

BEFORE THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

THE HUMANE SOCIETY OF THE UNITED STATES,
Petitioner,

SEABOARD CORPORATION
Proposed Respondent.

**COMPLAINT REQUESTING ACTION TO ENJOIN THE DISSEMINATION OF
FALSE OR MISLEADING STATEMENTS IN VIOLATION OF ANTIFRAUD
PROVISIONS OF THE FEDERAL SECURITIES LAWS**

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INTRODUCTION

Complainant The Humane Society of the United States (“The HSUS”) hereby requests the Securities and Exchange Commission (“Commission”) investigate and take action against Seaboard Corporation (“Seaboard”) for disseminating false or deceptive information in violation of the Securities Exchange Act of 1934, 15 U.S.C. § 78a, *et seq.*, and Commission Rule 10b-5, 17 C.F.R. § 240.10b-5.

As described herein, Seaboard is issuing unlawfully false or misleading representations about the animal welfare practices of its wholly owned subsidiary Seaboard Foods, one of the largest pork producers in the country. Seaboard Foods’ “Sustainability & Stewardship Report,” accessible through both the Seaboard Corporation and Seaboard Foods websites,¹ and videos and other statements available on the Seaboard Foods website are replete with false and/or misleading representations about Seaboard’s animal welfare practices, claims that animals raised to produce Seaboard products are raised “free from cruelty,” and only in accordance with the “most humane practices.” These unqualified claims are not only irreconcilable with the documented findings of a recent investigation of Seaboard, but also with the overwhelming majority of consumer opinion data that shows that the company’s routine practices – such as intensive, isolated confinement of sows and castration without pain killers – are unacceptable. Further, these claims are material and misleading to stakeholders concerned about corporate social responsibility (“CSR”), and, through the above-mentioned report, and identical statements contained in videos and

¹ See Attachment 1, “Sustainability & Stewardship Report,” Seaboard Foods (April 2008), *at* <http://www.seaboardcorp.com/companies-foods.html> *and* http://www.seaboardfoods.com/FileLibrary/FileImage/Seaboard_Foods_Sustainability_Report_04-08.pdf.

pages on the Seaboard Foods website², Seaboard has actively marketed to CSR-conscious investors and other stakeholders.

Seaboard Foods' "Sustainability & Stewardship Report," videos, and related website statements are directed at stakeholders, including investors, and as such are linked to trade in Seaboard securities. Accordingly, The HSUS respectfully requests that the Commission exercise its investigation and enforcement authority to stop Seaboard from misleading stakeholders through unlawful statements and omissions about Seaboard Foods' animal welfare practices.

PARTIES

1. The HSUS

The HSUS is the nation's largest animal protection organization, with nearly eleven million members and constituents. The HSUS is based in Washington, D.C., and works to protect all animals through education, investigation, litigation, legislation, advocacy, and field work. Amongst other issues, The HSUS campaigns to eliminate the most egregious factory farming practices.

2. Seaboard Corporation

Seaboard Corporation is the parent company of Seaboard Foods. Seaboard's common stock is listed on the New York Stock Exchange AMEX Equities and trades under the ticker symbol "SEB." Seaboard Foods is one of the largest pork producers in the United States, producing more than four million pigs annually. Its corporate headquarters are located at 9000 West 67th Street, Merriam, KA 66202.

² See Attachment 2, "Our Vision and Values" and "Our Commitment to Quality;" available at <http://www.seaboardfoods.com/About-SSVision/Index.htm> and <http://www.seaboardfoods.com/About-SSQuality/Index.htm>.

STANDARD OF REVIEW

Section 10(b) of the Securities Exchange Act of 1934 and Commission Rule 10b-5 prohibit, in connection with the purchase or sale of any security, the making of any untrue statement of a material fact or the omission of a material fact that would render statements made not misleading.³ Commission Rule 10b-5 makes it unlawful . . .

- (a) To employ any device, scheme, or artifice to defraud,
- (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
- (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.⁴

FALSE OR MISLEADING CLAIMS RELATING TO PRODUCTION PRACTICES

1. Seaboard Foods Statements and Videos Presented as Factual, Accurate, and Material

In April 2008, Seaboard Foods issued a press statement announcing the release of the company's first "Sustainability & Stewardship Report."⁵ The 28-page report provides information about the company's six key core commitments, including animal care. In the press statement, Seaboard Foods president Rod Brenneman claimed that the report "showcases some of the ways" that Seaboard acts as a good corporate citizen.⁶

³ Securities Exchange Act of 1934 (1934 Act), as amended, 15 U.S.C. §78a *et seq.*

⁴ 17 C.F.R. § 240.10b-5 (2011).

⁵ Press Release: Seaboard Foods showcases commitment to sustainability and stewardship (April 24, 2008), *available at* <http://www.seaboardfoods.com/About/PressRelease.asp?ItemKey=84&=&None>

⁶ *Id.*

The information contained in Seaboard's "Sustainability & Stewardship Report," which is repeated verbatim in statements and videos on the Seaboard Foods web site,⁷ is presented as factual, accurate, and material. In addition to being presented in the form of an official company "report," the information is laid out in a format that first describes Seaboard Foods' values and policies as they relate to a particular CSR topic (the "core commitments") and then explains what the company does to implement those policies. With respect to animal care, which is one of Seaboard Foods' six "core commitments," assurances relating to the humane treatment of animals are combined with statements implying that Seaboard has created its animal care program using the best available science, adding further weight to these assurances. For example, the report claims that: "We use the *most humane practices* throughout the animal's life. Not only is this the right thing to do, but *it's scientifically proven* to provide better pork quality;" Seaboard's animal care program "has been hailed by industry experts;" and "A full-time staff of veterinarians, veterinary technicians, nutritionists and animal scientists" oversees Seaboard's animal care program.⁸ Statements contained in the report and made by Seaboard Foods President & CEO Rod K. Brenneman also frame these issues as key to the success of the company.⁹ The commitment to the CSR policies asserted in the report and website, including the humane treatment of animals, are "what separates Seaboard from other companies."¹⁰

⁷ See Seaboard Foods, "Sustainability & Stewardship: Our Never-Ending Commitment," at <http://www.seaboardfoods.com/About-SSHome/Index.htm>; Seaboard Foods, Videos "For Retailers" and "For Food Service," at <http://www.seaboardfoods.com/About-QualityCircle/Index.htm>.

⁸ See Attachment 1, "Sustainability & Stewardship Report," Seaboard Foods (April 2008), at 7 (emphasis added), 20-21. The report also describes the "full-time staff of veterinarians, veterinary technicians, nutritionists, and animal scientists," as well as "graduate degree nutritionists" that oversee the company's animal care program.

⁹ Press Release: Seaboard Farms sets new industry standard with animal welfare audit system (June 24, 2003), available at <http://www.seaboardfoods.com/33.03.htm>

¹⁰ See Attachment 1, "Sustainability & Stewardship Report," Seaboard Foods (April 2008), at 2.

2. False and Misleading Assertions About Standards of Animal Care and Treatment

The Seaboard Foods “Sustainability & Stewardship Report” is rife with assertions relating to the humane treatment of pigs that create the impression that Seaboard’s pigs are given the very highest level of care and treated in the most humane manner possible. Among the representations that contribute to this are the following:

- a) “*We use the most humane practices throughout the animal’s life. Not only is this the right thing to do, but it’s scientifically proven to provide better pork quality.*”
- b) Seaboard believes its animals “can and should be raised, transported and processed using procedures that are safe and *free from cruelty* and neglect.”
- c) “Treating our animals humanely is a moral and ethical obligation everyone at Seaboard Foods takes seriously.”
- d) Seaboard is “committed to proper animal care” and has “a moral and ethical obligation to the humane treatment of animals.”
- e) “Our extensive animal care program is based on the fundamental belief that food animals should and can be treated humanely.”
- f) “[W]e implement the latest technology and practices to ensure our animals remain calm and comfortable.”¹¹

It is a reasonable interpretation of these assertions, both separately and collectively, to conclude that Seaboard uses the most humane practices that currently exist in caring for its animals, that it is a leader in humane animal care, that they employ analgesics and anesthetics whenever available for the comfort of the animal, they do not transport animals in trucks that expose them to life-threatening weather extremes, and that they assure a virtually cruelty-free life for their pigs. However, Seaboard cannot substantiate such

¹¹ See Attachment 1, “Sustainability & Stewardship Report,” Seaboard Foods (April 2008), pp. 7, 20-21 (emphasis added). See also Attachment 2.

claims: the company offers the appearance of their truth and reliability by presenting them in the form of a “report” on the company’s CSR efforts, yet the claims are not reconcilable with the factual realities of Seaboard’s operations and material facts have been omitted that would prevent consumers from being misled in their interpretation.

a. The HSUS Investigation of Inhumane Treatment at Seaboard Foods

In contrast with the statements contained in Seaboard’s “Sustainability & Stewardship Report,” an HSUS investigation conducted during October and November 2011 revealed that the company’s pigs suffer systematic abuse and treatment that could not be considered humane under the most lenient of definitions. For thirty days in October and November of 2011, an HSUS investigator witnessed the day-to-day operations and activities at a Goodwell, OK, Seaboard pig breeding facility. The investigator documented the following findings:

- (1) Approximately 2,700 sows were individually confined in gestation crates, which are narrow metal cages over slatted floors that severely restrict movement.
- (2) Sows suffering from large pressure sores, golf ball-sized lumps, wounds, torn skin, and scabs. These sows never received any type of medical treatment for these problems, and the investigator never saw a veterinarian at the facility.
- (3) Sows with abnormally swollen and torn vulvas. One pregnant sow’s vulva was so severely torn that it was steadily gushing blood. The farm manager told the investigator that the sow would not be euthanized because she was carrying piglets and they wanted her to give birth. When asked whether it would hurt the sow to give birth with an injured vulva, the farm manager responded “they’re pretty tough, they can handle some pain.” The sow eventually gave birth, and

several days later, the same sow, who had not seen a veterinarian and whose wounds were still seeping, was transferred back to the breeding barn.

- (4) The investigator was instructed by Seaboard employees to wrap duct tape tightly around piglets born with splayed hind legs – taping the piglets’ legs to its chest – in order to “correct” the splayed legs. The duct tape was removed and re-applied every day, and no gauze or any other type of padding was placed between the duct tape and the piglets’ skin.
- (5) The investigator found dead pigs and piglets in crates and pens throughout the facility.¹²

It is impossible to reconcile Seaboard’s statements that it uses “the most humane practices throughout the animal’s life,” that the lives of these animals are free of cruelty, or that the humane treatment of animals is something being implemented as a serious moral obligation and takes very seriously, with the acts of abuse exposed during the Goodwell facility investigation.

b. Standard Practices at Seaboard

While the egregious acts of cruelty uncovered at The HSUS’ investigation the Goodwell, OK, Seaboard facility are irreconcilable with Seaboard’s representations to stakeholders that it employs “the most humane practices throughout the animal’s life,”¹³ even the routine practices at Seaboard, such as confinement of pigs in gestation crates, simply cannot be reconciled with its claims of providing the best possible care.

¹² See Attachment 3, HSUS Investigation Report.

¹³ See Attachment 1, “Sustainability & Stewardship Report,” Seaboard Foods (April 2008) at 7. See also Attachment 2.

1. Gestation Crates

In its “Sustainability & Stewardship Report,” Seaboard states that its “barns are designed to give pigs adequate room to eat, drink, rest, sleep, and move without injury.”¹⁴ However, the HSUS investigator found that Seaboard sows are, for the majority of their lives, confined in gestation crates, which are metal cages so small that the sows are unable to turn around or take more than one step forward or backward. During the time the investigator was at the facility, several gestation crates overflowed with feces and urine, which bubbled up from below the slatted floors due to a system clog, covering the pigs inside with waste and filth.

For humane reasons, eight states¹⁵ have already banned the use of gestation crates. Dr. Temple Grandin – who Seaboard praises on its website and in a press release relating to its animal welfare audits – has stated that gestation crates “are a real problem . . . Basically you’re asking a sow to live in an airline seat, . . . I think it’s something that needs to be phased out.” Dr. Grandin’s position is consistent with the findings of a 2007 survey funded by the American Farm Bureau and conducted by researchers at Oklahoma State University. That survey revealed that a majority of the public believe that housing pregnant sows in crates is not humane.¹⁶

In a case involving review of another industry’s housing practices – that of egg-laying hens in battery cages – the National Advertising Review Board affirmed that survey evidence showed that most consumers find such intense confinement to be “unacceptable.” In addressing industry claims that such confinement is humane, the board noted that “it is

¹⁴ *Id.* at 20.

¹⁵ States with laws instituting prohibitions on gestation crates include Florida (2002), Arizona (2006), Oregon (2007), Colorado (2008), California (2008), Maine (2009), Michigan (2009), and Ohio (2010).

¹⁶ Prickett, R.W., F.B. Norwood, and J.L. Lusk. “Consumer preferences for farm animal welfare: results from a telephone survey of U.S. households.” *Animal Welfare* 19.3 (2010): 335-347.

unimaginable that consumers would consider treatment they find ‘unacceptable’ to be humane treatment”¹⁷ It would be equally unimaginable here that, with respect to gestation crates, consumers or stakeholders would consider treatment they find unacceptable to be “the most humane practice[],” especially where alternatives to gestation crates exist and have been successfully implemented.¹⁸

2. Surgical Procedures

Seaboard routinely performs surgical procedures on three to five day old piglets, including cutting off their tails and castrating male piglets. These procedures are painful for the piglets, and are performed without any type of anesthetics or analgesics.

Castration is performed by cutting the piglet’s scrotum with the hooked blade of a surgical scalpel and pushing the testicles through the incision, then cutting or pulling them free of connecting tissue.¹⁹ Physiological and behavioral lines of evidence clearly demonstrate that castration without pain killer causes significant suffering for the piglets.²⁰ According to the American Veterinary Medical Association, “[c]astration is a painful procedure and animal welfare would be improved if it was performed under anesthesia and with analgesia, or replaced by a less invasive procedure.”²¹ Yet at Seaboard, which claims to use “the most humane practices throughout the animal’s life,” and that it “ensure[s]” that

¹⁷ *United Egg Producers, Inc. (Animal Care Certified Eggs)*, NARB Panel Report #122, (April 2004).

¹⁸ For example, as of December 29, 2011, 488 pig farms have been certified under the Global Animal Partnership’s Welfare Rating Standards, which prohibit the confinement of sows in gestation and farrowing crates. See Global Animal Partnership, “The 5 Step Program,” available at <http://www.globalanimalpartnership.org/the-5-step-program/>.

¹⁹ Prunier A, Bonneau M, von Borell EH, et al. 2006. A review of the welfare consequences of surgical castration in piglets and the evaluation of non-surgical methods. *Animal Welfare* 15:277-89; Holden PJ and Ensminger ME. 2006. *Swine Science*, 7th Edition (Upper Saddle River, NJ: Pearson Prentice Hall, pp. 365-6).

²⁰ EFSA Scientific Panel on Animal Health and Welfare. 2004. Opinion of the Scientific Panel on Animal Health and Welfare on a request from the Commission related to welfare aspects of the castration of piglets. *The EFSA Journal* 91:1-18. And Von Borell E, Baumgartner J, Giersing M, et al. 2009. Animal welfare implications of surgical castration and its alternatives in pigs. *Animal* 3(11):1488-96.

²¹ “Welfare Implications of Practices Performed on Piglets,” American Veterinary Medical Association, March 26, 2010.

“animals remain calm and comfortable,” male piglets are castrated in this manner while fully conscious, and no form of painkiller is administered. Further, during the Goodwell facility investigation, the HSUS investigator witnessed multiple piglets dying from what Seaboard employees called “ruptures” – the piglets’ intestines spilled out from the opening where their testicles were removed during castration. The farm manager told the HSUS investigator that these “ruptures” were “part of the learning process” of new employees castrating piglets.

The tail docking is another procedure that causes “acute trauma and pain.”²² The HSUS investigator did not witness the use of any local anesthetic or analgesic to prevent or manage pain for this procedure—indeed the industry norm is *not* to provide such relief for piglets.²³ The AVMA, however, recommends for such procedures the use of practices that reduce pain, including the use of effective medications whenever possible.²⁴ Yet Seaboard nonetheless asserts it uses the “most humane procedures” throughout the entire lives of its pigs, and it does this while simultaneously omitting the material welfare-related fact that it is willfully failing to meet the pig’s need for pain relief during an acutely painful procedure.

c. Material Omissions About National Pork Board Certification

Seaboard touts the fact that all of its farm managers receive Pork Quality Assurance (PQA) Plus and Transport Quality Assurance (TQA) certification as “Animal Care Commitment Highlights” in its “Sustainability & Stewardship Report.” With respect to its PQA Plus certification, Seaboard states that “[t]his program, administered by the National Pork Board, includes training and certification of the managers’ responsibilities for all aspects of animal well-being, including proper housing, management, nutrition, disease

²²Sutherland, M. A., P. J. Bryer, N. Krebs, and J. J. McGlone. 2008. Tail docking in pigs: Acute physiological and behavioural responses. *Animal* 2:292–297.

²³ *Id.*

²⁴ AVMA Policy: Tail Docking and Teeth Clipping of Swine. Oversight: AWC; Approved EB 04/2010, EB Revised 06/2011.

prevention and treatment, responsible care, humane handling and when necessary, humane and timely euthanasia.”²⁵ Similarly, Seaboard describes the TQA program as “stress[ing] the importance of proper handling, loading, and transporting of hogs, with special attention paid to biosecurity and animal welfare.”²⁶

In flaunting its PQA Plus and TQA certifications as “highlights” displaying its commitment to animal care, however, Seaboard fails to disclose the material connection between itself and the endorser issuing these certifications. Both certifications are issued by the National Pork Board (NPB), a federally created organization that is funded and directed by pork producers and that is mandated by law to promote the pork industry.

Federal Trade Commission rules dictate that where there is a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement, that connection must be fully disclosed.²⁷ There is no such disclosure in Seaboard’s “Sustainability & Stewardship Report,” or elsewhere on the Seaboard Foods website, nor any way that the reasonable investor can determine the extent to which the NPB is intertwined with producers, including Seaboard. Certainly, however, it must be concluded that such factors as the NPB mandate to increase pork sales and its funding provided entirely by producers themselves, including Seaboard, raises questions about the weight or credibility of the PQA Plus and TQA certification programs. After all, unlike independent certification businesses, NPB’s success does not depend on the integrity of its certifications, but on the degree to which it increases pork sales. Such incentive is exactly the type of material connection that the disclosure policies for endorsements were implemented to address. Without the full disclosure of NPB’s producer

²⁵ See Attachment 1, “Sustainability & Stewardship Report,” Seaboard Foods (April 2008), p. 21.

²⁶ *Id.*

²⁷ “Guides Concerning Use Of Endorsements And Testimonials In Advertising,” 16 CFR Part 255; 16 CFR 255.5 (2011).

funding, producer direction, and industry promotion mandate, investors are not able to fairly evaluate the integrity of the organization's certification programs.

Were the connection between Seaboard and the NPB properly disclosed, reasonable investors would be alerted to scrutinize the PQA Plus program more closely. Upon doing so, they would then discover that producer certification under the program is granted for simply attending a single *exam-free* training session once every three years. In other words, all it takes to receive this so-called seal of animal care assurance is simply to show up at a one-time session with an advisor. There is no test, no hands on training, no way to fail to receive certification at the end of the session, and no need to do anything else for more than a thousand days afterward.²⁸

Seaboard's advertisement of the PQA Plus and TQA certifications of all of its farm managers and transporters as "highlights" of its commitment to animal care increases the likelihood of harmful reliance on the misleading information, which is unlawfully deficient in its material disclosure requirements, and which in this case would reveal to the investor the lack of independence of the endorsement. Seaboard cannot tout its endorsements from NPB programs while failing to fully disclose its material connection with the endorser; NPB is producer-directed and producer-funded and any certification it issues to producers must fully disclose that connection to avoid violating federal law.

ANALYSIS OF CLAIMS UNDER ANTIFRAUD PROVISIONS OF FEDERAL SECURITIES LAWS

1. Material Assertions and Omissions Relating to Issues of Social Responsibility

It is a violation of the antifraud provisions of the federal securities laws "to make any untrue statement of a material fact or to omit to state a material fact necessary in

²⁸ See Attachment 4, National Pork Board, PQA Plus Certification Manual, p. 103.
<http://www.pork.org/filelibrary/PQAPlus/PQAPlusEdBook.pdf>.

order to make the statements made, in light of the circumstances under which they were made, not misleading.”²⁹

Seaboard’s “Sustainability and Stewardship Report” and the identical statements made on the Seaboard Foods website are clearly designed to address CSR concerns of stakeholders, including investors, potential investors, customers, etc. Indeed, these issues are of particular interest both to stakeholders concerned about the company’s social responsibility practices and to those concerned about the financial damage to the business should it be revealed that the company is treating animals in ways that customers find unacceptable.³⁰

There can be no dispute that many stakeholders are concerned enough about animal welfare to alter their purchasing and/or investing habits on the basis of representations such as those made by Seaboard here. Consumer polls have shown that the humane treatment of animals is an important issue to the majority of consumers,³¹ and even Seaboard Foods’ President/CEO has stated that “[a]nimal welfare is an important issue . . . It makes good business sense”³² Because Seaboard recognizes the importance to stakeholders of CSR issues, including animal welfare, it has created the “Sustainability & Stewardship Report” and has prominently posted the report, along with videos and web pages containing identical statements, on the Internet.

²⁹ 17 C.F.R. § 240.10b-5(b) (2011).

³⁰ For example, on November 18, 2011, immediately following the release of undercover video documenting horrific abuse suffered by egg-laying hens at facilities owned by major egg producer Sparboe Farms, both McDonald’s and Target dropped Sparboe as a supplier. See ABC News, “McDonald’s, Target Dump Egg Supplier After Investigation,” at <http://abcnews.go.com/Blotter/mcdonalds-dumps-mcmuffin-egg-factory-health-concerns/story?id=14976054>.

³¹ See Context Marketing, “Ethical Food: A Research Report on the Ethical Claims That Matter Most to Food Shoppers and How Ethical Concerns Influence Food Purchases” (March 2010), available at <http://www.contextmarketing.com/ethicalfoodreport.pdf> (finding that 91% of consumers consider “ethical food” to be produced in a way that “avoids inhumane treatment of animals” and that 69% of consumers will pay more for food brands they see as “ethical.”).

³² Press Release: Seaboard Farms sets new industry standard with animal welfare audit system (June 24, 2003), available at <http://www.seaboardfoods.com/33.03.htm>.

2. The “Sustainability & Stewardship Report” and Statements Available on the Seaboard Foods Website Are Likely to Reach Stakeholders and Satisfy the “In Connection With” Requirement

The Commission has interpreted the “in connection with purchase or sale of any security” broadly to give stakeholders maximum protection against fraud.³³ In this case, the deceptive information contained in the Seaboard Foods “Sustainability & Stewardship Report” is directly linked to from Seaboard’s corporate website – which also contains information for investors – and is published on Seaboard Foods’ website, both of which are freely accessible to the public. In addition, Seaboard issued a press release announcing the availability of the report, and provided a link to the report in the release.

Seaboard Foods’ 2008 “Sustainability & Stewardship Report” and the identical language displayed on and contained in videos published on Seaboard Foods’ website is indeed the *only* place that CSR information is readily available to stakeholders, including investors. Because the “Investor Information” tab on Seaboard’s website does not contain any information about Seaboard’s CSR policies, including animal welfare, investors interested in these issues will most assuredly access other portions of Seaboard’s and its subsidiary Seaboard Foods websites to seek out this information, which, as noted above, is contained solely in the 2008 Seaboard Foods “Sustainability & Stewardship Report,” and in identical statements made on the Seaboard Foods website. As the Commission has noted, “[a] company’s web site is an obvious place for investors to find information about the company,” and “[i]nvestors are turning increasingly to electronic media and to company and third-party web sites as sources of information to aid in their investment decisions,

³³ *SEC v. Rana*, 8 F.3d 1358, 1362 (9th Cir. 1993); *See also SEC v. Hasho*, 784 F.Supp.1059, 1106 (S.D.N.Y. 1992) (“[a]ny statement that is reasonably calculated to influence the average investor satisfies the ‘in connection with’ requirement of Rule 10b-5.”).

particularly since many types of investment-related company information are only available in electronic form,”³⁴ including information relating to CSR practices.

The Commission has made clear that “antifraud provisions of the federal securities laws apply to company statements made on the Internet in the same way they would apply to any other statements made by, or attributable to, a company.”³⁵ As the online community grows and technology advances, web sites become an even more significant source for the fast and widespread release of information. In its latest interpretive release paper on the web site guidance, the Commission stated it believes “that a company’s web site can be a valuable channel of distribution for information about a company, its business, financial conditions and operations.”³⁶

Seaboard’s corporate website, the Seaboard Foods “Sustainability & Stewardship report,” and Seaboard Foods’ website are all freely open to the public, and the Commission has noted generally that a “fundamental principle underlying these interpretations and rules is that, where access is freely available to all, use of electronic media is at least equal

³⁴ *Commission Guidance on the Use of Company Web Sites*. Release No. 34-58288, at 6-7, 9 (Aug. 7, 2008) [FR 45862].

³⁵ *Id.* See, e.g., *Use of Electronic Media for Delivery Purposes*, Release No. 33-7233, at n. 11 (Oct. 6, 1995) [F.R. 53458], (“The liability provisions of the federal securities laws apply equally to electronic and paper-based media. For instance, the antifraud provisions of the federal securities laws as set forth in Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder would apply to any information delivered electronically, as it does to information delivered in paper.”); *Use of Electronic Media by Broker-Dealers*, Release No. 33-7288, at Section 1, n. 4, (May 9, 1996) [61 F.R. 24643] (“The substantive requirements and liability provisions of the federal securities laws apply equally to electronic and paper-based media. For example, the antifraud provisions of the Exchange Act and Rule 10b-5 thereunder . . . apply to information delivered and communications transmitted electronically, to the same extent as they apply to information delivered in paper form.”); *Use of Electronic Media*, Release No. 33-7856, at Section II.B., (Apr. 28, 2000) [65 F.R. 25843] (“It is important for companies . . . to keep in mind that the federal securities laws apply in the same manner to the content of their Web sites as to any other statements made by or attributable to them.”).

³⁶ *Commission Guidance on the Use of Company Web Sites*. Release No. 34-58288, at Section II.A.

to other methods of delivering information or making it available to investors and the market.”³⁷

Finally, the Commission has made clear that a company may be liable for posting false or misleading information through a hyperlink to a third party. “Under Section 10(b) of the Exchange Act and Rule 10b-5, a company can be held liable for third-party information to which it hyperlinks from its web site and which could be attributable to the company.” *Commission Guidance on the Use of Company Web Sites*. Release No. 34-58288, at 32 (Aug. 7, 2008) [FR 45862]. Third-party information is attributable to a company when the company has (1) involved itself in the preparation of the information, or (2) explicitly or implicitly endorsed or approved the information. *Id.* As Seaboard is the parent company of Seaboard Foods, and has linked directly to the Seaboard Foods report on its corporate website, Seaboard easily meets this test. In addition, Seaboard Foods has stated that its “values *directly reflect those of our parent company, Seaboard Corporation.*” See Attachment 1, “Sustainability & Stewardship Report,” Seaboard Foods (April 2008), at 2 (emphasis added). Thus, it is clear that Seaboard Corporation is liable for the statements made in the Seaboard Foods report and website – the only places that any stakeholders, including investors are able to readily access any CSR-related information relating to the company, including information relating to animal welfare.

3. Stakeholder Vulnerability to the Type of Deception at Issue Here Calls for Heightened Scrutiny

Stakeholders concerned about CSR issues, such as the humane treatment of animals, are almost totally dependent on the company’s truthfulness. If stakeholders have concerns about corporate finances or governance, they can independently review publicly filed records. If they have concern about the quality of whatever product the company is

³⁷ *Id.* at 11.

manufacturing, they can get a sample and have it independently tested. If, however, they have a concern about how the company treats animals used for production, they have no means of independently observing that and so are wholly dependent on the company's assurances.

Where, as here, there is strong evidence that a company's claims are not true, that the treatment of animals is not at the level being asserted to stakeholders, action from the Commission to protect stakeholders is essential.

RELIEF REQUESTED

The actions described above constitute violations of the antifraud provisions of the federal securities laws. Accordingly, The HSUS respectfully requests that the Commission exercise its investigative and enforcement powers to stop Seaboard from deceiving stakeholders with deceptive assertions and omissions relating to animal welfare and the other issues detailed in this complaint.

/s/

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