

March 20, 2012

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

Re: Further violations of multiple SEC regulations by Seaboard Corporation

Dear Director Khuzami:

The Humane Society of the United States (“The HSUS”) has for at least one year continuously held and continues to hold at least \$2,000 in market value, or 1%, of Seaboard Corporation (the “Company” or “Seaboard”) securities, and has submitted a shareholder proposal (the “Proposal”) to the Company seeking a shareholder advisory vote regarding animal welfare.

The HSUS submitted the Proposal on September 28, 2011 for inclusion in the Company’s 2012 Proxy Statement. *See* Exhibit A.

On March 9, 2012, Seaboard filed its Proxy Statement which contains [the Board of Directors’ statement in opposition](#) (“the Opposition Statement”) to The HSUS’ shareholder proposal. *See* Exhibit B.

We write today to bring to the Staff’s attention multiple violations of SEC regulations by the Company with regard to its Opposition Statement.

**I. The Company failed to provide an advance copy of its Opposition Statement to The HSUS prior to filing its Proxy Statement.**

According to Rule 14a-8 of the Securities Exchange Act of 1934, Seaboard was required to have supplied The HSUS with a copy of its Opposition Statement prior to filing its Proxy Statement. *See* 17 C.F.R. 240.14a-8(m)(3). As stated by the Staff in The Division of Corporate Finance’s [Staff Legal Bulletin No. 14](#) (July 13, 2001):

“If a proposal appears in a company’s proxy materials, the company may elect to include its reasons as to why shareholders should vote against the proposal. This statement of reasons for voting against the proposal is commonly referred to as a statement in opposition...[and] ***the company is required to provide the shareholder with a copy of its statement in opposition no later than 30 calendar days before it files its definitive proxy statement and form of proxy.***” (emphasis added).

In this case, Seaboard did not provide The HSUS with a copy of its Opposition Statement prior to that Statement appearing in the Company’s Proxy Statement, and this is a clear violation of SEC regulations. Accordingly, we request that enforcement action be taken against the Company for having stripped The HSUS of a critical shareholder right.

## II. The Company's Opposition Statement contains several materially false and misleading statements.

Had the Company complied with SEC regulations and provided The HSUS with a copy of its Opposition Statement prior to filing its Proxy Statement, The HSUS would have certainly contested several materially false and misleading statements that are in violation of Rule 14a-9(a). *See* 17 C.F.R. § 240.14a-9(a) (prohibiting proxy statements containing statements which are false or misleading with respect to any material fact, or which omit to state any material fact necessary in order to make the statements therein not false or misleading). The HSUS would have attempted to resolve this issue privately with the Company by requesting that those statements be removed, had that opportunity existed.

As The HSUS is now in a situation where its Proposal is printed in a Proxy Statement alongside a materially false and misleading Opposition Statement, it feels compelled to draw the Staff's attention to this issue.

Specifically, in its Opposition Statement, Seaboard makes the following materially false and misleading statement:

1. Seaboard believes its animals "can and should be raised, transported and processed using procedures that are *safe* and *free from cruelty* and neglect." Opposition Statement at 27 (emphasis added).

As explained in a [complaint](#) (the "January Complaint") previously filed with this agency by The HSUS against the Company (Ref. No. TCR1328032823413), this statement is materially false and misleading. Contrary to Seaboard's claims of providing its pigs with lives that are "free from cruelty," an undercover investigation into the Company's treatment of its animals revealed 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. *See* Exhibit C.

Further, the Company explains in its Opposition Statement:

2. "The Seaboard integrated system uses both stalls and group pens to house gestating sows with the majority housed in stalls, *as does most of the pork production industry.*"
3. "The Board of Directors believes the stockholders will be better served by having Seaboard *continue its efforts to employ industry best practices . . . .*"

Opposition Statement at 28 (emphasis added).

As The HSUS explained in a second complaint (the "February Complaint") previously filed with this agency, Seaboard's claims that it follows standard industry practices with respect to the housing of its sows and the treatment of its pigs are irreconcilable with the claims of superior care asserted in Seaboard's "Sustainability & Stewardship Report" and are certainly not reconcilable with assertions of care that is "free from cruelty." Seaboard has not and cannot substantiate that standard industry practices, including very tight confinement of sows for essentially their entire lives, and castration and tail removal

without anesthetics or other pain mitigation, are practices that are “free from cruelty.” See Exhibit D.

And, importantly for review of the completeness of its statement, the Company fails even to disclose that its animals suffer acute pain during such procedures, a fact that its expert advisors agree upon. Such selective disclosures and omissions cannot satisfy the requirement that a proxy statement present all material facts affecting the voting process. See, e.g., *Mendell v. Greenberg*, 927 F.2d 667, 670 (2nd Cir. 1991) (“A proxy statement should honestly, openly and candidly state all the material facts . . . Unlike poker where a player must conceal his unexposed cards, the object of a proxy statement is to put all one’s cards on the table face-up.”).

Additionally, the Company asserts the following in its Opposition Statement:

4. “In addition, all supervising employees caring for hogs are certified in the National Pork Board’s Pork Quality Assurance Plus (PQA Plus) program, and Seaboard personnel and contractors who transport hogs to Seaboard’s plant receive Transport Quality Assurance (TQA) certification.”

Opposition Statement at 28.

In flaunting its PQA Plus and TQA certifications as highlights supposedly displaying its commitment to animal care, however, Seaboard fails to disclose the material connection between itself and the endorser issuing these certifications. This misleading material omission is described in further detail on pages 11 – 13 of the January [Complaint](#).

## **Conclusion**

Seaboard continues to make materially false and misleading statements about animal welfare to shareholders, as outlined both above as well as in The HSUS’ January and February Complaints. In its most recent violation of SEC regulations regarding false and misleading statements, Company statements appear in the Proxy Statement alongside The HSUS’ Proposal, despite the Company’s failure to provide The HSUS with a copy of its Opposition Statement prior to issuing its Proxy Statement.

As The HSUS has demonstrated both here and in its previous complaints, the Company has repeatedly displayed a lack of regard for SEC regulations about both false and misleading statements; it has now broadened that disregard to include shareholder rights. As such, this situation demands urgent review.

Accordingly, The HSUS respectfully encourages the Staff to take enforcement action against the Company and, if appropriate, initiate cease-and-desist proceedings pursuant to 15 U.S.C. §78u-3.

Thank you for your consideration. You may reach me via email at [klevy@humanesociety.org](mailto:klevy@humanesociety.org) or via phone at (202) 676-2327 with any questions you may have.

