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

THE CHAIRMAN

May 14, 2002

The Honorable Edward J. Markey
Ranking Member
Subcommittee on Telecommunications and the Internet
U.S. House of Representatives
2018 Rayburn House Office Building
Washington, DC 20515-6115

Dear Congressman Markey:

Thank you for your letter of May 7, 2002, concerning my recent meeting with Eugene O'Kelly, Chairman of KPMG LLP.

On the same date that I received your letter, I replied to an inquiry from the Hon. W.J. "Billy" Tauzin, Chairman of the House Energy and Commerce Committee, on the very same matter and sent a copy to your attention as the Ranking Member of the Committee. Because your letter asks for essentially the same information, including the circumstances of the meeting, who was in attendance and what was discussed, I am enclosing a copy of my May 7, 2002, response to Chairman Tauzin in reply to your questions.

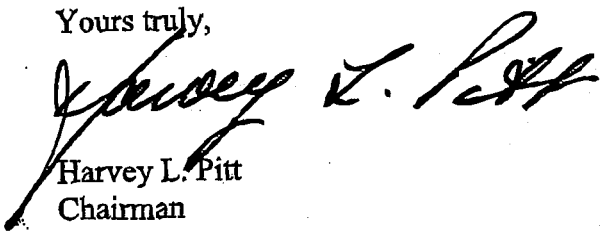
Consistent with my responsibilities as a member, and Chairman, of the Commission, I have an affirmative duty to seek out, and be open to, all points of view in considering rulemaking and policy formulations. Because of the breadth and nature of my prior private legal practice, these efforts have included speaking or meeting, at one time or another, with a number of my prior clients, many of whom are key market participants. On all occasions I have fulfilled not just the letter, but also the spirit, of my ethics agreement.

Although my meeting with Mr. O'Kelly was perfectly benign, in light of the concerns it has engendered, I have concluded that, in instances where a company or firm is under investigation by the Commission, I will do my utmost to avoid even the appearance of impropriety in instances where such meetings could be misconstrued.

You have also asked for information from the SEC's Office of General Counsel concerning agency ethics, conflict-of-interest and recusal rules. Enclosed is a memorandum from the General Counsel in response to your query.

I hope that this information addresses your questions and, if I can provide any additional information, or be of further service, that you will not hesitate to call upon me.

Yours truly,



Harvey L. Pitt
Chairman

Enclosures

Similar letter to: The Honorable John D. Dingell, Ranking Member
Committee on Energy and Commerce

The Honorable Edolphus Towns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

cc: The Honorable W.J. "Billy" Tauzin, Chairman
Committee on Energy and Commerce

The Honorable Fred Upton, Chairman
Subcommittee on Telecommunications and the Internet

The Honorable Cliff Stearns, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Michael G. Oxley, Chairman
Committee on Financial Services

The John J. LaFalce, Ranking Member
Committee on Financial Services

The Honorable Richard H. Baker, Chairman
Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises

The Honorable Paul E. Kanjorski, Ranking Member
Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises

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

THE CHAIRMAN

May 7, 2002

The Honorable W.J. "Billy" Tauzin
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Chairman Tauzin:

I am writing to follow-up on our telephone call today about my recent meeting with the new chairman of KPMG. As we discussed, I am setting forth the details relating to that meeting.

Shortly after Eugene O'Kelly was elected chairman of KPMG, his office contacted my Confidential Assistant, Phyllis Somers, to arrange a meeting when Mr. O'Kelly was to be in Washington. Mr. O'Kelly and I had never met, and I believe it is important for public investors that I meet with the leaders of firms we regulate. In arranging the meeting, both my Confidential Assistant and Chief of Staff, Mark Radke, received express assurances that there would not be any other agenda items beyond a standard "meet-and-greet." Both were told by Mr. O'Kelly's office that this was to be a relatively brief meeting solely for the two of us to make the other's acquaintance.

On April 26 I met with Mr. O'Kelly and was joined in the meeting by my Chief of Staff. The meeting was relatively brief – approximately 10 minutes – and at no time was there any discussion of Xerox or any other enforcement matters at the SEC. I considered the meeting unremarkable until I read in the press about a memorandum apparently sent by Mr. O'Kelly to KPMG staff that purported to recount the substance of part of our meeting. Again, both my Chief of Staff and I are certain that there was no discussion of any SEC enforcement matters.

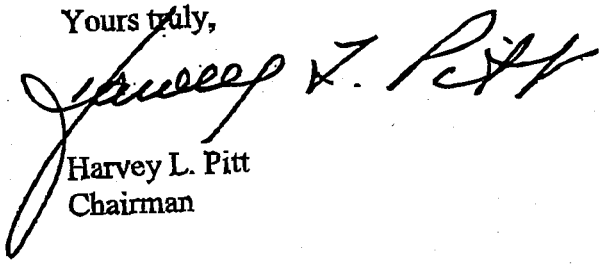
Moreover, in this instance, as I mentioned to you, I am recused from any matters involving KPMG that may come before the Commission. As a result, even if Mr. O'Kelly had wanted to discuss a pending enforcement matter, it would have been a useless effort, since I do not participate in the conduct of <u>any</u> pending enforcement matters, and especially those from which I am recused.

In conducting the business of the Commission, I follow the guidelines contained in the agency's ethics manual, which seek to strike a balance between a Commissioner's duty to seek out, and be open to, all points of view in considering rulemaking and policy decisions, and the obligation to avoid both general, and specific, conflicts of interest.

Although my meeting with Mr. Kelly was perfectly benign, in light of the concerns it has engendered, I have concluded that, in instances where a company or firm is under investigation by the Commission, I will do my utmost to avoid even the appearance of impropriety in instances where such meetings could be misconstrued.

Chairman Tauzin, I appreciate your willingness to discuss this matter and hope that I have addressed any issues that were of concern. If I can provide you with any additional information, or be of additional service, please do not hesitate to call upon me.

Yours truly,



Harvey L. Pitt
Chairman

cc: The Honorable John D. Dingell

MEMORANDUM

To: Chairman Harvey L. Pitt

From: Office of the General Counsel

Date: May 14, 2002

Subject: Report to Congressmen Dingell, Markey and Towns

You have asked that this office prepare a report in response to a request contained in a letter, dated May 7, 2002 (the "May 7, 2002 Letter"), from Congressmen John D. Dingell, Edward J. Markey, and Edolphus Towns. The May 7, 2002 Letter requests a report from you regarding the circumstances of a meeting last month between you and Mr. Eugene D. O'Kelly, Chairman and Chief Executive, of KPMG LLP.

In addition, the May 7, 2002 Letter requests a report from the Commission's General Counsel "as to the controls that have been put in place to ensure compliance with relevant ethics, conflict-of-interest, and recusal rules, including to ensure that there are no inappropriate contacts between [you] and [your] former clients, and how those controls were applied and actually operated in the context of this meeting." This memorandum, prepared in consultation with the Commission's Designated Agency Ethics Official, responds to that request.

Relevant Ethics, Conflict-of-Interest, and Recusal Rules

SEC Commissioners perform their functions subject to numerous ethics restrictions, including with respect to matters such as conflicts of interest and recusals. Commissioners' ethics obligations include restrictions and reporting requirements arising under ethics laws and regulations generally applicable to Executive Branch officials. They also include requirements under the Commission's ethics rules and procedures, particularly as to matters such as trading in securities. In addition, in connection with the nomination and confirmation process, all Commissioners, including the Chairman, enter into ethics agreements in which additional commitments may be undertaken.

The comprehensive body of ethics rules applicable to an SEC Chairman frequently requires an assessment of numerous contextual considerations as well as analysis of detailed rules and regulations. Further, many of the relevant ethics rules contain terms that have come to

acquire, as a matter of precedent or interpretive regulation, highly specialized meanings. In some cases, moreover, the rules may require a balancing of competing interests (*e.g.*, the interest in maintaining the appearance of impartiality and the interest in affording affected persons an opportunity to make their views known to the Commission). The interplay of these considerations must also take into account the distinctions between the Commission's adjudicative functions and its administrative and rule-making functions.

Analysis of the restrictions applicable under the ethics rules in the context of conflict-of-interest and recusal obligations may entail particularly complex issues. While subject to various exceptions and qualifications, those rules generally do not impose an absolute ban on speaking or meeting with prior clients or other persons presenting similar potential conflicts. Instead, those rules serve principally to limit a Commissioner's participation in particular matters involving such persons, as well as to buttress broader efforts to maintain the Commission's reputation for impartiality.

Procedures and Controls

The Commission has adopted extensive procedures and controls to implement the ethics rules applicable to Commissioners and Commission staff. These procedures and controls begin with the education and training of Commissioners and Commission staff concerning the nature of their ethics obligations. Key elements of this process are briefings and consultations with incoming Commissioners and their staff upon commencement of their service at the Commission, an annual ethics training program, distribution to Commissioners and staff of detailed materials describing ethics obligations, and publication of Ethics Bulletins on the Commission's intranet.

Further, the Commission has a dedicated Ethics Office within the Office of the General Counsel that is headed by the Commission's Ethics Counsel, who serves as the Commission's Designated Agency Ethics Official for purposes of the Standards of Ethical Conduct for Employees of the Executive Branch. The Ethics Office is staffed by several experienced ethics professionals who, together with the Ethics Counsel, provide advice on the full range of ethics issues to Commissioners and staff. The Ethics Office is located on the same floor as the offices of the Chairman and other Commissioners, thereby rendering the staff of the Office more readily available to the Commissioners (and reflecting the importance of their duties to the Commission's mission).

To supplement the effective operation of the Ethics Office, an Ethics Liaison Officer has been appointed in the Office of the Chairman, as in the case of other Offices and Divisions of the Commission. The availability of an Ethics Liaison Officer in the Chairman's Office offers an additional mechanism for identifying ethics issues as they may arise from time to time in connection with the performance of the Chairman's duties. Moreover, the Ethics Liaison Officer has a greater opportunity to interact with, and identify potential ethics issues in cooperation with, the staff of the Chairman's office responsible for arranging meetings, handling correspondence and similar matters.

Finally, the staff of the Chairman may determine, in connection with specific meetings or discussions with persons outside the Commission, to take additional steps that can serve as a control under relevant ethics requirements. For example, the staff may ask for a description of the proposed agenda for a meeting or may identify to a potential meeting participant particular items that the Chairman would not consider appropriate for discussion. In addition, the Chairman's Chief of Staff or one of the Chairman's counsel, where practicable, attends meetings between the Chairman and persons outside the Commission. In the event that an inappropriate topic arises, the Chairman or his Chief of Staff or counsel may caution the person not to discuss the topic or the Chairman may terminate the meeting.

Operation of Controls in the Context of the Meeting with Mr. O'Kelly

The operation of the procedures and controls described above in the context of your meeting with Mr. O'Kelly have been described in your letter to Congressman Tauzin, dated May 7, 2002 (enclosed), which we have reviewed and relied upon. Based on that description, it appears that, after being contacted by Mr. O'Kelly's office, both your Confidential Assistant and Chief of Staff received express assurances that there would not be any other agenda items beyond a standard "meet-and-greet." As your letter explains, both were told that this was to be a relatively brief meeting solely for you and Mr. O'Kelly to make the other's acquaintance. Your letter further explains that on April 26, 2002, you and your Chief of Staff met with Mr. O'Kelly for approximately ten minutes and at no time was there any discussion of Xerox or any other enforcement matters at the SEC.