



THE CHAIRMAN

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

October 2, 2002

The Honorable John D. Dingell  
Ranking Minority Member  
Committee on Energy and Commerce  
United States House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515-6115

Dear Congressman Dingell:

I am writing in response to a report from the General Accounting Office (GAO) entitled SEC Enforcement: More Actions Needed to Improve Oversight of Disgorgement Collections (GAO-02-771, July 12, 2002). The report presents the results of a GAO review of the Commission's current disgorgement collection efforts. The Commission agrees with much of what this report recommends, and we are already addressing many of GAO's concerns. Our specific comments as to each of GAO's five recommendations follow.

**I. Develop appropriate procedures to ensure that information maintained in DPTS (Disgorgement Payment Tracking System) is accurate and current.**

This recommendation is based upon inaccuracies found in the sample of data examined which are largely the result of delays in obtaining updated information concerning actions in Federal Court or payments to a court registry or court appointed receiver. We agree with this recommendation, and accordingly we have developed a new procedure for obtaining updated information more rapidly. As an alternative to our existing practice of generating periodic reports for review and update by staff, we now require that the responsible staff submit to DPTS a Financial Judgment Record Form when they receive notice of any reportable event that pertains to disgorgement. The form has been made available to all staff electronically, and staff has been instructed to submit completed forms via a dedicated e-mail mailbox.

**II. Ensure that disgorgement and the collection of disgorgement are addressed in SEC's strategic and annual performance plans, including the development of appropriate performance measures.**

We view judgments for disgorgement and collection of those judgments as important components of our mission of investor protection. We will seek to develop a performance measure based on the timeliness of our disgorgement collection efforts for inclusion in the fiscal 2004 performance plan and the strategic plan when it is next updated. As the report points out, the disgorgement collection rate can be skewed by whether we have a large payment from one defendant in a given year and because the

individuals who owe large sums of disgorgement generally have long since spent their ill-gotten proceeds and there is simply no hope that money will be obtained. Accordingly, we do not believe that the new performance measure should be the rate at which disgorgement is collected.

**III. Expediently complete the evaluation of options for addressing the competing priorities and increasing workload faced by SEC's Division of Enforcement staff, including assessing the feasibility of contracting certain collection functions and increasing the number of staff devoted exclusively to collections, and take steps to implement any recommended actions.**

The report accurately describes the enormous workload and the competing priorities of the staff, including whether to do collection work or to work on stopping new and ongoing frauds. While collections have always been viewed as extremely important, our first priority has been, and we believe should continue to be, to stop ongoing frauds with the aim of protecting investors from additional losses. We have been examining contracting with outside firms to do collection work. We will make every effort to expediently implement any contracting options that would enhance our collection efforts.

As to devoting more staff exclusively to collections: we do not currently have the staff to accomplish this goal. The recent Sarbanes-Oxley Act of 2002, however, authorizes an increase in our staffing levels for certain Commission programs. Once that funding is fully appropriated, we will examine whether the Commission has the ability to devote more staff exclusively to collections.

**IV. Ensure the prompt implementation of collection guidelines that specify the various collection actions available, explain when such activities should be considered, and stipulate how frequently they should be performed. In addition, SEC should develop controls to ensure that staff follow these guidelines.**

The Division of Enforcement issued collection guidelines to its staff on July 30, 2002. These guidelines address all aspects of this recommendation; they include practice guides to assist the staff in enforcing judgments through litigation, requiring the staff to adhere to certain deadlines and tracking the staff's efforts and results.

**V. Ensure that management uses information on the distribution of disgorgement, including the amounts due to and received by investors and the fees paid to receivers, to monitor the distribution of disgorgement, including the reasonableness of receiver fees.**

As noted in the report, the SEC staff currently monitors the distribution of disgorgement, typically by court appointed receivers, on a case-by-case basis. A new tracking system has now been put in place throughout the Division of Enforcement to monitor when courts enter distribution plans and when receivers (or other distribution agents) distribute funds.

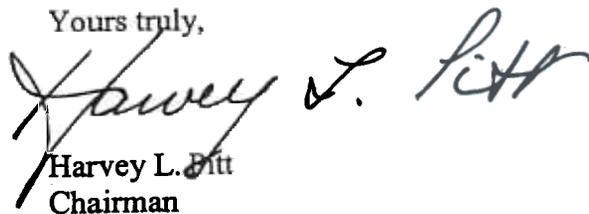
The Honorable John D. Dingell

Page 3

We do not believe that aggregating information on distributions of disgorgement would help the agency assess how well it is meeting its goal of deterring fraud and depriving wrongdoers of their ill-gotten gains. The amount distributed to investors (rather than given to the United States Treasury) is a function of numerous factors that vary from case to case, including the size of the disgorgement award, how much the agency (and the receiver, if one is appointed) could collect, and the costs of administering the receivership, including fees paid to receivers and attorneys and accountants under their direction. In some complex cases, receiver fees and costs will necessarily consume a substantial portion of the disgorged assets. In some simple cases, the fees and costs necessary to distribute the disgorged funds will be minimal. Combining the amounts distributed and the fees paid to receivers in many cases will not shed any light on whether defrauded investors could or should have received more in any particular case or even overall. The only way to determine if the amount returned to investors is appropriate is to evaluate the particular facts and circumstances of the case. Since the receivership fees are totally within the purview of the court in any particular matter, we do not believe that accumulating data on these fees would be useful in accomplishing our mission of investor protection. We have issued new guidelines for collections and established new systems for tracking collections and distributions. We believe that the Division's new collections guidelines and systems for tracking collections and distributions will greatly improve our ability to monitor the effectiveness of our disgorgement program. In addition, we note that these efforts will be an enormous undertaking with limited staff resources. While we will continually review the effectiveness of these measures, and consider modifications as appropriate, we do not believe that accumulating additional data is realistic or useful at this time.

Thank you for your interest in the work of the Commission. I appreciate the opportunity to comment on this important report.

Yours truly,

A handwritten signature in dark ink, appearing to read "Harvey L. Pitt". The signature is written in a cursive style with a large initial "H".

Harvey L. Pitt  
Chairman

Similar letters sent to:

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