff cited a SEC policy which restricts discussion of active, ongoing investigations. SEC staff indicated that the matter had been referred to the Office of the Inspector General (SEC/OIG) and that SEC/OIG conducted a complete and thorough review and had subsequently closed the case.

Shortly thereafter, Senator Grassley's Finance Committee Staff met with the SEC/OIG and requested a copy of the SEC/OIG's closeout memorandum. At a third meeting, held at SEC headquarters on June 15, 2006, SEC/OIG allowed Finance Committee staff to see the final six page closeout memorandum prepared by SEC/OIG, however Finance Committee staff was not allowed to retain a copy. Finance Committee staff also viewed an additional two page summary memorandum describing the SEC *Enforcement Divisions actions to-date*, which was prepared by an SEC staff member at the Commission's request.

Further oversight of this matter continued on June 28, 2006, when Senator Specter held a Judiciary Committee hearing entitled "Hedge Funds and Independent Analysts: How Independent are Their Relationships?" At the hearing, Mr. Gary Aguirre, a former SEC attorney, testified regarding experience working on the PCM matter at SEC, and his alleged termination for objecting to the SEC's failure to aggressively pursue the case. Following the Judiciary Committee hearing, our staffs began working together to better understand the Enforcement Division and procedures at the SEC for investigating and prosecuting violations of the federal securities laws.

Despite the SEC's cooperation thus far, many questions regarding the handling of the PCM matter remain unanswered. For example, the quality of the SEC/OIG investigation and the SEC summary memoranda are of particular concern. Both reviews were troubling for numerous reasons, including but not limited to the following:

- (1) Mr. Aguirre, the complainant, was never interviewed by either SEC staff or that of the SEC/OIG,
- (2) SEC and SEC/OIG staff were seemingly unaware of the existence of certain material documents,
- (3) The SEC and SEC/OIG were seemingly unaware of one or more meetings that were material to the investigation, and,
- (4) SEC and SEC/OIG accounts of certain events were inconsistent, incomplete, and contradicted by documentary evidence.

Accordingly, we hereby request that the SEC produce the following documents and information to facilitate our ongoing review of this matter:

- (1) All documents created by SEC or SEC/OIG staff related to the investigation of Pequot Capital Management (PCM) including but not limited to all communications or records of communications in any form, such as email, sent or received by any of the following individuals:
  - a. Gary Aguirre
  - b. Eric Ribelin
  - c. Mark Kreitman
  - d. Robert Hanson
  - e. Linda Thomsen
  - f. Paul Berger
  - g. Joseph Cella
  - h. James Eichner
- (2) All documents related to the termination of the employment of Mr. Gary Aguirre including but not limited all communications in any form, such as email sent or received by any of the above named individuals.

These requests include, but are not limited to, the following records:

- a. The full employment personnel file of Mr. Gary Aguirre, both formal and informal.
- b. All documents, communications, or records of communications, in any form, such as email, sent or received by Linda Thomsen or Mary Jo White that relate to Gary Aguirre, John Mack, Pequot Capital Management, or Morgan Stanley.

- c. The SEC/OIG Closing Memorandum (file # OIG-431), prepared by Ms. Kelly J. Andrews, Associate Counsel to Inspector General.
- d. The memorandum presented to Finance Committee Staff on June 15, 2006 prepared by Mr. Walter Ricciardi, Deputy Director, Division of Enforcement.
- e. All communications or records of communications in any form, such as email, sent or received by any representative of the SEC or Mr. Arthur Samberg, or any designated representative of Mr. Samberg.
- f. All communications or records of communications in any form such as email, sent or received by SEC or SEC/OIG staff regarding Congressional inquiries related to Mr. Gary Aguirre.

Additionally, we request that you make the following SEC staff members available for interviews:

- (1) Mark Kreitman
- (2) Robert Hanson
- (3) Linda Thomsen
- (4) Eric Ribelin
- (5) Joseph Cella
- (6) James Eichner

Please advise the aforementioned individuals that they have the right to speak directly and independently to Congress, or to a Committee of Congress, without interference from the SEC if they wish, in accordance with 5 U.S.C. § 7211. Retaliation against these individuals, or any other SEC employees, who communicate with Congress in reference to this matter, or any other, will not be tolerated. Such conduct is further punishable by 18 U.S.C. § 1505 and false statements and perjury are likewise punishable pursuant to 18 U.S.C. § 1001. Further, under 5 U.S.C. § 2302(b)(8), a federal employee authorized to take any personnel action may not take any personnel action against an employee because of protected whistleblowing.

Please also note that P.L. 109-115 enunciates a government-wide prohibition on the use of appropriated funds to pay the salary of any federal official who prohibits or threatens to prevent a federal employee from communicating with Congress, regardless of whether the employee or Congress initiated the contact.

We respectfully request that all SEC employees involved directly or indirectly with this matter be immediately provided with a copy of this letter to inform them of their right to speak and to cooperate with Congress. All SEC employees should be informed that no documents, records, data or information related, directly or indirectly, to this matter shall be destroyed, modified, removed or otherwise made inaccessible to Congress. Further, if any SEC employee believes that they have been subject to

retaliation for meeting with Congressional staff and/or for anything associated with the ongoing investigation of this matter, the employee should contact our staffs immediately.

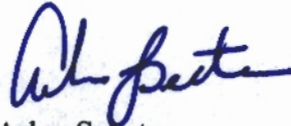
Finally, it has come to our attention that recently, both the SEC and the SEC/OIG have reopened investigations into this matter. Based upon our review of the SEC/OIG's previous investigation, we have serious concerns regarding whether SEC/OIG is capable of conducting a re-investigation worthy of any public confidence.

We thank you in advance for your continued cooperation as we review this important matter. Please have your staff coordinate with ours for delivery of the requested documents no later than close of business on August 15, 2006. Further, the individual contacting our staff should be prepared to schedule interviews with the requested SEC staff members. Any questions or concerns should be directed to Emilia DiSanto or Nick Podsiadly of Senator Grassley's staff at (202) 224-4515, or Harold Kim, Seema Singh or Hannibal Kemerer of Senator Specter's staff at (202) 224-5225.

Sincerely,



Charles E. Grassley  
United States Senator  
Chairman, Committee on  
Finance



Arlen Specter  
United States Senator  
Chairman, Committee on the  
Judiciary

Enclosures

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

## GENERAL INSTRUCTIONS

1. Please note that, for purposes of responding to this document request, the term "document" should be interpreted in accordance with the general definitions attached to this letter.
2. In complying with this document request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. In addition, produce documents that you have a legal right to obtain, documents that you have a right to copy or have access to, and documents that you have placed in the temporary possession, custody, or control of any third party.
3. No documents, records, data or information requested by the Committees shall be destroyed, modified, removed or otherwise made inaccessible to the Committee.
4. If the document request cannot be complied with in full, it shall be complied with to the extent possible, which shall include an explanation of why full compliance is not possible.
5. In complying with this document request, respond to each enumerated request by repeating the enumerated request and identifying the responsive document(s).
6. In the event that a document is withheld on the basis of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
7. Each document produced shall be produced in a form that renders the document susceptible of copying.
8. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same document.
9. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, or control.
10. This request is continuing in nature. Any document, record, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.

All documents shall be Bates stamped sequentially and produced sequentially.

## GENERAL DEFINITIONS

1. The term "Securities and Exchange Commission" or "SEC" means the United States Securities and Exchange Commission as defined in 15 U.S.C § 78d, the Commission, the Commissioners, any staff member, including but not limited to, officers, attorneys, economists, examiners, and any other employee or contract employee of the Commission.
2. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to the following: memoranda, reports, statistical or analytical reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra office communications, electronic mail (E-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, discs, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disc, or videotape. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
3. The term "records" is to be construed in the broadest sense and shall mean any written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts and both sides thereof, whether printed or recorded electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements, drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape

recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intra-office and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.

4. The terms "relate," "related," "relating," or "regarding" as to any given subject means anything that discusses, concerns, reflects, constitutes, contains, embodies, identifies, deals with, or is any manner whatsoever pertinent to that subject, including but not limited to documents concerning the preparation of other documents.
5. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this document request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa to bring within the scope of this document request any information which might otherwise be construed to be outside its scope. The masculine includes the feminine and neuter genders to bring within the scope of this document request any information that might otherwise be construed to be outside its scope.
6. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, written, electronic, by document or otherwise, and whether face to face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise. Documents that typically reflect a "communication" include handwritten notes, telephone memoranda slips, daily appointment books and diaries, bills, checks, correspondence and memoranda, and includes all drafts of such documents.