



DIVISION OF
ENFORCEMENT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

December 8, 2003

Mr. Ralph Nader, Founder
Mr. Lee Drutman, Communications Director
Citizen Works
P.O. Box 18478
Washington, D.C. 20036

Dear Mr. Nader and Mr. Drutman:

Thank you for your November 20th letter to Chairman Donaldson concerning the Commission's partial settlement of its enforcement action against Putnam Investment Management, LLC ("Putnam"). Your letter expresses concerns about the substance of the Commission's agreement with Putnam as well as with the process by which the agreement was reached. Your letter has been referred to me for response.

You express the view that the Commission's partial settlement with Putnam did not inflict adequate punishment on the firm. This conclusion is based on a fundamental misunderstanding of the agreement and of the Commission's processes for resolving cases. I welcome this opportunity to address those concerns and explain in detail the substance of the Putnam agreement, as well as the status of the Commission's continuing actions with respect to Putnam. Before addressing your particular concerns, however, I believe it would be useful to review the actions the Commission has taken against Putnam and its employees.

On October 28, the Commission brought actions against Putnam and two former Putnam portfolio managers in connection with the personal trading by those portfolio managers in Putnam mutual funds. The Commission filed a civil injunctive action against the two portfolio managers charging each of them with securities fraud. The complaint alleges that they, for their own personal accounts, engaged in excessive short-term trading of Putnam mutual funds for which they were portfolio managers. In this action, the Commission is seeking injunctive relief, disgorgement, penalties, and such equitable relief as the court deems appropriate. The Commission also issued an administrative order instituting proceedings against Putnam.

Subsequently, on November 13, the Commission issued another order against Putnam reflecting a partial settlement with the firm. In connection with that agreement, Putnam is required to undertake significant and far-reaching reforms relating to excessive short-term and market timing trading by its employees. Putnam also agreed to a process for calculating and paying restitution to investors. The partial settlement in no way prejudices or sacrifices the claim for a penalty or other monetary relief. Indeed, because

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Putnam has admitted liability for the purposes of the penalty phase of the proceeding, our efforts to obtain those sanctions have been advanced. Putnam fund shareholders are unquestionably better off now than they were before the Commission's November 13 order. The amount of civil penalty and other monetary relief to be paid by Putnam remains open and the Division of Enforcement remains committed to seeking significant monetary sanctions.

In its Order against Putnam, the Commission found that Putnam committed securities fraud by failing to disclose potentially self-dealing securities trading by several of its employees. The Commission also found that Putnam failed to take adequate steps to detect and deter such trading activity through its own internal controls and its supervision of investment management professionals. As noted, Putnam has agreed to admit these findings for purposes of the penalty phase of the administrative proceeding, which has not yet taken place.

The reforms that Putnam agreed to implement, pursuant to the Commission's Order, are all designed to prevent the sort of violations found by the Commission. Among the specific reforms Putnam will implement is a requirement that Putnam employees who invest in Putnam funds hold those investments for at least 90 days, and in some cases for as long as one year, putting an end to the type of short-term trading we found at Putnam. On the corporate governance front, Putnam fund boards of trustees will have independent chairmen, at least 75% of the board members will be independent, and all board actions will be approved by a majority of the independent directors. In addition, the fund boards of trustees will have their own independent staff member who will report to and assist the fund boards in monitoring Putnam's compliance with the federal securities laws, its fiduciary duties to shareholders, and its Code of Ethics. Putnam is also required to submit to an independent review of its policies and procedures designed to prevent and detect problems in these critical areas -- now, and every other year.

With that information as a backdrop, I now turn to the specific issues you raise in your letter. Your primary concern about the *substance* of the settlement appears to be that it "should have exacted a stiffer price for the wrongdoing." You also characterize the agreement as letting Putnam "off the hook without just punishment or even significant concessions." These concerns misunderstand the procedural significance of the Putnam agreement, which, quite simply, did not end our action against Putnam. The enforcement proceeding against Putnam is still open, and the Division of Enforcement fully intends to seek substantial penalties and/or other monetary payments from Putnam, over and above the restitution Putnam already is bound by the Commission's order to make. By acting quickly, the SEC required Putnam to agree to terms that will produce immediate and lasting benefits for investors currently holding Putnam funds, all without giving up the right to obtain a penalty and/or other monetary relief from Putnam. Finally, the Commission's investigation of Putnam and its employees is active and ongoing. If additional misconduct comes to light, the Commission will bring additional enforcement actions.

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Your letter also poses several questions concerning the *process* by which the Commission reached its partial settlement agreement with Putnam. I respond to each of those questions below.

Question 1. What exactly are the SEC's enforcement policies? More specifically, what criteria does the SEC use to determine when to refer cases to the Justice Department or when to settle? Are there certain criteria that the Putnam case failed to meet that caused your agency to jump to such a quick and easy settlement?

Answer. Your question assumes, mistakenly, that the Commission may *either* refer a matter to the Department of Justice *or* enter a settlement. These two actions are neither related nor mutually exclusive. The SEC staff refers a matter to the criminal authorities for investigation and possible prosecution based on a number of factors, including (but not limited to) the egregiousness of the conduct, the extent of investor harm or market impact, and the level of scienter. That decision is made independent of whether or not to settle a matter. The Commission enters settlement agreements, or in the case of Putnam, *partial* settlement agreements, when doing so will resolve a matter fairly and for the benefit of investors. The Putnam agreement obtained substantial and immediate benefits for investors, and did so without sacrificing the ability to seek a civil penalty. Indeed, as part of the agreement, Putnam consented to admit liability for the purposes of a penalty proceeding, enhancing our ability to obtain such relief against Putnam in the future.

Question 2. How many top Putnam employees are former SEC employees? Did any former SEC employees at Putnam contact the SEC asking the agency to go easy on the firm? If so, what rules are in place at the SEC to make sure that such influence-peddling is not allowed to corrupt the mission of the agency? Are there any efforts being made to strengthen ex parte rules to prevent former SEC employees now working for firms from being able to plead their firms' case before the SEC for a set period of time?

Answer. I am not aware of any former SEC employees holding top positions at Putnam, although I have not attempted to check the backgrounds of Putnam's employees. You may be interested to know that the federal post-employment statute, 18 USC 207, is applicable to the conduct of former SEC employees. That statute bars all former government employees from knowingly making, with the intent to influence, any communication to or appearance before their former agency on behalf of anyone other than the U.S. on a particular matter involving specific parties in which they participated personally and substantially while in the government. The statute also bars senior employees from attempting the same type of activity in connection with any matter (regardless of their previous involvement) for one year after leaving the government. Additionally, the SEC has a two-year Notice of Appearance requirement designed to screen former employees from appearing in violation of the post-employment statute. Finally, former SEC attorneys are bound by their applicable state bar rules, which may include other relevant restrictions.

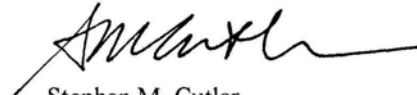
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Question 3. Now that the Putnam case is closed, how much of the Putnam file will you open to the public? Will you reveal, for example, the decision-making process within the SEC that led to such a quick settlement? Will you reveal the content of any communications between the SEC and Putnam, or between the SEC and anybody operating on Putnam's behalf?

Answer. This question, too, mistakenly assumes that the Putnam case is closed. This is absolutely incorrect. The agreement reached with Putnam was a partial resolution of the SEC's proceeding, which is still ongoing. In addition, as noted above, the Commission's investigation of Putnam and its employees is active and ongoing. If additional misconduct comes to light, the Commission will bring additional enforcement actions. As for disclosure of the Putnam files, they are subject to the same Commission policies and procedures, pursuant to the Freedom of Information Act, as other enforcement files. Under these policies and procedures, in general, files relating to ongoing Commission investigations are considered non-public.

I hope that this information will help you to gain a fuller understanding of the Commission's agreement with Putnam and the benefits it will provide to investors. If you have additional questions, please feel free to contact me at (202) 942-4500.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Cutler", with a long horizontal flourish extending to the right.

Stephen M. Cutler
Director