Description of document:	National Credit Union Administration (NCUA) Inspector General (OIG) Office of Investigations Report of Investigation Case Number: 17-CO-07, conflict of interest investigation regarding NCUA Chairman J. Mark Mc Watters, 2018
Requested date:	03-June-2018
Released date:	08-June-2018
Posted date:	11-June-2018
Source of document:	FOIA Request National Credit Union Administration Office of the Inspector General 1775 Duke St. Alexandria, VA, 22314 Fax: 703-518-6349 Email: FOIA@ncua.gov

June 8, 2018

SENT BY EMAIL

SUBJECT: FOIA Request 2018-IGF-00008

This responds to your June 3, 2018, request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, which we received June 4, 2018, for a copy of the final investigation report associated with footnote 3 of page 31 of the most recent OIG semiannual report.

I am providing you the requested report, in which I redacted the identifying information of a criminal investigator, whose identity is protected under FOIA exemptions (b)(6) and (b)(7)(C), which protect personal privacy interests.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you are not satisfied with my action on this request, you may file an administrative appeal in writing within 90 days of the date of this letter. If you file an appeal, please note "FOIA APPEAL" in the letter and on the envelope (or in the subject line of email to foia@ncua.gov) and address it to: National Credit Union Administration, Office of General Counsel-FOIA APPEAL, 1775 Duke Street, Alexandria, VA 22314-3428. A copy of your initial request and a copy of this letter should accompany your appeal letter.

For further assistance, you may contact me, the OIG FOIA Public Liaison Sharon Regelman, or the Office of Government Information Services (OGIS). The OIG FOIA Liaison is responsible for assisting in the resolution of FOIA disputes. OGIS, which is part of the National Archives and Records Administration (NARA), offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to appeals or litigation. You may contact the FOIA Public Liaison at oigmail@ncua.gov or 703-518-6350. You may contact OGIS at 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; OGIS@nara.gov; 202-741-5770; 877-684-6448 (toll free); or 202-741-5769 (fax). Seeking assistance from the OIG Public Liaison or OGIS does not affect your right, or extend the deadline, to pursue an appeal.

Sincerely,

MARTA ERCEG

Digitally signed by MARTA ERCEG
DN: c=US, o=U.S. Government, ou=National Credit Union Administration, cn=MARTA ERCEG, 0.9.2342.19200300.100.1.1=25001003545421
Date: 2018.06.08 11:14:48 -04'00'

Marta Erceg
Counsel to the Inspector General/
Assistant IG for Investigations

cc: FOIA Officer

NATIONAL CREDIT UNION ADMINISTRATION
Office of Inspector General
Office of Investigations

REPORT OF INVESTIGATION

CASE NUMBER: 17-CO-07

DATE: February 8, 2018

CASE TITLE: J. Mark McWatters

CASE STATUS: Closed – pending

VIOLATIONS: Conflict of Interest

PREDICATION

On Friday, December 8, 2017, the National Credit Union Administration (NCUA) Office of Inspector General (OIG), Alexandria, VA received information from Michael McKenna, General Counsel, National Credit Union Administration (NCUA), regarding NCUA Chairman J. Mark McWatters.

McKenna received information from Eric Froman, Financial Stability Oversight Council (FSOC), that McWatters had participated in a vote, as a member of FSOC, to rescind FSOC's determination that material financial distress at American International Group (AIG) could pose a threat to U.S. financial stability, which removed AIG from the requirement of enhanced supervision by the Board of Governors of the Federal Reserve (known as "decertification"). At the time of the vote, McWatters owned AIG stock worth approximately $7,500 and AIG warrants worth approximately $1,200. According to McKenna, the Office of Government Ethics (OGE) believed that because McWatters owned warrants, under 18 U.S.C. § 208, Acts affecting a personal financial interest, he could have a nonexempt financial interest that could have been affected by his participation in the vote regarding AIG.

DISTRIBUTION:	CASE AGENT:	APPROVED:
Stefan C. Passantino Deputy Counsel to the President, Compliance and Ethics	(b) (6), (b) (7)(C) Director of Investigations	Marta Erceg Counsel/Asst. Inspector General for Investigations
	(b) (6), (b) (7)(C) (Signature)	Marta Erceg (Signature)

SUBJECT INFORMATION

J. Mark McWatters, NCUA Chairman

RELEVANT STATUTES, REGULATIONS, AND RULES

18 U.S.C. § 208, Acts affecting a personal financial interest

18 U.S.C. § 208(a) provides in relevant part:

> [W]hoever, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States…participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—Shall be subject to the penalties set forth in section 216 of this title.

18 U.S.C. § 208(b)(2) provides: "Subsection (a) shall not apply if, by regulation issued by the Director of the Office of Government Ethics…the financial interest has been exempted from the requirements of subsection (a) as being too remote or too inconsequential to affect the integrity of the services of the Government officers or employees to which such regulation applies[.]"

5 C.F.R § 2640, Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. § 208

OGE's regulations for § 208 include **5 C.F.R. § 2640.202, Exemptions for interests in securities**:

(a) *De minimis exemption for matters involving parties.* An employee may participate in any particular matter involving specific parties in which the disqualifying financial interest arises from the ownership by the employee, his spouse or minor children of securities issued by one or more entities affected by the matter, if:

(1) The securities are publicly traded, or are long-term Federal Government, or are municipal securities; and

(2) The aggregate market value of the holdings of the employee, his spouse, and his minor children in the securities of all entities does not exceed $15,000.

5 C.F.R. § 2640.102(r) provides: "*Security* means common stock, preferred stock, corporate bond, municipal security, long-term Federal Government security, and limited partnership interest. The term also includes "mutual fund" for purposes of § 2640.202(e) and (f) and 2640.203(a)."

5 C.F.R. § 2638.102, Government ethics responsibilities of employees, provides in relevant part: "Employees must refrain from participating in particular matters in which they have financial interests and, pursuant to § 2635.402(f) of this chapter, should notify their supervisors or ethics officials when their official duties create the substantial likelihood of such conflicts of interest."

5 C.F.R. § 2638.104, Government ethics responsibilities of agency ethics officials, provides that the Designated Agency Ethics Official's (DAEO) responsibilities include providing advice and counseling to prospective and current employees regarding government ethics laws and regulations; taking appropriate action to resolve conflicts of interest and the appearance of conflicts of interest; reviewing financial disclosure reports, with an emphasis on preventing conflicts of interest; consulting, when necessary, with financial disclosure filers and their supervisors to evaluate potential conflicts of interest; and using the information disclosed in financial reports to prevent and resolve conflicts of interest.

5 C.F.R. § 2638.106, Government ethics responsibilities of Inspectors General, provides in relevant part:

> An agency's Inspector General has authority to conduct investigations of suspected violations of conflict of interest laws and other government ethics laws and regulations....Inspectors General may consult with the Director [of OGE] for legal guidance on the application of government ethics laws and regulations, except that the Director may not make any finding as to whether a provision of title 18, United States Code, or any criminal law of the United States outside of such title, has been or is being violated.

Rules of Organization of the Financial Stability Oversight Council, § XXX.9 provide: "Council members...shall consult with their own agency ethics officials concerning potential disqualifications (and appropriate remedies) or other ethics issues."

SYNOPSIS

The investigation revealed that McWatters owned AIG stock worth approximately $7,500 and AIG warrants worth approximately $1,200 at the time of the FSOC vote on AIG. McWatters believed at the time of the vote that his AIG holdings fell under the OGE's *de minimis* exemption for publicly traded securities whose aggregate market value does not exceed $15,000, and therefore, as a result, he did not need to recuse himself from the FSOC vote. OGE verbally advised OIG and McWatters' attorney in December 2017 that the exemption applied to McWatters' stock holdings, but not the warrants. McWatters' attorney provided two submissions to the OIG in January 2018 stating that warrants are treated the same as stock by securities lawyers and accountants and warrants are publicly traded instruments. In addition, according to McWatters and his attorney, the AIG securities held by McWatters fell under the OGE's *de minimis* exemption amount. Further, the OGE has not provided any written guidance regarding the treatment of warrants. The Department of Justice declined prosecution of this case in January 2018.

DETAILS

A. Interviews of McKenna, Ulan, and Kendall

On December 13, 2017, the Reporting Agent (RA) and Sharon Separ, then Counsel to the Inspector General/Assistant Inspector General for Investigations, NCUA OIG, interviewed Michael McKenna, General Counsel (and Designated Agency Ethics Official (DAEO)), NCUA, in connection with this investigation. (Exhibit 1)

McKenna stated that on Tuesday, December 5, 2017, he spoke to Ross Kendall, NCUA attorney, who told him that he had received a telephone call from Eric Froman, Deputy Assistant General Counsel, FSOC. Froman said that the FSOC had received a call from OGE regarding an 18 U.S.C. § 208 violation on McWatters' part in connection with his vote to decertify AIG in September 2017. McKenna added that OGE contacted Hattie Ulan (Alternate DAEO, NCUA), around the same time and OGE told her that because McWatters owned AIG warrants, he violated section 208 in voting to decertify AIG.

McKenna stated that McWatters owned AIG stocks and AIG warrants and that he received the warrants because of a reorganization at AIG. McKenna added that McWatters did not believe that owning the warrants was an issue and that he had a minimal amount of stock and warrant holdings.

McKenna stated that on Wednesday, December 6, 2017, he, Kendall, and Ulan spoke over the phone to David Apol, OGE Acting Director, Seth Jaffe, Chief, OGE Ethics Law and Policy Branch, and Chris Swartz, OGE Associate Counsel. According to McKenna, Apol stated that

McWatters was the deciding vote on decertification of AIG and that he violated section 208 and the regulation (2640) because he held AIG warrants. McKenna told Apol that McWatters was not the deciding vote because the vote was 6-3 in favor of decertifying AIG. After discussing this with Apol, McKenna stated that Apol agreed that McWatters was not the deciding vote. OGE explained to McKenna, Ulan, and Kendall why warrants are treated differently under the OGE definitions and exemptions.

McKenna said that Apol suggested that he contact the Public Integrity Section at the Department of Justice (DOJ). McKenna contacted Michelle Zamarin, Deputy Chief, Fraud and Public Corruption Section at DOJ, who told him to refer this issue to the OIG for investigation.

McKenna related that McWatters told him that he owned the AIG warrants when he served on the Troubled Asset Relief Program (TARP) Congressional Oversight Panel and the Senate Ethics Committee had advised him that his ownership of the AIG stock and warrants was not a problem. McWatters left the TARP in April 2011. [Investigator's note: McWatters' attorney's January 12, 2018, submission, described in greater detail below, which included a declaration by McWatters, stated that McWatters was a member of the TARP panel from 2009 to 2011, that he received advice from the Senate Ethics Committee regarding AIG common stock when he commenced employment with the TARP panel (in 2009), and that AIG did not issue warrants to him until 2011. Thus, when McWatters received advice from the Senate Ethics Committee, he did not yet own the warrants].

McKenna said that according to McWatters, the FSOC attorneys did not tell McWatters that there was a conflict owning AIG stocks or warrants. However, McKenna also said that according to FSOC bylaws, there was no duty for FSOC attorneys to advise McWatters or do a conflict of interest analysis. According to McKenna, the NCUA General Counsel (McKenna) does not have an obligation to reach out to McWatters and provide him with conflict of interest analysis and advice.

McKenna stated he became aware of the September AIG vote before it occurred because there was a controversy within the FSOC about what constitutes a two-thirds majority. According to McKenna, although there was a lot of contemporaneous discussions about the vote, the issue of AIG warrants never came up. Neither McKenna nor anyone else from OGC ever raised it and McWatters never asked about it. McKenna also said that he did not review McWatters' SF 278 before the AIG vote.

Until December 5, McKenna said that he was not aware of the distinction between the AIG stocks and warrants and was not aware that Ulan had instructed McWatters to report the stocks and warrants separately on his SF 278s. Regarding the approval of the SF 278s, McKenna said that he signs the forms but only speaks to Ulan if there is a problem with the form and that he was unaware of the AIG issue until December 5.

McKenna stated that he disagrees with OGE's position on warrants. McKenna believes that one is to assume that options and warrants are the same as stocks as there is no distinction between options, warrants, and stocks. McKenna added that a reasonable person would not know that owning warrants was impermissible when it came to voting. McKenna said that the OGE wrote the regulation so deference is given to OGE, but he disagrees with its interpretation.

On December 13, 2017, the RA and Separ interviewed Hatti Ulan, Alternate DAEO,[1] in connection with this investigation. (Exhibit 2)

Ulan related that on Tuesday, December 5, 2017, she received a telephone call from Apol, Jaffe, and Swartz from OGE. Ulan stated that they told her that McWatters was being considered for another position in the Administration and they were reviewing his SF 278 as part of that. OGE told Ulan that McWatters had AIG stock and warrants worth less than $15,000, McWatters voted to decertify AIG, and OGE assumed he still owned the securities at the time of the vote. Ulan further related that the OGE said that McWatters had a small investment but that the OGE *de minimis* exemption (less than $15,000) did not apply to warrants. As a result, McWatters had a financial conflict of interest under 18 U.S.C. § 208 at the time of his vote. According to Ulan, OGE presented this matter to her as if it were her fault for not reviewing McWatters' SF 278 before the vote and advising him of the conflict.

In her interview, Ulan said that she felt like she should have reviewed McWatters' SF 278s and that she was aware of a vote but did not realize it was about AIG. She explained that had she known it was about AIG, she hoped that she would have contacted OGE.

Ulan also stated that she knew about the $15,000 stock exemption, but was unaware that warrants did not also fall within the exemption. Ulan added that, had she known, she would have advised McWatters prior to the vote that there was a conflict.

Separ asked Ulan if she had any communication with anyone during the AIG vote. Ulan stated that she did not. Separ asked Ulan when she learned of the AIG warrants being an issue. Ulan responded that she became aware of the issue on Tuesday, December 5 during the phone call with OGE and that she never previously thought about the warrants. However, Ulan added that when McWatters joined the NCUA and filed the SF 278s, there was some confusion about the

[1] 5 C.F.R. § 2638.104(d) provides: Each agency head must appoint an Alternate Designated Agency Ethics Official (ADAEO). The ADAEO serves as the primary deputy to the DAEO in the administration of the agency's ethics program. Together, the DAEO and the ADAEO direct the daily activities of an agency's ethics program and coordinate with the Office of Government Ethics. The ADAEO must be an employee who has demonstrated the skills necessary to assist the DAEO in the administration of the agency's ethics program.

warrants. Ulan said that she researched them online and spoke to OGE. Ulan added that the stocks and warrant were separately reported on McWatters' SF 278s. Ulan provided the RA a November 18, 2013, letter from McWatters to McKenna (ethics agreement) describing the steps he would take to avoid any actual or apparent conflict of interest in the event he was confirmed for the position of NCUA board member; the letter attached McWatters' new entrant SF-278, which listed his AIG warrants. McWatters' ethics agreement did not refer to the AIG warrants, or to AIG at all. The OIG also obtained from Ulan a January 9, 2017, letter from McKenna to the OGE director informing him that he had reviewed McWatters' SF 278 and ethics agreement and stating: "I hereby certify there are no conflicts of interest under applicable laws and regulations." (Exhibit 3)

On December 13, 2017, the RA and Separ interviewed Ross Kendall, NCUA Special Counsel, Office of the General Counsel, NCUA Central Office, in connection with this investigation. (Exhibit 4)

Kendall stated that Froman from the FSOC contacted him on Tuesday, December 5, 2017, stating that he had spoken to Department of Treasury ethics staff who had been contacted by the OGE, who said that McWatters had a financial interest in AIG and should have recused himself from the vote to decertify AIG.

Separ asked Kendall what McWatters' ethical obligation was regarding the AIG vote. Kendall said his general understanding was that any FSOC member should consider whether he/she has any disqualifying financial interests in any company being voted on, and if so, he/she should recuse him/herself. Kendall said he had no personal knowledge of McWatters' financial holdings, including AIG holdings, until December 5.

Kendall said that since late 2010, his role with the FSOC has been as the NCUA's lawyer's committee representative. Kendall related that he is familiar with FSOC's by-laws, which were drafted by the lawyer's committee and he participated in a general way in this drafting effort. Separ asked Kendall, who under the FSOC by-laws, has the obligation to report potential financial conflicts. Kendall stated he did not know positively the answer but his straight forward reading of the by-laws indicated that it is the FSOC member's primary responsibility. Kendall added that if one has a financial interest in a company being voted upon, they should withdraw from consideration.

Kendall stated that the next day, Wednesday, December 6, he spoke to McKenna and Ulan and they all called OGE. Kendall related that he did not have knowledge of McWatters' financial interests until December 5. Kendall added that he, McKenna, and Ulan were not 100% sure of the distinction between stocks and warrants.

Kendall stated that during his conversation with OGE, OGE stated that warrants are not covered

by the *de minimis* exemption. Kendall said that the OGE stated that this rule was consciously designed because securities are marketable and tradeable and that warrants are a more exotic instrument. In addition, Kendall related that the OGE believes warrants fluctuate widely and can result in a dramatic windfall to the owner. Kendall stated that OGE's interpretation was unreasonable but acknowledged that this was OGE's rule.

B. Review of McWatters' SF 278s

On November 13, 2013, McWatters signed the new entrant SF 278, Public Financial Disclosure Report, and Michael McKenna, NCUA General Counsel, signed it on January 9, 2014. (Exhibit 3) In his initial SF 278 and in subsequent years, 2014 – 2017, McWatters identified the AIG stock and AIG warrants he owned and listed them as separate entries on the SF 278s. (Exhibit 5-7). The AIG stock and AIG warrants are each listed on the SF 278s as having a valuation of between $1,001 - $15,000.

C. OIG Discussions with OGE

During this investigation, the OIG spoke with the OGE. In December 2017, the OGE was reviewing McWatters' SF 278 in the context of his being considered for another position within the Administration. OGE's review included identifying any conflicts of interest. In reviewing McWatters' file, the OGE noticed that McWatters sits on the FSOC and noted that the file contained a transcript of an FSOC meeting where McWatters voted on a matter involving AIG. McWatters' SF 278 also documented that he held AIG warrants, which the OGE flagged as a potential conflict of interest.

OGE explained that its position is that warrants are not included in the definition of a security for purposes of applying the *de minimis* exemption for publicly traded securities whose aggregate market value does not exceed $15,000. OGE's definition of security is as follows: "*Security* means common stock, preferred stock, corporate bond, municipal security, long-term Federal Government security, and limited partnership interest. The term also includes 'mutual fund' for purposes of § 2640.202(e) and (f) and 2640.203(a)." 5 C.F.R. § 2640.102(r).

OGE has provided verbal advice to individuals and as part of training that warrants are not part of the *de minimis* exemption but it has not put that advice in writing. OGE also stated that it has a memorandum of understanding with DOJ to give prospective advice to agencies regarding potential statutory violations. It does not, however, provide written opinions after the fact and does not advise regarding 18 U.S.C. violations, which are the purview of DOJ. [Investigator's note: OGE regulations at 5 C.F.R § 2638.106 provide that the OGE "Director may not make any finding as to whether a provision of title 18, United States Code, or any criminal law of the

United States outside of such title, has been or is being violated."]. OGE also said that reasonable minds could disagree on whether warrants should be included in the definition of a security.

D. McWatters' attorney submissions

On January 12, 2018, Harvey Pitt, attorney for McWatters, emailed the RA a "Submission re J. Mark McWatters." (Exhibit 8) The submission asserted the following:

McWatters owned a *de minimis* amount of AIG common stock and AIG publicly-traded warrants that were convertible, on a one-to-one basis, into AIG common stock. Both types of AIG securities were well within the *de minimis* exception adopted by the OGE to federal conflict of interest proscriptions.

McWatters did not breach any conflict of interest provision applicable to his role at the FSOC or the NCUA based on:

The wording of OGE's *de minimis* exception to criminal conflict of interest prohibitions;

Universally-recognized view that AIG warrants are the effective equivalent of AIG common stock;

The illogical and unsound result that would prevail if McWatters' possession of the AIG warrants—the equivalent of AIG common stock—but not his possession of AIG common stock could be deemed to have created a conflict; and

Absence of any prior OGE interpretation suggesting that the equivalent of common stock, in the form of these AIG warrants, could somehow create a conflict.

The submission also stated that in March 2009, while employed in the private sector, McWatters purchased 125 shares of AIG common stock. In 2011, AIG restructured and issued warrants to the then-existing common stock owners, including McWatters. McWatters' warrants entitled him to purchase 66 shares of AIG common stock. McWatters never converted his warrants into additional shares of AIG common stock. If he had converted those warrants into common stock prior to the FSOC vote on AIG in September 2017, OGE's concerns would not have arisen. When the FSOC vote took place, McWatters owned approximately $7,500 worth of AIG common stock and approximately $1,200 worth of AIG warrants, for a total value of $8,700, well under OGE's $15,000 *de minimis* exception.

According to the submission, both AIG common stock and AIG warrants are separately listed and publicly traded on the New York Stock Exchange. They are both understood to constitute common AIG stock and common stock equivalents, an understanding reflected, among other

places, in the federal securities laws, generally accepted accounting principles, and the Internal Revenue Code. Aside from his initial purchase of AIG securities eight years prior to the FSOC vote on AIG, McWatters has not added to or subtracted from his holdings of AIG securities, until he donated them to the Leukemia & Lymphoma Society on December 20, 2017. In addition, McWatters is not claiming any tax deduction for this donation on his tax returns.

Pitt stated that he respects the OGE's right to limit its *de minimis* exception in any matter it believes appropriate, and it is McWatters' obligation to abide by the OGE pronouncements. However, Pitt was unable to find any OGE pronouncements suggesting that a government employee's receipt of a *de minimis* amount of a company's securities, in the form of common stock and publicly traded warrants, has ever been deemed to pose a possible problem under the criminal conflict of interest statutory prohibitions.

On January 16, 2018, Pitt emailed the RA a "Supplemental Submission regarding McWatters." (Exhibit 9) The submission was related to a January 12, 2018, Politico.com article about McWatters' participation in the FSOC vote. In his email, Pitt stated that the article was seriously deficient and inaccurate.

Pitt's supplemental submission noted that the Politico article suggested that McWatters' FSOC vote was an "oversight." Pitt's submission stated this was incorrect and that McWatters voted in appropriate reliance on the OGE *de minimis* rule. According to Pitt, McWatters' holdings of AIG common stock and AIG warrants, taken together, satisfied that criteria.

According to Pitt, the Politico article indicated that the AIG warrants owned by McWatters are not publicly traded as ethics rules require, "according to multiple ethics experts." Pitt stated that was incorrect as they are listed on the New York Stock Exchange trading under the symbol "AIG WS."

Lastly, Pitt indicated that McWatters met both requirements of the OGE *de minimis* rule – the aggregate amount of his AIG securities was below $15,000 and both AIG securities were publicly traded. Pitt indicated that the article failed to note that the OGE has never publicly said its *de minimis* exception does not apply to publicly-traded, stock exchange-listed warrants, like those involved here, which was confirmed by OGE's Acting Head (and General Counsel).

E. McWatters' interview

On January 24, 2018, the RA and Marta Erceg, Counsel to the Inspector General/Assistant Inspector General for Investigations, NCUA OIG, interviewed McWatters. (Exhibit 10) Also present were McWatters' attorney, Harvey Pitt, and Nina Rodriguez, both of Kalorama Partners.

Prior to beginning the interview, the RA gave McWatters a Kalkines Warning. At that time, Pitt

asked the RA and Erceg if it was permissible to record the interview on Rodriguez's phone. Pitt stated that he would provide the OIG with both a copy of the recording and a transcript. Erceg permitted the recording of the interview.

McWatters stated that he became aware of the OGE *de minimis* exception for interests of $15,000 or less when he became a member of the TARP Congressional Oversight Panel in December 2009 because the Senate ethics officer advised him that his AIG stock was *de minimis* and he was therefore not required to sell the stock. McWatters said that as a lawyer and certified public accountant, he knows that publicly traded common stock warrants are the equivalent to common stock. He also stated that his warrants were distinct from stock option contracts, with Pitt noting that warrants are not volatile but stock options can be. Pitt added that within the *de minimis* rule there are two criteria. The first is that the financial interest, in the aggregate, has to be less than $15,000, which is the case here. The second is that securities have to be publicly traded. As a result, McWatters met both conditions with the AIG warrants.

McWatters stated that he was not aware that OGE regulations do not include warrants in the definition of security until December 2017, when OGE contacted NCUA's Office of General Counsel and stated its position regarding warrants. McWatters added that OGE has never put its position on warrants in writing, so even if he had wanted to research this, he would not have found anything. McWatters also stated that when he joined NCUA in 2014, he reported his AIG stock or warrants on his SF 278 but he was not required to divest those holdings.

On January 27, 2018, Pitt emailed the RA a transcript of McWatters' interview. (Exhibit 11) According to Pitt, this was not a verbatim transcript but an accurate reflection of the substance of the questions and answers given. The OIG reviewed its notes from the interview and determined that Pitt's transcription accurately reflects the substance of what was discussed during the interview.

On January 31, 2018, Pitt provided the OIG with the audio recording of the interview. The audio recording is available upon request.

Exhibits

Exhibit 1 – MOI McKenna

MOI Mike McKenna
12.22.17 FINAL.pdf

Exhibit 2 – MOI Ulan

MOI Hattie Ulan
12.22.17 FINAL.pdf

Exhibit 3 – Ethics Agreement and New Entrant SF 278

New entrant 278 and
ethics agreement.pdf

Exhibit 4 – MOI Kendall

MOI Ross Kendall
12.22.17 FINAL.pdf

Exhibit 5 – SF 278 (2015 Annual Report)

SF 278, 2015 annual
report.pdf

Exhibit 6 – SF 278 (2016 Annual Report)

SF 278, 2016 annual
report.pdf

Exhibits

Exhibit 7 – SF 278 (2017 Annual Report)

SF 278, 2017 annual report.pdf

Exhibit 8 – Attorney Submission (with exhibits)

J. Mark McWatters NCUA OIG Submissio

Exhibits to M. McWatters Submissio

Exhibit 9 – Attorney Supplemental Submission and Politico article

J. Mark McWatters Supplemental NCUA (

Politco.com article 1.12.18.pdf

Exhibit 10 – MOI McWatters including Kalkines Warning

MOI Mark McWatters 1.24.18.pdf

Kalkines Warning - McWatters 1.24.18.pd

Exhibit 11 – Transcription of McWatters' interview

McWatters' interview transcription.pdf