Senator Specter
Examining Enforcement of Criminal Insider Trading and Hedge Fund Activity
December 5, 2006

Questions for Eric Ribelin (Branch Chief, SEC Market Surveillance):

1. When you spoke with my staff, you said that Mr. Aguirre was "one of the smartest, most tenacious, intelligent, thoughtful lawyers I had worked with in 18 years" and that "he was aggressively, but appropriately, pursing an investigation." [Tr. p. 20] Please identify your bases for making this statement regarding Mr. Aguirre.

Response to Question 1.

In my eighteen years in the SEC Enforcement Division ("Division"), I've had the pleasure of working with a great many dedicated lawyers. Over the last five years, I've supervised a team of dedicated and experienced investigators. My assessment of Mr. Aguirre's performance (quoted in the question above) is without qualification and is based on my observation and assessment of his work ethic, work product and demeanor while working together on the investigation that has become one of the subjects of your inquiry.

Let me specifically address my comment that Mr. Aguirre was "...aggressively, but ***appropriately***, pursuing an investigation [emphasis added to the original]." I felt it was important to indicate that the attempt to aggressively investigate should not be construed in anyway as inappropriate or unprofessional. In order to obtain the truth in the investigative process it is incumbent upon the investigator – always working within the boundaries of propriety, of course – to proceed aggressively.

2. When my staff interviewed you in September, you said "I have seen many, many times where ... the staff is aggressive at the beginning, and then maybe a little less aggressive as time goes on." Why do investigators become less aggressive over time? Does it have anything to do with resistance from supervisors like you encountered in the Pequot investigation? Does the SEC's enforcement culture make it hard for investigators to bring cases against well-represented, prominent persons?

Response to Question 2.

Although investigations often become less aggressive over time due to such factors as pushback from opposing counsel and the effects of attrition, the roadblocks encountered in the Pequot investigation were of a different kind and degree. We encountered very aggressive tactics by opposing counsel and a troubling lack of support for an aggressive investigation by supervisors in the Division. This was the first time in my eighteen-year tenure that I had encountered first-hand such a confluence of events. Notwithstanding the exceptional difficulties presented, Mr. Aguirre, as I've said, continued to attempt to investigate with the same tenacity throughout his employment.

Over the years, I've heard of a few instances of investigations that were, to the dismay of staff, stalled or watered-down. I don't believe, however, that the enforcement culture necessarily makes it difficult to bring cases against well-represented, prominent persons.

3. While speaking with the Committee staff, you said that "maybe reasonable minds could have disagreed – do we take [John Mack's testimony] now or do we get a few more things before we take him." [Tr. p. 46] But you also said that "[I]t seemed to come down as *fait accompli*, we're not going to take his testimony." [Tr. p. 46] Please tell the Committee why you felt that the decision had already been made, and whether you felt the decision was politically motivated.

Response to Question 3.

The decision not to take Mr. Mack's testimony, or indeed to ask a few questions over the phone, was made away from Mr. Aguirre and me and without consulting us. The decision which came on the heels of a series of troubling events, including the fact we were excluded from the decision-making process, suggested forces at work beyond our knowledge and control.

I believe reasonable minds could have disagreed whether we took Mr. Mack's testimony at the point in time suggested by Mr. Aguirre, or at some point soon thereafter. However, after my discussions with Mr. Hanson and Mr. Kreitman – after the decision came down not to question Mr. Mack – I never had the sense they intended to move in that direction. Indeed, Mr. Hanson never responded to the suggestion that we simply call up Mr. Mack – a compromise that presumably would have alleviated the concern he articulated to me. And Mr. Kreitman suggested an exercise in futility when he indicated we needed to determine whether Mr. Mack was over-the-wall.

Furthermore, the case seemed to proceed in a halting and unproductive manner after the firing of Mr. Aguirre. My September 8, 2005 e-mail [Exhibit 9; SEC Bate's stamp 000851] to Mr. Hanson in which I asked why they were "fixated" on whether the size of the trading was "aberrational," captured some of my frustration. I was also concerned that something untoward had happened, and may have been happening at the point I e-mailed him shortly after on that same evening and said I had "serious misgivings" about the investigation and that "something smells rotten." Events prior to the decision not to question Mr. Mack, and indeed, how the investigation unfolded after the firing of Mr. Aguirre informed my suspicion that the decision had been a foregone conclusion.

What drove the decision not to take Mr. Mack's testimony, or to ask a few questions over the phone? I don't know. Who ultimately made the decision and was it politically motivated? Again, I don't know. I only have a few pieces of the puzzle, because I was kept out of the loop. Notwithstanding the great deal of time my staff and I dedicated to this matter, I was excluded from the decision-making process.