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ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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July 22, 2010

The Honorable H. David Kotz
Inspector General
U.S. Securities and Exchange Commission
100 F Street Northeast
Washington, D.C. 20549-2736

Dear Mr. Kotz:

I appreciate your work in conducting oversight of the Securities and Exchange Commission (the "Commission"), including your ongoing investigation into the circumstances surrounding the Commission's civil securities fraud action against Goldman Sachs & Co. ("Goldman").¹ As you know, the timing of the filing of the Commission's suit against Goldman called into question the Commission's independence and impartiality.² In addition, I have also raised questions about the settlement of the Commission's suit against Goldman, which came less than two hours after the U.S. Senate passed controversial financial reform legislation.³

Commission regulations require its members to "reject any effort by representatives of the executive or legislative branches of the government to affect their independent determination of any matter being considered by the Commission."⁴ Moreover, the Commission is prohibited from using its resources to influence the passage of legislation.⁵ The Commission must seek to avoid even the appearance of applying political considerations or self-serving grandstanding.⁶ That is why the timing of the Commission's initial suit against Goldman, the settlement of that suit, and the public announcements of both actions have been a cause of concern.

¹ See letter from H. David Kotz to Darrell Issa, April 25, 2010.

² See letter from Darrell Issa et. al. to Mary Schapiro, April 20, 2010.

³ See letter from Darrell Issa to Mary Schapiro, July 16, 2010.

⁴ 17 C.F.R. 200.58.

⁵ See 18 U.S.C. 1913.

⁶ See 17 C.F.R. 200.58 ("[Commissioners] should *exhibit* a spirit of firm independence ...") (emphasis added).

A recent article about the Goldman settlement in *The Wall Street Journal* reported further details, which, if true, raise additional concerns about the factors affecting the timing of the Commission's settlement of its case against Goldman. According to the article,

On Wednesday [July 14, 2010], upon learning *The Wall Street Journal* was preparing an article on catch-all settlement talks, SEC enforcement chief Robert Khuzami grew furious and blasted Goldman. He accused the firm of leaking a story that *suggested Goldman had bested the SEC*, a person familiar with the matter says. . . . Worried about further leaks, the SEC decided to move fast. After the commission's Thursday vote, Mr. Khuzami and his staff made their way down to the basement of the SEC's Washington headquarters, unveiling the settlement to reporters.⁷ (emphasis added)

Thus, it appears that the Commission may have entered into a "landmark settlement" resulting in the "largest-ever penalty paid by a Wall Street firm" in order to avoid further criticism in the press.⁸ This is precisely the criteria for Commission action that is explicitly prohibited in regulations governing the Commission's behavior.⁹ Enforcement of the nation's investor protection rules should be exercised independent of politics and press relations.

In light of the controversial circumstances surrounding the Commission's settlement with Goldman, I request that your office broaden its existing investigation into the Commission's suit against Goldman to include the circumstances surrounding the Commission's negotiations with Goldman and the subsequent settlement.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X.

⁷ See "SEC Split Over Goldman Deal," *The Wall Street Journal*, July 17, 2010. Available at http://online.wsj.com/article/SB10001424052748704229004575371601322076426.html?mod=googlenews_wsj.

⁸ See "Goldman Sachs to Pay Record \$550 Million to Settle SEC Charges Related to Subprime Mortgage CDO," U.S. Securities and Exchange Commission, Press Release, July 15, 2010. Available at <http://www.sec.gov/news/press/2010/2010-123.htm>.

⁹ See 17 C.F.R. 200.58 ("A member should not be swayed by partisan demands, public clamor or considerations of personal popularity or notoriety; so also *he should be above fear of unjust criticism by anyone.*") (emphasis added).

The Honorable H. David Kotz
July 22, 2010
Page 3 of 3

If you have any questions regarding this request, please contact Christopher Hixon with the Committee staff at (202) 225-5074.

Sincerely,



Darrell Issa
Ranking Member

cc: The Honorable Edolphus Towns, Chairman

Attachment: Letter from Darrell Issa to Mary Schapiro, July 16, 2010.

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CHAIRMAN

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ANH "JOSEPH" CAO, LOUISIANA
BILL SHUSTER, PENNSYLVANIA

July 16, 2010

The Honorable Mary Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street Northeast
Washington, D.C. 20549

Dear Chairman Schapiro:

The announcement of the Securities and Exchange Commission's (the "Commission") settlement of its civil securities fraud action against Goldman Sachs & Co. ("Goldman")¹ less than two hours after the U.S. Senate passed controversial financial reform legislation raises questions about whether politics influenced the announcement. I am writing to request information about the Commission's negotiations with Goldman, the timing of the announcement of the settlement, and any attempt by anyone inside or outside the Commission to influence the timing of the announcement of the settlement in order to advance legislation in Congress.

While the timing of the settlement announcement and the passage of the financial reform legislation may be entirely coincidental, my concern is heightened by the timing of the Commission's original filing of the suit against Goldman. As I and other Members of the Committee expressed to you on April 20, 2010, the details surrounding the timing of the original suit against Goldman called into question the Commission's independence and impartiality.² As you know, the Commission's Inspector General is currently conducting an investigation into the circumstances surrounding the Commission's suit against Goldman.³

The Commission's canons of ethics require its members to "reject any effort by representatives of the executive or legislative branches of the government to affect their

¹ See "Goldman Sachs to Pay Record \$550 Million to Settle SEC Charges Related to Subprime Mortgage CDO," U.S. Securities and Exchange Commission, Press Release, July 15, 2010. Available at <http://www.sec.gov/news/press/2010/2010-123.htm>.

² See letter from Darrell Issa et. al., April 20, 2010.

³ See "SEC Inspector General to Launch Investigation on Timing of Goldman Sachs Filing," Committee on Oversight and Government Reform, April 23, 2010. Available at http://republicans.oversight.house.gov/index.php?option=com_content&view=article&id=677%3Asec-inspector-general-to-launch-investigation-on-timing-of-goldman-sachs-filing&catid=22&Itemid=29.

independent determination of any matter being considered by the Commission.”⁴ Moreover, the Commission is prohibited from using its resources to influence the passage of legislation.⁵ Given your strong public support for the legislation passed by the Congress,⁶ the American people have a right to know that the settlement announcement was not delayed in an attempt to secure passage of the financial reform bill.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. In light of the circumstances described above, and the need for the Commission to avoid even the appearance of bias,⁷ please provide the following information as soon as possible, but in no case later than 5 pm EST on Friday, July 30, 2010:

1. State whether any Commissioner or Commission employee communicated with any of the following regarding the status of the Commission’s negotiations with Goldman or the announcement of a settlement with Goldman, prior to the public announcement of the settlement on July 15, 2010:
 - a. Any employee of the Executive Office of the President;
 - b. Any employee of the Democratic National Committee or Organizing for America;
 - c. Any employee of the Democratic Senatorial Campaign Committee;
 - d. Any employee of the Democratic Congressional Campaign Committee;
 - e. Any Member of the Senate or the House of Representatives, or any employee of the Senate or the House of Representatives;
 - f. Any employee of the U.S. Treasury Department; or
 - g. Any employee of the Federal Reserve;
2. Identify every person who sent or received any communication described in request no. 1.;

⁴ 17 C.F.R. 200.58.

⁵ See 18 U.S.C. 1913.

⁶ See “Chairman Schapiro Statement on Regulatory Reform Legislation,” U.S. Securities and Exchange Commission, Press Release, June 28, 2010. Available at <http://www.sec.gov/news/press/2010/2010-113.htm>.

⁷ See 17 C.F.R. 200.58 (“[Commissioners] should *exhibit* a spirit of firm independence and reject any effort by representatives of the executive or legislative branches of the government to affect their independent determination of any matter being considered by this Commission”) (emphasis added).

3. Provide a detailed timeline of the settlement negotiations with Goldman, including but not limited to the following information:
 - a. Goldman's agreement to the settlement;
 - b. The Commission's consideration of the settlement;
 - c. The Commission's vote on the settlement, including a list of Commission members and their respective votes;
 - d. The draft of the press announcement of the settlement;
 - e. The final approval of the press announcement of the settlement by the Commission or the relevant Commission staff; and
4. Provide all records and communications referring or relating to the communications described in requests nos. 1 and 2.

For purposes of responding to this request, the terms "records," "communications," and "referring or relating" should be interpreted consistently with the attached Definitions of Terms.

If you have any questions regarding this request, please contact Christopher Hixon with the Committee staff at (202) 225-5074.

Sincerely,



Darrell Issa
Ranking Member

cc: The Honorable Edolphus Towns, Chairman
The Honorable H. David Kotz, Inspector General, SEC
The Honorable Kathleen L. Casey, Commissioner, SEC
The Honorable Elisse B. Walter, Commissioner, SEC
The Honorable Luis A. Aguilar, Commissioner, SEC
The Honorable Troy A. Paredes, Commissioner, SEC

Attachment

Definitions of Terms

1. The term "record" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A record bearing any notation not a part of the original text is to be considered a separate record. A draft or non-identical copy is a separate record within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
3. The terms "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to that subject.