American Medical Association Physician Consortium for Performance Improvement, the Ambulatory Quality Alliance, and the National Quality Forum in the development, adoption, endorsement, and selection of quality measures for this program.

Considerable time and effort have been devoted to the development and reporting of quality measures for various providers in Medicare under the Social Security Act. Many of these programs have now been up and running for some time. This is why I am greatly troubled that, as currently drafted, the Wired for Health Care Quality Act would require the development and reporting of quality measures under the Public Health Service Act.

It is hard to comprehend how the quality measurement system created by S. 1693 would interact with the various quality measurement programs that have already been enacted by Congress under the Social Security Act and implemented by CMS. Creating two different quality measurement systems would have the potential to create differing or even duplicative quality measurement systems which could drastically interfere with our common goal of improving the quality of health care in this country.

Under the bill, the Secretary also would establish Federal standards and implementation specifications for data collection. Within three years of their adoption, all Federal agencies would have to implement these standards according to the specifications. While this sounds appealing, I am concerned about the reality of implementing such standards—across the myriad programs at the Departments of Health and Human Services, Veterans Affairs, Defense, and all the other Federal agencies that may have health care data. It would be an enormous challenge. Agencies collect data for many different purposes, using many different data systems. Six years ago, when Secretary Thompson first arrived at the Department of Health and Human Services, the department had eight different computer systems. Presumably other agencies similarly have multiple systems. All will be expensive and difficult to retrofit to meet new federal standards.

The bill also would require the HHS Secretary to provide federal health data, including the Medicare claims databases, to at least three ''Quality Reporting Organizations'' that agreed to provide public reports based on the data.

The Quality Reporting Organizations would be required to release regular reports on quality performance that are provider- and supplier-specific. Any organization, including those with commercial interests, could request that the Quality Reporting Organizations compile specific reports based on the requester's methodology. So, for example, drug companies could request data on physician prescribing patterns to determine which physicians their salespeople should target.

In overseeing Medicare, Congress is working to bring more quality reporting into the program. As I mentioned before, just this past December Congress enacted the Tax Relief and Health Care Act of 2006, which implemented a physician pay-for-reporting program in Medicare. The Finance Committee has been working for some time now to phase-in the use of quality measures with various providers. Eventually, I hope that Medicare can compensate providers appropriately for providing high-quality care.

I am, however, concerned about public disclosure of provider-specific information without appropriate safeguards. If not used properly, the data could be misinterpreted. For example, hospitals that specialize in very difficult cases might seem to provide lower quality of care than those treating less severe cases. This would set up the wrong incentives for hospitals and other health care providers.

I agree that it would be helpful to standardize data reporting throughout the federal government, and to use that data appropriately to assess the quality of care provided by clinicians, hospitals, and other health care organizations. At the same time, I have serious concerns about how this bill is structured with respect to the disclosure and use of the data from federal health entitlement programs which are within the sole jurisdiction of the Finance Committee.

I welcome the opportunity to work with the sponsors of S. 1693, Senators KENNEDY, ENZI, CLINTON, and HATCH, along with members of the Health, Education, Labor, and Pensions Committee on this matter. I had hoped we could work out an agreement on legislative language that was acceptable to both the Finance Committee and the HELP Committee before the bill was on the floor. I appreciate the efforts that my colleagues, Senators ENZI and KENNEDY, have undertaken with us over the last month to resolve the concerns of the Finance Committee. However, I remain deeply troubled that, as currently drafted, the Wired for Health Care Quality Act could end up unintentionally delaying or frustrating the goal we all share of improving the quality of health care for all Americans.

REPORT OF SEC INVESTIGATION

Mr. GRASSLEY. Mr. President, today along with Senator SPECTER, I present the findings of a joint investigation by the minority staffs of the Committees on Finance and the Judiciary. It will be posted today on the Finance Committee Web site. I urge all my colleagues to read this important report.

Together, our committees conducted an extensive investigation of allegations raised by former Securities and Exchange Commission attorney Gary Aguirre concerning the SEC and insider trading at a major hedge fund.

During the course of this investigation, the staff reviewed roughly 10,000 pages of documents and conducted over 30 witness interviews. The Judiciary Committee held three related hearings. Our joint findings confirm a series of failures at the SEC: (1) Failures in its enforcement division, (2) failures in personnel practices, and (3) failures at the Office of Inspector General.

There was, however, one bright spot. The Chairman of the Securities and Exchange Commission cooperated fully with our inquiry. I would like to take a moment to thank Chairman Christopher Cox for recognizing the value of congressional oversight instead of resisting it like most other agencies do. In my years in the Senate, I have overseen many investigations of Federal agencies. I am happy to say that Chairman Cox—who inherited these problems in 2005—was a model of transparency and accountability.

I also thank Senator SPECTER for his hard work on this issue, and for the way our committees were able to work together so effectively.

Our investigation focused on three allegations: (1) The SEC mishandled its investigation of a major hedge fund, Pequot Capital Management. (2) The SEC fired Gary Aguirre, the lead attorney in the Pequot investigation, after he reported evidence of political influence corrupting the investigation. (3) The SEC's Office of Inspector General failed to thoroughly investigate Aguirre's allegations.

In 2001, Pequot made about $18 million in just a few weeks of trading in advance of the public announcement that General Electric was acquiring Heller Financial. Pequot accomplished this by buying over a million shares of Heller Financial and shorting GE stock. The New York Stock Exchange highlighted these suspicious and highly profitable trades for the SEC.

When the SEC finally got around to investigating the matter 3 years later, the only full-time attorney working on it, Mr. Aguirre, was up against an army of lawyers from Pequot and Morgan Stanley.

Those lawyers could easily bypass the commission staff and go directly to the Director of Enforcement. In other words, attorneys from Wall Street law firms had better access to SEC management than the staff attorney working on the case, and they used it.

When Aguirre wanted to question Wall Street executive John Mack, his supervisors blocked his efforts and delayed the testimony as long as they could. Mack was about to be hired as the CEO of Morgan Stanley. This raised a critical question in our investigation: Did Mack get special treatment, and if so, why? Gary Aguirre was told by one of his supervisors that it was because of his ''political connections.''

Our investigation uncovered no evidence that Mack's special treatment was due to partisan politics. However, internal e-mails do show that SEC managers cared about something else: prominence—not partisanship.

They put hurdles in the way of taking Mack's testimony because he was an ''industry captain'' and well-known on Wall Street. His lawyers would have ''juice,'' according to SEC management—meaning they could easily pick up the phone and talk to senior officials three and four layers above Aguirre. Mack's prominence protected him from the initial SEC inquiry, protection that would not have been afforded to him had he been from Main Street rather than Wall Street.

Our investigation also found that Mr. Aguirre's firing from the SEC was closely connected to his objections to the special treatment afforded to John Mack. Unfortunately, that was not the only retaliation we found at the SEC. Another employee was also penalized for objecting to problems similar to Aguirre's. This sort of retaliatory firing of a whistleblower is not acceptable, and must be stopped.

Finally, our investigation found failures at the SEC's Office of Inspector General. When Mr. Aguirre presented the Inspector General's office with serious allegations, there was no attempt to conduct a serious, credible investigation.

The Inspector General merely interviewed SEC management, accepted their side of the story, and closed the case. This is unacceptable. It is the role of the inspector general to be an independent finder of fact, not a rubberstamp for agency management. I understand that the current inspector general is retiring, and his last day is today. I hope Chairman Cox chooses the next inspector general very carefully.

Our investigation has uncovered real failures at the SEC, and fixing these problems will take real reform. We have proposed six recommendations. These recommendations include the creation of a uniform, comprehensive manual of procedures for conducting enforcement investigations along the lines of the U.S. Attorney's Manual. If the SEC had such a manual, there would have been clear guidance regarding the standard for issuing a subpoena to any suspected tipper, whether John Mack or John Q. Public.

Other recommendations include the reform of the SEC's Office of Inspector General, firmer ethics requirements, and standardized evaluation procedures to prevent the sort of retaliatory personnel practices that took place with Gary Aguirre. By implementing real reforms such as those our report outlines, the SEC can begin to regain public confidence, and I look forward to working with the SEC as these reforms are implemented.

Mr. President, in closing, I ask unanimous consent to print in the RECORD, the report's executive summary and list of recommendations.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

II. EXECUTIVE SUMMARY

Pequot's trades in advance of the GE acquisition of Heller Financial were highly suspicious and deserved a thorough investigation. In the weeks after a conversation with John Mack and prior to the public announcement of GE's acquisition of Heller, Pequot CEO Arthur Samberg purchased over one million shares of Heller Financial stock, and also shorted GE shares. On the day the deal was announced, Samberg sold all of the Heller stock. He also covered the short positions in GE shortly thereafter, for a total profit of about $18 million for Pequot in a matter of weeks.

The SEC examined only a fraction of the other suspicious Pequot trading highlighted by Self-Regulatory Organizations (SROs). GE-Heller represented just one of at least 17 sets of suspicious transactions involving Pequot brought to the SEC's attention by organizations like the NYSE and NASD. However, SEC managers ordered the staff to focus on only a few transactions. In addition to GE-Heller, the SEC investigated trades involving (1) Microsoft, (2) Astra Zeneca and Par Pharmaceutical, and (3) various ''wash sales.''

Staff Attorney Gary Aguirre said that his supervisor warned him that it would be difficult to obtain approval for a subpoena of John Mack due to his ''very powerful political connections.'' Aguirre's claim is corroborated by internal SEC e-mails, including one from his supervisor, Robert Hanson. Hanson also told Aguirre that Mack's counsel would have ''juice,'' meaning they could directly contact the Director or an Associate Director of Enforcement.

Attorneys for Pequot and Morgan Stanley had direct access to the Director and an Associate Director of the SEC's Enforcement Division. In January 2005, Pequot's lead counsel met with the SEC Director of Enforcement Stephen Cutler. Shortly thereafter, SEC managers ordered the case to be narrowed considerably. In June 2005, Morgan Stanley's Board of Directors hired former U.S. Attorney Mary Jo White to determine whether prospective CEO John Mack had any exposure in the Pequot investigation. White contacted Director of Enforcement Linda Thomsen directly, and other Morgan Stanley officials contacted Associate Director Paul Berger. Soon afterward, SEC managers prohibited the staff from asking John Mack about his communications with Arthur Samberg at Pequot.

Seeking John Mack's testimony was a reasonable next step in the investigation. Several SEC staff wished to take Mack's testimony because they believed he: (1) had close ties to Samberg, (2) had potential access to advanced knowledge of the deal, (3) had spoken to Samberg just before Pequot started buying Heller and shorting GE, and (4) was an investor in Pequot funds and was allowed to share in a lucrative direct investment in a (5) start-up company alongside Pequot, possibly as a reward for providing inside information.

SEC management delayed Mack's testimony for over a year, until days after the statute of limitations expired. After Aguirre complained about his supervisor's reference to Mack's ''political clout,'' SEC management offered conflicting and shifting explanations for blocking Mack's testimony. Although Paul Berger claimed that the SEC had always intended to take Mack's testimony, Branch Chief Mark Kreitman said that definitive proof that Mack knew about the GE-Heller deal was the ''necessary prerequisite'' for taking his testimony. The SEC eventually took Mack's testimony only after the Senate Committees began investigating and after Aguirre's allegations became public, even though it had not met Kreitman's prerequisite.

The SEC fired Gary Aguirre after he reported his supervisor's comments about Mack's ''political connections,'' despite positive performance reviews and a merit pay raise. Just days after Aguirre sent an e-mail to Associate Director Paul Berger detailing his allegations, his supervisors prepared a negative re-evaluation outside the SEC's ordinary performance appraisal process. They prepared a negative re-evaluation of only one other employee. Like Aguirre, that employee had recently sent an e-mail complaining about a similar situation where he believed SEC managers limited an investigation following contact between outside counsel and the Director of Enforcement.

After being contacted by a friend in early September 2005, Associate Director Paul Berger authorized the friend to mention his interest in a job with Debevoise & Plimpton. Although that was the same firm that contacted the SEC for information about John Mack's exposure in the Pequot investigation, Berger did not immediately recuse himself from the Pequot probe. Berger ultimately left the SEC to join Debevoise & Plimpton. When initially questioned, Berger's answers concerning his employment search were less than forthcoming.

The SEC's Office of Inspector General failed to conduct a serious, credible investigation of Aguirre's claims. The OIG did not attempt to contact Aguirre. It merely interviewed his supervisors informally on the telephone, accepted their statements at face-value, and closed the case without obtaining key evidence. The OIG made no written document requests of Aguirre's supervisors and failed to interview SEC witnesses whom Aguirre had identified in his complaint as likely to corroborate his allegations.

III. RECOMMENDATIONS

The controversy over allegations of improper political influence and the firing of SEC attorney Gary Aguirre garnered considerable media attention. The public airing of evidence in support of those allegations undoubtedly had an adverse impact on public confidence in the SEC. The damage to public confidence in the SEC as a fair and impartial regulator must be repaired if the agency is to be effective and able to fulfill its mission.

However, the controversy is more than merely an issue of perception. Our investigation uncovered real failures that need real solutions. Our recommendations focus on improving the Commission's approach to the management of complex securities investigations, personnel problems, the handling of ethics issues, and the role of the Inspector General. A more standardized, professional system for dealing with these issues could have averted much of the controversy. It could also improve employee morale and confidence in management by ensuring more consistent, documented, transparent, and careful internal deliberations.

For these reasons, we offer the following recommendations for consideration:

1. Standardized Investigative Procedures: The SEC should draft and maintain a uniform, comprehensive manual of procedures for conducting enforcement investigations, along the lines of the United States Attorney's Manual. The manual should attempt to address situations or issues likely to recur. It should set a consistent SEC policy where possible and provide general guidance for complex issues that require individual assessment on a case-by-case basis, so that inquiries are handled as uniformly as possible throughout the Enforcement Division.

2. Directing Resources to Significant and Complex Cases: The SEC currently lacks a set of objective criteria for setting staffing

levels and has no mechanism for designating a case as critically important. The SEC should set standards for assessing the size, complexity, and importance of cases to ensure that significant cases receive more resources. The Enforcement Division should develop and apply objective criteria for determining how many attorneys, paralegals, and support personnel should be assigned to a particular case.

3. Transparent and Uniform External Communications: The SEC should issue written guidance requiring supervisors to keep complete and reliable records of all outside communications regarding any investigation. The need for a clear record and transparency is especially acute regarding any communications by supervisors that exclude the staff attorney assigned to the case. The SEC's guidance should generally discourage supervisors from engaging in such communications without the knowledge or participation of the lead staff attorney. The SEC needs to present one, consistent position to parties involved in its investigations.

4. Greater Office of Inspector General (OIG) Independence and More Thorough Investigative Procedures: The hallmarks of any good Inspector General are independence and integrity. However, the reputation of the Inspector General within the SEC appears to be that of an office closely aligned with management, lacking independence. In addition to the facts of the Aguirre case, we received numerous complaints about the OIG from both current and former SEC employees. The OIG should develop a plan to ensure independence from SEC management and the General Counsel's Office, and to ensure that its future investigations of allegations against management are thorough, fair, and credible. The SEC needs to implement a directive requiring its Office of Information Technology to provide thorough and timely responses to SEC/OIG document requests. Since the purpose of the OIG is to ensure integrity and efficiency, a document request in connection with an SEC/OIG investigation should be among the highest priorities.

5. Timely and Transparent Recusals: The SEC should review its guidance to employees regarding their obligations to recuse themselves immediately from any matter involving a potential employer with whom the employee has had contact, either directly or indirectly through an agent. Recusals should be communicated in writing to all SEC staff who have official contact with the recused individual, and a record of the recusals should be centrally maintained by a designated ethics officer. The appearance created by having undisclosed contacts with potential employers while still participating in an enforcement matter involving that potential employer undermines public confidence in the fairness and impartiality of the SEC.

6. Standardized Evaluation Procedures: Employee evaluations should be submitted in a timely manner, according to an established schedule. Evaluations should not be prepared outside or apart from the established procedure. Although it is appropriate to document performance issues and to discuss them with the employee as the issues arise, submitting a re-evaluation with substantive changes after the regularly scheduled evaluation is submitted can raise questions. Where the re-evaluation occurs just after an employee reports alleged wrongdoing by a supervisor, it tends to suggest that retaliation is driving the process rather than an honest attempt to evaluate employee performance.

Mr. SPECTER. Mr. President, I seek recognition, along with my colleague from Iowa, Senator GRASSLEY, to inform the full Senate of the conclusion of our joint investigation into allegations of abuse of authority at the Securities and Exchange Commission and of the availability of our findings and recommendations. On January 31, 2007, Senator GRASSLEY and I came to the floor and submitted the ''Specter-Grassley Interim Findings on the Investigation Into Potential Abuse of Authority at the Securities and Exchange Commission.'' Senator GRASSLEY and I did not want to delay in expressing our concerns about, No. 1 the SEC's mishandling of the investigation of potential massive insider trading by a hedge fund which we recommended be reopened; No. 2, the circumstances of the termination of SEC attorney Gary Aguirre, who was leading the investigation; and No. 3, the manner in which the SEC's Inspector General's Office handled Aguirre's allegations that he was terminated for improper reasons, including pressing too hard to interview a witness in the investigation. We were concerned about what appeared to be managerial interference with the independence and doggedness of an SEC attorney who was determined to follow the evidence wherever it might lead.

Today, we file our comprehensive report and recommendations—comprising nearly 100 pages of annotated findings and recommendations—with the Senate Judiciary and Finance Committees. Before I summarize the key findings and recommendations, I must commend the SEC for two aspects of its response to Congress. First, the SEC, despite some initial disputes and letters relating to document production and privilege, ultimately cooperated fully with Congress by producing all requested documents and permitting all witnesses to be interviewed under oath and with a transcript. Second, Chairman Cox, the other Commissioners, and SEC Director of Enforcement Linda Thomsen have clearly been listening to concerns we raised about insider trading in general and in particular suspicious trading ahead of mergers on the part of hedge funds and others with access to material nonpublic information as a result of the intertwined relationships in our financial sector. Since the Judiciary Committee began holding hearings on insider trading and related fraud in June 2006, the SEC has filed a number of substantial civil cases—often in coordination with the Department of Justice, which handles criminal matters. Linda Thomsen testified at the Judiciary Committee hearing on September 26, 2006 that ''[r]igorous enforcement of our current statutory and regulatory prohibition on insider trading is an important part of the Commission's mission.'' This appears to be the case.

In February 2007, the SEC charged seven individuals and two hedge funds with insider trading ahead of announcements by Taro Pharmaceuticals Industries regarding earnings and FDA drug approvals. Four of the individuals were in their early thirties or younger and worked at major accounting and law firms.

In March 2007, the SEC and Federal prosecutors filed charges against a dozen defendants, including a former Morgan Stanley compliance officer who pleaded guilty in May 2007 to charges that she and her husband sold information about four deals—including Adobe Systems Inc.'s $3.4 billion purchase of Macromedia and the $2.1 billion acquisition of Argosy Gaming by Penn National Gaming, Inc.—to individuals who used the information in trading for hedge fund Q Capital Investment Partners and other accounts.

In March 2007, the SEC charged a 41-year-old UBS research executive with selling information about upcoming UBS upgrades and downgrades of the stock of Caterpillar, Goldman Sachs, and other companies. The information was then used in trading on behalf of hedge funds Lyford Cay, Chelsea Capital and Q Capital Investment Partners.

In May 2007, a 37-year-old Credit Suisse investment banker was charged with insider trading for leaking details of acquisitions involving nine publicly traded U.S. companies including the $45 billion takeover of TXU Corp by a private equity firm. He also leaked information on deals involving Northwestern Corporation, Energy Partners, Veritas DGC, Jacuzzi Brands, Trammel Crow Co., Hydril Company, Caremark RX, and John H. Harland Co.

In May 2007, the SEC accused a former analyst at Morgan Stanley and her husband, a former analyst in the hedge fund group at ING, of making more than $600,000 by trading on companies advised by Morgan Stanley's real estate subsidiary.

In May 2007, the SEC obtained a court order requiring Barclays Bank to pay $10.9 million—including a $6 million penalty—for insider trading based on material nonpublic information obtained by its head trader, who served on bankruptcy creditors committees.

In June 2007, the SEC filed a complaint alleging that a former bank vice president had traded in securities of a bank that he learned would be acquired by another bank.

In June 2007, the SEC filed a complaint alleging unlawful insider trading by the former managing partner of the Washington, DC office of a large law firm who learned of an imminent acquisition from a job candidate.

In July 2007, a court sentenced a corporate executive to a 6-year jail term, and ordered him to forfeit $52 million, in a case involving more traditional insider trading executed by a company executive in his own company's stock.

These aggressive enforcement efforts send a strong message to the public, and we commend the SEC for ensuring that action accompanies their assurances to Congress and to the public. I point out the ages of some of those charged because it strikes me that they may not have lived through the 1980s insider trading scandals of the 1980s that resulted in jail sentences for some very prominent businessmen. Though time has passed since those scandals, there continues to be a need to reinforce that insider trading is a serious violation of the law. Following our hearings and investigation, the SEC appears to have reasserted itself.

On March 1, 2007, in announcing charges against 14 individuals in a brazen insider trading scheme, Chairman Cox stated: ''Our action today is one of several that will make it very clear the SEC is targeting hedge fund insider trading as a top priority.'' Linda Thomsen, Director of the SEC's Division of Enforcement, recently stated that the SEC has made insider trading ahead of mergers and acquisition one of its top priorities. Peter Bresnan, Deputy Director of the SEC's Division of Enforcement, stated in a CNBC interview on May 11, 2007: ''Hedge fund managers are under enormous pressure to show profits for their clients. . . . Not every hedge fund manager can get those kinds of returns through legitimate trading.'' Bruce Karpati, an Assistant Regional Director in the SEC's New York office stated in May 2007 that the SEC is ''actively studying the relationships that hedge funds have both inside the hedge funds and outside'' to see how information flows around financial markets and that the SEC is also looking at ''more complex trading strategies'' at hedge funds. Also in May 2007, when the SEC filed charges against a Hong Kong couple and alleged that they had illegally traded ahead of News Corp.'s offer to buy Dow Jones, Cheryl Scarboro, SEC Associate Enforcement Director, stated: ''Cases like this, insider trading ahead of mergers, are a top priority and we will continue our pursuit of it, no matter where it occurs.''

Finally, in early 2007 it was widely reported that the SEC had begun a factfinding study of the relationships that hedge fund advisers have with brokerages to determine if those contacts could have led to insider trading. The SEC had specifically requested information about stock and options trading by major firms. It is encouraging to see that the SEC's rhetoric is increasingly matched by real cases against those who subvert our capital markets through insider trading.

On the other hand, we agree with Peter Bresnan, who recently expressed dismay over the number of Wall Street professionals involved in these cases, from investment bankers and advisers to lawyers and accountants. ''When we see Wall Street professionals engage in insider trading, it is particularly reprehensible because we rely on them to keep the markets fair and clean.'' As I stated during the Judiciary Committee hearings, although disgorgement and civil penalties in these cases are a good start, I will continue to press for jail terms for those who engage in fraudulent conduct that harms other investors, especially when those who commit fraud are in positions of trust.

With respect to our investigation and final report, Senator GRASSLEY and I were primarily concerned about three aspects of a single case of insider trading: First, the handling of the investigation of what some at the SEC believed was one of the largest insider trading cases in recent history; second, the timing of the firing of Gary Aguirre, one of the lead investigators on the case; and third, the worse-than-cursory inspector general investigation of Mr. Aguirre's claims of improper discharge. All of this presented a troubling picture that centers on apparently lax enforcement by the SEC.

The alleged insider trading occurred in July 2001, several weeks before the public announcement that GE would purchase Heller Financial. During the lead-up to the announcement, Pequot CEO Arthur Samberg began purchasing large quantities of Heller Financial stock while also shorting GE stock. Two years later, the SEC began an investigation. Despite several promising leads, the investigation was left to wither when the lead attorney, Gary Aguirre, was abruptly fired with little explanation. When Aguirre complained to Commissioner Cox about the circumstances of the termination, Chairman Cox instructed the inspector general to investigate. The inspector general's staff, however, did so with the stated view that they were not going to ''second guess'' Aguirre's managers. Perhaps for this reason, the inspector general did not interview Aguirre or the other employees named in Aguirre's letters to Chairman Cox, choosing instead to accept the managers' explanations at face valueeven the explanations that were inconsistent with SEC procedures and some of the documentary evidence submitted by Aguirre.

What was Gary Aguirre investigating? As explained at our hearings, when an acquisition like the GE-Heller deal is announced, the price of the purchasing company typically falls and the price of the purchased company typically rises. This is an opportunity for guaranteed, quick and easy profits. Samberg directed the purchase of ''a little over a million shares'' of Heller stock. On several days, the shares he sought to purchase exceeded the total volume of trading that day. On January 30, 2002, the NYSE ''highlighted'' these trades for the SEC as a matter that warranted further scrutiny and surveillance. Yet it was not until 2004, when Gary Aguirre joined the Commission, that an investigation began in earnest. Mr. Aguirre became the driving force behind the investigation of the GE Heller trades.

Aguirre's immediate supervisors were initially enthusiastic about the investigation and the identification of John Mack as the possible tipper. On June 14, 2005, Mr. Aguirre's supervisors authorized him to speak to Federal prosecutors concerning the trades. His immediate manager, Robert Hanson, wrote in an e-mail on June 20, 2005, ''Okay Gary you've given me the bug. I'm starting to think about the case during my non work hours.'' But the enthusiasm quickly waned at some point after newspapers reported on June 23, 2005, that Morgan Stanley was considering hiring John Mack as its new CEO. Aguirre testified that the timing was no coincidence and that his supervisor, Robert Hanson, would not let him take Mack's testimony because of his ''powerful political contacts.'' Hanson later sent Aguirre e-mails that mentioned Mack's ''juice'' and ''political clout.'' Hanson, for his part, later explained that he simply wanted to make sure that the SEC had gotten ''their ducks in a row'' before taking drastic action.

Although reasonable minds may disagree on an appropriate investigative strategy, the SEC's stated rationale for delaying the taking of Mack's testimony runs counter to the normal approach described to the committees' staff by insider trading experts at the SEC. Hilton Foster, an experienced former SEC investor with knowledge of the Pequot matter, stated that ''as the SEC expert on insider trading, if people had asked me when do you take his testimony, I would have said take it yesterday.'' The explanation offered by Aguirre's supervisors—that without direct evidence that Mack had knowledge of the GE transaction, the deposition would consist simply of a denial by Mack—is not at all convincing since the SEC eventually did question Mack for over 4 hours in August 2006 without such direct evidence.

Mack's testimony was taken 5 days after the statute of limitations expired. We note that shortly after Aguirre's termination, the SEC Market Surveillance Branch Chief sought removal from the Pequot investigation, stating that ''something smells rotten.'' We note that this chief was a reluctant witness who came forward to the committees to do the right thing. Despite a number of such SEC employees, with Aguirre gone and a change in staff on the Pequot case, the trail seems to have grown cold and any evidence likely lost.

With respect to our recommendations, we start by noting that the committees adduced documents and testimony showing that Gary Aguirre, a probationary employee while at the SEC, was an experienced, smart, hardworking, aggressive attorney who was passionately dedicated to the Pequot investigation. These attributes were noted in a June 1, 2005, performance plan and evaluation. A more detailed ''Merit Pay'' evaluation written by Hanson on January 29, 2005, noted Aguirre's unmatched dedication ''to the Pequot investigation'' and ''contributions of high quality.'' These evaluations were submitted to the SEC's Compensation Committee, which approved a two-step salary increase recommendation on July 18, 2005. After these favorable reviews, Aguirre's managers wrote a ''supplemental evaluation,'' on August 1 that included negative assessments. The document was never shared with Aguirre, who received a notice of termination exactly 1 month later, on September 1. To the extent that there was contemporaneous documentation, little appears to support the assertion that the decision to terminate was based on poor performance or employee misconduct, which leaves open the possibility that the discharge was for improper reasons.

More disturbing, however, is the cursory investigation of Aguirre's allegations by the SEC's Office of Inspector General, headed by Walter Stachnik. Chairman Cox referred the matter to Stachnik, who failed to interview Aguirre or any of the other SEC employees mentioned in Mr. Aguirre's letter. The IG's investigators repeatedly told staff that in investigating Mr. Aguirre's allegations of improper motivation for his termination that they ''don't second guess management decisions . . . [and they] don't second guess why employees are terminated.'' These statements are troubling. After speaking only to Aguirre's supervisors about the facts and accepting everything they said at face value, the IG staff reviewed only those documents identified by Aguirre's managers.

This is not a recipe for an independent and thorough investigation. Even after committee hearings, Stachnik insisted that his investigation was ''professional,'' but he did reopen the IG investigation. Unfortunately, as part of the reopened investigation, Stachnik sought documents in Aguirre's possession, including documents that were communications between Aguirre and the Senate. When Aguirre balked, Stachnik asked the Department of Justice to petition a Federal court to enforce the subpoena. If Chairman Cox had been able to obtain a timely, objective, and thorough consideration of Aguirre's concerns, the Pequot investigation may have been put back on track shortly after Aguirre's termination. Because the Chairman did not have the benefit of a careful review by the IG, we will never know what would have happened.

In light of this, and based on the committees' investigation, we make certain recommendations intended to help the SEC remedy obvious shortcomings in order for it to avoid an undermining of public confidence in the agency. The reputation of the SEC as a fair and impartial regulator must be restored. I note that through our investigation, we determined that what we have is not merely an issue of perception. There are real failures that need real solutions to improve the management of complex securities investigations; the handling of ethics concerns and issues; and personnel policies and procedures to increase employee morale and confidence in management and to ensure more consistency, transparency, and careful internal deliberations.

The SEC should draft and maintain a comprehensive manual of procedures for conducting enforcement investigations, along the lines of the U.S. Attorney's Manual. The manual should address situations and issues likely to recur, including a section outlining all SEC policies related to the issuance of subpoenas. It should set a consistent SEC policy and provide general guidance for complex issues that require individual assessment on a case-by-case basis.

Among other policy changes, the SEC should begin to conduct regularly scheduled, confidential employee surveys to measure confidence in senior management. Such responses should be reviewed and evaluated by the inspector general as potential predicates for audits, investigations, or recommendations to senior management. The SEC should also revise its policies on disclosing nonpublic information to third parties.

The SEC currently lacks a set of objective criteria for setting staffing levels and has no mechanism for designating a case as mission critical. The SEC should set standards for assessing the size, complexity, and importance of cases to ensure that significant cases receive more resources. The Enforcement Division should develop objective criteria for determining how many attorneys, paralegals, and support personnel should be assigned to a particular case. It may be unavoidable that the SEC often will have fewer resources than the entities the agency regulates, but effective staffing could help the SEC avoid being outmatched when it matters most.

The SEC should issue written guidance requiring supervisors to keep complete records of all external communications regarding any investigation. As a starting point for drafting such a policy, the SEC should review and consider adopting an approach similar to that of the Food and Drug Administration in 21 C.F.R. section 10.65. The need for a clear record and transparency is especially acute regarding any communications by supervisors that exclude the staff attorney assigned to the case. Allowing outside counsel and interested parties to circumvent the staff attorney by dealing separately with higher level officials may undermine the investigation and also undermine the goals of consistency, impartiality, and professionalism.

The SEC Office of Inspector General should develop a plan to ensure independence from SEC management and the General Counsel's Office. Such a plan must ensure that the SEC's investigations of allegations against management are thorough, fair, and credible. The OIG should submit its plan to Congress for review and followup oversight.

Equally as important, employees should have confidence that they have confidential alternate channels of communication through which both real problems and misperceptions may be resolved early and without public controversy. Personnel procedures should be regularly audited and reviewed to ensure that they are fairly and consistently applied.

All SEC inspector general audit and investigation reports should be available to Congress, on a confidential basis when appropriate. The detail, quality, and volume of reports from the Inspector General's Office need to be improved dramatically.

The SEC should review its guidance to employees regarding their obligations to disclose any connections with potential employers and recuse themselves from any matter involving those employers. The appearance created by having undisclosed contacts with potential employers while still participating in an enforcement matter involving that employer undermines public confidence in the fairness and impartiality of the SEC.

Employee evaluations should be submitted in a timely manner, according to an established schedule. Evaluations should not be prepared outside or apart from the established procedure. The process should be audited regularly, and supervisors who fail to follow the procedures should face meaningful consequences. Although it is appropriate to document and discuss performance issues as they arise, submitting a re-evaluation with substantive changes after the regularly scheduled evaluation is submitted can raise questions—especially when it occurs just after an employee reports alleged wrongdoing by a supervisor.

In conclusion, I will comment on an issue that was the subject of much discussion during the investigation whether hedge funds should be subject to greater regulation. With baby boomers beginning to retire, pension funds are moving more of their assets out of fairly conservative stocks and bond portfolios and increasing their investments in hedge funds. This shift comes as hedge fund returns are cooling. As just one example, the Amaranth fund, which made risky bets on natural gas, collapsed in September 2006. On July 25, 2007, the Commodity Futures Trading Commission charged the fund and its chief energy trader with trying to manipulate the natural gas markets.

Hedge funds are fiercely protective of their trading strategies, and they are hard to value because they are not actively traded. Unlike mutual funds, they are not required to register with the SEC or disclose their holdings. In addition, they may borrow as much as 10 times their cash holdings to execute their investment strategies. For this reason, many say that there is an inconsistency between the high-risk, high-return concept behind hedge funds and the low-risk, guaranteed return goal of pension funds. Pension funds may have consultants and sophisticated money managers, but even they can be tripped up, as evidenced by the fact that Bear Stearns, a Wall street firm known for its caution and its expertise in bond-treading, notified clients this month that their investment in two prominent hedge funds were worth pennies on the dollar. Those funds made bets on risky bonds backed by subprime mortgages.

Individuals, like managers of the pension funds of middle class workers, have also begun to increase their investments in hedge funds. Once limited to the wealthy, hedge funds are now available to retail investors through funds of funds. By pooling money, funds of funds allow investors who do not have the minimum investments or assets to gain access to the hedge fund club.

Because of my concern for these investors, I will continue to study the question of increased transparency and effective regulation of hedge funds.

PESTICIDE REGISTRATION IMPROVEMENT RENEWAL ACT

Mr. CHAMBLISS. Mr. President, I rise to express my support for the Pesticide Registration Improvement Renewal Act. It reauthorizes the highly successful Pesticide Registration Improvement Act, PRIA, which was modeled on the Prescription Drug User Fee Act and enacted as part of the 2004 omnibus appropriations bill.

PRIA authorized the U.S. Environmental Protection Agency, EPA, to collect service fees in order to help cover the cost of registering new pesticides. It also authorized EPA to continue to collect fees to review older pesticides. PRIA established a fee schedule for pesticide registration requests and set specific time periods for EPA to make regulatory decisions on pesticide registration and tolerance requests. The goal of PRIA was to create a more predictable and effective evaluation process for pesticide registration decisions and link the collection of individual fees with specific decision review periods.

PRIA was developed through the work of a unique coalition of environmental associations and the registrant community, which included agricultural and non-agricultural, antimicrobial, large, small, biotech, and biopesticide companies. This same coalition came together to develop this legislative proposal to reauthorize PRIA.

This is true consensus legislation. It clarifies the intent of the original law and continues the fee-for-service program, with some technical adjustments. Specifically, it increases and clarifies categories covered, uses maintenance fees for registration review, protects funds for grant programs, increases funding, and prevents free-riding.

I am pleased to cosponsor and support this legislation. I urge my colleagues to approve its reauthorization and continue the positive changes PRIA brought to the pesticide registration process.

OBJECTION TO RIZZO NOMINATION

Mr. WYDEN. Mr. President, most of my colleagues are well aware that I have been pushing for a ban on the practice of anonymous holds for several years. I believe that holds are an acceptable parliamentary tactic, but I firmly believe that it is inappropriate for Senators to use them secretly. If Senators wish to object to the consideration of a particular bill or executive nominee, they should be required to do so publicly, so that their objections can be discussed and debated in full view of the American people. Today, I am announcing my objection to any unanimous consent request to bring the nomination of John Rizzo to the Senate floor for approval.

The President has nominated Mr. Rizzo to be General Counsel of the Central Intelligence Agency, CIA. When Mr. Rizzo appeared before the Senate Select Committee on Intelligence a few weeks ago, I asked him about a now-infamous legal opinion that was prepared by the Department of Justice in 2002. This opinion, commonly known as the ''Bybee memo'' includes shocking interpretations of U.S. torture laws, and essentially concludes that inflicting any physical pain short of organ failure is not torture. Most Americans would agree that this conclusion is over the line, and this is why the Administration revoked the memo as soon as it became public.

John Rizzo was the acting general counsel of the CIA at that time, and I asked him if, in hindsight, he wished that he had objected to this memo. I was disappointed to hear him say, even with the benefit of five years' hindsight, that he did not.

Much more recently, about 2 weeks ago the President issued an Executive order interpreting Common Article Three of the Geneva Conventions and how it applies to CIA detentions and interrogations. This Executive order refers to classified CIA guidelines. I have read these guidelines, and I believe that they have suffered from a clear lack of effective legal oversight. Since John Rizzo is once again acting general counsel of the CIA, I believe that he bears significant responsibility for this situation. I am not at all convinced that the techniques outlined in these guidelines are effective, nor am I convinced that they stay within the law.

The last thing that I want to see is hard-working, well-intentioned CIA officers breaking the law because they have been given shaky legal guidance. These men and women dedicate their lives to serving their country, and they deserve better than that. They deserve to know that they are on firm legal ground when they are doing their jobs, and that they can rely on the legal advice of their general counsel.

I should also note that I disagree with the President's decision to interpret the Geneva Conventions as broadly as he did, although this does not excuse Mr. Rizzo from responsibility. The Director of National Intelligence, Mike McConnell, discussed these techniques on television recently and stated that he wouldn't want any Americans to undergo them. I don't think it would be acceptable to use these techniques on Americans either, but the President's new interpretation of the Geneva Conventions says that it is okay for other countries to use them on Americans when they are captured. This is also unacceptable.

I believe that you can fight terrorism ferociously without tossing aside American laws and American values, and I worry that the administration and CIA lawyers may be losing sight of this. I was disappointed to hear John Rizzo say that he did not wish he had objected to the 2002 torture memo, and I was even more disappointed when I read these guidelines. Our intelligence agencies cannot fight terrorism effectively unless programs like this one are on a solid legal footing. Mr. Rizzo's record demonstrates that he is prepared to let major programs go forward without a firm legal foundation in place.

This is why I have come to the conclusion that John Rizzo is not qualified to be the general counsel of the CIA. I plan to vote against Mr. Rizzo's confirmation in committee, and when it comes to the floor I will object to any unanimous consent agreement to consider his nomination until I am satisfied that our national counterterrorism programs, and particularly the CIA detention program, have the solid legal foundation that they need.

CFIUS

Mr. MARTINEZ. Mr. President, I applaud the signing of the Foreign Investment and National Security Act of 2007 by President Bush. After more than a year and a half of work, this critical piece of legislation was finally signed into law on July 26, 2007. I would also like to commend Chairman DODD and Senator SHELBY, my colleagues on the Banking Committee for their leadership in forging bipartisan legislation that will further protect critical U.S. assets and infrastructure from predatory foreign control.

This much needed legislation updates, reforms, and provides transparency to the review process conducted by the Committee on Foreign Investment in the United States, CFIUS. This Act will ensure national security while promoting foreign investment and the creation and maintenance of U.S. jobs. As we have seen over the last couple of years with the Dubai Ports and China National Offshore Oil Corporation, CNOOC, issues, greater oversight and transparency is needed for foreign investment in the United States.

This legislation also clarifies and expands the term ''national security'' to include those issues related to ''homeland security,'' including its application to critical infrastructure. The ct