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February 9, 2012

Robert Khuzami
Director, Division of Enforcement
Securities and Exchange Commission
Office of the Chairman
100 F Street, NE
Washington, D.C. 20549

Re: Complaint Filed on January 31, 2012, Supplemental Information Relating to Violations of the Federal Securities Laws by Seaboard Corporation

Dear Director Khuzami:

The Humane Society of the United States (HSUS) submits the following additional information to supplement the agency's review of the previously filed complaint in this matter (Reference No. TCR1328032823413), relating to animal treatment claims made by Seaboard Corporation and its wholly owned subsidiary Seaboard Foods (collectively: "Seaboard"). The information relates to violations committed since the last complaint was filed and is significant both for the offenses committed and to illustrate how urgently agency action is needed to protect stakeholders and potential investors from being misled by deceptive animal care claims.

On January 31, HSUS filed a complaint with this agency detailing Seaboard's violations of the antifraud provisions of the federal securities laws relating to its animal handling practices. Also on that day, Seaboard was notified and a press conference was held announcing the findings of an undercover investigation into the company's treatment of animals.¹ Contrary to Seaboard's claims of providing its pigs with lives that are "free from cruelty" and of using the "most humane practices," the investigation confirmed that Seaboard routinely performs surgical procedures, like castration and tail docking, without administering any pain relief and uses intensive confinement systems that the majority of stakeholders consider inhumane.

¹ See "AN HSUS REPORT: Undercover Exposés at Two of the Nation's Largest Pork Producers," available at www.humanesociety.org/assets/pdfs/farm/seaboard_prestage_gestation.pdf.

In response to the public revelation of details and video recordings from HSUS' Seaboard investigation, the company responded by posting to its website and releasing to national media outlets a statement containing even further misleading and conflicting claims.² Such representations take on even more significance in the context in which they were made, a literally global discussion of the company's animal handling practices.

I. Seaboard's Public Media Release

On the afternoon of January 31, 2012, Seaboard posted to its website and directed national media inquiries to a press release containing several misleading representations about its practices. In both the title and body of the release, Seaboard defended its operations as standard "U.S. industry practices." In fact, it is Seaboard's repeated representations in its CSR and core commitments documents that it *exceeds* industry standards that were challenged in the previously filed complaint. Seaboard emphasized its commitment to this exceptionally high standard of animal care and the core values asserted in its CSR report and website, expressly stating that this is "what separates Seaboard from other companies."³ Far from providing a defense to Seaboard's lofty claims, however, the company's press release actually *supports* a finding of deception. There is simply no rational way that the company can profess on the one hand to be separated from other companies by its extraordinarily high level of animal care and then defend that level of care by reverting to a claim of "industry standard practices" when those claims come under public scrutiny. What's clear is that Seaboard *cannot* substantiate its CSR assertions of ensuring the highest level of humane care. It cannot even claim to go beyond industry norms, which, as detailed in the previously filed complaint, include numerous practices that many stakeholders consider inhumane.

In its release and public statements, Seaboard expressly repeats its claims of providing animals with the "most humane" care and lives "free from cruelty" despite the extensive consumer opinion evidence to the contrary. From the context of the release, Seaboard appears to base these assertions on its subjective position that they represent "best industry practices."⁴ It is well-established however, that deception is not judged from the perspective of the company making the claim, but from the perspective of the investors and stakeholders reviewing it. The reasonable expectation of the investor is key in assessing a representation or omission for deception.

² See Attachment 1, News Release: "U.S. Swine Industry Practices Media Statement." Seaboard Foods, January 31, 2012. Retrieved from www.seaboardfoods.com/250.03.htm.

³ See Sustainability & Stewardship Report," Seaboard Foods (April 2008), at http://www.seaboardfoods.com/_FileLibrary/FileImage/Seaboard_Foods_Sustainability_Report_04-08.pdf, p. 2.

⁴ See Attachment 1, Seaboard News Release.

Seaboard has opted not to provide details in either its CSR report, website, or latest media release on the specifics of its sow confinement systems, such as how small the gestation crates are, how long sows are kept in them, the number and degree of injuries resulting from long-term immobilization, etc. It is perfectly lawful for Seaboard to withhold that information; indeed, it is understandable *why* the company would not want such information revealed. What the company is not permitted to do, however, is omit such specifics while describing these and other practices to the general public as cruelty-free or the most humane options available.

The evidence overwhelmingly shows that stakeholders find unacceptable the intensive confinement of animals in cages so small that they are isolated and virtually immobilized for life.⁵ Seaboard's own advisor has been vocal and clear on this issue, as well.⁶ Regardless of whether Seaboard maintains a different position on the issue, what's most important for purposes of finding deception is whether Seaboard is omitting material information from its claims that would prevent stakeholders from wrongly concluding that the company is not engaging in any practices they would reasonably find inhumane. In other words, if a majority of stakeholders find Seaboard's practices unacceptable, the company can hardly make unqualified claims of cruelty-free and "most humane" care and hope to avoid stakeholder misinterpretation. The likelihood of misunderstanding is even greater in the wake of announcements from Seaboard's major competitors, like Smithfield and Hormel, that they are reducing and plan to eliminate their use of gestation crates for humane reasons. While its competitors are publicly announcing changes to standard practices to *actually* provide more humane care to animals, Seaboard is failing even to change its rhetoric to ensure stakeholders are not misled into thinking it is making a similar humane commitment.

Also problematic with maintaining the "cruelty-free" and "most humane practices" claims is the fact that Seaboard opts not to utilize readily available pain relief for surgical procedures, such as tail docking and castration. Even the scientist Seaboard cites in its public response has expressly acknowledged that these procedures cause acute pain in pigs.⁷ Seaboard's option not to use analgesics to alleviate this pain may very well be, as it claims, routine practice in industry, but it can hardly substantiate the deceptive claim at issue that it opts for the "most humane" animal care treatment. Seaboard raises nearly five million pigs each year, all of which suffer pain that could have been avoided had the company opted for more humane procedures. This is not a system that can support Seaboard's claim that its animals are provided the most humane care.

⁵ 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.

⁶ Temple Grandin's opposition to gestation crates is well-documented and was noted in the previously filed complaint. It is of significant note that Seaboard references her in its defense of its practices, while omitting her strong and clear position that gestation crates are not the "most humane" options for sow housing.

⁷ McGlone, J.J., Sutherland, M. *Is tail docking necessary and if so, how long should the tail be?* NPB #06-183 (September 30, 2009): "Tail docking causes acute pain in pigs."

II. Seaboard Misrepresents the position of the American Veterinary Medical Association (AVMA)

In its release, Seaboard misrepresents the AVMA's position on castration and tail docking both by false assertion and material omission. Contrary to Seaboard's representation, the AVMA *does not* state that castration and tail docking are "essential industry practices."⁸ The AVMA position states why these procedures are performed, but not that it is essential that they are. In fact, the AVMA expressly recommends development and implementation of alternatives to castration.⁹

As concerning as Seaboard's affirmative misrepresentation of the AVMA's position statement on these issues are, what's particularly relevant here is what Seaboard has omitted from this statement. In its public statement in defense of its animal care policies, Seaboard has conspicuously omitted from its reference to AVMA policy the organization's position on *how* such procedures are performed. Specifically, the AVMA recommends for castration and tail docking, whenever possible, "*the use of procedures and practices that reduce or eliminate pain.*"¹⁰

The AVMA position, of course, reinforces the violation raised in the complaint that the company's failure to opt for humane pain relief when it is readily available is contrary to its public claims of employing the "most humane" practices. Separately, though, the omission of the AVMA's pain relief recommendation when expressly referencing the organization's position on such practices is itself a material omission that only serves to further mislead stakeholders. Seaboard is selectively withholding material information that stakeholders need to prevent a misinterpretation of the company's claims about its practices being the "most humane" available. The company, even when challenged, appears unwilling to assure such integrity in its communications, which only illustrates how urgently agency action is needed here to prevent deception among conscientious stakeholders.

⁸ "Welfare Implications of Practices Performed on Piglets," American Veterinary Medical Association, March 26, 2010. *See also* AVMA Policy Statements: Tail Docking and Teeth Clipping of Swine, *available at* www.avma.org/issues/policy/animal_welfare/tail_docking_teeth_clipping_swine.asp and Swine Castration, *available at* www.avma.org/issues/policy/animal_welfare/swine_castration.asp.

⁹ *Id.*

¹⁰ *Id.* (emphasis added); *See also* "Welfare Implications of Practices Performed on Piglets," AVMA, March 26, 2010: "Castration involves cutting and manipulating innervated tissues and if anesthesia is not provided it will be painful, as reflected by elevated blood cortisol concentration, high-pitched squealing and pain-indicative behaviors, such as trembling and lying alone."

III. Agency Enforcement is Urgently Required

Seaboard's latest communication to stakeholders through its widely distributed release further highlights the urgent need for agency action now, as Seaboard and others increasingly target concerned stakeholders with unqualified claims about levels of animal care that are far lower than stakeholder perception; that is, companies are using terms like "cruelty-free" and "most humane" to advertise practices that the overwhelming majority of stakeholders find unacceptable. While the agency need not decide which practices are "most humane" or "cruelty-free," it does need to ensure that companies are not using those terms in a way that misleads reasonable stakeholders and investors. Because the majority of stakeholders find gestation crates and castration without pain relief, for example, to be inhumane practices, Seaboard must ensure that its claims to the contrary are clear enough that such stakeholders are not misled to believe that such practices are not employed by the company. In this case, the representations at issue do not come close to doing that. And the press release now issued by the company to address these practices only furthers the likelihood of stakeholder deception.

_____/s/_____
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