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Pitt, Harvey

SEC's Pitt Faces More Questions About Conversations With CEOs

By MICHAEL SCHROEDER and JAMES BANDLER
Staff Reporters of THE WALL STREET JOURNAL

WASHINGTON -- Securities and Exchange Commission Chairman Harvey Pitt, under fire for meeting with the new chief executive of KPMG LLP while the accounting firm was under investigation, faces fresh questions about other conversations he had with executives of companies the agency was investigating.

Mr. Pitt met with the CEO of Xerox Corp. in December before the company settled charges with the SEC, the company confirmed. Before the settlement, Mr. Pitt also met with Stephen Butler, who was then CEO of KPMG, Xerox's accounting firm, according to people familiar with the meetings.

The SEC chairman also has told SEC officials that he spoke with Donald Trump before Mr. Trump's casino company settled charges with the SEC. Senior SEC lawyers have counseled Mr. Pitt against meeting with former clients and companies under investigation, but he has disregarded the advice.

"Every meeting or conversation I have had has been for a legitimate purpose, to help the SEC improve its performance for investors," Mr. Pitt said Sunday, while declining to discuss specific encounters. He said he will continue to talk with company officials, but added: "I have taken steps to ensure that I avoid meetings that might be misconstrued."

Mr. Pitt became chairman of the SEC in August, following a career as a private securities lawyer during which he represented the Big Five accounting firms and several Wall Street firms.

Government ethics rules forbid him from taking part in any matters specifically related to former clients for his first year in office.

The meetings don't violate ethics rules, and there hasn't been any suggestion that Mr. Pitt tried to improperly influence SEC enforcement cases. Indeed, people familiar with SEC decision-making, say he has pushed the enforcement staff to seek tough penalties against violators.

Criticism of Mr. Pitt intensified after KPMG, a former Pitt client, said two weeks ago that its new chairman, Eugene O'Kelly, met with Mr. Pitt on April 26. Mr. Pitt has said that the two didn't discuss a pending investigation of the accounting firm. Mr. O'Kelly initially suggested he referred to the Xerox case, but later said he didn't mention the case by name.

Commissioner Isaac Hunt, a Democrat, said he believes it is a mistake for commissioners to meet with companies under SEC scrutiny. "There's just a general practice that when they're under investigation, we don't meet with them," Mr. Hunt said.

But Mr. Pitt continues to have the support of the White House. "Our information is that these meetings are in compliance with his ethics agreement. The president has confidence that Chairman Pitt is doing a good job," said White House spokeswoman Claire Buchan.

One SEC official recalls a commission meeting in which Mr. Pitt said he spoke with Mr. Trump before the SEC announced a settlement on Jan. 16 with Trump Hotels & Casino Resorts Inc.'s over a pro forma earnings release. The company didn't admit or deny the allegations and wasn't assessed a fine. Mr. Trump couldn't be reached for comment.

The SEC is investigating KPMG's audit of Xerox's books during the four-year period in which the SEC says Xerox falsely boosted its pretax profit by \$1.5 billion. Xerox last month agreed to pay a \$10 million civil penalty, but neither admitted nor denied wrongdoing. The SEC has

notified KPMG that it is considering filing civil charges against it. The agency has asked current and former KPMG employees to respond to draft notices of allegations of wrongdoing.

Prior to the Xerox settlement, Mr. Pitt and Robert Herdman, the SEC's chief accountant, met with Mr. Butler, then chairman of KPMG. Mr. Butler and KPMG spokesman George Ledwith declined comment.

On Dec. 7, Mr. Pitt met with Xerox's new CEO, Anne Mulcahy, a meeting reported in the Washington Post. SEC staff also had warned her not to bring up the Xerox enforcement case, but Ms. Mulcahy did anyway; Mr. Pitt declined to discuss it, according to people with knowledge of the meeting. Christa Carone, a Xerox spokeswoman, confirmed that the meeting took place, but declined further comment.

Worried that such meetings could create an appearance of a conflict of interest, Commissioner Hunt said he will seek information from the chairman's staff about the Butler meeting. "The optics of it are bad. I think the chairman knows that," he said. But he added that he doesn't believe Mr. Pitt had done anything unethical.

KPMG says questions it raised about Xerox accounting prompted an independent investigation to determine if Xerox's bookkeeping practices were sound. That probe, KPMG says, led to restatements of several years' results. Xerox fired KPMG in late 2001.

The SEC has rejected a Wall Street Journal's Freedom of Information Act request for a list of Mr. Pitt's meetings with company executives since he became chairman on Aug. 2.

S.E.C. Chief Pledges New Rules but Not Open Meetings

5/24

By STEPHEN LABATON

WASHINGTON, May 23 — Fights over contacts between corporations and senior government officials who regulate them have become an almost daily ritual of Washington life.

Today, Harvey L. Pitt, the chairman of the Securities and Exchange Commission — on the defensive about secret meetings with companies under investigation by the agency — promised to issue a new set of rules that would silence his critics. But Mr. Pitt said he would continue meeting with executives of companies he had once represented as a private lawyer and would continue to keep his calendar confidential.

In a courthouse across town, a coalition of environmental and other advocacy groups won an important ruling in their lawsuit against the White House, in which they are trying to gain access to records about the membership and meetings of Vice President Dick Cheney's energy task force. The General Accounting Office has filed a similar suit.

On Wednesday, the action was in Congress as a Senate committee voted along party lines to issue two subpoenas to the White House for more information about contacts with executives at Enron.

Two days earlier, a deal between antitrust regulators at the Federal Trade Commission and the Justice Department over procedures for reviewing corporate mergers collapsed. Senator Ernest F. Hollings, the chairman of the Commerce Committee, had threatened to block funds for the agencies because he said the arrangement was the product of secret deliberations involving corporate lawyers with an interest in the outcome.

From Mr. Pitt to Mr. Cheney, who has resisted disclosing corporate contacts with the energy task force that he led, Bush administration officials and appointees insist that they cannot do their jobs without gathering confidential advice from the industry interests the government regulates.

"It's impossible to function as agency head without understanding what's going on in the market," Mr. Pitt said at a breakfast meet-



Paul Hosenfros/The New York Times

The S.E.C. chairman, Harvey L. Pitt, said he would continue meeting with executives of companies he used to represent as a private lawyer.

An old Washington instinct to conduct the public's business in secret.

ing with reporters today.

But groups ranging from environmentalists to institutional investors that say they are shut out of the policy-making process maintain that details of such meetings ought to be made public. They say policies are being set at the highest levels with the secret and undue influence of political cronies.

"This administration has held themselves above the law, and they are asking and pushing for more than the law provides," said Sharon Buccino, a lawyer at the Natural Resources Defense Council, which prevailed today against the government's request to dismiss its lawsuit demanding details of the White House energy task force's activities.

"They are continuing to resist the public's right to know," she said. "They have taken an imperial approach to governing."

The debate is not a new one. But it has heated up in recent months, as Senate Democrats have become

emboldened in challenging an administration with strong pro-business leanings.

The debate has also underscored the widely varying approaches to disclosure among executive departments and independent agencies. The Federal Communications Commission and the Federal Energy Regulatory Commission, for instance, make public extensive details about such contacts, while nondisclosure is the rule at the White House, many executive branch agencies and some independent agencies, including the S.E.C.

Mr. Pitt declined this morning to provide many details about the new rules he intends to put into force at the S.E.C. He said he would generally strive to avoid meeting with executives from companies under investigation, but did not totally rule out such meetings.

He also said he would continue to meet with executives from those companies he once represented as a lawyer and that he would not make such meetings public because of concerns that disclosures would chill candid discussions.

Provoked by a reporter's question, Mr. Pitt said that public disclosure of his discussions would be like disclosing the contents of the reporter's interview before publication.

"In the history of the Securities and Exchange Commission, no one has taken the steps I am taking — no one," Mr. Pitt said. "While transparency is the order of the day, there is no S.E.C. chairman — none, ever — who has talked about every meeting he has held."

But such disclosure is the practice at some other regulatory agencies. The F.C.C., tarred in the 1950's by a scandal involving the awarding of broadcast licenses, has what is widely considered the broadest disclosure system in the federal government. It requires lobbyists and executives to disclose, within 24 hours, their meetings with senior officials and the subject of their discussions.

Big telecommunications companies and industry groups have retained staffs to keep abreast of such filings, which are posted on the F.C.C.'s Web site. The companies and groups respond to meetings involving competitors by then arranging for their own meetings.

"It's the best system in town," said Andrew Jay Schwartzman, president of the Media Access Project, a public advocacy and gadfly group that often fights with the largest corporations. "Candid confidential advice from regulated parties is not only unnecessary; it is often illegal. The public is entitled to know by whom one is being persuaded, and what the basic arguments are."

Mr. Schwartzman says he often hears directly from companies once they see that he has met with a commissioner on a subject that concerns them. He has assailed loopholes in the disclosure rules and the failure of some corporate lobbyists to provide adequate disclosure. But he also said that the rules were flexible enough to permit discussions to occur without revealing sensitive information.

"If they need truly confidential information because of trade secrets, there are protections for that," Mr. Schwartzman said. "If it is for national security, there are protections for that. And if unwarranted invasions of privacy, there are protections for that. The problem is that confidentiality is often an excuse for special pleading, and the benefits of disclosure outweigh the value for keeping these secrets."

REVIEW & OUTLOOK

Harvey Pitt's Credibility

As a political issue, the Enron debacle seemed to fade away long ago. So we have to wonder why the Bush White House doesn't object that its own SEC Chairman is single-handedly trying to resurrect it, and perhaps just in time for November.

The SEC chief isn't restoring trust in American capitalism.

We're referring to Harvey Pitt, the former lawyer for the accounting industry who is now President Bush's top securities cop. Granted, the SEC job during this post-Enron moment would be difficult for anyone. But Mr. Pitt hasn't helped his task of restoring trust in corporate governance by the way he's appeared to assist his former industry clients.

In the latest flap, he's been caught in a yes-you-did, no-I-didn't dispute with Eugene O'Kelly, the new chairman of KPMG. The accounting firm was Mr. Pitt's law client for years and is now being investigated by the SEC for its Xerox audits. The two men met on April 26, and Mr. O'Kelly later sent an e-mail to KPMG's staff saying the Xerox probe had come up in the conversation.

When the e-mail story made the press, Mr. Pitt quickly denied that they had "discussed any enforcement matter, including Xerox." But KPMG sticks by Mr. O'Kelly's story and says there was nothing inaccurate in his e-mail.



Harvey Pitt

This might all be a tempest in the Tidal Basin if it weren't for the current political and corporate climate. Post-Enron and especially after Arthur Andersen's implosion, financial markets and the shareholding public are looking for more honesty in business bookkeeping. Enemies of free markets are also hoping to use Enron-Andersen as an excuse to justify more regulation and to undermine public support for Social Security reform. Now is precisely the time, in short, for a Republican Administration to have someone with credibility as its securities chief.

Even before the KPMG dispute, Mr. Pitt did not look to be that man. He's gone too easy on

his old friends in the accounting trade, especially in protecting the industry's lucrative consulting business. He lifted not a finger to help Paul Volcker rescue and reform Arthur Andersen;

instead, he joined the rest of the industry in winking at, if not quite cheering for, its demise.

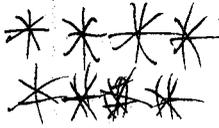
Mr. Volcker was proposing the kind of self-regulating internal discipline for accounting firms that might have restored confidence in audits without ceding more power to the feds.

After KPMG, Mr. Pitt is likely to become even less credible. Democrats will constantly point to his accounting ties and lobby for tighter regulation. And to protect himself Mr. Pitt is likely to do what regulators usually do, which is find some other corporations to hang in the public square. He's already unleashed his regulators and lawyers on a host of companies, some of them deserving of scrutiny, others merely businesses that went bust when the telecom boom did. If Mr. Pitt had been more willing to confront his accounting friends, he might not have to police the rest of the U.S. economy.

Mr. Pitt's behavior, by the way, is an example of the surprising indifference the Bush Administration has shown to its Enron-Andersen vulnerability. The smart guys there seem to figure Enron is a dead political horse and no one much cares about corporate governance anyway. Perhaps they've been listening to the libertarian sages who insist that profit and loss statements are meaningless, so why should anyone worry about accounting? (One answer: to help reassure the middle-class capitalists whose support Mr. Bush will need if he's ever going to succeed in selling private Social Security accounts.)

These must be the same whippets who wrote the words that White House spokeswoman Claire Buchan uttered on Mr. Bush's behalf on Monday amid Mr. Pitt's KPMG dispute: "The President has confidence that Chairman Pitt is doing a great job getting tough on corporate misconduct, on increasing disclosure and on improving shareholder information."

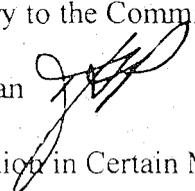
We doubt anyone at the White House really believes that. At least we hope they don't, because no one anywhere else does.



MEMORANDUM

October 29, 2001

To: Mark Radke, Chief of Staff
David Becker, General Counsel
Barbara Hannigan, Ethics Counsel and Designated
Agency Ethics Official
Jonathan Katz, Secretary to the Commission

From: Harvey L. Pitt, Chairman 

Subject: Recusal from Participation in Certain Matters

I intend to follow the recusal policies set forth below, which supersede all previous recusal policies and amendments thereto.

I intend to disqualify myself from participation in any particular matter involving specific parties that has a direct and predictable effect on my financial interest or a financial interest imputed to me.¹ A list of all of these possible entities is attached. Please refrain from presenting any such matter to me for decision, approval or disapproval, recommendation, advice, or other official action.

Furthermore, I intend to disqualify myself until August 3, 2001, from participation in any particular matter involving specific parties in which the law firm of Fried Frank Harris Shriver & Jacobson either is or represents a party in the matter. I also intend to disqualify myself until that same date from participation in particular matters involving specific parties in which any of my former clients on the attached list is or represents a party in the matter. I may, however, participate in such matters if, in consultation with the Designated Agency Ethics Official, I conclude that the interests of the Securities and Exchange Commission in my participation outweigh the concern that a reasonable person may question the integrity of the agency's programs and operations.

I intend to participate in matters of general applicability, such as general policy considerations, rulemaking proceedings or legislation, except that, as required by 18 U.S.C. 208, I will not participate when such a matter would, to my knowledge, have a direct and predictable effect on my financial interests, or financial interests imputed to me.

I intend to disqualify myself on a case-by-case basis, with respect to any other matter where, in order to avoid the possible appearance of impropriety, it appears

¹ I understand that the financial interests that are imputed to me are those of my dependent children, spouse, general partner, or any organization in which I am serving as officer, director, trustee, or employee, or any person with whom I am negotiating for employment.

desirable to me to disqualify myself, despite the lack of any actual conflict of interest or any requirement to do so.

I request that you retain and review the attached recusal list and identify any matter that may require my recusal.²

² I have been advised that it is not necessary to initiate calls to other divisions and offices to establish affirmatively the absence of involvement of the entities identified on the recusal list. If the documents in the case make no reference to any of these entities, and you are not otherwise put on notice that one or more of these entities has an interest in the matter, you may assume that the matter may be presented for consideration in the usual manner. Of course, if your review of the matter raises questions, it would be appropriate to seek additional information.

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