

PATRICK J. LEAHY, VERMONT, CHAIRMAN

EDWARD M. KENNEDY, MASSACHUSETTS  
JOSEPH R. BIDEN, Jr., DELAWARE  
HERB KOHL, WISCONSIN  
DIANNE FEINSTEIN, CALIFORNIA  
RUSSELL D. FEINGOLD, WISCONSIN  
CHARLES E. SCHUMER, NEW YORK  
RICHARD J. DURBIN, ILLINOIS  
BENJAMIN L. CARDIN, MARYLAND  
SHELDON WHITEHOUSE, RHODE ISLAND

ARLEN SPECTER, PENNSYLVANIA  
ORRIN G. HATCH, UTAH  
CHARLES E. GRASSLEY, IOWA  
JON KYL, ARIZONA  
JEFF SESSIONS, ALABAMA  
LINDSEY D. GRAHAM, SOUTH CAROLINA  
JOHN CORNYN, TEXAS  
SAM BROWNBACK, KANSAS  
TOM COBURN, OKLAHOMA

## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*  
STEPHANIE A. MIDDLETON, *Republican Staff Director*  
NICHOLAS A. ROSSI, *Republican Chief Counsel*

December 24, 2008

The Honorable Christopher Cox, Chairman  
U.S. Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, D.C., 20549

BY ELECTRONIC MAIL

Dear Chairman Cox:

Senator Charles Grassley and I have already issued public findings concerning the Securities and Exchange Commission's ("SEC") bungled investigation into Pequot Capital Management's ("Pequot") suspicious trading.<sup>1</sup> These findings also criticized the original Office of Inspector General's report, which essentially ignored former SEC investigator Gary Aguirre's complaints of political influence in the Pequot investigation. You welcomed our findings and worked to implement our recommendations. Nonetheless, after the new SEC Inspector General, David Kotz, largely agreed with our findings and recommended disciplinary action against Mr. Aguirre's supervisors up to the Director of Enforcement, the SEC selected an initiating official who, in a matter of days, found that disciplinary action was unwarranted. That official was described in press accounts as an Administrative Law Judge, and it was not until further inquiry that the SEC admitted she was not acting in a judicial capacity in issuing her decision. I am now writing because recent events provide the SEC with an opportunity to make good on its Pequot investigation, despite having precipitously and unjustifiably closed the case in November 2006.

In 2006, the SEC closed its investigation of April 2001 trading by Pequot in Microsoft stock. The investigation centered, in part, on evidence that David Zilkha, a Microsoft employee who joined Pequot in April 2001 and separated from Pequot in November 2001, may have given Arthur Samberg, Pequot's CEO, inside information regarding Microsoft.

---

<sup>1</sup> See "Specter-Grassley Interim Findings on the Investigation Into Potential Abuse of Authority at the Securities and Exchange Commission," 153 CONG. REC. S1381-02, 1383, 2007 WL 269174, at \*6 (CONG. REC.); see also, "The Firing of an SEC Attorney and the Investigation of Pequot Capital Management," Minority Staff Report by Senate Finance and Judiciary Committees, S. PRT. NO. 110-28 (2007) (hereinafter "Senate Report").

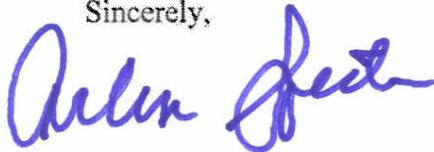
The Honorable Christopher Cox  
Page 2 of 2

Documents recently filed in a Connecticut divorce case (*Zilkha v. Zilkha*) disclose that Pequot has made or promised to make payments of \$2.1 million to David Zilkha. On December 1, 2008, and December 16, 2008, Pequot and Pequot CEO Arthur Samberg filed motions for protective orders, and the state court has scheduled the hearing on those motions for January 16, 2009.

On December 10, 2008, Senator Grassley and I requested from Pequot and Mr. Samberg all records related to the payments to Mr. Zilkha, as well as an explanation of the payments. On December 17, 2008, Mr. Samberg responded that the payments to Mr. Zilkha were for the purpose of "settling a civil claim related to his employment and termination by Pequot." Mr. Samberg enclosed a few documents, but we have requested additional records, and have asked for a complete production.

Given the troubled history of this case, the SEC should also be seeking answers as to any payments made to Mr. Zilkha by Pequot. I therefore write to strongly urge the SEC to consider filing pleadings in the Connecticut action, so that the court will have all relevant information when it considers the Pequot and Samberg motions for protective orders. Please respond as to whether the SEC will take such an action. I also ask that you notify me immediately if the SEC reopens its investigation or takes any enforcement action in light of this new evidence.

Sincerely,



Arlen Specter