

# **Testimony Concerning SEC Personnel Matters**

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## **Before the U.S. Senate Committee on the Judiciary**

**December 5, 2006**

Chairman Specter, Ranking Member Leahy, and Members of the Committee:

Thank you for inviting me to testify today and to respond to false allegations of abuse of authority that have been advanced by a former staff attorney of the United States Securities and Exchange Commission. I greatly appreciate the opportunity to set the record straight on the matter about which Gary Aguirre testified to this Committee last summer. I will start with an introduction that summarizes my testimony and then provide further details.

### **Summary**

Let me state at the outset that, in my experience, the Division of Enforcement of the SEC has never considered an individual's political connections in deciding whether or not to take his or her testimony. No one has ever asked or suggested that I refrain from taking a person's testimony because of his or her political connections. Indeed, Enforcement investigations frequently involve well known and prominent individuals. In conducting and supervising investigations, I always follow the evidence wherever it leads -- even if the trail points to a prominent executive or a public figure. In the investigation concerning the hedge fund Pequot Capital Management, I have no reason to believe any outside source ever attempted to influence the decision on taking the testimony of John Mack, the current CEO of Morgan Stanley.

As you are aware, Mr. Aguirre was terminated before his one-year probationary period expired. Until he completed his probationary period, Mr. Aguirre could be terminated at any time, for any lawful reason. Mr. Aguirre was a highly energetic staff attorney, but his conduct was often inappropriate and his behavior unsuitable for continued employment in the Enforcement Division. He was unable or unwilling to work in a professional manner with other attorneys on the investigation and he failed to observe Enforcement Division policy on several occasions. In the spring of 2005, Mr. Aguirre twice left work abruptly during the workday after disagreements with other attorneys. He tendered his resignation from the Commission in July 2005. Some time thereafter he withdrew his resignation. Then Mr. Aguirre said he would leave after completing the investigation but would not memorialize the investigative findings. His erratic behavior and the negative impact it was having on the investigation and the other attorneys on the case compelled me to strongly urge others to terminate Mr. Aguirre before his one-year probationary period ended.

Mr. Aguirre's public assertion that the Pequot investigation was halted or somehow ceased after he was terminated is completely untrue. In fact, after he was terminated, the Division of Enforcement continued the investigation, devoting hundreds of staff hours to the matter. After Mr. Aguirre's termination, investigative staff took testimony from or interviewed more than a dozen individuals, made numerous formal and informal document requests, reviewed and analyzed thousands of documents, and participated in two proffer sessions with the Federal Bureau of Investigation and the office of the U.S. Attorney for the Southern District of New York. Ultimately, after a thorough investigation, we closed the matter after finding insufficient evidence to warrant bringing an enforcement action.

### **My Professional Background**

I am currently employed as a Branch Chief in the Division of Enforcement at the SEC, where I have worked for approximately six and one half years. I currently supervise five staff attorneys on approximately ten active investigations.

Prior to working the Division of Enforcement, I worked as an attorney in the SEC's Office of Compliance, Inspections and Examinations for approximately two years. I have received several awards while working at the SEC, including a Division Director's Award and a Chairman's Award for Excellence. I have an extensive background in accounting and finance, having practiced as a CPA for many years before entering law school. I have spent my entire legal career in federal government service. It has been a great honor and privilege to do so.

During my tenure at the SEC, I have interviewed or taken the testimony of dozens of prominent individuals, including: (1) principals of brokerage firms, hedge fund advisers and publicly-traded companies; (2) executives of a major stock exchange; and (3) a former United States Senator. While working in the Division of Enforcement, I have participated in bringing several significant SEC enforcement cases including:

- Financial fraud cases against (1) AremisSoft Corp. and senior management (working with the Department of Justice to repatriate \$200 million to the U.S.); and (2) Huntington Bancshares Corp. and three of its senior officers;
- Broker-dealer fraud cases against ICapital Markets (formerly Datek Securities Corp.) and Heartland Securities, and actions against a number of principals of those firms (resulting in some of the highest penalties ever collected from individuals in an SEC proceeding);
- A fraud case against broker-dealer Robertson Stephens, Inc. and a former research analyst of the firm;