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May 19, 2014

VIA ELECTRONIC & FIRST CLASS MAIL

Amanda L. Straub, Esquire
Division of Enforcement
New York Regional Office
United States Securities and Exchange Commission
200 Vesey Street, Suite 400
New York City, New York 10281-1022
strauba@sec.gov

Re: Your Letter Dated May 8, 2014

Dear Ms. Straub:

I write on behalf of (i) the Committee on Ways and Means of the United States House of Representatives ("Committee"), and (ii) Brian Sutter, Staff Director for the Committee's Subcommittee on Health, in response to your letter of May 8, 2014, which provides some information regarding the subpoenas that the SEC recently issued to the Committee and Mr. Sutter.

The Committee and Mr. Sutter object to the subpoenas on at least the following grounds, reserving the right to supplement these objections, including as the basis for additional objections comes to light:

1. Each of the subpoenas is barred by the sovereign immunity, never waived, that attaches to the Committee and Mr. Sutter in their official capacities. *See, e.g., Lane v. Pena*, 518 U.S. 187, 192 (1996) (any waiver of sovereign immunity must be "unequivocally expressed in statutory text").
2. Each of the subpoenas seeks information protected from compelled disclosure by the Speech or Debate Clause, U.S. Const. art. I, § 6, cl. 1. *See, e.g., Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 503, 509 (1975) (Clause protects "absolute[ly]" all congressional activities that fall "within the legitimate legislative sphere").
3. The subpoena to Mr. Sutter, insofar as it demands his testimony, is improper because high-ranking government officials may not be compelled to testify absent

extraordinary circumstances, not present here. *See, e.g., United States v. Morgan*, 313 U.S. 409, 422 (1941).

4. Each of the subpoenas is vague, confusing, overbroad, unduly burdensome, unlikely to lead to the discovery of admissible evidence, and otherwise improper to the extent it purports to impose an obligation to prepare, as to each document withheld on the basis of “any privilege or immunity,” a new record that “identify[ies] each such document, including, without limitation, the number of pages, its present custodian, the date and time of the document, and each person to whom the substance of the document was communicated in whole or in part (including without limitation all carbon copies and blind carbon copies)” and “state[s] the nature of the privilege or immunity asserted, and all facts upon which that assertion is based.”
5. Each of the subpoenas is vague, confusing, overbroad, unduly burdensome, unlikely to lead to the discovery of admissible evidence, and otherwise improper to the extent it purports to define “Committee” to include “any Member thereof.” Member documents are outside the possession, custody, or control of the Committee. *See, e.g., Rules VII, XI.2(e), Rules of the U.S. House of Representatives, 113th Cong. (2013) (“House Rules”), available online <http://clerk.house.gov/legislative/house-rules.pdf>.*
6. Each of the subpoenas is vague, confusing, overbroad, unduly burdensome, unlikely to lead to the discovery of admissible evidence, and otherwise improper to the extent it uses the term “[c]oncerning,” particularly where defined as meaning “relating to, referring to, describing, evidencing, reflecting, or constituting.” *Cf. Fed. R. Civ. P. 45(d)(1), (3)(A)(iv); Fed. R. Civ. P. 26(b)(1), (2)(C).*
7. Each of the subpoenas is vague, confusing, overbroad, unduly burdensome, unlikely to lead to the discovery of admissible evidence, and otherwise improper to the extent it purports to impose any obligation regarding “any document sought by these document requests [that] once was, but no longer is, within the Committee’s possession, custody, or control.” To the extent that this demand is made to Mr. Sutter, he is not in a position to speak for the Committee.
8. Each of the subpoenas is vague, confusing, overbroad, unduly burdensome, unlikely to lead to the discovery of admissible evidence, and otherwise improper to the extent it demands “[a]ll documents concerning communications between [Mr. Sutter] and any member or employee of Greenberg Traurig LLP,” no matter the subject matter of any such communication; “[a]ll documents concerning communications between [Mr. Sutter] and CMS,” no matter the subject matter of

- any such communication; “[a]ll documents concerning communications to, from, copying, or blind-copying [Mr. Sutter] concerning the potential confirmation of Marilyn Tavenner,” no matter the subject matter of any such communication; “[a]ll documents created by [Mr. Sutter or in his files] . . . concerning . . . Hayes, Taylor, or White, . . . and/or . . . the potential confirmation of Marylyn Tavenner,” no matter the subject matter of any such communications. *Cf.* Fed. R. Civ. P. 45(d)(1), (3)(A)(iv); Fed. R. Civ. P. 26(b)(1), (2)(C).
9. Each of the subpoenas constitutes an unwarranted intrusion into the privacy of Mr. Sutter insofar as it demands “[a]ll telephone records” from his work telephones as well as documents “sufficient to identify all of [Mr. Sutter’s] personal and work telephone numbers and email addresses.” *Cf.* Fed. R. Civ. P. 45(d)(1), (3)(A)(iv); Fed. R. Civ. P. 26(b)(1), (2)(C).
 10. Each of the subpoenas improperly demands documents and/or testimony irrelevant or immaterial to the investigation described in the Order Directing Private Investigation & Designating Officers to Take Testimony, *In the Matter of Humana Inc.*, NY-8910 (U.S. Secs. & Exch. Comm’n) (attached), and therefore the provision of which is not authorized by House Rule VIII.
 11. Each of the subpoenas is repugnant to public policy.¹

Accordingly, given the various defects in the two subpoenas, the Committee and Mr. Sutter would appreciate you withdrawing them. In the meantime, neither the Committee nor Mr. Sutter intends to produce documents or to provide testimony in response to the subpoenas.

As previously noted, please do not disclose this communication, or the contents thereof, to any person or entity outside of the SEC, whether pursuant to a request or demand under the Freedom of Information Act, 5 U.S.C. § 552, or otherwise. Please treat all communications (past, present, or future) between this Office and the SEC in the same manner.

Thank you for your attention.

¹ In addition to the objectionable nature of the subpoenas, your cover letter and its attachments also are improper insofar as they purport to impose on the Committee and Mr. Sutter any obligations beyond those identified by the subpoenas themselves.

Amanda L. Straub, Esquire
May 19, 2014
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Sincerely,

A handwritten signature in black ink, appearing to read "William Pittard". The signature is fluid and cursive, with a prominent loop at the end.

William Pittard

Enclosure

cc: Honorable Dave Camp (*via electronic mail only*)
Brian Sutter (*via electronic mail only*)