U.S. SENATE COMMITTEE ON
Finance
SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

http://finance.senate.gov

Opening Statement of U.S. Senator Chuck Grassley of Iowa
Judiciary Committee Hearing
Examining Enforcement of Criminal Insider Trading and Hedge Fund Activity
Tuesday, December 5, 2006

Good morning, I would like to thank Chairman Specter for calling today's hearing on the enforcement efforts against criminal insider trading and hedge fund activity.

Before I get to the body of my opening statement, I would like to take a moment today to publicly thank the SEC and Chairman Cox for the continued cooperation in providing access to documents, information, and witnesses to both the Finance and Judiciary Committees during the course of this investigation. The access granted has been helpful in getting to the bottom of some serious allegations. I commend the SEC and Chairman Cox for recognizing the Constitutional duty that Congress has in conducting oversight over federal agencies. It is my hope that as we go forward we will continue to see such helpful cooperation. A lot of other federal agencies, especially the Department of Health and Human Services and the Justice Department, could learn a thing or two from the SEC in this regard.

Today's hearing is the second held by this Committee relating to penalties for enforcement of illegal insider trading and the third that has discussed the evolving role of hedge funds. Like Chairman Specter, I have concerns about the extent of insider trading and its impact on public confidence in the fairness and integrity of the stock market. As Chairman of the Committee on Finance, I have taken an interest in hedge funds and the impact they have on pensions, markets, and all investors.

Hedge funds represent a growing trend in the financial markets where complex forms of institutional trading are seeing an influx of investors. More and more, the hard earned pensions of millions of Americans are being invested in hedge funds. The lure of large returns that hedge funds offer is an enticing deal that represents the best intentions of a free market economy. The use of hedge funds for pension investment is not necessarily problematic. However, when a hedge fund goes belly-up, as was the case with Amaranth Advisers, the government and the American taxpayer could be left to foot the bill.

The increasing role played by hedge funds and the expectation of consistent, market-beating returns could lead to increasing pressure on fund managers to deliver by any means, such as riskier investments, or worse, illegal trading on inside information. Recent reports in the media and testimony submitted to this Committee suggest that there has been increased trading activity before major market events, leading some to believe that insider trading is on the rise.

Any illegal activity in the financial markets must be investigated and prosecuted to the fullest extent of the law. The financial markets work based on the belief that the average investor has the same access to information as the big boys. Today's hearing will examine this enforcement to see if we need to do anything legislatively to strengthen the criminal laws against insider trading.

This hearing will ask some tough questions of the market regulators and enforcers. Does the SEC have the tools and resources it needs? Does the Department of Justice prosecute to the fullest extent when criminal violations are found? This Committee has jurisdiction over the criminal laws and we need to see that they are enforced with the way that Congress intended.

We are also here today to discuss the allegations brought by former SEC attorney, Gary Aguirre. His allegations led to a joint Finance-Judiciary Committee investigation on whether there was retaliation against Mr. Aguirre for his role in the investigation of a large hedge fund. The Senate investigation also focused on the original investigation conducted by that office into the same allegations.

We'll hear evidence from the Senate committees' investigation, along with information learned through witness interviews and an extensive review of SEC documents. We'll dig into why the Inspector General failed to uncover important evidence that appears to corroborate many of those allegations.

We'll also question Mr. Aguirre's supervisors about the debate inside the SEC surrounding whether and when to ask a high-profile Wall Street executive, John Mack, some key questions in its insider trading investigation of Pequot Capital Management. The resistance to taking Mr. Mack's testimony until after the press and Congress put a spotlight on the issue raises serious questions for me about whether "captains of industry" get the same treatment as regular investors or whether they get treated with kid gloves.

Finally, we'll question Mr. Aguirre's supervisors about the SEC's personnel process and why an alternate, negative evaluation of Mr. Aguirre was submitted into his personnel file after he was fired. I'd like to hear how they can square that with Mr. Aguirre's original, positive evaluation and pay increase. It looks like that negative evaluation was only created after Aguirre started complaining to his supervisors that it was unfair to treat John Mack differently than the SEC would treat an average investor in the same situation. That's not a legitimate reason to go back and change an employee's performance evaluation.

These issues point to problems within the agency that distract from its core mission of protecting investors. This hearing can kick start some necessary changes at the SEC. This hearing is about finding solutions as well as exposing problems. With that, I must excuse myself to chair a previously scheduled hearing before the Finance Committee, but I will return for some questions later in the hearing.