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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

March 13, 2025

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **25-00012-OIG**

This is a partial response to your request, dated March 10, 2025 and received in this office on March 11, 2025, for the following records:

A copy of the final report, report of investigation, closing memo, referral letter, or other conclusory report document for each of the following SEC OIG closed investigations. 19-ENF-0016-I, 19-ENF-0039-I, 20-OIT-0035-I, 21-OAQ-0006-I, 21-IAD-0027-I, 21-OSO-0030-I, 22-SEC-0005-I, 22-EXA-0010-I, 22-ENF-0019-I, 22-DCF-0028-I, 22-ENF-0027-I, 22-OWB-0031-I, 22-SEC-0001-I, 22-SEC-0002-I, 23-SEC-0006-I, 23-OWB-0013-I, 24-OHR-0002-I, 24-ENF-0003-I, 24-DTM-0016-I, 24-EXA-0017-I, 24-EXA-0018-I.

Access is granted in part to the following eight (8) reports: 19-ENF-0039-I, 20-OIT-0035-I, 21-IAD-0027-I, 21-OSO-0030-I, 22-ENF-0019-I, 22-SEC-0005-I 23-SEC-0006-I and 24-ENF-0003-I. Certain information is being withheld under 5 U.S.C. § 552(b)(5), (b)(6), (7)(A), (7)(C) and (7)(E). Please be advised that I have considered the foreseeable harm standard in preparing this response.

Under Exemption 5, I have withheld information that is protected from disclosure by the attorney-client privilege, attorney work product, and/or forms an integral part of the pre-decisional process, which is protected from release by the deliberative process privilege embodied in Exemption 5.

March 13, 2025

Additionally, under FOIA Exemption 6, I am withholding certain information the release of which would constitute a clearly unwarranted invasion of personal privacy, including SEC staff and third-party personal information. Under FOIA Exemption 7(C) release of the information could reasonably be expected to constitute an unwarranted invasion of personal privacy. Further, public identification of SEC staff could conceivably subject them to harassment and annoyance in the conduct of their official duties and in their private lives.

Exemption 7A protects from disclosure records compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement activities. The assertion of this exemption should not be construed as an indication by the SEC or its staff that any violations of law have occurred with respect to any person, entity, or security. Further, Since Exemption 7(A) protects certain information from disclosure, other exemptions could apply, and we reserve the right to assert them should Exemption 7(A) be inapplicable.

Finally, certain information within these records is being withheld under FOIA Exemption 7(E), since release could reasonably be expected to reveal specific investigative techniques, guidelines, and criteria, used in connection with the staff's protection of the Commission's IT systems and thereby undermine the enforcement of the federal securities laws.

I am the deciding official with regard to this determination. You have the right to appeal my decision to the SEC's General Counsel under 5 U.S.C. § 552(a)(6), 17 CFR § 200.80(f)(1). The appeal must be received within ninety (90) calendar days of the date of this adverse decision. Your appeal must be in writing, clearly marked "Freedom of Information Act Appeal," and should identify the requested records. The appeal may include facts and authorities you consider appropriate.

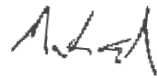
You may file your appeal by completing the online Appeal form located at https://www.sec.gov/forms/request_appeal, or mail your appeal to the Office of FOIA Services of the Securities and Exchange Commission located at Station Place, 100 F Street NE, Mail Stop 2465, Washington, D.C. 20549, or deliver it to Room 1120 at that address.

If you have any questions, you can contact me at sifordm@sec.gov or (202)551-7201. You may also contact the SEC's FOIA Public Service Center at foiapa@sec.gov or (202) 551-7900.

March 13, 2025

For more information about the FOIA Public Service Center and other options available to you, please see the attached addendum.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Siford', with a stylized flourish at the end.

Mark P. Siford
Attorney Adviser
Office of FOIA Services

Attachment



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

June 5, 2025

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **25-00012-OIG**

This is the final response to your March 11, 2025 request for the following records:

A copy of the final report, report of investigation, closing memo, referral letter, or other conclusory report document for each of the following SEC OIG closed investigations. 19-ENF-0016-I, 19-ENF-0039-I, 20-OIT-0035-I, 21-OAQ-0006-I, 21-IAD-0027-I, 21-OSO-0030-I, 22-SEC-0005-I, 22-EXA-0010-I, 22-ENF-0019-I, 22-DCF-0028-I, 22-ENF-0027-I, 22-OWB-0031-I, 23-SEC-0001-I, 23-SEC-0002-I, 23-SEC-0006-I, 23-OWB-0013-I, 24-OHR-0002-I, 24-ENF-0003-I, 24-DTM-0016-I, 24-EXA-0017-I, 24-EXA-0018-I.¹

On March 13, 2025, access was granted in part to the following eight (8) reports: 19-ENF-0039-I, 20-OIT-0035-I, 21-IAD-0027-I, 21-OSO-0030-I, 22-ENF-0019-I, 22-SEC-0005-I 23-SEC-0006-I and 24-ENF-0003-I.

At this time, access is granted in part to the remaining 13 OIG reports: 21-OAQ-0006-I, 24-DTM-0016-I, 24-EXA-0018-I, 24-EXA-0017-I, 22-ENF-0027-I (MIR 24-002), 23-SEC-0001-I, 23-SEC-0002-I, 22-OWB-0031-I, 19-ENF-0016-I, 24-OHR-0002-I, 22-EXA-0010-I, 23-OWB-0013-I and 22-DCF-0028-I.

Certain information is being withheld under 5 U.S.C. § 552(b)(5), (6), (7)(C) and (7)(E) for the following reasons:

¹ Per your email of March 13, 2025, you confirmed that you seek 23-SEC-0001 and 23-SEC-0002 and not 22-SEC-0001 and 22-SEC-0002.

June 5, 2025

- FOIA Exemption 5 protects information that forms an integral part of the pre-decisional process and is protected from release by the deliberative process privilege,
- FOIA Exemption 6 protects information the release of which would constitute a clearly unwarranted invasion of personal privacy, and
- FOIA Exemption 7(C) protects information the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Further, public identification of Commission staff could conceivably subject them to harassment in the conduct of their official duties and in their private lives.
- Information within these records is being withheld under FOIA Exemption 7(E), since release could reasonably be expected to reveal specific investigative techniques, guidelines, and criteria, used in connection with the staff's protection of the Commission's IT systems and thereby undermine the enforcement of the federal securities laws.

Please be advised that I have considered the foreseeable harm standard in preparing this response.

I am the deciding official with regard to this determination. You have the right to appeal my decision to the SEC's General Counsel under 5 U.S.C. § 552(a)(6), 17 CFR § 200.80(f)(1). The appeal must be received within ninety (90) calendar days of the date of this adverse decision. Your appeal must be in writing, clearly marked "Freedom of Information Act Appeal," and should identify the requested records. The appeal may include facts and authorities you consider appropriate.


You may file your appeal by completing the online Appeal form located at https://www.sec.gov/forms/request_appeal, or mail your appeal to the Office of FOIA Services of the Securities and Exchange Commission located at Station Place, 100 F Street NE, Mail Stop 2465, Washington, D.C. 20549, or deliver it to Room 1120 at that address.

If you have any questions, you can contact me at sifordm@sec.gov or (202)551-7201. You may also contact the SEC's FOIA Public Service Center at foiapa@sec.gov or (202) 551-7900. For more information about the FOIA Public Service Center and

June 5, 2025

other options available to you, please see the attached addendum.

Sincerely,

A handwritten signature in dark ink, appearing to read 'M. Siford', is positioned above the typed name.

Mark P. Siford
Attorney Adviser
Office of FOIA Services

Attachment



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION



MEMORANDUM

May 14, 2024

TO: FILE

FROM: (b)(6); (b)(7)(C)
Senior Special Investigator
Office of Investigations

THROUGH: (b)(6); (b)(7)(C)
Special Agent in Charge
Office of Investigations

SUBJECTS: Case No. 19-ENF-0016-I
Neil Cole, (now) former Chief Executive Officer
Seth Horowitz, (now) former Chief Operating Officer
Iconix Brand Group, Inc.

The purpose of this memorandum is to document our investigative activities and to recommend case closure.

We initiated this investigation when the Division of Enforcement (ENF) referred allegations that Neil Cole, (now) former Chief Executive Officer for Iconix Brand Group, Inc. (Iconix), and Seth Horowitz, (now) former Iconix Chief Operating Officer, engaged in securities fraud, including false statements and filings to the SEC, and fraudulent accounting practices. ENF also alleged that (b)(6); (b)(7)(C) obstructed the ENF investigation by shredding documents and deleting information from her work phone and computer.

We investigated the matter jointly with the Federal Bureau of Investigation while ENF conducted a parallel civil investigation. We interviewed several portfolio managers of investment funds and investors that held investment positions in Iconix stock. The portfolio managers and investors collectively stated that they relied on Iconix's reported revenue and earnings per share (EPS) to make decisions about investing in Iconix.

We determined that beginning in or about 2013, Cole and Horowitz engaged in a scheme that falsely inflated Iconix's reported revenue and EPS by orchestrating a series of accounting "round-trip"

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Office of Inspector General – Investigations
U.S. Securities and Exchange Commission

transactions in which Cole and Horowitz persuaded a joint venture (JV) partner, L&F, to pay inflated buy-in purchase prices for JV interests, with the understanding that Iconix would reimburse L&F for the overpayments it made to Iconix.

In December 2019, Cole and Horowitz were indicted for securities fraud, conspiracy, accounting fraud, and destruction of records in U.S. District Court (USDC) for the Southern District of New York (SDNY). In December 2019, Horowitz self-surrendered pursuant to a criminal information and pleaded guilty in USDC for SDNY. Under the plea agreement, Horowitz admitted to five counts related to securities fraud, conspiracy, destruction of records, and improperly influencing the conduct of audits.

Cole was arrested in December 2019. After a criminal trial in USDC for SDNY, Cole was acquitted of conspiracy charges on November 1, 2021, and the jury failed to reach a verdict on the remaining counts. There was not sufficient evidence to charge (b)(6); (b)(7)(C)

Cole was retried in USDC for SDNY and on November 28, 2022, was convicted of one count of securities fraud, six counts of making false filings with the SEC, and one count of improperly influencing the conduct of audits. On October 10, 2023, Cole was sentenced to 18 months imprisonment for each convicted count, to run concurrently, followed by three years of supervised release. Cole was also ordered to pay a forfeiture of \$790,200 and an \$800 special assessment. Restitution was ordered, however the USDC for SDNY deferred the determination of restitution to Iconix and requested additional information.

On November 16, 2023, Horowitz was sentenced to time served and ordered to pay an assessment of \$800. No forfeiture or restitution was sought.

On April 26, 2024, Iconix's motion for restitution in the amount of \$7,177,009 was denied on the basis that Iconix was not a victim of Cole's criminal acts.

The case has been adjudicated; therefore, the issue does not merit further OIG investigation. Accordingly, a report to management is not warranted and administratively closing this case is recommended.

Concurrence:

(b)(6); (b)(7)(C)

Digitally signed by (b)(6); (b)(7)(C)

Date: 2024.05.15 09:18:45 -04'00'

(b)(6); (b)(7)(C)

Special Agent in Charge

Date

Approved:

KATHERINE REILLY

Digitally signed by KATHERINE REILLY

Date: 2024.05.14 16:33:08 -04'00'

Katherine H. Reilly, Acting Deputy Inspector General
for Investigations

Date

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Office of Inspector General – Investigations
U.S. Securities and Exchange Commission



U.S. Securities and Exchange Commission
Office of Inspector General



**Abbreviated
Report of Investigation**

Subject: Richard J. Rubin
Title: Non-government disbarred attorney
SK-Level/Grade: N/A
Office: N/A
Region: N/A

Case #: 19-ENF-0039-I

Origin: Division of Enforcement

Subject: Thomas J. Craft
Title: Non-government former attorney
SK-Level/Grade: N/A
Office: N/A
Region: N/A

Investigation Initiated: September 20, 2018

Investigation Completed: January 9, 2023

OVERVIEW

This report summarizes the results of an investigation conducted by the U.S. Securities and Exchange Commission's (SEC) Office of Inspector General (OIG) into information received from the Division of Enforcement (ENF) that Richard J. Rubin, despite being disbarred, had appeared and practiced before the SEC as an attorney representing several clients in an ENF matter and in reviews of certain periodic corporate filings submitted to the SEC's Division of Corporation Finance. Mr. Rubin had been admitted to the New York Bar in 1968 and subsequently was disbarred by the Appellate Division, First Judicial Department, on February 23, 1995. From approximately 2011 through 2018, Rubin communicated with ENF staff on behalf of his clients, representing himself as a practicing attorney. In addition, Rubin allegedly submitted numerous false documents to the SEC, including 8-K filings uploaded into EDGAR and Rule 144 letters claiming he was an attorney.

During the course of the investigation, we determined that Thomas J. Craft, an attorney located in Florida, worked with Rubin knowing that Rubin was a disbarred attorney. Further, we confirmed that Craft received payments from Rubin to sign Rule 144 letters for Over-the-Counter (OTC) companies in order to have their securities traded in the OTC market.

The investigation determined that Craft knowingly participated in the fraudulent scheme in which Craft allowed Rubin to falsely represent to the SEC that he had undertaken certain legal

work in connection with attorney opinion letters. Craft admitted that he merely “rubber-stamped” the opinion letters that had been prepared by Rubin in exchange for financial compensation.

Based on our investigative findings, Rubin and Craft were both arrested on December 2, 2020, and each pled guilty to one count of securities fraud. On November 2, 2021, Rubin was sentenced to pay restitution of \$117,068.15, sentenced to one year of probation, and ordered to perform 200 hours of community service. On October 26, 2022, Craft was ordered to forfeit of \$55,000, sentenced to one year of probation, four months home confinement, and ordered to perform 200 hours of community service. Further, Craft relinquished his law license as part of the plea agreement.

BACKGROUND

On September 20, 2018, the OIG opened an investigation based on allegations that disbarred attorney Rubin had appeared and practiced before the SEC as an attorney by representing several clients in an ENF matter and in reviews of certain periodic corporate filings submitted to the SEC’s Division of Corporation Finance. During this time, Rubin had communicated with SEC staff on behalf of his clients, representing himself as a practicing attorney. During the course of the investigation, we developed additional information from OTC Markets Group by obtaining all correspondence from Rubin to OTC Markets Group, which included Rule 144 Letters from OTC companies represented by Rubin.

OTC Markets Group

OTC securities are traded between two counterparties outside of a formal securities exchange. OTC Markets Group is a securities market headquartered in New York, New York, that provides price and liquidity information for OTC securities.

Rule 144 Letters

Securities Act Rule 144 (“Rule 144”), codified at 17 C.F.R. § 230.144, provides a registration exemption for restricted securities. Specifically, Rule 144 permits the public resale of restricted securities if certain conditions are met. However, even if these conditions are met, the sale of restricted securities to the public is still not permitted until a transfer agent removes the restricted legend from the security. A Rule 144 Seller’s Representation Letter is a letter from an affiliate seller (that is, a seller in a relationship of control with the issuer, such as an executive officer, a director, or a large shareholder) of restricted securities to a transfer agent. The Seller’s Representation Letter is to establish certain facts underlying a legal opinion that the securities at issue can be sold publicly pursuant to Rule 144. The issuer’s consent to the removal of a restrictive legend typically comes in the form of an opinion letter from the issuing company’s attorney, the Seller’s Representation Letter, indicating that the securities at issue satisfy the conditions of Rule 144. Seller’s Representation Letters contain multiple attestations that are required by law prior to the legend being removed. The transfer agent relies on the Seller’s Representation Letter in determining whether to remove the restrictive legend from a security.

INVESTIGATIVE FINDINGS

Proffer sessions with Rubin

The OIG and the United States Attorney's Office, for the Southern District of New York conducted two proffer sessions with Rubin. (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Interview of Craft

The OIG interviewed Craft. (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Fraudulent Scheme

We found that from about 2011 through about September 2018, Rubin and Craft participated in a fraudulent scheme. Craft falsely represented that he had undertaken certain legal work in connection with Seller's Representation Letters, OTC Markets Attorney Letters, and Form S-1 registration statements, all of which enabled securities to be sold to the investing public. In addition, in connection with the securities of certain issuers, Rubin falsely represented that he was an attorney in Seller's Representation Letters and OTC Markets Attorney Letters, all of which enabled securities to be sold to the investing public. The false representations were in letters pertaining to about a dozen companies traded on the OTC Market (Exhibit 4).

Coordination

On June 13, 2018, we coordinated with OTC Markets Group, and requested all communications and correspondence from Rubin and Craft from OTC companies to OTC Markets Group. They informed us that Rubin was placed on their Prohibited Service Providers List. Further, we requested that OTC Markets Group keep the OIG apprised if Rubin remained involved with any OTC companies (Exhibit 5).

On September 4, 2018, the facts and evidence of this investigation were presented to the United States Attorney's Office for the Southern District of New York. The matter was accepted for criminal prosecution on the same day (Exhibit 6).

Judicial Action

On December 2, 2020, Rubin was arrested (Exhibit 4). On July 1, 2021, Rubin entered into a plea agreement (Exhibit 6). On July 8, 2021, Rubin pled guilty to one count of securities fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff, 17 C.F.R. § 240.10b-5, and 18 U.S.C. § 2 (Exhibit 4). On November 2, 2021, Rubin was sentenced to one year probation, ordered to pay restitution of \$117,068.15, a fine of \$1,000, a \$100 court fee, and 200 hours of community service (Exhibits 7 and 8).

On December 2, 2020, Craft was arrested. On November 5, 2021, Craft pled guilty to one count of securities fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff, 17 C.F.R. § 240.10b-5, and 18 U.S.C. § 2, and agreed to relinquish his law license in Florida (Exhibit 9). On October 26, 2022, Craft was sentenced to one year of probation, four months home confinement, and ordered to perform 200 hours of community service. Additionally, Craft, was ordered to forfeit \$55,000, pay a \$1,000 court fine, and a special assessment of \$100 (Exhibits 10 and 11).

Signatures

Case Agent:

(b)(6); (b)(7)(C)

Digitally signed by (b)(6); (b)(7)(C)

Date: 2023.01.03 15:09:18 -05'00'

(b)(6); (b)(7)(C)

Senior Special Investigator

Date

Concurrence:

(b)(6); (b)(7)(C)

Digitally signed by (b)(6); (b)(7)(C)

Date: 2023.01.03 15:12:04 -05'00'

(b)(6); (b)(7)(C)

Special Agent in Charge

Date

Approved:

Reilly, Katherine

Digitally signed by Reilly, Katherine

Date: 2023.01.05 14:23:08 -05'00'

Katherine H. Reilly, Acting Deputy Inspector General
for Investigations

Date

Exhibits

1. Memorandum of Activity, Proffer of Rubin, dated May 7, 2020.
2. Memorandum of Activity, Proffer of Rubin, dated July 1, 2020.
3. Memorandum of Activity, Interview of Craft, dated September 6, 2018.
4. United States Attorney's Office Southern District of New York press release for Rubin, dated July 8, 2021.
5. Memorandum of Activity, Coordination with OTC Markets Group, dated June 13, 2018.
6. Memorandum of Activity, Criminal Prosecution Acceptance, dated September 4, 2018.
7. Memorandum of Activity, with attachment of United States Attorney's Office Southern District of New York plea agreement for Rubin, dated July 8, 2021.
8. Memorandum of Activity, Rubin sentencing with attachment of Judgment in Criminal Case Number 20-CR-632-02 filed November 2, 2021.
9. United States Attorney's Office Southern District of New York press release for Craft, dated November 5, 2021.
10. Memorandum of Activity, Craft sentencing with attachment of Judgment in Criminal Case Number 20-CR-632-02, dated October 26, 2022.
11. Law360 press release, regarding Craft's sentencing, dated October 26, 2022.



U.S. Securities and Exchange Commission
Office of Inspector General



Report of Investigation

Subject: (b)(6); (b)(7)(C)
Title: [REDACTED]
SK-Level/Grade: N/A
Office: Office of Information Technology
Region: Washington, DC

Case #: 20-OIT-0035-I

Origin: Office of General Counsel

Investigation Initiated: June 3, 2020

Investigation Completed: September 29, 2023

SUMMARY

The U.S. Securities and Exchange Commission (SEC), Office of Inspector General (OIG), Office of Investigations initiated an investigation based on a referral from the SEC Office of General Counsel (OGC), that (b)(6); (b)(7)(C) emailed SEC non-public information (NPI) outside of the SEC. Specifically, Contracting Officer's Representative (COR) (b)(6); (b)(7)(C) SEC Office of Information Technology (OIT) and (b)(6); (b)(7)(C) OIT, related that (b)(6); (b)(7)(C) sent four emails containing SEC NPI from his SEC email account (b)(6); (b)(7)(C)@sec.gov to his (b)(6); (b)(7)(C) email account (b)(6); (b)(7)(C).com. (EXHIBIT 1)

The investigation confirmed, (b)(6); (b)(7)(C) admitted, that (b)(6); (b)(7)(C) sent four emails with attached files from his SEC email account to his (b)(6); (b)(7)(C) email account that contained SEC NPI. (b)(6); (b)(7)(C) these files were either his or his team's work product, and he wanted to save the files for his own records believing he was entitled to take them with him when his employment with the SEC (b)(6); (b)(7)(C) ended.

(b)(6); (b)(7)(C) email account from his home computer and downloaded the files containing SEC NPI to his personal computer hard drive. We requested and (b)(6); (b)(7)(C) access and delete the emails and attachments from his (b)(6); (b)(7)(C) email account. A forensic examination of (b)(6); (b)(7)(C) SEC computer and personal computer disclosed no evidence to indicate (b)(6); (b)(7)(C) forwarded the emails to anyone else, that anyone else had access (b)(6); (b)(7)(C) email account, or that copies of the SEC files were located anywhere other than on his personal computer hard drive and (b)(6); (b)(7)(C) email account.

(b)(6); (b)(7)(C)

We presented the matter to the United States Attorney's Office (USAO) (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) who ultimately declined criminal prosecution.

BACKGROUND

The SEC contracts with (b)(6); (b)(7)(C) for services related to (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) sub-contracted some of these responsibilities to (b)(6); (b)(7)(C) worked as (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) for the SEC under (b)(6); (b)(7)(C) sub-contract (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) where he was responsible for (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) also worked on (b)(6); (b)(7)(C)

(EXHIBIT 2)

SCOPE

We investigated the following potential violations relating to (b)(6); (b)(7)(C)

- 18 U.S.C. § 641 – Theft.
- 18 U.S.C. § 1905 – Disclosure of Confidential Information.
- (b)(6); (b)(7)(C)
-

We coordinated with the following individuals:

- (b)(6); (b)(7)(C) SEC, OIT, Contracting Officer's Representative.
- (b)(6); (b)(7)(C) (Contractor).
- (b)(6); (b)(7)(C)
-
-
- (b)(6); (b)(7)(C) Senior Counsel, SEC, ENF.
- (b)(6); (b)(7)(C) SEC, ENF.

We reviewed the following documents and information:

- (b)(6); (b)(7)(C) his SEC account to his (b)(6); (b)(7)(C) account.
- (b)(6); (b)(7)(C) account.
- Digital forensic (b)(6); (b)(7)(C) personal computer.
- 832 gigabyte thumb drive containing data associated with (b)(6); (b)(7)(C) email account (b)(7)(E)

RESULTS OF INVESTIGATIVE ACTIVITY

1. **Allegation:** (b)(6); (b)(7)(C) disclosed SEC NPI upon departing the SEC.

Finding: (b)(6); (b)(7)(C) NPI to a non-SEC email address upon departing the SEC, but there was no evidence that he further disclosed the information.

(b)(6); (b)(7)(C) the COR for the pertinent contract, told us that on (b)(6); (b)(7)(C) at 1:53pm, she received an email from the SEC Security Operations Center (SOC) advising (b)(6); (b)(7)(C) sent a questionable email on (b)(6); (b)(7)(C) at 4:16pm. The SOC (b)(6); (b)(7)(C) sent this email from his SEC email (b)(6); (b)(7)(C)@sec.gov to (b)(6); (b)(7)(C).com, and the email contained numerous attached files. The SOC requested (b)(6); (b)(7)(C) look through the attached files to determine if any files were NPI, which she did on Monday (b)(6); (b)(7)(C). She determined that the emailed files contained NPI and notified OIT (b)(6); (b)(7)(C) of this issue. (b)(6); (b)(7)(C) access to all SEC systems suspended. (EXHIBIT 3)

On (b)(6); (b)(7)(C) we interviewed (b)(6); (b)(7)(C) at which time (b)(6); (b)(7)(C) recalled sending four emails with attached files to his (b)(6); (b)(7)(C) email account on the afternoon of (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) told us that he believed the information contained in the file folders was his "work product" and therefore he was authorized to keep it as reference material for future employment. (b)(6); (b)(7)(C) accessed his (b)(6); (b)(7)(C) email account from his home computer and downloaded the file folders to his personal computer hard drive. (b)(6); (b)(7)(C) did not look through the file folders prior to sending them to himself because he felt he could go through the files at a later time. (b)(6); (b)(7)(C) explained that (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) he downloaded each of the specific files. (b)(6); (b)(7)(C) told us that it was either his work product, timesheet, or personal information, or he did not know or recognize the file.

During this interview, we requested (b)(6); (b)(7)(C) access and delete the four emails from his (b)(6); (b)(7)(C) email. (b)(6); (b)(7)(C) insisted that the only copies of the files were on his personal desktop computer and (b)(6); (b)(7)(C) email. (b)(6); (b)(7)(C) stated that he did not forward these emails to anyone else, nor did anyone else access his (b)(6); (b)(7)(C) email. (b)(6); (b)(7)(C) said that he had not provided these files to anyone. (b)(6); (b)(7)(C) (EXHIBIT 2)

(b)(6); (b)(7)(C)

We provided a copy of the contents of (b)(6); (b)(7)(C) to himself to Division of Enforcement (ENF) personnel for review and assessment. ENF Senior Counsel (b)(6); (b)(7)(C) provided us a summary of her review, which determined the SEC documents (b)(6); (b)(7)(C) appeared to be the same files that we had previously identified as the files he sent himself from his SEC email. She continued that (b)(6); (b)(7)(C) emailed to himself were sensitive and included detailed information about the overall structure of and content within SEC systems (b)(6); (b)(7)(C) explained that there was specific information about Enforcement (e.g., a listing of all open investigations; text of a TCR) and information about other SEC databases, including (b)(6); (b)(7)(C) as well as a number of documents that detailed (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) Additionally, there were technical documents that indicated activity regarding (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (EXHIBIT 13)

In addition to (b)(6); (b)(7)(C) hard drive, we received data from (b)(6); (b)(7)(C) regarding (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) email account which contained eight emails (b)(6); (b)(7)(C) his SEC email account to his (b)(6); (b)(7)(C) email account. All of the files we received from (b)(6); (b)(7)(C) were duplicative of the files we had already identified and reviewed. (EXHIBITS 5 & 7)

We also took (b)(6); (b)(7)(C) SEC-issued desktop computer for examination and provided the contents to SEC OIT for review. (b)(6); (b)(7)(C) told us that all of the information contained on the computer appeared to be “coordinated with work that had been assigned” (b)(6); (b)(7)(C) & 8)

(b)(6); (b)(7)(C)

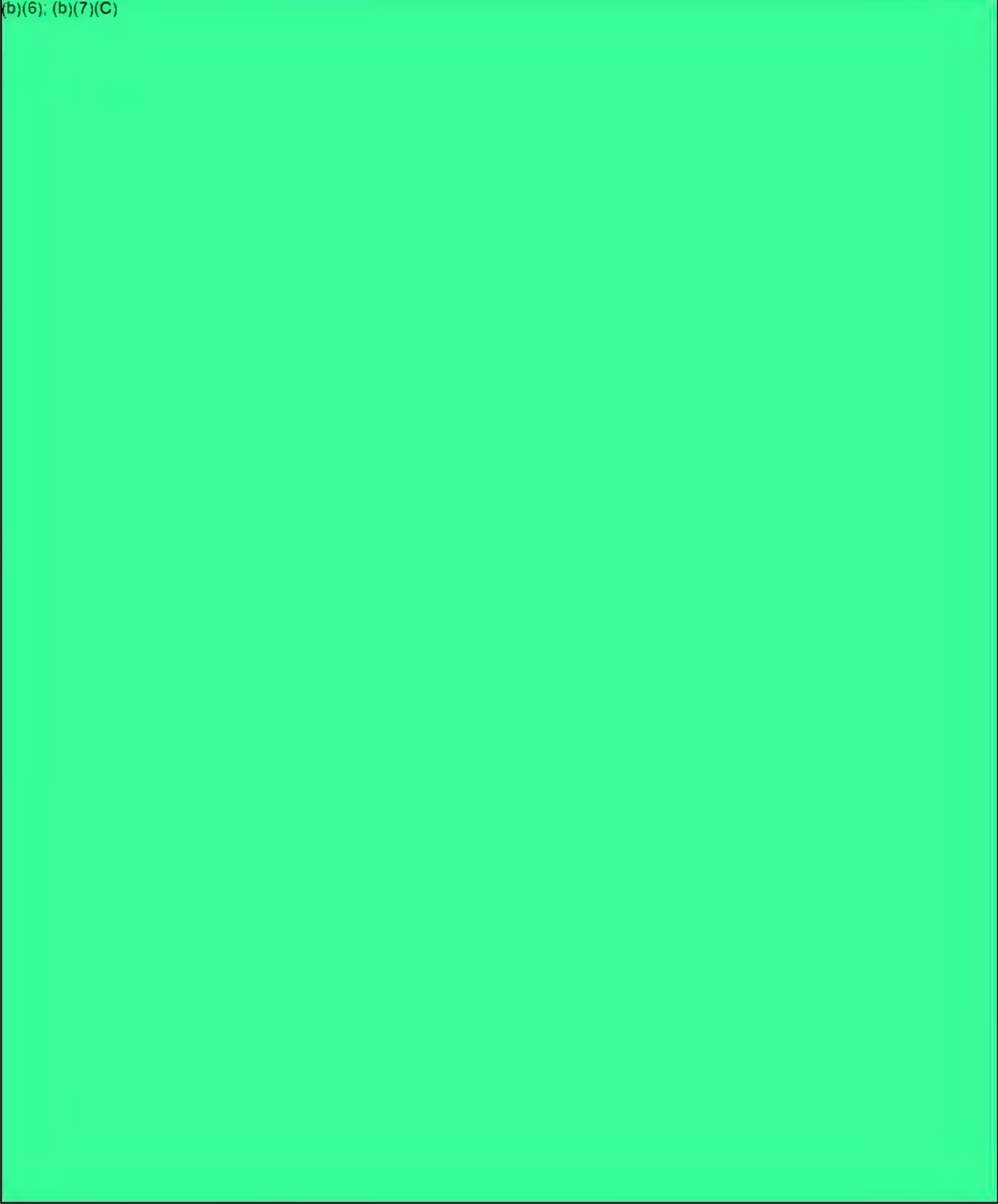
Report of Investigation

Case Title: (b)(6); (b)(7)(C)

Case # 20-OIT-0035-1

Page 5 of 7

(b)(6); (b)(7)(C)



Report of Investigation

Case Title: (b)(6); (b)(7)(C)

Case # 20-OIT-0035-I

Page 6 of 7

(b)(6); (b)(7)(C)

We are providing this Report to SEC management for information only.

Signatures

Case Agent:

(b)(6); (b)(7)(C)

September 29, 2023

(b)(6); (b)(7)(C)

Senior Special Agent

Date

Concurrence:

(b)(6); (b)(7)(C)

Digitally signed by (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

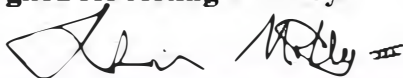
Date: 2023.09.29 09:04:47 -04'00'

(b)(6); (b)(7)(C)

Special Agent in Charge

Date

Approved: Signed for Acting DIGI by:



9/29/23

Katherine H. Reilly, Acting Deputy Inspector General
for Investigations

Date

Exhibits

1. Predicating documentation Memorandum of Activity, (b)(6); (b)(7)(C) 2020.
2. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) 2020.
3. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) 2020.
4. Memorandum of Activity, (b)(6); (b)(7)(C) personal and SEC Issued Computers, dated (b)(6); 2020.
5. Memorandum of Activity, (b)(6); (b)(7)(C) email account data from (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) 2020.
6. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) 2020.
7. Memorandum of Activity, DFIU review of (b)(6); (b)(7)(C) data, dated (b)(6); 2020.
8. Memorandum of Activity, (b)(6); Review of Records, dated (b)(6); (b)(7)(C) 2020.
9. Memorandum of Activity, (b)(6); (b)(7)(C)
10. Memorandum of Activity, (b)(6); (b)(7)(C)
11. Memorandum of Activity, (b)(6); (b)(7)(C)
12. Memorandum of Activity, (b)(6); (b)(7)(C)
13. Memorandum of Activity, (b)(6); Review of Records, dated February 28, 2022.
14. Memorandum of Activity, AUSA Coordination, dated April 27, 2023.
15. Memorandum of Activity, (b)(6); (b)(7)(C) receipt, dated May 10, 2023.
16. Memorandum of Activity, Disposition of Evidence, dated May 23, 2023.



U.S. Securities and Exchange Commission
Office of Inspector General



Report of Investigation

Subject: McNeil, Tracey L.

Case No.: 21-IAD-0027-I

Title: SEC Ombudsman (former)

SK-Level/Grade: Senior Officer (former)

Origin: Anonymous Complainant

Office: Office of the Ombudsman

Office of the Investor Advocate

Region: Headquarters

Investigation Initiated: July 14, 2021

Investigation Completed: August 4, 2022

SUMMARY

The U.S. Securities and Exchange Commission (SEC) Office of Inspector General (OIG) investigated anonymous allegations that Tracey L. McNeil, the SEC Ombudsman, provided false statements to OIG auditors regarding the Tips, Complaints, and Referral (TCR) program, and that McNeil had violated SEC Regulation (SECR) 3-2 (TCR Intake Policy) by failing to enter TCRs in accordance with the policy.

We found that McNeil misrepresented facts in her written response to an OIG draft management letter related to TCR practices by the Office of the Ombudsman. McNeil's written response to the OIG letter was in direct contravention to what she conveyed to the OIG during its engagement with her on the TCR program, what we confirmed through TCR records, and what we learned from her own staff. Additionally, McNeil approved a spreadsheet provided to the OIG containing 14 TCR entries that were purportedly entered by her office, which was inaccurate and misleading. We found that ten of the 14 TCRs presented by McNeil did not originate with the Office of the Ombudsman, were not related to Ombudsman matters, nor were they entered into the TCR system by Ombudsman staff.

We found that McNeil violated SECR 3-2 by failing to enter TCRs on investor matters received by the Office of the Ombudsman that warranted entry. As a matter of practice, the Office of the Ombudsman referred investors to enter their own TCRs on matters related to alleged securities law violations or fraud, rather than entering the matters into the TCR system or forwarding the matters to a TCR point of contact as required.

Finally, we found that McNeil presented vignettes in her annual Ombudsman's Report to the Congress for fiscal years (FY) 2017 through 2020, in which she described investor matters addressed by the Office of the Ombudsman, that were potentially misleading. The vignettes (b)(6); (b)(7)(C) were, according to her, hypothetical or composite descriptions of Ombudsman matters, but she did not state so in the congressional reports. Following concerns

expressed by the OIG in 2021, McNeil added language to her Ombudsman's Report for fiscal year 2021 clarifying that the vignettes presented were simplified or composite descriptions of investor complaints.

(b)(6); (b)(7)(C)

We are providing our findings to the Commission for any action deemed appropriate.

BACKGROUND

SECR 3-2 sets forth the responsibilities of SEC staff for the entry of TCRs into the TCR system. The pertinent part of the regulation defines a TCR as any credible allegation or statement of concern about a possible violation of federal securities laws or conduct reasonably related to securities that poses a possible risk of harm to investors. The term "credible" is defined as an allegation or statement that is not frivolous on its face. According to the regulation, all SEC staff are responsible for entering TCRs or forwarding TCRs to their respective TCR point of contact, and should err on the side of entering a TCR when in doubt. Additional guidance on the responsibilities of SEC staff in executing the TCR program is further detailed in the *Commission-Wide Policies and Procedures for Handling Tips, Complaints, and Referrals*.

On February 24, 2021, the OIG reported the results of its evaluation of the SEC TCR program titled *The SEC Can Further Strengthen the Tips, Complaints, and Referrals Program, Report No. 566*.¹ In conjunction with the evaluation, OIG auditors engaged with McNeil on several occasions to discuss her management of the TCR program within the Office of the Ombudsman. Following the publishing of Report No. 566, the OIG prepared a document titled *Discussion Draft Management Letter: Actions May Be Needed to Improve the Efficiency of Receiving and Coordinating Investor Submissions*, to notify SEC management of several matters identified during the TCR evaluation that warranted further attention, some of which pertained to the Office of the Ombudsman. On April 5, 2021, the discussion draft management letter was provided to SEC officials for comment and feedback. On April 15, 2021, a consolidated management response to the draft document was provided to the OIG. On May 24, 2021, the OIG published its *Final Management Letter: Actions May Be Needed To Improve Processes for Receiving and Coordinating Investor Submissions*.²

Pursuant to the Exchange Act, §4(g)(8)(D), codified in 15 U.S.C. §78d(g)(8)(D), the SEC Ombudsman submits semiannual reports to the Investor Advocate that describe the activities and evaluate the effectiveness of the Ombudsman during the preceding year, which are included in the Investor Advocate's reports to Congress. Annually, the Investor Advocate separately submits to

¹ OIG Report No. 566 may be found on the SEC OIG public website located here: https://www.sec.gov/oig/reportspubs/inspector_general_recent_reports.html.

² *Final Management Letter: Actions May Be Needed To Improve Processes for Receiving and Coordinating Investor Submissions* may be found on the SEC OIG public website located here: https://www.sec.gov/oig/reportspubs/inspector_general_recent_reports.html.

Congress a Report on Objectives and a Report on Activities, both of which contain reporting by the Office of the Ombudsman.³

SCOPE

The OIG investigated whether McNeil (b)(6); (b)(7)(C) in her response to the OIG's Discussion Draft Management Letter, and whether she violated SECR 3-2 by not entering TCRs on investor matters reported to the Office of the Ombudsman that met the TCR reporting requirement.

RESULTS OF INVESTIGATIVE ACTIVITY

The OIG initiated this investigation after receiving two anonymous complaints related to alleged misconduct by McNeil. On (b)(6); (b)(7)(C) an anonymous complainant alleged that McNeil

(b)(6); (b)(7)(C); (b)(3); 5 U.S.C. App 3 § 7(b)(IG Act)

(b)(6); (b)(7)(C); (b)(3); 5 U.S.C. App 3 § On June 8, 2021, an anonymous complainant further alleged

(b)(6); (b)(7)(C); (b)(3); 5 U.S.C. App 3 § 7(b)(IG Act)

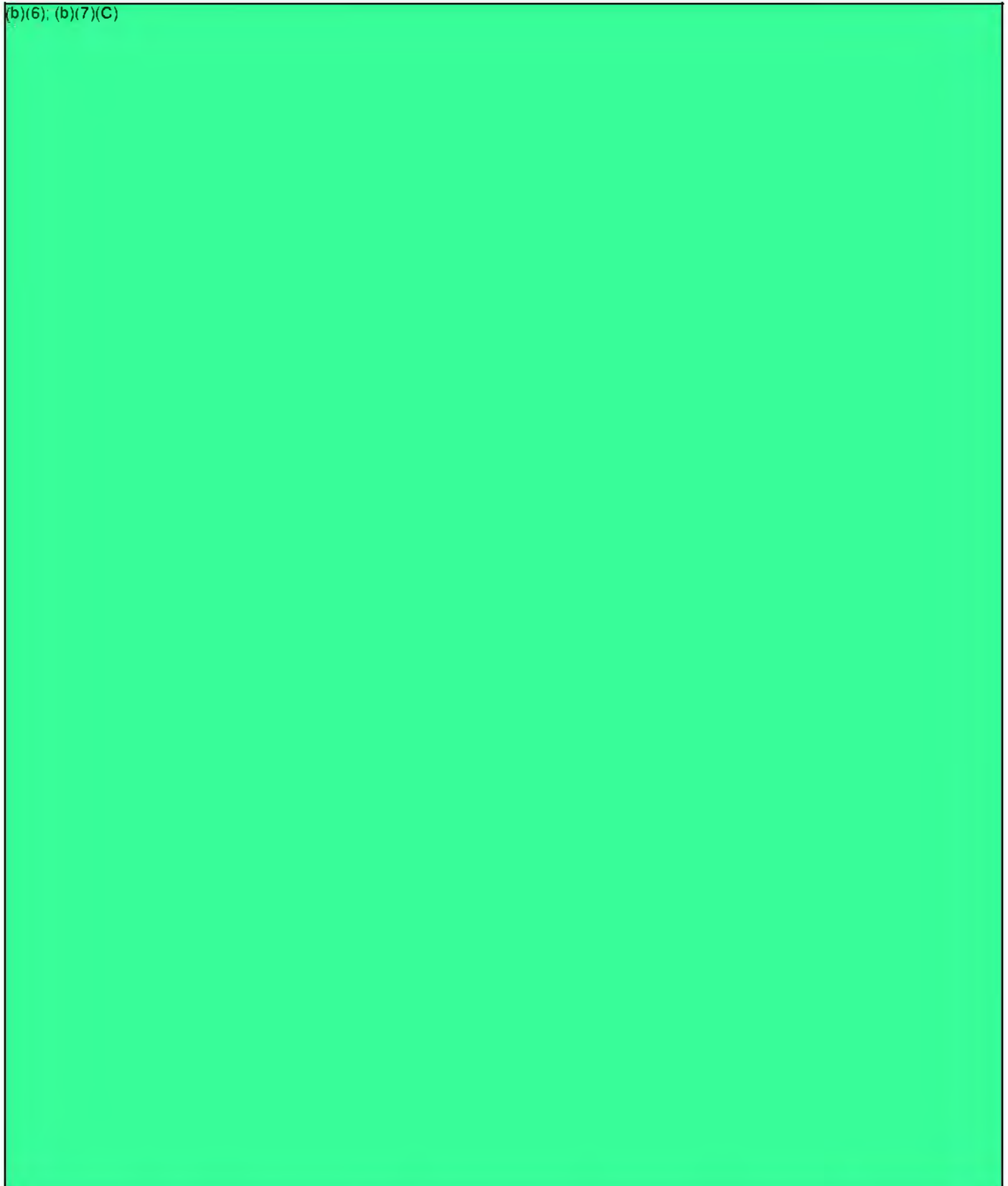
McNeil (b)(6); (b)(7)(C) in Her Written Response to the OIG Discussion Draft Management Letter

We found that McNeil made written statements that misrepresented facts about TCR practices in the Office of the Ombudsman and contradicted verbal statements she made to OIG auditors during their engagement with McNeil on TCR practices by her office.

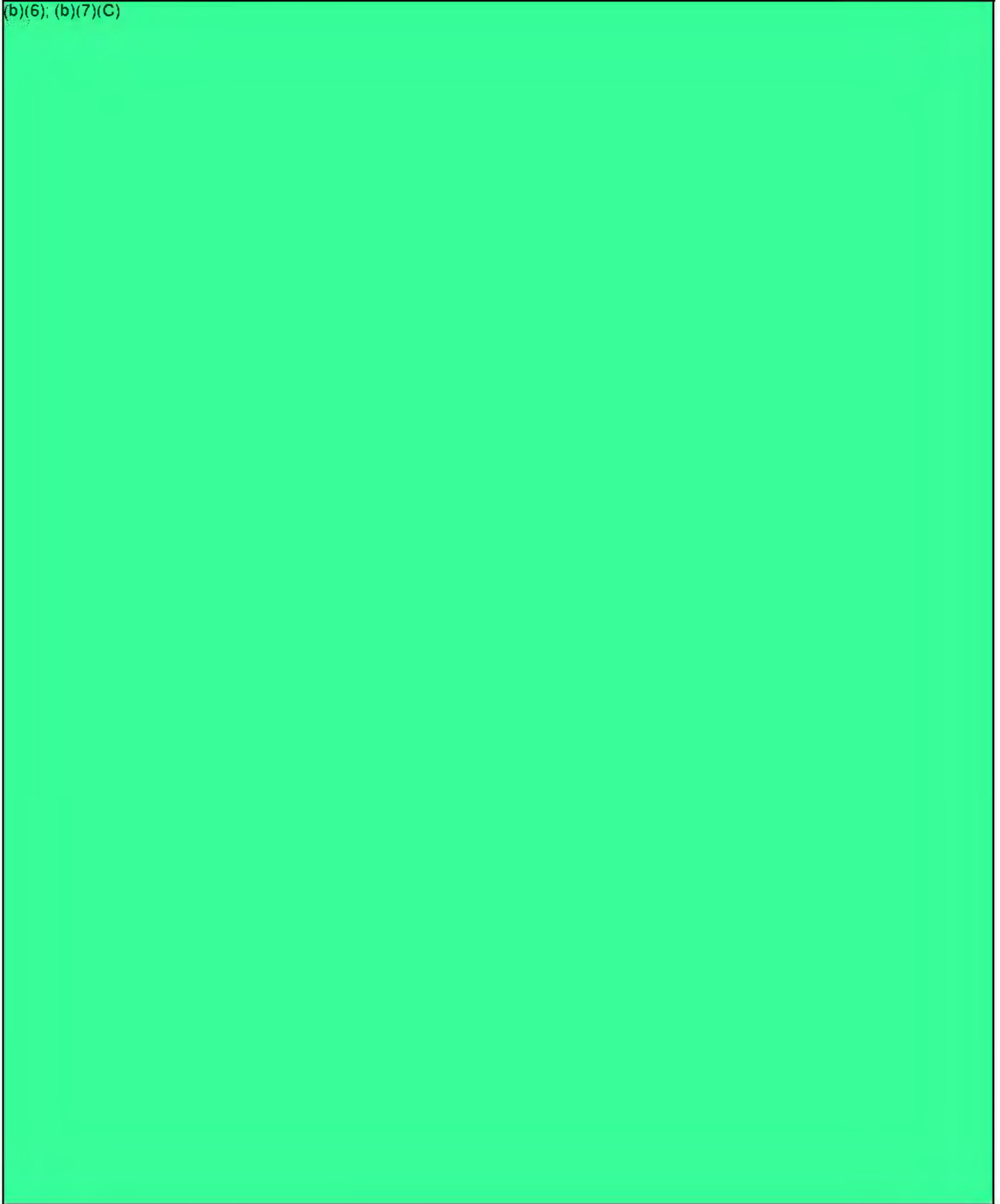
(b)(6); (b)(7)(C)

³ Investor Advocate reports to Congress may be found on the SEC Investor Advocate public website located here: <https://www.sec.gov/advocate/investor-advocate-rpports.html>.

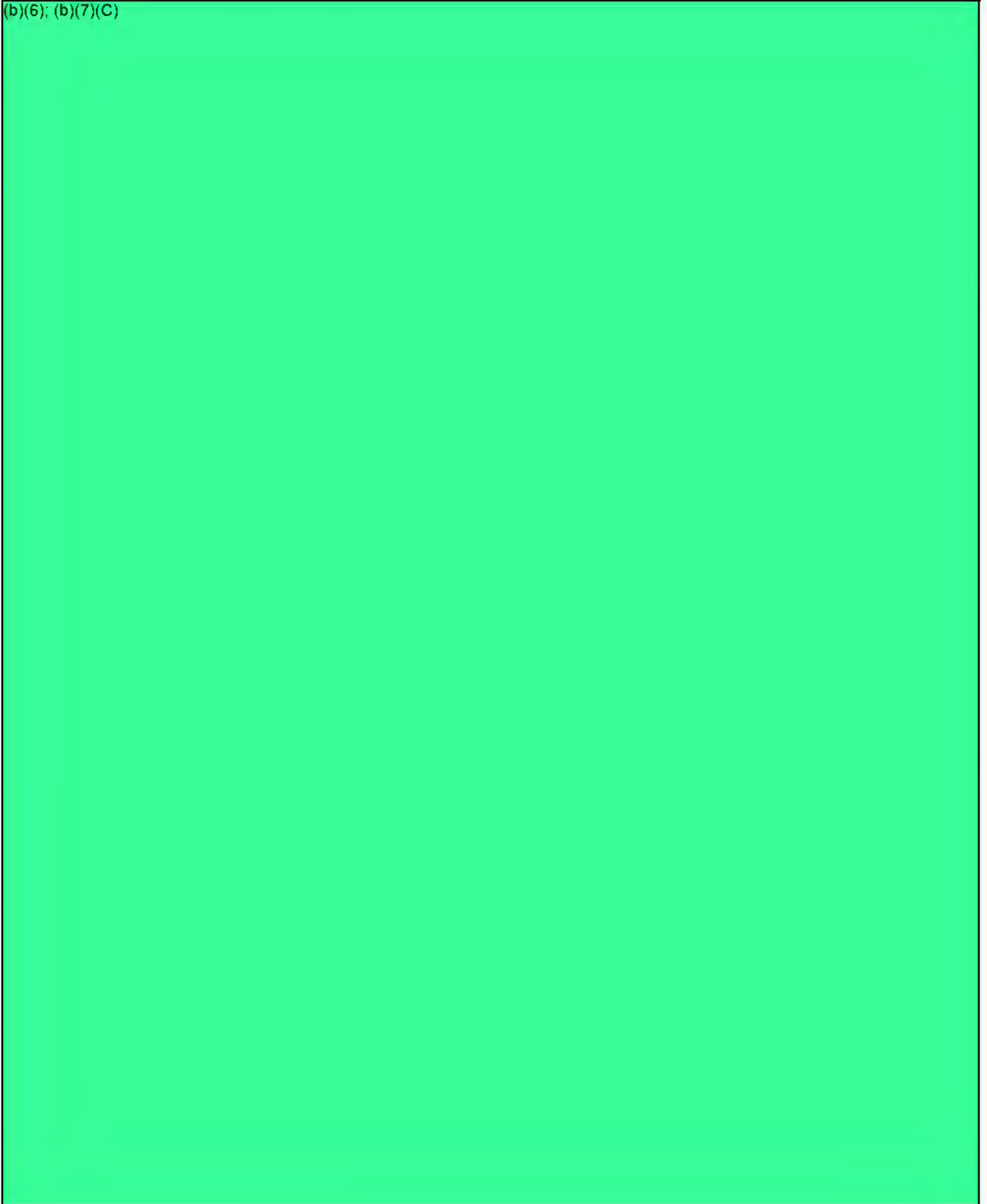
(b)(6); (b)(7)(C)



(b)(6); (b)(7)(C)



(b)(6); (b)(7)(C)



(b)(6); (b)(7)(C)

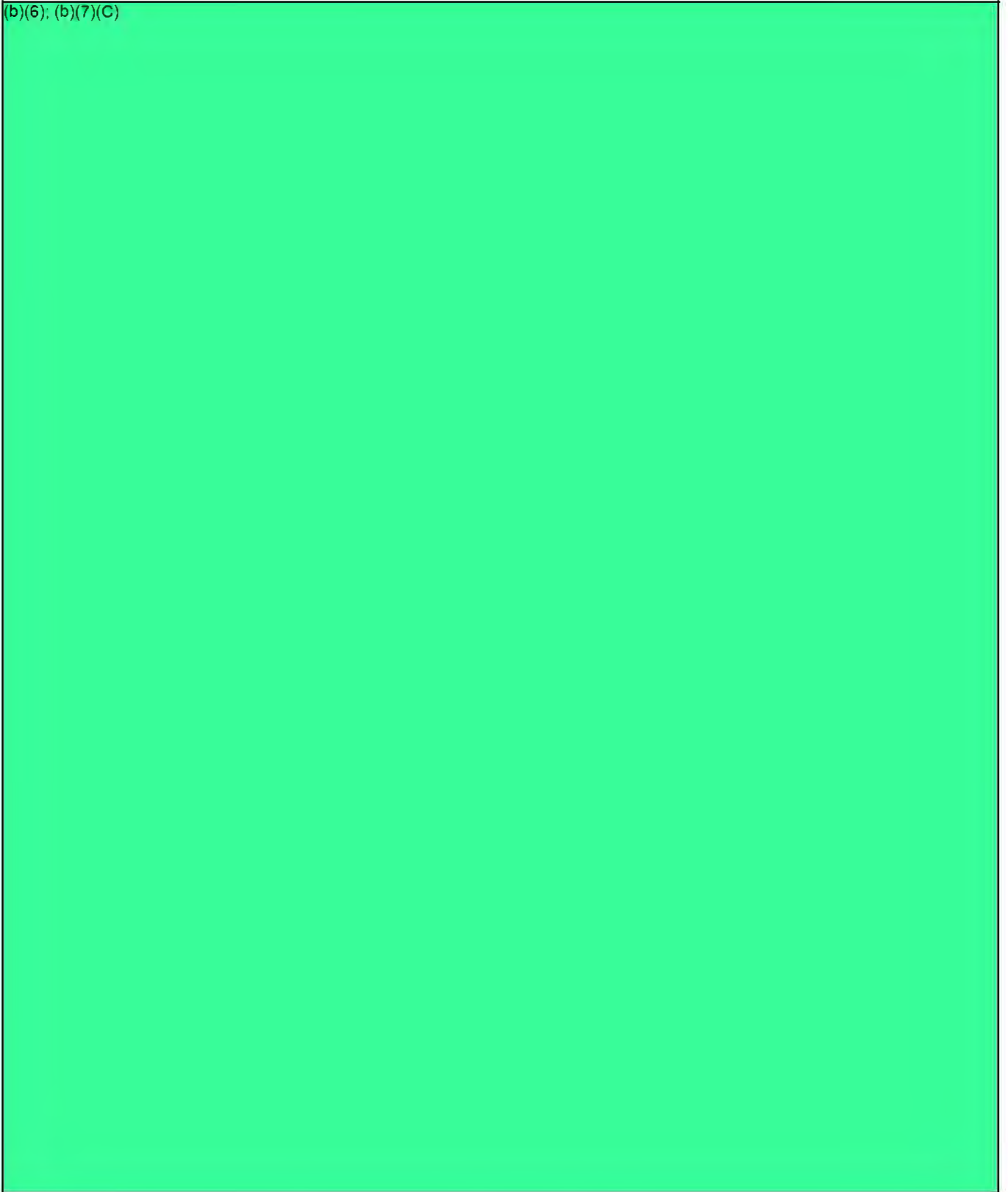
*McNeil's Written Response to the Discussion Draft Management Letter Contradicted Statements to
OIG Auditors*

On April 5, 2021, OIG auditors provided McNeil the *Discussion Draft Management Letter*, which outlined observations made by the OIG that warranted attention, including deficiencies relating to the TCR practices by the Office of the Ombudsman (Exhibit 13).

On April 14, 2021, McNeil provided (b)(6); (b)(7)(C) Office of the Chief Operating Officer, her written response to the *Discussion Draft Management Letter* (Exhibit 14). (b)(6); (b)(7)(C) was responsible for preparing the consolidated response to the OIG on behalf of several SEC offices. In her written response, McNeil refuted the auditors noted deficiencies regarding TCRs. McNeil made the following salient statements in her response to OIG observations in the *Discussion Draft Management Letter* (Figures 6 through 10):

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)



(b)(6); (b)(7)(C)

On April 15, 2021, (b)(6); provided the OIG the consolidated management response to the *Discussion Draft Management Letter*, which included McNeil's response relating to the Office of the Ombudsman (Exhibit 15). (b)(6); told us that he coordinated the written Ombudsman response directly with McNeil but would not have edited anything of substance given he was not a subject matter expert on the material (Exhibit 16). (b)(6); related that any edits he may have had in consolidating the collective responses would be limited to format, transition, or phrasing.

According to McNeil, she reviewed the consolidated response document that (b)(6); prepared before it was provided to the OIG (Exhibit 11). We compared the language of the response prepared personally by McNeil, including edits she made to a consolidated draft document, with the final consolidated response coordinated by (b)(6);. We found the language in (b)(6); consolidated response to be nearly verbatim to the response McNeil provided him, with one instance in which one of McNeil's sentences was rephrased.

(b)(6); (b)(7)(C)

We interviewed Office of the Ombudsman staff, which comprised two attorneys, a senior law clerk, and a senior paralegal, all of whom (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

The Ombudsman policy documents provided to (b)(6); (b)(7)(C) contained the following relevant guidance in reference to how investor matters related to alleged securities fraud should be processed by Ombudsman staff (portions bolded for emphasis):

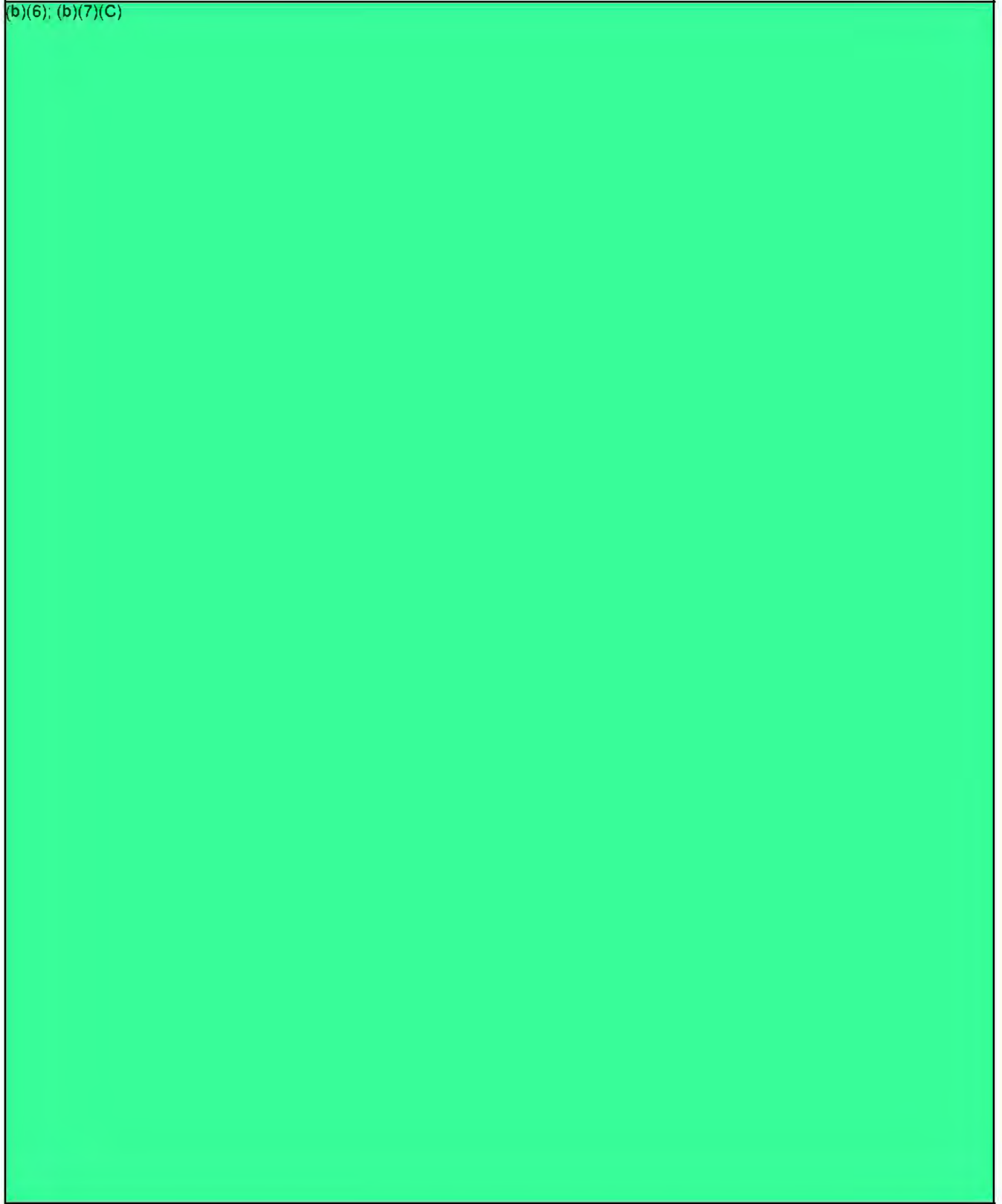
Figure 11. Office of the Ombudsman Policy Documents.

| Ombudsman Draft Policies and Procedures Manual (Page 8) |
|--|
| 3. The submitter is a retail investor, and the issue is within the SEC's jurisdiction, but not within the Ombudsman's purview. |
| <u>Examples:</u> Submitter is trying to establish ownership of old stock certificates. Submitter believes that he is the victim of a securities fraud. |
| <u>Response:</u> After describing the scope of the Ombudsman's role, refer the submitter to the appropriate SEC Division or Office. (e.g., OIEA for personal investment questions, ENF (TCR) for alleged violations of the securities laws.) (See Appendix B for resources within the SEC). |
| Appendix B – Internal Resources |
| <u>For matters where submitter alleges securities fraud:</u> |
| Suggest that the investor submit a TCR to the Division of Enforcement at https://www.sec.gov/tcr |

Source: Exhibit 17, attachment 2. Interview of (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)



(b)(6); (b)(7)(C)

McNeil (b)(6); (b)(7)(C) in Reporting TCRs Submitted During the Period Evaluated

We found that (b)(6); (b)(7)(C) approved a spreadsheet that was provided to the OIG to demonstrate her record of TCR submissions, which we later determined contained TCR entries that had no affiliation with the Office of the Ombudsman or Ombudsman activities.

Upon receiving the consolidated management response in which McNeil disputed the OIG's observations related to TCR practices by the Office of the Ombudsman, OIG auditors contacted (b)(6); and requested documentation that demonstrated McNeil or her staff had entered TCRs during the period evaluated. On April 20, 2021, (b)(6); provided the OIG with a spreadsheet that contained 14 TCR entries purportedly entered by Ombudsman staff during the period (Exhibit 23).

(b)(6); reported to us, and e-mail records reflect, that (b)(6); (b)(7)(C) Division of Enforcement, provided the TCR spreadsheet to (b)(6); on April 20, 2021, with McNeil copied on the e-mail correspondence (Exhibits 14 and 16).

We interviewed (b)(6); who told us that she obtained the TCR spreadsheet provided to (b)(6); from (b)(6); formerly of OMI (Exhibit 24). (b)(6); said that the original data pull provided by (b)(6); contained additional TCR entries but it was pared down to the 14 entries based on McNeil's review and confirmation that the entries were from the Office of the Ombudsman.

We sought to speak with (b)(6); who was no longer an SEC employee, but she declined our request for an interview.

(b)(6); (b)(7)(C)

The TCR Spreadsheet Provided to the OIG

The spreadsheet contained 14 TCRs entered into the TCR system between November 7, 2017, and October 29, 2019, that were submitted by TCR users (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (Exhibit 23) (Table 1).

Table 1. Listing of TCRs on Spreadsheet Provided to the OIG.

| TCR ID | | Date Submitted | TCR Submitted By | TCR ID | | Date Submitted | TCR Submitted By |
|--------|--------|----------------|-------------------|--------|--------|----------------|-------------------|
| 1 | 679670 | 11/7/2017 | (b)(6); (b)(7)(C) | 8 | 761305 | 7/30/2018 | (b)(6); (b)(7)(C) |
| 2 | 679672 | 11/7/2017 | | 9 | 762331 | 8/17/2018 | |
| 3 | 751078 | 2/6/2018 | | 10 | 778660 | 7/26/2019 | |
| 4 | 752814 | 3/5/2018 | | 11 | 780014 | 8/26/2019 | |
| 5 | 753828 | 3/20/2018 | | 12 | 780033 | 8/26/2019 | |
| 6 | 753830 | 3/20/2018 | | 13 | 783066 | 10/25/2019 | |
| 7 | 760192 | 7/6/2018 | | 14 | 783240 | 10/29/2019 | |

Source: Exhibit 23, TCR spreadsheet.

We spoke with (b)(6); (b)(7)(C) who was previously assigned as a senior paralegal in the Office of the Investor Advocate (OIAD), and reviewed the TCR entries contained in the spreadsheet that she reportedly entered on behalf of the Office of the Ombudsman (Exhibit 25).

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) who was previously assigned as an attorney advisor in OIAD, confirmed with us that she was a TCR user in that office and routinely entered TCRs based on information received through the OIAD e-mail and voicemail systems (Exhibit 26). (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

We coordinated with OIAD and confirmed that nine of the TCR entries (TCR Nos. 679670, 679672, 751078, 760192, 778660, 780014, 780033, 783066, and 783240) were captured in the OIAD internal tracking system (Exhibit 27). According to (b)(6); (b)(7)(C) OIAD, the nine entries in the OIAD tracking system that were entered by (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) indicated that the TCRs originated within OIAD. He reported that TCR No. 761305, which was entered by (b)(6); (b)(7)(C) was not in the OIAD tracking system but was entered into the TCR system after (b)(6); (b)(7)(C) departed OIAD to her current assignment. The TCR entries made (b)(6); (b)(7)(C) did not appear in the OIAD tracking system.

(b)(6); (b)(7)(C) who was a contractor previously assigned to the Office of the Ombudsman, departed employment with the SEC (b)(6); (b)(7)(C) and was not interviewed. We did, however, confirm through the (b)(6); (b)(7)(C) that the four TCRs reportedly entered by (b)(6); (b)(7)(C) were captured in the internal tracking system, indicating that the four matters had originated in the Office of the Ombudsman (Exhibit 28).

When we advised McNeil that 10 of the 14 entries had no affiliation with the Office of the Ombudsman, she told us that the Office of the Ombudsman investor matters were routinely discussed and coordinated with OIAD, and as a result, OIAD staff may have on occasion entered TCRs on behalf of the Office of the Ombudsman (Exhibit 11). (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

McNeil Violated SEC Policy When She Failed to Enter TCRs for Ombudsman Matters and Instructed Her Staff Not to Enter TCRs

We found that McNeil violated SECR 3-2 when she promoted the practice within the Office of the Ombudsman of referring investor complainants, whose matters related to alleged securities law violations or fraud, to file their own TCRs rather than entering the information into the TCR system herself or by her staff as required.

McNeil Failed to Enter TCRs for Ombudsman Matters

(b)(6); (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

According to the statutorily required Ombudsman Reports contained in the annual Office of the Investor Advocate Reports on Activities and the TCR records we obtained from OMI, we found the following disparities in matters that the Ombudsman Reports characterized as

“allegations of securities law violations/fraud” and the number of TCRs⁴ entered by McNeil or her staff (Table 2):

Table 2. Reported Ombudsman Matters Compared to TCRs (FY 2016 – FY2020).

| | Ombudsman Matters Reported as Allegations of Securities Law Violations/Fraud | Number of TCRs Submitted by Ombudsman Staff |
|---------------|--|---|
| FY 2016 | 34 | 1 |
| FY 2017 | 44 | 0 |
| FY 2018 | 51 | 4 |
| FY 2019 | 319 | 0 |
| FY 2020 | 301 | 0 |
| Totals | 749 | 5 |

Source: Office of Investor Advocate Reports on Activities and Exhibit 29, OMI Records.

(b)(6); (b)(7)(C)

We found, however, that there was a marked increase in the number of TCRs submitted by Ombudsman staff following the engagement by OIG auditors with McNeil in 2021 on TCR practices (Table 3).


Table 3. Reported Ombudsman Matters Compared to TCRs (FY 2021).

| | Ombudsman Matters Reported as Allegations of Securities Law Violations/Fraud | Number of TCRs Submitted by Ombudsman Staff |
|---------|--|---|
| FY 2021 | 622 | 120 |

Source: Office of Investor Advocate Reports on Activities and Exhibit 29, OMI records.

⁴ For comparison, SECR 3-2 defines a TCR as “any credible allegation or statement of concern about a possible violation of the federal securities laws or conduct reasonably related to securities that poses a possible risk of harm to investors.”

(b)(6); (b)(7)(C)



McNeil Reported Activity in Congressional Ombudsman Reports That Was Potentially Misleading

We found that McNeil reported 27 vignettes in her Ombudsman Activity Reports for fiscal years 2017 through 2020 that, according to McNeil, contained hypothetical, composite, or simplified information. Because the vignettes were presented as individual Ombudsman matters

and activity by McNeil's office and were not qualified as hypothetical, composite, or simplified information, they may have been misleading to Ombudsman Activity Report users.⁵

(b)(6); (b)(7)(C)

When we spoke to McNeil about the vignettes, she explained that the vignettes were composite or hypothetical descriptions of investor matters intended to assist the reader in understanding the types of services provided and did not necessarily correlate with a specific investor matter documented in OMMS (Exhibit 11).

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Following engagement with McNeil by OIG auditors on this issue in 2021, McNeil added a caveat to her vignette reporting in the FY 2021 Activities Report clarifying that the presented information may be composite or simplified material.

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Separately, we reviewed the Ombudsman Report on Objectives contained within the annual Office of Investor Advocate Reports on Objectives and found that McNeil reported 17 similar vignettes in FY 2019 through FY 2021 without any language clarifying that the information may have been based on hypothetical, composite, or simplified material.

⁵ Investor Advocate reports to Congress may be found on the SEC Investor Advocate public website located here: <https://www.sec.gov/advocate/investor-advocate-reports.html>.

Signatures

Case Agent:

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Date: 2022.08.04 13:30:14 -04'00'

(b)(6); (b)(7)(C)

Senior Special Agent

Date

Concurrence:

(b)(6); (b)(7)(C)

Digitally signed by (b)(6); (b)(7)(C)

Date: 2022.08.04 14:07:45 -04'00'

(b)(6); (b)(7)(C)

Special Agent in Charge

Date

Approved:



8/4/2022

Nicholas Padilla, Jr., Deputy Inspector General
for Investigations

Date

Exhibits

1. Anonymous Complaint to the OIG, dated June 1, 2021.
2. Anonymous Complaint to the OIG, dated June 8, 2021.
3. E-mail Records between OIG and McNeil, dated May 28, 2020 – June 1, 2020.
4. TCR Evaluation Questionnaire by McNeil, dated June 17, 2020.
5. E-mail Records between OIG and McNeil, dated August 3-4, 2020.
6. E-mail Record between OIG and McNeil, dated January 22, 2021.
7. Auditor Meeting Notes, dated January 22, 2021.
8. Auditor Meeting Notes, dated March 12, 2021.
9. Auditor Meeting Notes, dated April 20, 2021.
10. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on June 14, 2021.
11. Memorandum of Activity, Interview of Tracey McNeil on May 26, 2022.
12. Memorandum of Activity, Receipt of Records from McNeil Legal Counsel, dated May 16, 2022.
13. E-mail Record between OIG and McNeil, containing Discussion Draft Management Letter, dated April 5, 2021.
14. Memorandum of Activity, Receipt of Records from (b)(6); (b)(7)(C) dated October 29, 2021.
15. E-mail Record between (b)(6); and OIG, containing the consolidated response to the Discussion Draft Management Letter, dated April 15, 2021.
16. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on October 22, 2021.
17. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on June 30, 2021.
18. Memorandum of Activity, Receipt of Records from (b)(6); (b)(7)(C) dated July 22, 2021.
19. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on July 9, 2021.
20. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on October 18, 2021.
21. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on January 26, 2022.
22. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on January 27, 2022.
23. E-mail Record between (b)(6); and OIG, containing TCR spreadsheet, dated April 20, 2021.
24. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on December 14, 2021.
25. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on January 10, 2022.
26. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on January 10, 2022.
27. Memorandum of Activity, Coordination with OIAD, dated January 20, 2022.
28. Memorandum of Activity, Receipt of OMMS Records, dated July 1, 2022.
29. Memorandum of Activity, Receipt of Records from OMI, dated February 17, 2022.
30. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on January 11, 2022.
31. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on January 27, 2022.
32. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on January 13, 2022.
33. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on January 18, 2022.



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION



MEMORANDUM

December 19, 2023

TO: FILE

FROM: (b)(6); (b)(7)(C)
Senior Special Investigator
Office of Investigations

THROUGH: (b)(6); (b)(7)(C)
Special Agent in Charge
Office of Investigations

SUBJECT: Case No. 21-OSO-0030-I
(b)(6); (b)(7)(C)
Office of Security Services

The purpose of this memorandum is to document our investigative activities and to recommend case closure.

We initiated this investigation when the Office of the General Counsel referred to us an allegation that (b)(6); (b)(7)(C) Office of Security Services took her SEC-issued laptop to (b)(6); (b)(7)(C) in violation of SEC Administrative Regulations.

We confirmed through records obtained from the U.S. Customs and Border Protection that (b)(6); (b)(7)(C) traveled internationally to (b)(6); (b)(7)(C). We also determined through digital forensics of her SEC-issued laptop computer that on (b)(6); (b)(7)(C) 2021, and (b)(6); (b)(7)(C) 2021, (b)(6); (b)(7)(C) connected to the SEC's virtual private network through a wireless access point named (b)(6); (b)(7)(C). An internet search found that (b)(6); (b)(7)(C) is a resort located in (b)(6); (b)(7)(C). These findings established that (b)(6); (b)(7)(C) connected to the SEC network while she was in (b)(6); (b)(7)(C).

Further, (b)(6); (b)(7)(C) WebTA Timesheet Summary record for (b)(6); (b)(7)(C) 2021, reflected regular time periodic home (telework). Accordingly, she claimed to be working while she was traveling internationally from (b)(6); (b)(7)(C) 2021. We determined that (b)(6); (b)(7)(C) was absent without leave

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Office of Inspector General – Investigations
U.S. Securities and Exchange Commission

(b)(6); (b)(7)(C)

Page 2 of 2

(AWOL), on (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) 2021, but claimed she was working. She would have been paid \$831.20 for two days that she was AWOL; however, (b)(6); (b)(7)(C) submitted annual leave for (b)(6); (b)(7)(C) 2021; but only after being instructed by her supervisor. We found that the eight hours not worked by (b)(6); (b)(7)(C) on (b)(6); (b)(7)(C) 2021, was valued at \$415.60. (b)(6); (b)(7)(C) declined to be interviewed at that time.

When we interviewed (b)(6); (b)(7)(C) 2023, she explained (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) admitted that she logged onto her SEC laptop while in (b)(6); (b)(7)(C). She said that her supervisor did not mention (b)(6); (b)(7)(C) specifically, but he did ask if she was out of the country with the SEC laptop, and she told him that she was "overseas." (b)(6); (b)(7)(C) said that she was unaware that she could not take her SEC laptop out of the country.

(b)(6); (b)(7)(C) supervisor while at the SEC was (b)(6); (b)(7)(C). He told us that at the time relevant to the investigation he was notified by the SEC's Office of Information Technology (b)(6); (b)(7)(C) computer was "pinging" with an internet protocol address originating from (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) stated that when he spoke with (b)(6); (b)(7)(C) over the phone, she denied that she was in (b)(6); (b)(7)(C). He recalled that (b)(6); (b)(7)(C) claimed she was teleworking from home in (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) told us that he instructed her to submit annual leave because she was AWOL.

We contacted the U.S. Attorney's Office for (b)(6); (b)(7)(C) which declined to pursue criminal charges; therefore, the issue does not merit further OIG investigation. Due to the Privacy Act, (b)(6); (b)(7)(C) (b)(6); (b)(7)(C). Accordingly, a report to management is not warranted and administratively closing this case is recommended.

Concurrence:

(b)(6); (b)(7)(C)

Digitally signed by (b)(6); (b)(7)(C)

Date: 2023.12.20 06:37:21 -05'00'

(b)(6); (b)(7)(C)

Special Agent in Charge

Date

Approved:

KATHERINE REILLY Digitally signed by KATHERINE REILLY
Date: 2023.12.19 16:15:45 -05'00'

Katherine H. Reilly, Acting Deputy Inspector General
for Investigations

Date

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Office of Inspector General – Investigations
U.S. Securities and Exchange Commission



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION



MEMORANDUM

December 18, 2023

TO: FILE

FROM: (b)(6); (b)(7)(C)
Senior Special Agent
Office of Investigations

THROUGH: (b)(6); (b)(7)(C)
Special Agent in Charge
Office of Investigations

SUBJECT: Case No. 21-(b)(6); 0006-I
(b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)

The purpose of this memorandum is to document our investigative activities and to recommend case closure.

We initiated this investigation when the Division of Enforcement, Office of Market Intelligence, referred to us Tins, Complaints, and Referral (b)(6); (b)(7)(C) related to a confidential complainant who alleged that (b)(6); (b)(7)(C) with the (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) solicited SEC employees to participate in an alleged pyramid scheme. (b)(6); (b)(7)(C) reportedly requested SEC employees invest thousands of dollars with two companies referenced as (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) while also requesting the employees recruit other investors to maximize profit sharing.

The confidential complainant stated that (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

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Office of Inspector General – Investigations
U.S. Securities and Exchange Commission

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) told us that during a casual conversation with (b)(6); (b)(7)(C) outside of the SEC, she asked if he had ever heard of a community gifting program and explained it was a concept of investing with a group of friends or family members who invest in themselves. (b)(6); (b)(7)(C) said that he told (b)(6); (b)(7)(C) the concept of community gifting was a financial scheme and declined to participate.

When we interviewed (b)(6); (b)(7)(C) she admitted attending a virtual Zoom presentation for (b)(6); (b)(7)(C). She explained that after listening to the presentation she had no interest in pursuing additional information about the organization. (b)(6); (b)(7)(C) denied asking other SEC employees to participate in (b)(6); (b)(7)(C) and said she had not heard of (b)(6); (b)(7)(C).

We contacted the Assistant U.S. Attorney's Office for the District of Columbia which declined to pursue criminal charges. In considering the lack of evidence corroborating the confidential complainant's allegation and their request to withdraw the complaint during the investigation, the issue does not merit further OIG investigation. Accordingly, a report to management is not warranted and administratively closing this case is recommended.

Concurrence:

(b)(6); (b)(7)(C)

Digitally signed by (b)(6); (b)(7)(C)

Date: 2023.12.19 07:24:24 -05'00'

(b)(6); (b)(7)(C)

Special Agent in Charge

Date

Approved:

KATHERINE REILLY

Digitally signed by KATHERINE REILLY

Date: 2023.12.19 07:21:25 -05'00'

Katherine H. Reilly, Acting Deputy Inspector General
for Investigations

Date

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Office of Inspector General – Investigations
U.S. Securities and Exchange Commission

Report of Investigation

Financial Conflict of Interest Allegations
Against Former Corporation Finance Director
William H. Hinman

CASE NO: 22-DCF-0028-I
DECEMBER 9, 2024





Office of Inspector General

REPORT OF INVESTIGATION

DECEMBER 9, 2024 | CASE NO. 22-DCF-0028-I

| | |
|----------------|---------------------------------|
| SUBJECT | Hinman, William H. |
| POSITION TITLE | Director (Former) |
| SK-LEVEL/GRADE | Senior Officer |
| OFFICE | Division of Corporation Finance |
| REGION | Headquarters |

EXECUTIVE SUMMARY

We received a complaint from Empower Oversight alleging that former Director of the Division of Corporation Finance (CF) William Hinman did not comply with Office of the Ethics Counsel (OEC) "directives" with respect to his ongoing financial relationship and contacts with his former law firm, Simpson Thacher & Bartlett LLP ("STB"). Specifically, Empower Oversight alleged: 1) Hinman failed to disclose a direct financial interest in STB, which was a member of the Enterprise Ethereum Alliance ("Ethereum Alliance"), in his June 14, 2018 speech at Yahoo Finance's All Markets Summit: Crypto ("Yahoo speech"), in which he stated that the digital asset Ether was not a security; 2) Hinman referred a "business prospect" to STB; and 3) Hinman had "miscellaneous contacts" with STB while employed with the SEC.

We found that at the time of his onboarding at the SEC, Hinman disclosed his financial interest in STB to OEC and took the steps prescribed by SEC ethics officials to mitigate or cure the potential conflicts of interest. We also found that while Hinman replied to a recruiter's inquiry by directing him to an STB partner, doing so did not violate the ethics regulations or guidance he received from OEC to recuse himself from matters involving STB. Furthermore, Hinman's miscellaneous contacts with STB did not violate ethics rules or guidance.

With respect to the Yahoo speech, we determined that Hinman followed applicable ethics rules in preparing and delivering the speech (b)(6), (b)(7)(C). Finally, we uncovered no evidence that Hinman's statements regarding Ether in the Yahoo speech had a direct and predictable effect on Hinman's financial interests at the time or were made for his personal financial gain.

Background

Hinman joined the SEC as Director of CF in May 2017 after retiring from his partnership with STB. According to Hinman, he took the position at the suggestion of then-Chairman Jay Clayton, who appointed him as Division Director.¹ As Director of CF, Hinman led rulemaking initiatives designed to strengthen public markets, enhance investor protections, and broaden small business access to capital markets. He also provided guidance to market participants on various emerging issues, including digital assets.²

On June 14, 2018, Hinman gave a speech as Director of CF titled *Digital Asset Transactions: When Howey Met Gary (Plastics)* at the Yahoo Finance All Markets Summit: Crypto in San Francisco, California. The stated purpose of the Yahoo speech was to address the topic of “whether a digital asset offered as a security [could], over time, become something other than a security.” In his speech, Hinman stated that, “based on [his] understanding of the present state of Ether . . . current offers and sales of Ether are not securities transactions.” Ether is a native cryptocurrency of Ethereum, which is “a decentralized global software platform powered by blockchain technology.”³ (EXHIBIT 1)

On August 12, 2021, Empower Oversight, which describes itself as “a nonpartisan, nonprofit educational organization, dedicated to enhancing independent oversight of government and corporate wrongdoing,”⁴ submitted a Freedom of Information Act request to the SEC seeking eight categories of records to understand, among other things, whether the past and future private sector employment of Hinman and other former SEC officials created potential conflicts or public integrity concerns related to their official actions at the SEC. In particular, Empower Oversight highlighted a link between Ethereum and STB, Hinman’s former law firm. Near the time of the Yahoo speech, STB joined the Ethereum Alliance,⁵ “a member-led industry organization whose objective is to drive the use of Enterprise Ethereum . . . blockchain technology as an open standard to empower ALL enterprises” (emphasis in original).⁶ On May 9, 2022, Empower Oversight submitted the complaint to this office alleging the conduct that is the subject of this report. (EXHIBIT 2)

Because Hinman had left the SEC for the private sector before we received this complaint, we investigated this matter principally for possible criminal violations and to examine potential programmatic implications for SEC ethics oversight.

¹ Exhibit # 1: Hinman Dep. 44:17 – 45:7.

² Hinman Dep. 71:6-12. See also <https://www.stblaw.com/our-team/search/william-h-hinman>.

³ <https://www.investopedia.com/terms/e/ethereum.asp#toc-what-is-ethereum>

⁴ <https://empowr.us/mission/>

⁵ According to Hinman, STB became a member of the Ethereum Alliance to become more informed about Ethereum technology. See Exhibit # 4: Hinman Resp. Qs. 13, 14, and 14(a) –(c).

⁶ <https://entethalliance.org/about-enterprise-ethereum-alliance/>

Investigative Results

FINDING 1: At the time of his onboarding at the SEC, Hinman disclosed his financial interest in STB to OEC and took the recommended steps to mitigate or cure potential conflicts of interest. There is no evidence Hinman failed to follow OEC's instructions.

Implicated Standards

18 U.S.C. § 203: Prohibits a federal employee from receiving compensation for their own or for another's representational services when the representational services meet certain conditions, including when the service is rendered while that employee is a federal employee, and it involves a particular matter before the U.S. Government or any court. The prohibition at 18 U.S.C. § 203 prevents the federal employee from receiving any portion of their partnership share that is from the representational services described above rendered personally or by another member of the law firm, if such services were rendered during the time the partner was a federal employee. Furthermore, when compensation for representational services is prohibited under 18 U.S.C. § 203, an employee may not receive any portion of a partnership share for those representations made during the employee's federal service, even if the payment is made after the employee leaves federal service.⁷

18 U.S.C. § 208: Prohibits a federal employee from participating personally and substantially in a particular matter in which, to his knowledge, he has a financial interest. A federal employee who retains a financial interest in a law firm is prohibited from participating personally and substantially in any particular matter that to the employee's knowledge has a direct and predictable effect on the financial interests of the firm.⁸

Supporting Evidence

During his SEC onboarding process, Hinman disclosed that he received a retirement annuity from STB, paid on a monthly basis, the amount of which varied based on the profits of the firm. This type of agreement violates government ethics rules that prohibit government employees from receiving compensation from outside sources for representational services. OEC sought advice from the U.S. Office of Government Ethics (OGE) about mitigating this conflict. OGE advised that Hinman could continue to receive his STB retirement annuity while employed with the SEC if the annuity were fixed instead of variable. Thereafter, Hinman arranged to receive a fixed annuity for a period of three years, through the end of 2020. After that, Hinman's STB pension would revert to a profit-sharing arrangement. OEC informed Hinman that fixing the retirement annuity through 2020 would cure the financial conflict under 18 U.S.C. § 203 for that time period.⁹

⁷ See OGE Guidance on Conflicts of Interest Considerations: Law Firm or Consulting Employment (2024).

⁸ *Id.*

⁹ Exhibit #15.

However, because the annuity would revert to a profit-sharing arrangement after three years, the possibility that Hinman would benefit financially from STB's future profitability posed a risk that a financial conflict under 18 U.S.C. § 208 could arise. (EXHIBIT 3) OEC therefore advised Hinman to recuse himself from matters involving STB and assigned CF staff to ensure that Hinman's workflow did not include recused matters. The screening arrangement was updated annually and communicated among appropriate OEC and CF staff. There is no evidence that Hinman failed to follow the recusal instruction. (EXHIBITS 4, 5, 6, 7, and 15)

FINDING 2: Hinman replied to a recruiter's inquiry by directing him to an STB partner; doing so did not violate OEC guidance to recuse himself from matters involving STB.

Implicated Standards

18 U.S.C. § 208.

5 C.F.R. § 2635.702: An employee may not use their public office for their own private gain; for the endorsement of any product, service, or enterprise (except as otherwise permitted by this part or other applicable law or regulation); or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations.

Supporting Evidence

While it was alleged that Hinman referred a "business prospect" to his former law firm, our review of Hinman's email files found that a recruiter sent an email to Hinman's SEC email account on July 14, 2017, seeking an expert in investment banking and the China IPO process. Hinman responded, "[y]ou may want to ask Dan Fertig, a Simpson Thacher partner in Hong Kong for the referral. Given my current position at the SEC, I am not well placed to provide you the best names." Hinman's response to the recruiter did not violate OEC guidance or the ethics rules because there is no indication that Hinman was endorsing STB or its partner, or referring business to them, or that Hinman stood to benefit financially from suggesting that the recruiter speak to an STB partner for names of potential experts. We found no subsequent emails from Hinman pertaining to the recruiter's inquiry, and we did not find emails in which Hinman referred business prospects to STB. (EXHIBITS 4 and 12)

FINDING 3: Hinman’s “miscellaneous contacts” with STB personnel did not violate OEC guidance.

Implicated Standard

18 U.S.C. § 208.

Supporting Evidence

We reviewed Hinman’s SEC email files and found communications with former STB colleagues. We found that on May 15, 2017, on or about the day that Hinman’s OEC screening arrangement went into effect, someone from STB sent Hinman an email about the “abysmally low” \$2,000 threshold for shareholder proposals. We found no evidence that Hinman responded to the email. We also found that STB personnel invited Hinman to attend conferences; however, to comply with OEC guidance, Hinman accepted only one such invitation after the host arranged for STB staff not to attend. **(EXHIBITS 4, 12, and 15)**

Ethics guidance did not preclude Hinman from communicating with STB personnel. Rather, OEC advised that Hinman recuse himself from matters involving STB clients and not attend conferences where STB staff were panelists or attendees. Hinman told us that he coordinated with counsel in CF and sought OEC guidance involving STB matters.¹⁰ We found no evidence that Hinman failed to follow the guidance he received from OEC. **(EXHIBIT 15)**

FINDING 4: Hinman followed the SEC’s ethics rules in preparing and delivering the Yahoo speech (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Implicated Standards

17 C.F.R. § 200.735-4:¹¹ Provides guidance to SEC employees regarding outside employment and activities, including speaking and writing. The rule states that “the Commission encourages employees to engage in teaching, lecturing and writing activities.” The rule also prohibits SEC employees from: using confidential or nonpublic information; making comments on pending litigation in which the Commission is participating as a party or amicus curiae; or making comments on rulemaking proceedings pending before the Commission which would adversely affect the operations of the Commission. In furtherance of monitoring compliance with these requirements, the rule requires employees to submit prepared speeches “relating to the Commission, or the statutes or rules it administers,” to the General Counsel for review. The General Counsel is to determine whether the requirements of this rule are met, not to adopt or concur in

¹⁰ Exhibit # 4: Hinman Resp. Q. 6(b).

¹¹ See also 5 C.F.R. § 4401.103(d); 5 C.F.R. Part 2635, Subpart H.

the views expressed. The rule also provides disclaimer language that employees must use when giving a speech related to the SEC.

SEC Guidance on Speaking and Writing: Guidance found on the SEC Exchange requires employees to complete a coversheet, Form 2432, and submit it along with the proposed publication to OEC at least 30 days ahead of proposed publication. The coversheet calls for the identity and title of the speaker/writer, the subject matter of the proposed publication/speech, and requests confirmation that the material does not contain nonpublic information or comment on pending litigation or rulemaking proceedings and includes the standard disclaimer language. Upon receipt of the publication/speech and this information, OGC will then review and clear the publication.

Supporting Evidence

We found that Hinman complied with the ethics requirements regarding the speech clearance process by circulating the speech through OGC for review. We spoke with (b)(6); (b)(7)(C) to review draft speeches, particularly those drafted by and for Division directors and other high-level SEC officials.¹² (b)(6); (b)(7)(C) explained that the supplemental ethics regulations require speeches proposed by SEC employees to go through pre-publication review to ensure that the proposed speech does not contain nonpublic information.¹³ (b)(6); (b)(7)(C) explained further that SEC employees are prohibited from making predictions or commenting on active SEC matters.¹⁴ (b)(6); (b)(7)(C) the draft Yahoo speech contained a programmatically important issue: specifically, cryptocurrencies. (b)(6); (b)(7)(C) went through the draft with a "fine tooth comb."¹⁵ (b)(6); (b)(7)(C) edits to the speech, however, concentrated on ensuring Hinman gave accurate and impartial descriptions of cryptocurrencies.¹⁶ (b)(6); (b)(7)(C) also forwarded the speech and (b)(6); (b)(7)(C) comments to (b)(6); (b)(7)(C) supervisor at the time, (b)(6); (b)(7)(C) for (b)(6); (b)(7)(C) review.¹⁷

(b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)
(b)(6); (b)(7)(C) (EXHIBIT 8)

¹² Exhibit# 13 (b)(6); (b)(7)(C) Tr. 6-9:16.

¹³ (b)(6); (b)(7)(C) Tr. 7:6 – 8:16.

¹⁴ (b)(6); (b)(7)(C) Tr. 16:3-4.

¹⁵ (b)(6); (b)(7)(C) Tr. 19:25 – 21:12.

¹⁶ (b)(6); (b)(7)(C) Tr. 16:1-4.

¹⁷ (b)(6); (b)(7)(C) Tr. 18:13-18.

¹⁸ (b)(6); (b)(7)(C) Exhibit #5: (b)(6); (b)(7)(C) Tr. 18:18 – 19:20.

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FINDING 5: We found no evidence that Hinman's statements regarding Ether in the Yahoo speech had a direct and predictable effect on his financial interests at the time or that he made the statements for personal gain.

Implicated Standard

18 U.S.C. § 208.

Supporting Evidence

The complainant alleged that because STB was a member of the Ethereum Alliance at the time of Hinman's Yahoo speech, and Hinman had ties to STB through his retirement annuity and "repeated contacts" with STB personnel, then Hinman had a direct financial interest in Ethereum when he made statements in the Yahoo speech regarding Ether's status as a security. Even if true, the facts alleged do not amount to a conflict of interest on Hinman's part.

There Is No Evidence That Hinman Had a Financial Conflict of Interest Related to the Speech

As previously discussed, Hinman cured the dual representation financial interest conflict (18 U.S.C. § 203) when he agreed to receive a fixed rather than variable annuity from STB for the length of his SEC tenure and managed the potential financial conflict under 18 U.S.C. § 208 through his recusal from participating in matters involving STB. He told us: "I never took part in any matters involving Simpson Thacher or any matters that I believed would directly and predictably affect any of my financial interests."¹⁹ We found no evidence contradicting this statement. Moreover, Hinman completed OGE Public Financial Disclosure Forms 278 ("Forms 278") annually as required, in which he disclosed his STB retirement annuity but no other financial interest in STB. **(EXHIBIT 7)** Therefore, the evidence does not support a finding Hinman had any ties to STB that would violate criminal conflicts statutes.

We also found no evidence to indicate that Hinman had a financial interest in any digital assets, including Ether, while employed with the SEC. Specifically, Hinman testified in his 2021 deposition that as far as he was aware, he did not own – either directly or indirectly – any type of financial interest in any security issued by a cryptocurrency company or digital asset before, during, and after his tenure as Division Director.²⁰ We reviewed his Forms 278 and his Personal Trading Compliance System (PTCS) Annual Certification of Holdings covering his tenure at the SEC, which revealed no holdings in digital assets, including Ether. **(EXHIBIT 7)**

We also concluded that Hinman's statements about Ether in the Yahoo speech did not rise to the level of "personal and substantial" participation in a "particular matter" that was pending before the Commission at the time of the speech. The attenuated connection between the Yahoo speech, the status of the Ether token as a security, the Ethereum Alliance, and STB's participation in the Ethereum Alliance, an industry network, taken together, do not amount to a "direct and predictable" financial benefit to STB or Hinman.

¹⁹ Exhibit # 4: Hinman Resp. Q. 6(d)(ii).

²⁰ Exhibit # 1: Hinman Dep. 113:3 – 115:12; 325:3-16.

The Yahoo Speech Was Collaboratively Drafted and Hinman Was Not Representing His Own Personal Interests When He Gave the Speech

Hinman alone did not determine the content of the speech, nor was he its principal author. (b)(6), (b)(7)(C) during Hinman's tenure, told us that Hinman asked (b)(6), (b)(7)(C) to draft the Yahoo speech in collaboration with (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) along with others who worked (b)(6), (b)(7)(C) on (b)(6), (b)(7)(C) said that Hinman chose the subject because "the issue of how to treat digital assets" was "a hot topic" that (b)(6), (b)(7)(C) discussed with Hinman "a number of times in that time period. And I don't remember if it was him or me, or with someone else, but the idea came about to give a speech to give some kind of contour of the legal – of our legal thinking in this area."²² (b)(6), (b)(7)(C) to be the primary producer and distributor of the speech among SEC reviewers but characterized the speechwriting as "a collaborative process" with "multiple hands" involved.²³ We also spoke with (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) about the drafting process, who confirmed that multiple divisions and offices within the SEC provided input during the drafting of the speech.²⁴ Hinman told us that the then-Chairman and members of his staff reviewed and commented on the speech.²⁵ He further elaborated that the Chairman and other Division heads discussed the content of the speech at some length.²⁶

The decision to mention Ether in the speech was likewise collaborative. Hinman explained that "this decision was made collectively by the group of SEC officials that reviewed the speech."²⁷ He elaborated:

The thinking was that the markets were trying to understand how to apply the Howey case and our, then recent, 21A order, to digital assets. The SEC had previously made statements that [Bitcoin] was viewed as a commodity, (b)(5) (b)(5) we could generate a higher level of compliance among issuers of digital assets.²⁸

Moreover, Hinman stated that he was unaware of STB's recent membership in the Ethereum Alliance when he gave the Yahoo speech.²⁹

We also found that Hinman was on official SEC business when he gave the Yahoo speech.³⁰ SEC travel records confirmed that the agency paid for Hinman to travel to San Francisco, California on June 13, 2018, where he gave the speech on June 14th, and returned to

²¹ Exhibit # 10, (b)(6), (b)(7)(C) Tr. 9:6-18.

²² (b)(6), (b)(7)(C) Tr. 8:1-7.

²³ (b)(6), (b)(7)(C) Tr. 16:7-16; 13:8-9; 11:22.

²⁴ Exhibit # 10, (b)(6), (b)(7)(C) Tr. 9:6 – 10:22 ; Exhibit # 11, (b)(6), (b)(7)(C) Tr. 9:14 – 10:3.

²⁵ Exhibit # 4: Hinman Resp. Q. 7(b).

²⁶ Hinman Resp. Q. 10.

²⁷ Hinman Resp. Q. 10.

²⁸ Hinman Resp. Q. 10.

²⁹ Hinman Resp. Qs. 13 and 14(a).

³⁰ Hinman Resp. Q. 8.

D.C. on June 17, 2018. Hinman was in duty status for each of the workdays during this time. **(EXHIBIT 8)**

There is no evidence that Hinman would have been invited to speak but for his position at the SEC. His use of a disclaimer to the effect that the speech does not necessarily reflect the views of the Commission does not change this; it is the standard disclaimer used by SEC personnel in all speaking engagements.³¹ While Hinman could not remember who invited him to speak at the Summit, he thought that the invitation may have come through one of his SEC counsels and not directly to him.³² Moreover, Hinman testified that he did not consider himself an expert in digital asset transactions when he joined the SEC in 2017,³³ and he was listed on the agenda with only his title as Director of the Division of Corporation Finance at the SEC and no other biographical or professional information.³⁴ **(EXHIBITS 1 and 14)**

Meeting with Ethereum Officials Was Within the Ordinary Course of Business

We did find that Hinman and other SEC officials met with representatives from Ethereum before the speech was given. (b)(6); (b)(7)(C) recalled two meetings with non-SEC individuals (b)(6); (b)(7)(C) believed were involved with the Ethereum platform about a month or so before the Yahoo speech, the purpose of which was to receive background information on how the token worked, and obtain information that would make Hinman comfortable with the subject matter he was to present at the Yahoo Summit.³⁵ Hinman confirmed that he met with Joe Lubin and Vitalik Buterin, two of the originators of Ethereum, in connection with his due diligence leading up to the Yahoo speech.³⁶ Hinman told us that SEC officials did not tell the Ethereum originators that they were working on a speech.³⁷ There is no indication that this meeting was inappropriate or outside of the ordinary course of SEC business.

Coordination

We did not present this matter to the United States Attorney's Office for consideration of prosecution as we developed no evidence of a criminal violation.

³¹ The evidence indicates that Hinman was acting in his official capacity when he gave the Yahoo speech, an issue that was in dispute in *SEC v. Ripple Labs, Inc. et al.*, 1:20-cv-10832-AT-SN (S.D.N.Y. Dec. 22, 2020).

³² Exhibit # 1: Hinman Dep. 228:22 – 229:5.

³³ Hinman Dep. 45:19 – 46:14.

³⁴ https://finance.yahoo.com/news/yahoo-finance-presents-markets-summit-crypto-114756464.html?guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLnNvbS8&guce_referrer_sig=AQAAADeQgBJOlP7Wfgidbh6MA9qMRE8RHY4eGrkCciCPJTKMtQstx6O64CudE7iNNgui5CJoO6_2syU5ACpy7hmOp5k1BtNB7zjfSQBdg2tC-P2PE1akrvzkWko2FBINyaLIKR8nk5Q6HTNkS0SKlo0iCDyvvz1Rz-GhbdFFC4thZ84&guccounter=2

³⁵ Exhibit # 10: (b)(6); (b)(7)(C) Tr. 18:25 – 20:7.

³⁶ Exhibit # 4: Hinman Resp. Qs. 11 and 12.

³⁷ Hinman Resp. Q. 11(a).

Exhibits

1. Deposition of William H. Hinman, Jr., dated July 27, 2021.
2. Empower Oversight complaint, dated May 9, 2022.
3. Memorandum of Activity, Review of Hinman's STB pension agreement, dated May 9, 2017.
4. Memorandum of Activity, Investigative Questionnaire to Hinman, dated April 19, 2024.
5. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated November 15, 2022.
6. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated May 22, 2023.
7. Memorandum of Activity, Review of Hinman's OGE Forms 278 and PTCS forms, dated June 13, 2022.
8. Memorandum of Activity, Review of SEC Forms 2432, E2 Travel and WebTA, dated August 23, 2022.
9. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated June 1, 2023.
10. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated February 16, 2023.
11. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated February 15, 2023.
12. Memorandum of Activity, Review of Hinman's email files, dated September 14, 2023.
13. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated February 2, 2023.
14. Memorandum of Activity, Review of Hinman's email files, dated September 9, 2023.
15. Memorandum of Activity, Review of Hinman's email files, dated September 19, 2023.



U.S. Securities and Exchange Commission
Office of Inspector General



Report of Investigation

Subject: HUB/CAS Cross Contamination
Title: N/A
SK-Level/Grade: N/A
Office: Division of Enforcement and Office
of the Secretary
Region: SEC

Case #: 22-ENF-0019-I

Origin: Division of Enforcement

Investigation Initiated: June 13, 2022

Investigation Completed: May 4, 2023

SUMMARY

On May 16, 2022, the Securities and Exchange Commission (SEC), Office of Inspector General (OIG) met with SEC officials regarding an allegation that National Case Management Specialist (NCMS) (b)(6); (b)(7)(C) Division of Enforcement (ENF), who had authorized access to the Office of the Secretary's (OS) Commission Action System (CAS) and ENF's HUB system, accessed and extracted Office of General Counsel (OGC) adjudicatory information/documentation from the CAS system and uploaded it into the HUB system without proper authorization. Placing the OGC adjudicatory documents in HUB gave ENF staff who investigate and prosecute matters in front of the Commission access to memoranda drafted by OGC's Adjudication Group ("Adjudication"), which advises and assists the Commission in issuing adjudicatory opinions and orders. ENF personnel's unauthorized access to Commission adjudicatory information could constitute a violation of the Administrative Procedures Act, which restricts Commission staff from both investigating or prosecuting and adjudicating a matter. (EXHIBIT 1)

The investigation found that ENF Case Management Specialists (CMSs or CMS personnel) were granted access to CAS in order to access information and documentation pertaining to ENF actions. CMS personnel were told to download information/documentation related to ENF actions from CAS and upload that information into HUB. As a result, CMS personnel unknowingly accessed OGC Adjudication information/documentation via CAS and were able to email that information/documentation to other ENF personnel who unknowingly uploaded the OGC Adjudication information/documentation into HUB.

We determined that at some point between August 15, 2017, and July 31, 2018, subsequent to the launch of a new (b)(7)(E) CAS system, OS personnel upgraded the access roles of CMS personnel from "ReadOnly" to "ReadOnlySensitive," which allowed CMS personnel access to the OGC Adjudication documents (also known as "action memos"), which are marked "sensitive" in CAS. The initial role given to the ENF CMS's was the Serread_Role access level,

which did not give CMS personnel access to sensitive OGC Adjudication information/documentation. The CAS_ReadOnlySensitive access level allowed the unauthorized access to the OGC Adjudication information/documentation. On several occasions after 2018, OS certified that the CAS_ReadOnlySensitive access role provided to ENF CMSs was authorized and accurate.

Additionally, the investigation determined that at no time prior to or after the CMS personnel were given “ReadOnlySensitive” access in CAS did OS contemplate the scenario that CMS personnel would have access to OGC Adjudication documents in CAS, and that they would download those documents into HUB. Because this situation was never contemplated, CAS was not configured to further segregate – beyond the “sensitive” designation – OGC Adjudication documents so that information would be accessible to the appropriate personnel. Moreover, OS did not train ENF personnel regarding the fact that OGC Adjudication documents should not be accessed.

Furthermore, we found that ENF personnel were not aware that the documentation they were viewing and had access to in CAS was sensitive OGC Adjudication information/documentation or that their access to it was prohibited. ENF CMSs did not intentionally access and/or extract unauthorized OGC Adjudication information/documentation contained in CAS.

Finally, the investigation uncovered that when authorizing CAS access to CMS personnel, OS did not implement adequate controls regarding the co-mingling of sensitive OGC Adjudication information/documentation with other sensitive information/documentation that ENF was authorized to access. This matter of adequate controls has been referred to the OIG’s Office of Audits for further review.

BACKGROUND

On April 5, 2022, the SEC reported in a public notice that they found that “administrative support personnel from Enforcement, who were responsible for maintaining Enforcement’s case files, accessed Adjudication memoranda via the Office of the Secretary’s databases. Those individuals then emailed Adjudication memoranda to other administrative staff who in many cases uploaded the files into Enforcement databases.”

On May 16, 2022, we met with Deputy General Counsel Elizabeth McFadden, SEC, OGC, General Law and Management; (b)(6); (b)(7)(C) SEC, Division of Examinations (EXAMS), Boston Regional Office (BRO); (b)(6); (b)(7)(C) EXAMS, BRO; and Legal Counsel Lisa Helvin, SEC, Office of the Chair. The meeting concerned the matter relating to ENF staff improperly accessing OGC Adjudication materials.

As a result of the discovery, the SEC initiated a review and investigation into ENF staff members potentially improperly accessing adjudicatory materials. (b)(6); (b)(7)(C) reported that 28 open CAS matters were discovered to have been downloaded and subsequently posted in the

HUB. It was determined that (b)(6); (b)(7)(C) downloaded every action memorandum (102e & litigation) for the past several years. Generally, (b)(6); (b)(7)(C) emailed the memoranda to the Regional Case Management Specialists (RCMS), who would subsequently post the memoranda into the HUB.

The HUB is a database, maintained by ENF, which provides case management and tracks all aspects of ENF investigations and litigation nationwide. CMSs are ENF employees responsible for tracking the investigations of ENF attorneys from beginning to end and reporting/uploading case information into the HUB.

The Case Management Systems and Reporting (CSMR) Group, which consists of ENF personnel to include RCMS and NCMS personnel, manages the HUB as well as EnforceNet, which is the SharePoint site for ENF and is responsible for monitoring SEC authorizations in order to update ENF's case tracking data in the HUB.

RCMSs are responsible for ensuring that all information/documentation pertaining to ENF investigations in their regions is input into HUB prior to the investigation being closed. NCMSs review and validate the actions of the RCMSs assigned to them, ensuring that RCMSs do not miss any information/documentation pertinent to their respective regions.

The CAS is a database, maintained by OS, which tracks SEC votes on action memoranda, advice memoranda, Seriatim, and daily commission agendas and calendars.

NCMS and RCMS personnel were granted access to CAS in order to check and access information/documentation pertaining to authorized ENF actions acted/voted upon by the Commission. The CAS information/documentation was loaded into HUB as a dual tracking process.

[Agent's Note: The CAS and HUB are two separate systems and are purposely kept separate.]

ENF Leadership on discovery of the HUB/CAS cross contamination

(b)(6);
(b)(7)(C)

We interviewed (b)(6); (b)(7)(C) SEC, ENF, BRO who explained that he is in charge of the HUB. With respect to RCMS and NCMS personnel, (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) I report directly to him and perform CMS work for Home Office/Headquarters matters. (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) also report directly to him and serve as an umbrella over all CMS personnel, essentially validating HUB data, making sure that the data is entered into HUB as required, and performing other projects. (b)(6); (b)(7)(C) explained that the other CMS personnel, one or two per regional office, (b)(6); (b)(7)(C) He continued that although they (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) give them guidance regarding what is needed/required. (b)(6); (b)(7)(C) stated that NCMS personnel check the HUB-related work being performed by RCMS personnel to make sure that

the data is entered into HUB correctly and to resolve any issues. He continued that RCMSs and NCMSs could come (b)(6); (b)(7)(C) SEC (b)(6); (b)(7)(C) regarding any questions or issues.

Regarding the discovery of the HUB/CAS cross contamination, (b)(6); (b)(7)(C) related that while researching an issue that came up during a front office team meeting pertaining to the timing of an AP (Administrative Proceeding), he went to the case in HUB in an attempt to ascertain the case timeline. He noticed something strange about one of the action memos contained in the case documents and discovered that it was not an ENF action memo. (b)(6); (b)(7)(C) related that the action memo in question related to the case, but was drafted by OGC Adjudication. (b)(6); (b)(7)(C) explained that he realized the ENF should not have access to these documents because OGC Adjudication is, "...akin to a clerk of the court."

(b)(6); (b)(7)(C) stated that he never knew, and did not think that most people in ENF would have known prior to the discovery of this issue, that OGC Adjudication wrote action memos. (b)(6); (b)(7)(C) continued that the action memo, "...looked a lot like ours, but it was just in the content, it looked different because it had I think it had like a draft order, so that must be how they do it, they must draft up draft recommended orders, and circulate those to the Commission essentially recommending you should issue this order I guess and then probably explain why." (b)(6); (b)(7)(C) stated that upon finding the OGC Adjudication documents, he contacted (b)(6); (b)(7)(C) (b)(7)(E) (b)(7)(E)

(b)(6); (b)(7)(C) stated that ENF set up a process wherein (b)(6); (b)(7)(C) would get action memos from the OS systems and circulate them out to local field offices. (b)(6); (b)(7)(C) stated that he informed (b)(6); (b)(7)(C) that OGC Adjudication documents, such as action memos, should not be in HUB and asked her to check HUB, locate any additional OGC Adjudication documents and remove them from the system. (b)(6); (b)(7)(C) related that he removed the initial document that he discovered from HUB when he realized that it did not belong to ENF. (b)(6); (b)(7)(C) stated that approximately a week later, he coordinated with (b)(6); (b)(7)(C) and was informed that she had located additional OGC adjudication documents and had removed them from HUB.

(b)(6); (b)(7)(C) could not recall the specific OGC action memos or the number of action memos removed from the HUB by (b)(6); (b)(7)(C) and explained that when (b)(6); (b)(7)(C) informed him that there were a large number of these types of documents in HUB, he decided that (b)(6); (b)(7)(C) should pause their activity and that he should notify ENF leadership regarding the matter. (b)(6); (b)(7)(C) related that he did not believe that (b)(6); (b)(7)(C) was aware that the action memos in question were OGC Adjudication documents and that they should not have been in HUB, until he advised her of these facts.

When asked if (b)(6); (b)(7)(C) was ever told of the differences in markings and file endings about ENF action memos and OGC Adjudication documents in the CAS, (b)(6); (b)(7)(C) replied, "I doubt it." When asked if he was aware of the differences, prior to this incident, (b)(6); (b)(7)(C) replied, "No I wasn't, but I really wouldn't have been because I'm not really going into CAS; but she would work closely in CAS, I think she may have known something like that like the different file

extension, but the different file extensions, wouldn't necessarily mean, you know, we absolutely don't want it." (b)(6); (b)(7)(C) stated that, fundamentally he did not think that anyone in his group knew how OGC Adjudication did what it did, and that it used action memos. He continued that he did not think that his group was aware that OGC Adjudication documents were being made available to ENF, so he was not surprised that (b)(6); (b)(7)(C) did not realize it.

When asked if (b)(6); (b)(7)(C) was ever informed that there was information in CAS that she was not allowed to put into HUB, (b)(6); (b)(7)(C) replied, "I mean, I didn't give her that direction. I don't know what the OS said to her about the system, but I don't think the OS realized, I don't know, I don't know what the OS would have said." Additionally, (b)(6); (b)(7)(C) related that he was not aware of any RCMSs or NCMSs being informed, prior to the discovery, that there was information available to them in CAS that they should not have access to and that they should not put into HUB.

When asked if anyone from the CMSR group ever told CMS personnel that there was information in CAS that they should not load into HUB, (b)(6); (b)(7)(C) replied, "I didn't, we didn't know. No, we didn't know that. So we did not tell them that. We did not know, just to be clear, we really didn't know GC adjudication action memos really existed, at least I didn't, and I bet, like I was saying, I bet a lot of people didn't really know, that was even a thing. But so it's not like that's like something I'm like, oh, I gotta make sure, just in case. There's a GC adjudications memo mixed in with our stuff that I tell people don't do that. You didn't even know they existed. But if they did exist, like you, you certainly wouldn't think they're being made available to us. Right so, I did was never thinking I gotta tell people about this issue, because this is like it's so far removed from being on something that would be on your mind."

(b)(6); (b)(7)(C) related that his understanding was that within CAS, "...there are at least a few levels of permissioning is like regular documents that are sort of generally available to many, many CAS users. And then I don't know what they call it, but it's more of an it's probably called something like Executive Session, which is which kind of ties to how the Commission operates its business where there'd be memos stored for fewer eyes only. And that's the way the Commission does it. If you go to a Commission meeting, you'll see they'll have like a regular meeting, they consider a bunch of stuff and then they'll go into Executive Session and consider a few sensitive things. CAS I think reflects that, so they have stuff for the regular and then stuff for executive. And I think they were they have that ability. But the problem is ENF has stuff in executive session, and I guess, GC adjudications does, so the stuff is commingled. Even that's the issue like they could probably have pushed a bunch of adjudication stuff into their executive session level. And then said you just don't get executive session, but we have executive session stuff there too so that's why I believe they were saying within executive session, they can't cordon those they can't separate. And so they couldn't separate so we said, well, just cut us off and we'll work something out."

(b)(6); (b)(7)(C) was not sure if all CMS personnel had CAS access at the Executive Level but believed that since the OGC Adjudication documents appeared to be contained in the regular level as well as the Executive Level, they all may have had access to OGC Adjudication

documents (b)(6); stated that to the best of his knowledge, no ENF personnel were aware that there was information comingled in the CAS to which they were not supposed to have access. He continued that he and ENF staff presumably had access to what they were supposed to have access to; subsequently, CMS personnel marching orders were to go into CAS and extract the information that pertained to ENF cases and to upload that information into HUB. (b)(6); explained that (b)(6); (b)(7)(C) was tasked to grab all of the ENF-related action memos in CAS and to work with other CMS personnel to get the information out to the field. He continued that because CAS also contained other ENF-related information, individual RCMS personnel could also go into CAS to obtain information; however, (b)(6); (b)(7)(C) managed the ENF action memo centralized clearinghouse process.

(b)(6); explained that he discovered the OGC Adjudication documents in the HUB only after reading through the document. He continued that, "I read enough to know this looks weird." (b)(6); stated that (b)(6); (b)(7)(C) may have known that there were OGC documents in CAS, but believed her (b)(6); (b)(7)(C) issue was that she probably had no idea of the distinction between OGC Adjudications and OGC 102e's and did not know that ENF should not have had access to the OGC Adjudication information. (b)(6); continued that after discovering the document in HUB, he informed CMS personnel that if they came across something that looked like it was coming from OGC, he did not want them to touch it. (b)(6); explained that, "...I don't blame (b)(6); or someone for not kind of figuring that out. Because it's a kind of, you know, it's going to be it's going to be apparent to some folks, but it's not going to be apparent to others and just depends on your experience along the way. And I do think it's that frontline stuff, sort of attorney stuff and the CMSs are not attorneys. But it's the attorney stuff where you're going to be a little bit more tuned into an issue like that." (b)(6); reiterated that, "...we didn't know these documents even existed and we didn't know that we had access to them, so we didn't know to tell people don't touch them because we didn't even know they existed and we didn't know they could be in our possession even if they did exist." (EXHIBIT 19)

(b)(6); (b)(7)(C)

During an interview, Staff Attorney (b)(6); (b)(7)(C) SEC, ENF, (b)(6); explained that the (b)(7)(E) is responsible for managing the HUB, which tracks memos and investigations, both new matters and matters under inquiry and is used by ENF to track the various stages of ENF investigations from initiation to closure. She continued that the CMSR generates reports, utilizing the information contained in HUB, to keep SEC management informed of what the ENF inventory is in terms of cases or open actions as well as to assist with the various end of year metrics that the SEC is responsible for reporting to the public.

(b)(6); explained that RCMS personnel report to the senior officer in their regions and NCMS personnel report to (b)(6); (b)(7)(C) confirmed that essentially, NCMS personnel oversee the work of RCMS personnel and make sure that RCMS personnel are correctly inputting information into the HUB. When asked who reviews the work of NCMS personnel and ensures that NCMS personnel are correctly inputting information into the HUB, (b)(6); replied, (b)(6); (b)(6); (b)(7)(C) coordinate the guidance too."

(b)(6); (b)(7)(C) related that she has full access to HUB and indicated that (b)(6); (b)(7)(C) is responsible for ensuring that the information placed into HUB is appropriate and correct. Prior to the cross contamination of the HUB and the CAS, (b)(6); (b)(7)(C) stated that she was not aware that OGC prepared action memos. She continued that after this matter was brought to her attention, she had an opportunity to see one of the OGC action memos, when initially notified of the issue by (b)(6); (b)(7)(C) related, "I don't really remember specifically what the GC action memo looked like, I do remember thinking to myself, yeah, this looks weird, this looks not unlike, it doesn't necessarily it doesn't look like our typical action memos, but does have the same sort of subject areas and stuff..." (b)(6); (b)(7)(C) continued that she did not recall the OGC action memo being stamped or indicating OGC Action Memo, GC Action Memo, or Adjudication material. (b)(6); (b)(7)(C) confirmed that she has used the CAS system in the past, but stated that she has not used it in a while and that she believes the system is managed by OS. (b)(6); (b)(7)(C) stated that she did not know whether or not anyone besides (b)(6); (b)(7)(C) extracted information from CAS and uploaded it to HUB.

(b)(6); (b)(7)(C) stated that she did not think that she ever uploaded anything from CAS to HUB. Regarding CMS personnel instructions pertaining to uploading information from CAS to HUB, (b)(6); (b)(7)(C) stated, "...we were trying to get the action memos, so I think it was it was primarily (b)(6); (b)(7)(C) responsibility to upload action memos from CAS and I think she may have sent them, I don't exactly recall what her process was, but she would send them out to the regions and then the locals would upload them from there." (b)(6); (b)(7)(C) re-affirmed that to the best of her knowledge, RCMS and NCMS personnel were never told, by anyone within ENF, that they should not upload OGC Adjudication documents from CAS into HUB. (b)(6); (b)(7)(C) continued that prior to the HUB/CAS cross contamination, she did not know that CMS personnel had access to OGC Adjudication information in CAS or that there had been OGC Adjudication documents uploaded from CAS to HUB. (EXHIBIT 6)

(b)(6); (b)(7)(C)

We interviewed (b)(6); (b)(7)(C) SEC, ENF, (b)(6); (b)(7)(C) explained that (b)(6); (b)(7)(C) of multiple, large SEC applications to include HUB. (b)(6); (b)(7)(C) stated that he does not have any job duties/responsibilities in respect to NCMS or RCMS personnel because his duties mainly pertain to (b)(6); (b)(7)(C). He continued that he deals with the CMS team when it comes to modernizing the system, which is a separate contract, and (b)(6); (b)(7)(C) manages the other side, dealing with the CMS personnel. Regarding the cross contamination of HUB and CAS, (b)(6); (b)(7)(C) stated that he was not really involved in the matter, but heard about it. (b)(6); (b)(7)(C) continued that prior to this incident, there was no mechanism in HUB for determining who viewed a document. (b)(6); (b)(7)(C) stated that any time that he might have been in CAS, approximately (b)(6); (b)(7)(C) years ago, he does not recall coming across or seeing any OGC Adjudication documents. He also stated that he did not think that RCMS and NCMS were ever told that they could not put certain information into HUB. He continued that, "...We don't police that at all, it's really left up to them to put in the documents that are supposed to be and so if they think the documents are important to the case, they'll probably put it in there..." (b)(6); (b)(7)(C) stated that he was not aware that RCMS and/or NCMS

had access to OGC Adjudication documents or that they were loading the information into HUB. **(EXHIBIT 29)**

(b)(6); (b)(7)(C)

We interviewed (b)(6); (b)(7)(C) Staff Attorney, SEC, ENF (b)(6); (b)(7)(C) stated that he primarily works with HUB, ENF's data collection reporting system (b)(6); related that close to a year ago, he was informed by (b)(6); of an ongoing issue regarding the HUB and CAS, and at some point, he and (b)(6); worked together to develop a document containing information pertaining to action memoranda that may have been inappropriately uploaded into HUB. (b)(6); stated that to the best of his knowledge, he has never come across any documents listed as "General Counsel" or adjudicatory while using HUB. (b)(6); stated that he had no idea that there were action memos emanating from other offices like OGC and did not know whether or not CMS personnel were aware that OGC action memos existed either. **(EXHIBIT 4)**

(b)(6); (b)(7)(C) on discovery of the HUB/CAS cross contamination

(b)(6); (b)(7)(C)

We interviewed (b)(6); (b)(7)(C) OS, which is responsible for the orderly management of SEC work and ensures that items that are placed in front of the Commissioners for vote or consideration are handled properly and then issued properly. (b)(6); (b)(7)(C) SEC, OS, Commission Action Branch, oversees the system. When asked if there was a mechanism in CAS that could be activated to restrict or grant specific access to information and/or documents, (b)(6); (b)(7)(C) related, "Yes. So that was the two levels that I had alluded to before, was where there would be regular matters and then there would be limited distribution matters. And those limited matters only you would have to be granted specific permission to be able to see those. So if you only had regular read-only access and you tried to see a limited distribution memorandum you would not be able to."

(b)(6); (b)(7)(C) intimated that from a technology standpoint, OS would rely on the contractors to ensure that the appropriate read-only access or limited distribution access is granted, based on the information contained on the approved access request form. When asked why ENF personnel had access to the CAS, (b)(6); (b)(7)(C) related: "...they needed access to the system in order to confirm that the Commission had actually voted on something... When you go to the main page for any matters, see that a final disposition has been entered and that there are four or five or three, however many votes entered on something. And so they would be able to know that the matter was in fact had in fact been voted on and that action had been authorized for (sic) for enforcement to take. So for example, to file in District Court, or something along those lines, they would know that they had that authorization. It was subsequently explained to me that Enforcement preferred to use our copies of documents, rather than their own. And so therefore

relied upon the documents that were saved within our system to make sure that they had copies of all of the relevant materials for individual matters.”

According to (b)(6); (b)(7)(C) . . . certain Enforcement case management specialists, they did have access to the limited distribution documents. Most many not all, but many of which were adjudication materials. So, to just sort of step back briefly, OS does not determine whether something should be regular distribution or limited distribution or sensitive. We are told by staff when they submit documents. It doesn't mean that we don't provide guidance, but fundamentally those choices are made by staff. Most adjudications materials are limited distribution. And so for those and I don't think it was that many again, we would have to pull our records of the case management specialists who had access to distribution who would then have had access to the adjudication materials as well. Because the other category of limited distribution is there are many Enforcement cases that are considered limited distribution. Those would be the ones held in executive session or for whatever reason identified as more limited distribution. And so in order to know that those have been authorized as well, there was some number of staff who had access to the limited distribution section, so to speak, of CAS.”

(b)(6); (b)(7)(C) related that her understanding of the CAS audit trail, was that it is “...quite flawed and that one of the things that it is not possible, I believe, is to see who pulled what when. But from my point of view of sort of generally knowing the system, there is no obvious way to sort of click a button and know who touched what when... The one caveat being, of course, for our staff, who have administrative rights, you can see who uploaded the document. But in terms of sort of other access, I don't there may be something that others have; there's nothing that's sort of readily available now.”

(b)(6); (b)(7)(C) believed that the current CAS was designed in 2016 at which time, “...we started uploading documents into it, and this sort of distinction of limited observation was put in a little bit after CAS started, so that notion of who had access had sort of persisted started (b)(6); (b)(7)(C) has persisted. I will say that it reflects, to the best of my understanding again, I was not part of the design of the system, but it reflects practice that previously was done with paper copies, where because paper copies were distributed more broadly around the Commission, because there was no CAS system or SharePoint or anything that distributed these, it was done via paper.”

(b)(6); (b)(7)(C) explained that there are no in-system warnings, like banners on any of the restrictions for usage of the documents or contents that are in CAS. However, according to (b)(6); (b)(7)(C) “...so action memos often have, depending on what they have, will say at the top limited distribution. Sometimes they'll say restricted, Commission and counsels only. You know, when so when staff there will (*sic*) there could be legends at the top in the header of the action memo. There is also in CAS, if you do have access there would be a radio button that says sensitive that would be checked, that you know it was sensitive. Again, as I said, that doesn't correspond to the, you know, separation of functions of issue. It simply reflects the sensitivity overall of the document relative to other action memos. But that would be on sort of the face of

CAS. And then, as I said, there would be a legend that would say something like limited distribution or something along those lines at the top of the action memo.”

When asked if a CMS would see a comment such as, “for Commissioners only,” if the CMS simply extracted information or a document from CAS and uploaded it into the HUB without actually looking at the content of the document/information, (b)(6); (b)(7)(C) replied, “Yeah. I mean, I wouldn’t sort of want to speculate of what people looked at on the page. I mean, I suppose if you didn’t open the document, you wouldn’t see the header. I suppose. But that information is all sort of also reflected on the page of CAS. Where it says, you know, so when you pull it up it will say what division it came from, and you know, things like that. So it isn’t simply a document repository. You have to scroll down to the bottom where then there are the documents held. And I just don’t remember what the naming conventions are. But the number, the control number that we put on it also reflects the division, so everything that comes out of enforcement says “ENF” and everything that comes out of OGC says “OGC.” I will say that when we discovered this issue we immediately updated our coding in order to code everything that came out of OGC adjudications as OGC- ADJ, because of course not everything out of OGC is subject to the same separation of functions issues; it is the adjudicatory materials that are. And so for this fiscal year, that is a new code. But for prior years anything would have had OGC in that control number.”

(EXHIBIT 7)

(b)(6); (b)(7)(C)

When we interviewed (b)(6); (b)(7)(C) Program Analyst, SEC, OS, she related that she is the (b)(6); (b)(7)(C) along with IT Specialist (b)(6); (b)(7)(C). She continued that (b)(6); (b)(7)(C) is the (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) Concerning the cross contamination of the HUB and CAS, (b)(6); (b)(7)(C) related that ENF brought the matter to the attention of OS near the end of September 2021. (b)(6); (b)(7)(C) explained that ENF notified OS that they (ENF) had some OGC Adjudication documents in HUB. (b)(6); (b)(7)(C) stated that when OS first found out, via email, either she or (b)(6); (b)(7)(C) had to remove all users from CAS. (b)(6); (b)(7)(C) explained that because OGC action memos are posted in both CAS and (b)(7)(E) and because ENF personnel had access to both, all ENF personnel were removed from both sites. **(EXHIBIT 12)**

SCOPE

We investigated the following potential violations relating to ENF staff having improper access to OGC Adjudication documents:

- OP 24-04B - Rules of the Road: “Acceptable Use Policy” for information technology. All SEC users (i.e., federal employees, interns, visiting fellows, contractors and anyone else who is granted access to SEC systems) must follow the Rules of the Road when using SEC Information Technology (IT) resources, except as described in the “Rules of the Road Exceptions and Waivers” section.

- 5 U.S.C. § 554(d) of the Administrative Procedure Act ("APA") and the Due Process Clause restrict Commission staff from both investigating or prosecuting and adjudicating a matter. Section 557(d) of the APA also prohibits certain ex parte communications.

We interviewed the following individuals:

CMS Personnel

- (b)(6); (b)(7)(C) RCMS, SEC, ENF, MIRO.
- (b)(6); (b)(7)(C) RCMS, SEC, ENF, ARO.
- (b)(6); (b)(7)(C) RCMS, SEC, ENF, Washington, DC.
- (b)(6); (b)(7)(C) RCMS, SEC, ENF, NYRO.
- (b)(6); (b)(7)(C) RCMS, SEC, ENF, DRO.
- (b)(6); (b)(7)(C) NCMS, SEC, ENF, BRO.
- (b)(6); (b)(7)(C) RCMS, SEC, ENF, PLRO.
- (b)(6); (b)(7)(C) RCMS, SEC, ENF, CHRO.
- (b)(6); (b)(7)(C) RCMS, SEC, ENF, NYRO.
- (b)(6); (b)(7)(C) NCMS, SEC, ENF, SLRO.
- (b)(6); (b)(7)(C) RCMS, SEC, ENF, Washington, DC.
- (b)(6); (b)(7)(C) RCMS, SEC, ENF, LARO.
- (b)(6); (b)(7)(C) RCMS, SEC, ENF, SFRO.
- (b)(6); (b)(7)(C) NCMS, SEC, ENF, MIRO.
- (b)(6); (b)(7)(C) RCMS, SEC, ENF, BRO.
- (b)(6); (b)(7)(C) RCMS, SEC, ENF, Washington, DC.
- (b)(6); (b)(7)(C) RCMS, SEC, ENF, LARO.
- (b)(6); (b)(7)(C) NCMS, SEC, ENF, Washington, DC.
- (b)(6); (b)(7)(C) NCMS, SEC, ENF, CHRO.
- (b)(6); (b)(7)(C) RCMS, SEC, ENF, FWRO.

Other ENF Personnel

- (b)(6); (b)(7)(C) Staff Attorney, SEC, ENF, BRO.
- (b)(6); (b)(7)(C) Staff Attorney, SEC, ENF, BRO.
- (b)(6); (b)(7)(C) SEC, ENF, BRO.
- (b)(6); (b)(7)(C) SEC, ENF, BRO.
- (b)(6); (b)(7)(C) SEC, ENF, BRO.

Current and Former OS Personnel

- (b)(6); (b)(7)(C) SEC, OS, Washington, DC.
- (b)(6); (b)(7)(C) SEC, Division of Finance, Disclosure Management Office, Washington, DC. (b)(6); (b)(7)(C)
- (b)(6); (b)(7)(C) Information Technology Specialist, SEC, OS, Washington, DC.
- (b)(6); (b)(7)(C) Program Analyst, SEC, OS, Washington, DC.
- (b)(6); (b)(7)(C) SEC, OS, Washington, DC.

- (b)(6); (b)(7)(C) Management Program Analyst, SEC, Division of Examinations, Washington, DC.

RESULTS OF INVESTIGATIVE ACTIVITY

1. The move from Old CAS to New CAS.

OS staff we interviewed told us that in 2016, CAS was updated and transitioned to an (b)(7)(E) platform. (b)(6); (b)(7)(C) OS consisted of anything that was assigned to him (b)(6); (b)(7)(C) to include overseeing Commission meetings and processes within the office. (b)(6); stated that (b)(6); (b)(7)(C) the older version of CAS was in use, and one of his projects was to get the new version of CAS implemented. He was also to be the business sponsor for the new CAS system. When asked how access to specific information was cordoned off within CAS, (b)(6); recalled that CAS is a role-based system that allows users access to materials based on their role. He stated that he did not know of a firewall between the different types of information stored in CAS nor did he recall information in CAS being cordoned off based on access roles. (b)(6); stated, "... I don't recall the system being designed that way." (EXHIBIT 8)

We also interviewed (b)(6); who stated that when she first arrived in OS, the old CAS system was still in place: "The system was very, very old, and it was in place when I first got there, (b)(6); (b)(7)(C) there was already a plan and a team in place to replace CAS, which I believe was an ongoing project that had many starting stops over the years." Concerning CMS personnel, (b)(6); related that prior to the new CAS coming online, she believed that CMS personnel had limited CAS access but she believed they could check the progress of commission votes. (b)(6); stated that she did not recall whether old CAS allowed for delineations between what information CMS personnel could see in the system, but she suspected that those types of features were not built into a system of that age, because the old CAS was from the 1990s. (b)(6); related that when the new system was launched, ENF and OGC were the biggest customers requesting access to CAS; however, other offices had access as well. (b)(6); stated that she did not know how individual division/section information was maintained in CAS. She continued that she did not know the thought process regarding how the information was segmented in the system or whether or not division/section information was comingled or maintained in the same location.

(b)(6); could not recall how information access determination was made. Regarding 'roles' (b)(6); related the following: "The old system definitely had roles. Now, they would only have I think it was like read only there was another level of privilege where you could vote on behalf of someone and you could see anything, which is what someone within the Office of the Secretary would have... Yeah, it was definitely role based, so both the old CAS and the new CAS were role based and had to have been grandfathered over, I'm sure, but definitely role based."

(b)(6); (b)(7)(C) believed that when the new system came online, less SEC personnel requested access. (b)(6); (b)(7)(C) explained, "...I don't remember in old CAS, I don't remember there being a lot of like recertifying that you needed access. I know that happens in current CAS where there is (b)(7)(E) recertification process that happens I don't remember that being the case with old CAS."

(b)(6); (b)(7)(C) also recalled that old CAS was totally different, in that they (OS) really could not control access permissions, as they wanted to. (b)(6); (b)(7)(C) was asked whether OS tested new CAS regarding what people should be able to or could not do in the system either by person or by group (i.e., a user and/or member of a group, they should be able to read, write and execute, etc. and should have/not have access x, y, z), to which she replied: "I feel like we did. I can't remember actually doing it, but I think we did. I think so, I mean, I would think that we would have had to do that, because we migrated users over folks that we knew, like frequent fliers for CAS. Like I know for sure, you know, Suzie Q needs access, because she's here every day, I would assume that that's what we did and tried to do a thoughtful analysis of users."

(b)(6); (b)(7)(C) confirmed that unlike old CAS, one of the primary features of new CAS pertained to the ability to upload and/or download documents. When asked if she was aware that CMS personnel were downloading documents from CAS, she replied, "Yes, we knew that they had access to the system, because the case management specialists were responsible for disseminating information to their superiors prior to meetings, prior to the weekly closed commission meetings. One of their primary responsibilities was to make sure that their superiors had exactly what they needed to review prior to close commission meetings. So I don't know that I knew that they were necessarily downloading from CAS, I knew they could view from CAS. They could also look in our SharePoint to folks who did not have access to CAS, which has the documents and that was helpful to them because in old CAS, they were disseminating 30 to 40 copies of hard copy documents. You know, and it was just not it was not a sustainable way to continue business." (EXHIBIT 30)

We interviewed (b)(6); (b)(7)(C) who related that when she first arrived at the OS, there was an earlier version of CAS in place, and at that time, only OS personnel had access to CAS. She continued that around August 2016, the current version of CAS came online. (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) at the time determined that OS did not have the staff to accommodate all of the requests coming from the other divisions for CAS related information (memos; votes; etc.) so they implemented/changed the "permissions" to allow ENF and other divisions access to CAS so that they could obtain the memos and check the votes themselves. Regarding ENF, (b)(6); (b)(7)(C) stated that initially, only CMS personnel were given access to CAS due to them being the ENF liaisons to ENF Regional Offices and ENF leadership, and the CMSs disseminated the information to those in ENF with a need to know. When asked who made the decision to give ENF personnel access to CAS when the system came on line in 2016, (b)(6); (b)(7)(C) stated that she believed (b)(6); (b)(7)(C) may have been the system owner at the time and would have approved their access.

(b)(6); [REDACTED] also told us that OS information is maintained in two locations – CAS and the OS Sharepoint site. (b)(6); [REDACTED] explained that the memos in CAS and the memos on the OS SharePoint site are the same, but CAS contains Commission voting information. Both CAS and the OS Sharepoint site have restricted access, and select SEC personnel that need access to OS information can be granted access to the memos on the OS SharePoint site, but may not necessarily have access to CAS where Commission voting information is stored. (b)(6); [REDACTED] confirmed that prior to the HUB/CAS cross contamination incident, ENF had access to both CAS and the OS SharePoint site. (EXHIBIT 12)

We interviewed (b)(6); [REDACTED] who explained that she (b)(6); (b)(7)(C) [REDACTED] CAS system when she was (b)(6); (b)(7)(C) [REDACTED]. She continued that she (b)(6); (b)(7)(C) [REDACTED]. (b)(6); (b)(7)(C) [REDACTED] explained that the CAS system in place (b)(6); (b)(7)(C) [REDACTED] was on a “Sybase” platform and that the current/updated CAS system is on (b)(7)(E) [REDACTED]. She related that unlike the Sybase platform, (b)(7)(E) [REDACTED] she received the capability to give authorized users access to the system without having to go through the SEC equivalent of “Ask IT” at the time. (b)(6); [REDACTED] stated she was not sure of the exact date that the new CAS system came online, but believed it was approximately 2018 or 2019. She continued that for both the old system and the new system, access requests have to come through OS for review and approval. (b)(6); [REDACTED] explained that twice a year, she gets a complete user access list from the (b)(7)(E) [REDACTED] platform team for review and removal of access from anyone no longer with the SEC or in need of access. (b)(6); [REDACTED] recalled that users from the old system were migrated to the new system. (EXHIBIT 9)

2. The CAS access roles for CMS personnel.

We interviewed staff in both OS and ENF who discussed the process by which CMS personnel were granted access roles in CAS. In particular, we asked OS and ENF staff about the decision to grant CMS personnel “ReadOnlySensitive” access in CAS, as opposed to “ReadOnly” access. We interviewed (b)(6); [REDACTED] and we asked whether CAS had mechanisms in place to restrict access to certain documents and/or information. (b)(6); [REDACTED] replied, “Yes.” (b)(6); (b)(7)(C) [REDACTED] explained that the CAS system permissions are based on “Roles,” which include:

OS Administrator: Users have access to everything;

ReadOnly: Users may only view, not edit (permission fillable fields are grayed out), documents and information that are not “limited distribution” (or sensitive); and

ReadOnlySensitive: Users may only view, not edit (permission fillable fields are grayed out), all documents and information, including “limited distribution” (or sensitive).

(b)(6); [REDACTED] continued that to the best of her recollection, most users have a ReadOnly role. (b)(6); [REDACTED] continued that although she was with OS in 2016, during the roll out of the new CAS system, she was not involved in decisions regarding access or roles. She stated that she believed that CMS and ENF personnel had ReadOnly access prior to the new system coming on line, but did not know when their role might have been changed to Read Only Sensitive. (b)(6); [REDACTED] related that she believes that both (b)(6); (b)(7)(C) [REDACTED] and (b)(6); [REDACTED] would have been the individuals involved in the decisions or discussions regarding access and roles for the new system. (b)(6); [REDACTED] explained that

the old version of CAS utilized a “button,” labeled “sensitive,” that would be checked to classify a document/matter as sensitive. (b)(6); stated that if the button was checked (sensitive), then the item could be viewed by users in a ReadOnlySensitive and above role but not viewed by users in a ReadOnly role. (b)(6); continued that if the button was not checked (not sensitive), the document/matter could be viewed by users in all roles. She related that the buttons were visible to everyone, but “grayed out” and only editable by OS personnel.

When asked whose responsibility it was to ensure that the correct user roles and restrictions were assigned/put into place, (b)(6); responded, “I will probably say it probably is the business owner and the system owner at that time when we deployed CAS originally, which would have been (b)(6); (b)(7)(C). And I'm making an assumption (b)(6); (b)(7)(C) was the business owner because I don't know, but I would imagine it probably was (b)(6); (b)(7)(C) because he probably was a system owner slash business owner to sign off on like when we can deploy and sign off on the requirements...”

(b)(6); was asked if she could recall whether CMS personnel could see everything in CAS, and download everything in CAS. (b)(6); replied, “Yes. We were definitely wrong on their permissions because they were able to see everything that was limited distribution. So like what I was saying is primarily adjudication matters, where typically limited distribution, meaning they were sensitive matters, when in fact, it should have been like another layer to adjudicatory matters. But yes, they could see, so those Case Management Specialists were eventually granted read only sensitive. And I only can assume that they were granted read only sensitive because a lot of Division of Enforcement matters are sensitive as well. So all the sensitive matters were just in a bucket and, so that's why they were able to access adjudication matters as well. So yes, they could see those whatever the number of Case Management Specialist, they could see adjudication matters.” (EXHIBIT 12)

We interviewed (b)(6); who told us that when it came to the management of user roles and ensuring that users were placed into the proper roles, he recalled that OS conducted a yearly audit regarding users and user roles to identify individuals that were no longer with the SEC, that no longer needed access to CAS, or who needed an updated role. (b)(6); stated that he could not recall the exact parameters of everything that was looked at during the audit. When asked about restrictions and/or mechanisms in place on the new CAS that were used to restrict people's access to certain information contained on system, (b)(6); related, “...I think there was for some certain materials you can mark as confidential and I think that then impacted the ability of certain roles to be able to see that information.”

When asked about the process for granting role-based access in CAS, (b)(6); recalled the users were assigned access roles based on their position, job function, and duties. (b)(6); stated that after the CAS access request form was approved, it was returned to the OS (b)(6); (b)(7)(C) or the CAS team (b)(6); (b)(7)(C) for implementation. (b)(6); recalled that the request form contained a statement warning the user that access was granted only for the user's role, and that the user could only access information in the system that the user was authorized to access. When asked how a user would know that they had access to prohibited or

restricted information/documentation in CAS or what to do if they could see or access information not pertinent to their office/division/job, (b)(6); stated, "I don't know, I did not have a training for that and OS did not have a training for that." (EXHIBIT 8)

Similarly, we discussed access roles with (b)(6); (b)(7)(C) stated that in order to gain access to the system, an access request form must be submitted to the OS and must contain a justification for the access. She continued that the OS staff determines who gets access to CAS. When asked whether or not discussions were had with individuals receiving CAS access regarding restrictions or prohibitions on what could be seen and/or downloaded, (b)(6); (b)(7)(C) stated, "No...But so, CAS has sort of two different levels or it had two different levels of access, where there was sort of regular read-only access and then limited distribution access. Limited distribution were those documents that not as many people should see because of their sensitivity. And so there was a differentiation between those who had access to sort of everything that wasn't limited, versus those who would be able to justify that they had access to limited distribution items." (EXHIBIT 7)

We interviewed (b)(6); who stated that she is not involved in determining the roles of CAS users or what information users can access, other than ensuring that users are coded in the correct role, based on the OS-approval designations. (b)(6); related that she keeps a list of CAS users because OS has to recertify users every 6 months. She continued that she maintains a folder called (b)(7)(E) which contains CAS user access designations for the time period from the migration to new CAS to present.

(b)(6); continued that for the most part, ENF personnel had a 'ReadOnly' access to CAS. Regarding whether CAS has a mechanism in place to restrict what users can and cannot see, (b)(6); stated, "Yes, so it depends again on the role." When asked who was responsible for ensuring that users received the appropriate user role, allowing them access to authorized information and preventing them from accessing unauthorized information (b)(6); stated that once she assigns the role to a user, the platform team is responsible for ensuring that the user has the appropriate access based on the role assigned. (b)(6); explained, that once a user's access to CAS is approved, and she is informed, by an OS Administrator like (b)(6); of the role that the user should have, she (b)(6); goes into the CAS IMS to assign the role to the user.

During the course of the interview, (b)(6); accessed the CAS system and shared her screen. (b)(6); displayed an excel spreadsheet titled, (b)(7)(E) A review of the information displayed on the screen disclosed that at the time of the displayed (b)(7)(E) (b)(7)(E) the following personnel were assigned the following roles:

1. "CAS_ReadOnlySensitive" role:

a. RCMS: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) and (b)(6); (b)(7)(C)

b. NCMS: (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C)

2. "CAS_ReadOnly" role:

- a. RCMS: (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C)
b. ENF Leadership: (b)(6); (b)(7)(C)

(b)(6); explained that, "...we had users that had 'CAS ReadOnly' which means they can read anything, but that's all they can do is read. They can't see; they wouldn't been able to see any voting information, just reading whatever the case may be. And then there's something called 'ReadOnlySensitive', and then there's another level of read only, but I have to go back and find out what all those levels equate to as far as the roles..."

(b)(6); also related that the Commissioners, OGC personnel and other CAS users were assigned their own division/section roles in CAS (i.e., (b)(7)(E)

(b)(7)(E)
(b)(7)(E) (b)(6); stated that she believed that ENF personnel were placed in ReadOnly or ReadOnlySensitive roles. (b)(6); confirmed that users with a ReadOnlySensitive role could see and access more than users with a ReadOnly role, however, off the top of her head, she could not recall the specifics of the role parameters. She continued that the role assignment should allow the user to access only the parameters assigned to that role. (b)(6); (b)(7)(C) stated that when the new CAS was being brought on line, she was not a party to the discussions regarding the parameters of the roles. (EXHIBIT 9)

During the course of the investigation, we conducted a document/database review which determined just prior to new CAS coming on line, (b)(7)(E) populated the names and roles of ENF personnel using the data provided by OS on July 20, 2016, prior to relinquishing control of the CAS system to OS. Between July 20, 2016 and July 31, 2018, OS changed/upgraded the roles of CMS personnel on several occasions, ultimately providing the majority of CMS personnel the role of CAS_ReadOnlySensitive, which gave them access to, among other things, OGC Adjudication documents.

Additionally, on several occasions, OS personnel recertified the CMS personnel roles via OS CAS User Access Review & Recertification forms. A review of the recertification forms disclosed that among other things, the recertification included that the Business Owners must review the user access report to ensure that:

- Users consist only of individuals needing system access to perform their jobs;
- Existing user access levels are appropriate;
- Users are only authorized to perform the minimum functions within the application that are required to perform their duties;
- Users shall only have access to the data necessary for the performance of their duties; and
- Written notice of the necessary user access changes has been provided to the OIT Service Desk or designated change authority. (EXHIBIT 34)

3. When CAS access roles were granted to CMS personnel, the cross-contamination issue was not contemplated.

Through our investigation, we determined that, prior to the discovery of this incident, no one we interviewed was aware that there was a possibility that CMS personnel had or would have access to OGC Adjudication documents through the “ReadOnlySensitive” role in CAS, or that they would download those sensitive documents, and place them in HUB. When we interviewed (b)(6), we asked who was responsible for ensuring that CMS personnel did not have access to OGC Adjudication documents in CAS. (b)(6) told us, “I don’t think that was ‘quote anyone’s responsibility,’ not an identified responsibility.” (b)(6) related that he did not recall a mechanism being in place to ensure that a cross contamination or unauthorized access to information did not happen. He recalled that, in CAS, all documents and information related to a particular case were located (b)(7)(E). I think they you know, it was probably (b)(7)(E) is my recollection. So you had separate folders, it was (b)(7)(E) whatever, and there’s the materials again, and then based on your role, what can you see what can you not see?”

(b)(6) related that prior to this incident, he did not recall ever being made aware of an incident involving OGC Adjudication documents being improperly accessed by anyone. He confirmed that no one ever raised issues, concerns, or questions regarding CMS personnel having access to OGC Adjudication documents. (b)(6) stated that when he was assigned to OS, he did not know that anyone using CAS had access to information they were not authorized to have access to. (EXHIBIT 8)

Similarly, with regard to discussions concerning the separation of sensitive matters in CAS that pertained to different divisions/sections (i.e., OGC, ENF, the Commission, etc.), (b)(6), (b)(7)(C) told us that she did not remember and did not know that this was a potential issue until the cross contamination of the CAS/HUB was discovered. (EXHIBIT 30)

When we asked (b)(6) whether OS was aware – prior to the CAS/HUB cross contamination being brought to the attention of OS – that information pertaining to the different divisions/offices was commingled in the same “bucket” with OGC Adjudications documents, she told us, “I will say, I guess we probably did know. But I didn’t realize that oh, they should not have been intermingled together and they should have been segmented separately and not together because they’re all tagged as I won’t say all, majority of adjudication matters are limited distribution. So you can have limited distribution matters that are enforcement, Office of the Chief Accountant, so as long as you had that role, Read Only Sensitive, you can view anything that’s limited distribution. So I will say, we, probably did know but didn’t realize to say oh, the back end, the permissions to say oh, we didn’t implement this requirement correctly.” (EXHIBIT 12)

On the ENF side (b)(6) related that he could not remember the access levels of RCMS or other NCMS personnel, but believed that (b)(6); (b)(7)(C) might have had full access to CAS. He continued that he did not know how many levels of access were contained in the CAS and stated that as a result of this incident, he came to learn that OS was not segregating OGC Adjudication

documents from information in CAS that ENF needed to know and access. As such, until this incident was identified in 2021, (b)(6); never told CMS personnel, and was not aware of anyone else telling CMS personnel, that there was information in CAS that should not be put into HUB. (EXHIBIT 19)

During interviews, CMS personnel related that they were not made aware that there were restrictions on what information could be downloaded from CAS and uploaded into HUB. (EXHIBITS 2, 3, 5, 11, 13, 14, 15, 16, 17, 18, 20, 21, 23, 24, 25, 26, 27, 28, & 31)

(b)(6); similarly told us that until the CAS/HUB issues arose, he was never told that there was certain information that could not go into HUB. (EXHIBIT 4)

4. Because the cross-contamination issue was not contemplated, there was no effort made to cordon off OGC Adjudication documents from CMS personnel.

Because no one we spoke with contemplated the possibility of CMS personnel having access to OGC Adjudication documents through the "ReadOnlySensitive" role in CAS, CAS was not configured to cordon off the OGC Adjudication documents from other sensitive documents that CMS personnel might need access to in the course of their duties. When we asked (b)(6); if there was a mechanism in place that could have prevented ENF from seeing the OGC Adjudication documents in CAS, she replied, "No. The way that the requirements were implemented, there would not have been a way, from the time then, to drill it down further, to segment adjudicatory matters." (EXHIBIT 12)

When we asked (b)(6); if she recalled how CAS was configured in regard to roles, location of information and access to information, she told us:

"...everything in the system is labeled by the (b)(7)(E) so there's a drop down that says, you know, when something comes in from Enforcement, it says, (b)(7)(E) (b)(7)(E) you select (b)(7)(E) it also populates that way, and the (b)(7)(E) should be or (b)(7)(E) whatever your (b)(7)(E) should be the (b)(7)(E) so you know, (b)(7)(E) (b)(7)(E) and you should know, this is an enforcement case, I'm talking about a serialim or something but just any matter for enforcement, even for a closed commission meeting, it would have the originating division on there. So yes, there is a delineation, you can see that it's enforcement, you can see that it's Corpfm or GC or whatever."

(b)(6); continued that, "...what enforcement can see versus what GC could see, I did not realize they could see everything, but in the system, should there be a delineation? Yeah. Is everything just open for the public? Shouldn't be. I don't think we thought that it was." (b)(6); (b)(7)(C) confirmed that to the best of her knowledge, when new CAS came online it was believed that there was a mechanism in place to compartmentalize system information; the roles that were assigned to users restricted them from seeing information that they were not supposed to see; and

CAS itself was configured in a way that would not allow users to see information they were not authorized to see. (b)(6) recalled that before the system was fielded, there was a review of the actual roles and permissions of the system. She continued that, "we had to look through and make sure because we had to look through the old users to identify okay, I know for sure this person doesn't need access anymore because they have moved to another division that has nothing to do with this anymore, or their role is different now. Or, you know, folks have retired. So this is a different person or you have left the commission. So, yeah, we tried to move over as much clean data as we could and we did. We did review the users." (EXHIBIT 30)

5. CMS personnel were not trained regarding the sensitivity of OGC Adjudication documents.

Our investigation found that there was little training provided to CMS personnel on the use of CAS, and – because the possibility of CMS personnel having access to OGC Adjudication documents in CAS was not contemplated – any training that CMS personnel received regarding CAS did not address OGC Adjudication documents.

When we interviewed (b)(6), she explained that when new CAS came online, she was involved in staff training. She told us that OS, "... had training sessions, open training sessions, via WebEx, many, many, many, many sessions to try to reach as many users as we could. We also did information sessions for our Commissioners and with them because they are very heavy users of CAS and they are essential users of CAS, so we went to their offices one on one did training over and over again, if necessary, to get everyone comfortable. And then we did internal training for the Office of the Secretary several sessions to get us acclimated." When asked if the training included instructions regarding what users cannot do in CAS or what users should do if they came across information that they did not feel they should have access to, (b)(6) replied, "I don't think so; I would assume that was not done. That's typically not what we had to do. Tell you what you can't do. I can't imagine that I, or any of us would have said hey, if you see this, don't do blah, blah, blah." (EXHIBIT 30)

Other OS staff did not recall CMS personnel receiving specific training on CAS or training that would have pertained to OGC Adjudication documents. For example, (b)(6); (b)(7)(C) was not sure regarding whether training was provided when CAS access is granted, but believed that, "...typically there is some level of sort of training of at least how one searches..." (EXHIBIT 7)

We interviewed (b)(6) who stated that he did not think that users received any preset training from OS once access to CAS was granted. (EXHIBIT 8)

(b)(6) told us that although she was involved with the testing of the current version of CAS, she was not involved with the training of personnel given access to CAS. Regarding current training or recent CAS training, (b)(6) stated, "We used to do like, I know one of my colleagues we used to do, like maybe it was like a yearly training with the case management specialist and

somebody else periodically, but that's been quite a while. Maybe the last time we did it probably was 2019.” (EXHIBIT 12)

(b)(6); (b)(7)(C) told us that she was not involved with CAS training. She continued that if any training is provided, it is provided by (b)(6); (b)(7)(C) (EXHIBIT 9)

ENF staff also did not recall specific, relevant training for CMS personnel accessing CAS. For example, (b)(6); (b)(7)(C) stated he was not sure of what type of training CMS personnel received regarding CAS. (b)(6); (b)(7)(C) continued that he did not know whether CMS personnel were told that there was specific information in CAS that they should not access or download from the CAS. He continued that he had never heard anyone mention anything like that. (EXHIBIT 19)

(b)(6); (b)(7)(C) stated that he could not recall any formal training or any instructions regarding what was allowed to be viewed, accessed, or downloaded from CAS. (EXHIBIT 29)

(b)(6); (b)(7)(C) indicated that she received no training pertaining to the use of CAS and did not believe that RCMS or NCMS personnel received CAS-related training either. (EXHIBIT 6)

Moreover, the CMS personnel we interviewed, including NCMS (b)(6); (b)(7)(C) confirmed that they received limited to no training regarding the use of CAS, and any training provided was limited to logging into the system and searching for information pertinent to specific ENF case numbers. (EXHIBITS 2, 3, 5, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 24, 25, 26, 27, 28, & 31)

We also interviewed ENF staff on whether CMS personnel received training on using HUB and what information should be placed in HUB. (b)(6); (b)(7)(C) told us that when it comes to training of RCMS personnel on using HUB, the training is usually in person and typically, NCMS personnel will help to train new CMS personnel. She continued, “...There's various training materials that they have, that they'll go through, they usually go through, it's almost like a, like an apprentice, an apprenticeship sort of period where they're working with a national practicing putting data into the HUB before they actually are sort of allowed to get in there and work on their own. And that's mainly the method that we have for training them and but we have various training and I think we have a fairly standard kind of training. I want to call it a guide, but it's got it's got some exercises that help with the training, like after, you know, enter this case in sort of models and things like that for doing their job.”

Regarding NCMS personnel training, (b)(6); (b)(7)(C) stated, “...Well, we, the national program hasn't existed all that long, so I think we've only had one new person come on board. And that person was a local CMS for many, many years, so that training is essentially a lot of times the people that we've hired, I mean, they already know the HUB, they're really just changing what the focus of their job is so that, you know, we'll do new training as things come up or as like a new system is created we'll have whoever that is. So and then (b)(6); (b)(7)(C) or I will also if there are new areas that they're going to be involved in, we'll make sure that they need to know, that they know what they need to know in order to perform their duties. When asked whether CMS personnel receive training on what information can be uploaded into HUB, (b)(6); (b)(7)(C) related, “I

mean, we have specific, we have a specific training document about or documents or a series of documents that we use to train new people, which goes through the sorts of documents that you're supposed to put in the HUB. I mean, that basically lays out you know, what, what information is in there." However, (b)(6); stated that this HUB training probably does not say anything about not putting OGC Adjudication documents into HUB. She continued that, "I don't think that that's something that was really on anyone's radar." (EXHIBIT 6)

We interviewed (b)(6); who stated that he could not recall what type of training CMS personnel or other users originally received regarding HUB, but recalled going out to each SEC office and providing a presentation and giving demonstrations pertaining to the system software. He continued that ENF also has a "fairly extensive user manual that (b)(6); (b)(7)(C) put together, probably 200 pages that goes into the details of the system." Regarding periodic training, (b)(6); stated that none really exists, however, information will be sent to users when major releases are introduced. (b)(6); stated that there have not been any major issues with users asking how to use the system and that he does not deal with the training. (EXHIBIT 29)

During an interview (b)(6); related that when a new CMS gets hired, someone already serving as a CMS is assigned to work with them, "to get them up to speed." He continued that an experienced RCMS or NCMS work with that new person regarding how the job is done and what is expected. (b)(6); stated that his division also has periodic meetings wherein updates or changes are discussed, CMS personnel collaborate amongst themselves, and in the past, his group had a CMS conference. (EXHIBIT 19)

When we interviewed the CMS personnel, they told us that they primarily received on the job training (OJT) in regard to the use of HUB. They explained that the OJT primarily consisted of being walked through accessing HUB, an explanation of the different system tabs, and how to ensure that case information is captured in the system from case initiation to closure. (EXHIBITS 2, 3, 5, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 23, 24, 25, 26, 27, 28, & 31)

6. CMS personnel did not know that they should not upload OGC Adjudication documents into HUB.

Through our investigation, we determined that some CMS personnel accessed CAS directly and unknowingly downloaded OGC Adjudication documents, which were later uploaded into HUB. (EXHIBITS 3, 5, 10, 13, 14, 15, 16, 17, 20, 23, 24, 25, 26, & 28)

Other CMS personnel reported to us that they had access to CAS, and they would extract information only or screenshots of CAS documentation that pertained to ENF cases, some of which were later determined to include OGC Adjudication documents. The information, screenshots, and documentation were uploaded into HUB. (EXHIBITS 2, 27, & 31)

Some CMS personnel told us that they primarily received documents, some of which were later determined to be OGC Adjudication documents, from (b)(6); (b)(7)(C) and (b)(6); via email,

and then uploaded those documents into HUB. (EXHIBITS 2, 3, 10, 11, 13, 14, 15, 16, 17, 20, 21, 24, 25, 26, 27, 28, & 31)

Regardless of how CMS personnel received the OGC Adjudication documents, and in what format, we determined that the CMS personnel did not know that the OGC Adjudication documents existed, that they had access to them or that they were not supposed to receive/view this information or upload the information into HUB.

(b)(6); (b)(7)(C) stated that he never told RCMSs, (b)(6); (b)(7)(C) or any other NCMS that there was information in CAS that was not allowed to put into HUB. (b)(6); continued that prior to the discovery of this incident, he was not aware of any RCMS or NCMS being informed that there was information available to them in CAS that they should not have access to and that they should not put into HUB. (EXHIBIT 19)

OS staff we spoke with confirmed that, to the best of their knowledge, CMS staff did not know that there were OGC Adjudication documents in CAS. For example, when we asked (b)(6); whether CMS personnel were told when they were given access to CAS that there were OGC Adjudication documents in CAS that they should not access or download, (b)(6); stated, "From my knowledge, I don't think they were told that but again, I'm not sure what was discussed during the training, so it could have occurred during the training session, but I'm not sure." (b)(6); confirmed that, to the best of her knowledge, CMS and ENF personnel do not appear to have done anything inappropriate to access or gain access to OGC Adjudication documents and that the information was in a location that they had legitimate access to. She also confirmed that CMS and ENF personnel may not have been told that there was information in the "bucket" that they should not have had access to. (EXHIBIT 12)

Similarly, when asked specifically about whether ENF personnel, who had access to OGC Adjudication documents, were informed that there were OGC Adjudication documents in CAS or what action to take if they came across information not related to ENF actions, (b)(6); stated, "...none from me or from my recollection the Office of the Secretary did not provide that kind of information." (EXHIBIT 8)

Perspective of NCMS Personnel

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) stated that to the best of her knowledge, each NCMS has the same access in both the HUB and CAS. She continued that each NCMS also has individual project areas/responsibilities for the HUB and that her project area/responsibility is "Actions Memos" which is why she uploaded so many. (b)(6); (b)(7)(C) explained that she is responsible for ensuring that all pertinent action memos are uploaded by RCMS personnel and that this is usually accomplished by emails to RCMSs with specific instructions regarding how to handle a document and to let them know if it is limited distribution, restricted, etc.

(b)(6); (b)(7)(C) related that she believes that RCMS personnel had less access to CAS than the NCMSs, but she was not exactly sure what they actually see in CAS because she was never briefed regarding the specifics of who had access to what in CAS. (b)(6); (b)(7)(C) explained that NCMSs provided certain ENF case-related information from CAS to the RCMSs; the NCMSs were never told not to do so; and there were no indications in CAS that doing so was prohibited.

(b)(6); (b)(7)(C) continued that in addition to CAS, CMS personnel had access to the OS SharePoint Site, which includes all Commission action memos. (b)(6); (b)(7)(C) suggested that information/documentation from the OS SharePoint Site could also have been used to update the HUB.

(b)(6); (b)(7)(C) related that, in September 2021, when (b)(6); (b)(7)(C) notified her that CMS personnel should not have had access to OGC Adjudication documents, it was news to her because the subject had never been brought up or discussed prior to this incident. She continued that CMS personnel could see the information, had access to the information, and had always used the information to update the HUB. She stated that she never really read the documents that she downloaded from CAS. She simply looked at the title page, noted that the information pertained to ENF actions, and then uploaded the information/documentation to the HUB.

(b)(6); (b)(7)(C) reiterated that CMS personnel were not restricted from seeing OGC Adjudication information in the CAS system by OS personnel, there were no instructions on the CAS documents regarding any such prohibitions, and no one ever said OGC Adjudication documents needed to be approved/cleared before uploading to the HUB.

(b)(6); (b)(7)(C) related that she did not know if (b)(6); (b)(7)(C) was aware, prior to this incident, of the existence of OGC Adjudication documents in CAS, because he never mentioned it to her and prior to September 2021, the issue never came up. (b)(6); (b)(7)(C) related that because of this incident, CMS access to CAS has been terminated except for access to an ENF folder in CAS, which is populated by OS personnel with authorized information/documentation and instructions regarding the information/documentation. **(EXHIBIT 23)**

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) offered that prior to (b)(6); (b)(7)(C) mentioning the cross-contamination, the only OGC-related information she had seen in CAS was in regard to, "... 102-e memos, General Counsel, it's my understanding when staff think that a 102-e action should be filed against an attorney, they make that reference to General Counsel and General Counsel, if they think appropriate, they make a recommendation to the Commission to bring a 102-e action against the attorney. Those are the OGC memos I recall seeing in the CAS system or in HUB, I don't recall seeing any other adjudicatory type stuff, and my understanding of that would be, you know, memos from OGC, to the Commission regarding how the commission should or making a recommendation about how the commission should act on an administrative proceeding or maybe something else but that's my particular understanding. When you say adjudicatory, that's what I'm recalling."

(b)(6) continued that if she came across an OGC 102-e document authorizing an action pertaining to an ENF case, she would extract that document and upload it to HUB, if it was not already in HUB. (b)(6) continued that, "...because we add memos that authorize any kind of enforcement action which a 102-e action is an enforcement action, my understanding is that those are uploaded to have that support of our data entry for that particular action, so we know what was particularly authorized again by the Commission." (b)(6) continued that it is her understanding that, "...any action authorized by the Commission through a memo, that memo should be uploaded to HUB in order to support that action so we can make sure the data is correct." She continued that was her understanding, but she did not know how she learned or knew that she was supposed to follow that procedure. (b)(6) stated that she could not recall seeing any other information or action memos labeled OGC, General Counsel, or OGC Adjudication information, other than the 102-e memos. (EXHIBIT 17)

(b)(6); (b)(7)(C)

We interviewed (b)(6) who related "...if I'm going into CAS, it's for a specific purpose. It's perhaps two specific purposes. One would be to get the memo from the previous closed meeting so that I can have that memo. I can see the approvals, and I would have known that it was approved because at this time in history, (b)(6); (b)(7)(C) I would actually attend some of the closed meetings to ensure that I had everything in the HUB right away as soon as it was approved, which is what we're supposed to do. But I wouldn't necessarily have that approved action memo in hand. I would just know that it would be approved and so I would go into the CAS system to retrieve that action memo. Another reason would be if I were looking at an older case, and I was trying to close the whole case, which means I would have to go through every action and make sure all the dates were correct, and just make sure the data was clean and correct. Sometimes I wouldn't have an Action Memo from a previously approved case, a previously approved action, and so I would go into the CAS system to retrieve that Action Memo, but it's very specific because I know the date that it was approved, and that's associated specifically with a document. And so if I had that date, I can find the document in the document description or for lack of a better word description would inform me of what kind of document I'm looking for and they always had to do with you know, seriatim or something like that. So it would be very clear to me, whether it was a closed meeting Action Memo, or seriatim Action Memo that was developed by Enforcement." (EXHIBIT 28)

Perspective of RCMS Personnel

(b)(6); (b)(7)(C)

We interviewed (b)(6) who told us that her access to CAS was restricted, which she knew because she did not have access to the executive session memos that (b)(6); (b)(7)(C) would pull and send to her. (b)(6) stated she had access to OGC Adjudication information in the seriatim section of CAS. She was never told she should not have access to that information, nor was she ever told not to upload the OGC Adjudication documents into the HUB. (b)(6) believed these typically (b)(5) and she would upload them because they were

relevant to her assigned cases, (b)(6); (b)(7)(C) said the OGC Adjudication documents were often marked restricted or limited in CAS and if that was the case, she used the restricted feature in HUB to ensure that only the individuals assigned to the case could see those documents. **(EXHIBIT 5)**

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) related that she was aware that there were some restrictions on what information could be shared between the two systems. (b)(6); (b)(7)(C) could not recall when, but stated that “a long time ago” an attorney asked her how Commissioners voted on an action memo, so she pulled the memo from CAS and provided it to the attorney assigned to the case. She said the CAS administrator got in touch with the head CMS at the time and (b)(6); (b)(7)(C) was in “hot water.” (b)(6); (b)(7)(C) said she did not get in trouble, however, because she had emails from her supervisor at the time telling her to provide the requested documentation and had never been told that certain information in CAS had to be kept separate from the HUB. (b)(6); (b)(7)(C) did not believe she had access to any OGC Adjudication documents in CAS, but had never been told that she should not have access to such information. (b)(6); (b)(7)(C) was never told she could not upload OGC Adjudication documents from CAS into the HUB, but stated that she had never done so to her knowledge. **(EXHIBIT 10)**

(b)(6); (b)(7)(C)

We interviewed (b)(6); (b)(7)(C) who noted he was never told there were restrictions on what can be downloaded from CAS and uploaded into HUB, or that any firewalls existed. (b)(6); (b)(7)(C) used the “common sense method” and only downloaded or pulled information related to his region. **(EXHIBIT 14)**

(b)(6); (b)(7)(C)

When we interviewed (b)(6); (b)(7)(C) she said she downloaded “authorized action memorandums” from CAS and uploaded them to HUB. (b)(6); (b)(7)(C) noted the RCMS staff were told to upload authorized action memoranda to HUB by (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) was not told, and was not aware, that there were certain documents that she could not download from CAS and upload into HUB. (b)(6); (b)(7)(C) was never questioned regarding why she uploaded anything into the HUB. (b)(6); (b)(7)(C) noted that if there was a document in CAS that would assist her with opening a matter in HUB, she would download the document from CAS and upload it to HUB. However, she could not say specifically whether she had downloaded any OGC 102e documents or Adjudication documents from CAS. (b)(6); (b)(7)(C) usually searched by case number for documents in CAS, and noted OGC documents were not filed by case number. (b)(6); (b)(7)(C) does not believe she accessed OGC Adjudication documents. **(EXHIBIT 16)**

(b)(6); (b)(7)(C)

We interviewed (b)(6); (b)(7)(C) and she related that she was not familiar with CAS and did not believe that she had access to CAS. (b)(6); (b)(7)(C) stated that to the best of her knowledge, no one ever provided her documents from CAS and told her to upload them into HUB. **(EXHIBIT 18)**

(b)(6); (b)(7)(C)

When we interviewed (b)(6); (b)(7)(C), she said her access to CAS was restricted, which she knew because she did not have access to some areas of CAS. (b)(6); (b)(7)(C) believed all CMS personnel had CAS access. (b)(6); (b)(7)(C) stated that she routinely uploaded action memos from CAS into HUB for her cases. (b)(6); (b)(7)(C) was told to do this by various co-workers and that it was common practice among RCMSs. (b)(6); (b)(7)(C) could not recall if she was ever given CAS documents from someone else and told to upload them into HUB. (b)(6); (b)(7)(C) was never told that there were any kind of restrictions on what documents could be downloaded from CAS and uploaded into HUB or that the two systems were purposefully kept separate. She was not sure if she had access to OGC Adjudication documents in CAS, she thought she could only access the action memos and counsel sheet information, which listed the name of counsel for defendants in ENF matters. (b)(6); (b)(7)(C) was never told she should not have access to certain information, nor was she ever told not to upload the OGC Adjudication documents into HUB. (b)(6); (b)(7)(C) did not believe she had ever uploaded any such documents into HUB. (EXHIBIT 25)

Signatures

Case Agent:

| | |
|-------------------|----------------------|
| (b)(6); (b)(7)(C) | May 3, 2023 |
| (b)(6); (b)(7)(C) | Senior Special Agent |
| | Date |

Concurrence:

| | |
|-------------------|---------------------------------------|
| (b)(6); (b)(7)(C) | Digitally signed by (b)(6); (b)(7)(C) |
| | Date: 2023.05.03 12:06:31 -04'00' |
| (b)(6); (b)(7)(C) | Special Agent in Charge |
| | Date |

Approved:

| | |
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| KATHERINE REILLY | Digitally signed by KATHERINE REILLY |
| | Date: 2023.05.03 13:27:30 -04'00' |

| | |
|--|------|
| Katherine H. Reilly, Acting Deputy Inspector General for Investigations | Date |
|--|------|

Exhibits

1. Predicating documentation Memorandum of Activity, dated May 24, 2022.
2. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated August 10, 2022.
3. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated July 18, 2022.
4. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated August 22, 2022.
5. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated August 2, 2022.
6. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated September 27, 2022.
7. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated June 23, 2022.
8. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated October 13, 2022.
9. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated October 17, 2022.
10. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated August 3, 2022.
11. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated August 2, 2022.
12. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated October 4, 2022.
13. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated August 23, 2022.
14. Memorandum of Activity, Interview of (b)(6); (b)(7)(C), dated August 2, 2022.
15. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated August 9, 2022.
16. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated August 2, 2022.
17. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated August 22, 2022.
18. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated August 5, 2022.
19. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated August 30, 2022.
20. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated August 9, 2022.
21. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated August 3, 2022.
22. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated August 31, 2022.
23. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated June 16, 2022.
24. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated July 26, 2022.
25. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated August 4, 2022.
26. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated July 28, 2022.
27. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated August 30, 2022.
28. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated August 11, 2022.
29. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated October 5, 2022.
30. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated November 7, 2022.
31. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated July 27, 2022.
32. Memorandum of Activity, Coordination with (b)(7)(E) dated November 7, 2022.
33. Memorandum of Activity, Re-Interview of (b)(6); (b)(7)(C) dated January 23, 2023.
34. Memorandum of Activity, OS historical data/database review, dated January 27, 2023.



U.S. Securities and Exchange Commission
Office of Inspector General



Report of Investigation

Subject: (b)(6); (b)(7)(C)
Title: [REDACTED]
SK-Level/Grade: (b)(6); [REDACTED]
Office: Division of Examinations
Region: New York Regional Office

Case #: 22-EXA-0010-I

Origin: Office of Ethics Counsel

Investigation Initiated: January 25, 2022

Investigation Completed: July 12, 2023

SUMMARY

The U.S. Securities and Exchange Commission (SEC), Office of Inspector General (OIG), Office of Investigations initiated an investigation based on allegations provided by the Office of the Ethics Counsel (OEC). OEC reported that during a review of the Calendar Year (CY) 2021 U.S. Office of Government Ethics (OGE) Confidential Financial Disclosure Report (OGE Form 450) submitted by (b)(6); (b)(7)(C) [REDACTED] Division of Examinations (EXAMS), New York Regional Office (NYRO), it was discovered that (b)(6); [REDACTED] reported holdings of the SPDR Financial Select Sector Fund (XLF).¹ OEC reported to us that the value of (b)(6); (b)(7)(C) [REDACTED] holdings in XLF appeared to exceed the \$50,000 *de minimis* regulatory exemption threshold for sector funds, resulting in a possible conflict of interest with (b)(6); [REDACTED] official duties under 18 U.S.C. § 208. OEC further reported that (b)(6); [REDACTED] XLF trades were not pre-cleared as required by the SEC's supplemental ethics regulations, and many of the trades violated the minimum 30-day holding period for mutual funds. (b)(6); [REDACTED] self-reported to OEC his failure to pre-clear the transactions and retroactively entered information regarding these transactions into the SEC's Personal Trading Compliance System (PTCS). **(EXHIBIT 1)**

The investigation determined that, as of December 31, 2021, (b)(6); [REDACTED] holdings in XLF exceeded \$50,000, while at the same time he worked on a matter involving one of the companies held in XLF (b)(6); (b)(7)(C) [REDACTED]. Our investigation also found that (b)(6); (b)(7)(C) [REDACTED] failed to report his holdings of Utilities Select Sector SPDR Fund (XLU), an asset valued at greater than \$1,000, on his CY 2020 OGE Form 450. Moreover, between May 6, 2020, and January 4, 2022, (b)(6); [REDACTED] failed to pre-clear (and subsequently retroactively entered) 105 transactions in PTCS, of which 11 transactions were entered in PTCS with incorrect information. The failure to pre-clear these transactions as required by the SEC's supplemental ethics regulations resulted in many of the trades appearing to violate the minimum 30-day holding period for mutual funds. Finally, there were seven instances in which (b)(6); [REDACTED] did not request pre-approval for the initial purchase of securities that he later sold.

¹ SPDR funds are a family of exchange-traded funds traded in the United States, Europe, Mexico and Asia-Pacific and managed by State Street Global Advisors.

We presented the facts regarding this matter to the United States Attorney's Office (USAO), Southern District of New York, which declined criminal prosecution. The findings contained in this report are being referred to SEC management for any action deemed appropriate.

BACKGROUND

According to 18 U.S.C. § 208, an SEC employee cannot participate "personally and substantially" in an investigation or judicial proceeding in which, to his knowledge, he "has a financial interest," unless the "financial interest... has been exempted from the requirements of [this law] 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."² OGE has promulgated regulations to exempt certain holdings from the prohibitions of 18 U.S.C. § 208, and in particular the regulations allow an employee to "participate in a particular matter affecting one or more holdings of a sector mutual fund or a sector unit investment trust where the disqualifying financial interest in the matter arises because of ownership of an interest in the fund or the unit investment trust and the aggregate market value of interests in any sector fund or funds and any sector unit investment trust or trusts does not exceed \$50,000."³

The SEC's Supplemental Ethics Regulations, found at 5 C.F.R. Part 4401, provide further restrictions on SEC employees in an effort to prevent and detect potential financial conflicts of interest. For example, SEC employees must pre-clear certain financial transactions with OEC prior to effectuating the transaction.⁴ Also, SEC employees are required to abide by prescribed holding periods for securities purchased after beginning employment with the SEC.⁵

OEC has established PTCS to facilitate the collection and processing of personal securities information in accordance with the SEC's Supplemental Ethics Regulations and to assure SEC employees comply with applicable ethics laws, rules, and policies. OEC reviews each request that an employee submits through PTCS and either approves or rejects it. If approved, the employee has five business days to execute the transaction, and then must report the transaction's completion. Every year, employees are required to upload year-end brokerage statements containing reportable securities holdings and transactions and certify compliance with applicable ethics laws.

Another way that the employees and the SEC can identify financial conflicts is through the annual completion of the OGE Form 450. This form requires the disclosure of certain financial interests and contains detailed instructions on which financial disclosures are required and the format of the disclosure.

² 18 U.S.C. § 208(a) and (b)(2).

³ 5 C.F.R. § 2640.201(b)(2). *See also* SEC Ethics Handbook, Chapter 1, Section B.

⁴ 5 C.F.R. § 4401.102(d).

⁵ 5 C.F.R. § 4401.102(e).

In order to ensure that all SEC employees remain familiar with their responsibilities to comply with the ethics laws and regulations, all SEC employees are required to complete ethics training when onboarding with the SEC and annually thereafter.⁶

(b)(6); (b)(7)(C)

(b)(6); began employment with the SEC (b)(6); (b)(7)(C) within EXAMS. (b)(6); training history in the SEC's E-Learning Management System (LEAP) reflects that he completed the following ethics training modules: (EXHIBIT 4)

Table 1: (b)(6); (b)(7)(C) Relevant Ethics Training Record

| Course | Date Completed |
|--|----------------|
| 2021 Annual General Ethics MTC | 8/6/2021 |
| FY21 EXAMS Ethics Guidance Training | 7/13/2021 |
| FY20 OCIE Ethics Guidance Training | 5/28/2020 |
| Ninth Annual Trading Risk Identification Group (TRIG) Conference | 8/7/2019 |
| Annual Ethics Training for Employees who file OGE Form 450 | 9/11/2017 |
| 2017 Personal Trading Rules | 2/6/2017 |

When we interviewed (b)(6); (b)(7)(C) he confirmed that during his tenure as an SEC employee, he had received training regarding the SEC's Supplemental Standards of Ethical Conduct as they pertained to securities. (b)(6); continued that his understanding of the standards of ethical conduct were "that anything you do in your personal trading accounts should not be based on any of the work that you do here at the Commission."

(b)(6); (b)(7)(C) stated that he was aware that SEC employees are prohibited from knowingly purchasing or holding a security or other financial interest in an entity directly regulated by the Commission. He stated that he was aware that some mutual funds must be held for a minimum of 30 days before being traded. (b)(6); also related that he knew that SEC employees must confirm, before entering into any security or other related financial transaction, that the security or related financial transaction is not prohibited or restricted. (b)(6); explained that this requirement is met by pre-clearing transactions in the PTCS system.

(b)(6); also stated that he was aware that SEC employees must report and certify all securities holdings annually on the OGE Form 450 and submit statements into PTCS for every account containing reportable securities. Finally, (b)(6); confirmed that he was aware that

⁶ SEC Ethics Handbook, Chapter 11, Section C.

SEC employees must report all purchases, sales, acquisitions, or dispositions of securities within five business days after receipt of confirmation of that transaction.

(b)(6); confirmed that after he submitted his most recent OGE Form 450, OEC contacted him regarding, "...a financial ETF holding and it was related to divestiture of a portion of it."

(b)(6); related, "I responded, I believe by saying I would address it and I divested myself of the position or divested myself of a portion of the position to get to the desired level that Ethics needed or that was required."

When asked if he had received training pertaining to the OGE Form 450 and personal trading, (b)(6); stated, "I can't recall. Perhaps. I'm not sure." (b)(6); confirmed that most of the training that he received at the SEC had been done via LEAP, and continued that, "Yeah, I can't recall, though, when the last time I had done a training related to personal trading. I believe it's done annually, however." (EXHIBIT 8)

SCOPE

We investigated whether (b)(6); (b)(7)(C) (1) had a financial conflict of interest due to his holdings of certain financial sector mutual funds; (2) failed to report certain reportable assets on his OGE Form 450; (3) failed to pre-clear certain transactions in PTCS; and (4) reported certain transactions erroneously in PTCS. The applicable law, rules, regulations, and policies are:

- 18 U.S. Code § 208, Acts affecting a personal financial interest.
- 5 C.F.R. Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch.
- 5 C.F.R. Part 4401, Supplemental Standards of Ethical Conduct for Members and Employees of the Securities and Exchange Commission.
- 5 C.F.R. Part 2634, Subpart I – Confidential Financial Disclosure Reports
- SEC Ethics Handbook.

We coordinated with and/or interviewed the following individuals:

- Danae Serrano, Ethics Counsel, SEC, OEC, Washington, DC
- (b)(6); (b)(7)(C) Senior Financial Disclosure Counsel, SEC, OEC, NYRO
- (b)(6); (b)(7)(C) NYRO
- (b)(6); (b)(7)(C) First Republic Investment Management, Compliance, Office of General Counsel, New York, NY
- (b)(6); (b)(7)(C) Wealth Manager First Republic Investment Management, New York, NY

We reviewed the following documents/records:

- (b)(6); (b)(7)(C) TRENDS Report
- (b)(6); (b)(7)(C) PTCS records
- (b)(6); (b)(7)(C) Training Records
- (b)(6); (b)(7)(C) Brokerage Statements
- (b)(6); (b)(7)(C) Office of Government Ethics (OGE) Form 450 (Confidential Financial Disclosure Report)

RESULTS OF INVESTIGATIVE ACTIVITY

1. Allegation that (b)(6); (b)(7)(C) had a financial conflict of interest due to his holdings of certain financial sector mutual funds.

Our investigation found that (b)(6); (b)(7)(C) held shares valued in excess of \$50,000 of SPDR Financial Select Sector Fund (XLF), which at relevant times contained underlying assets including (b)(6); (b)(7)(C) concurrently while working on an examination of (b)(6); (b)(7)(C) thus creating a financial conflict of interest under 18 U.S.C. § 208.

On January 13, 2022, Danae Serrano, Ethics Counsel, OEC, referred the following allegation to us:

“OEC staff recently reviewed the OGE Form 450 covering 2021 for NYRO employee (b)(6); (b)(7)(C) is currently (b)(6); (b)(7)(C) EXAMS and reported on his Form 450 holding the SPDR Financial Select Sector Fund (XLF). It appears the value of his holding may exceed, or may have exceeded, the \$50,000 de minimis regulatory exemption threshold for sector funds and thus, we are concerned that (b)(6); (b)(7)(C) interest in XLF may have presented conflicts of interest with his official duties under 18 USC 208.

OEC has provided conflicts advice to (b)(6); (b)(7)(C) concerning his sector fund holdings on at least two occasions in the past. (b)(6); (b)(7)(C) indicated that while preparing his Form 450 filing (which he filed on January 4, 2022), he discovered that his broker made dozens of transactions in XLF on his behalf over a 20 month period. (b)(6); (b)(7)(C) further indicated the broker’s activity with respect to XLF was done without his authority and in contravention of a restriction he had placed upon his account. The XLF trades were not precleared as required by the SEC’s supplemental ethics regulation, and many of them violated the minimum 30-day holding period for mutual funds (5 CFR 4401.102). (b)(6); (b)(7)(C) self-reported the transactions to OEC and has since retroactively reported the XLF trades in PTCS. According to brokerage statements (b)(6); (b)(7)(C) submitted in PTCS, as of 12/31/2020, he held XLF in two accounts,

one an IRA and the other a brokerage account. Based on the information available to us in PTCS (brokerage statements and reported transactions), it appears that (b)(6); (b)(7)(C) XLF holdings likely exceeded the \$50,000 threshold under 5 CFR 2640.201 (b), and, thus, he may have violated 18 USC 208 by working on EXAMS matters affecting companies held by the financial sector fund in which he held a financial interest.” (EXHIBIT 1)

We reviewed (b)(6); sector fund holdings and determined that, as of December 31, 2020, Tempone held (b)(6); shares of the Financial Select Sector SPDR Fund (XLF), with a total value of \$49,850.68. On January 19, 2021, (b)(6); purchased an additional (b)(6); shares of XLF. According to Yahoo! Finance, the closing value of XLF on January 19, 2021, was (b)(6); per share. As a result, (b)(6); purchased \$1,493.52 of XLF, bringing his total investment in XLF, as of January 19, 2021, to \$51,344.20. (EXHIBIT 5)

We reviewed XLF’s filings in the Electronic Data Gathering, Analysis, and Retrieval system (EDGAR) and determined that, between December 31, 2020, and March 31, 2021, XLF held (b)(6); (b)(7)(C) securities, among other holdings. (EXHIBITS 3 & 5)

We reviewed reports within EXAMS’ case management system TRENDS (Tracking and Reporting Examination National Documentation System) and determined that, among other examinations, (b)(6); served as an examiner on an examination of (b)(6); (b)(7)(C) (examination number (b)(6); (b)(7)(C)) between (b)(6); 2020, and (b)(6); 2021. (EXHIBIT 3)

We interviewed (b)(6); and asked if he recalled serving as an examiner on an examination of (b)(6); (b)(7)(C) replied, “Yes, I do recall that examination, Sir.” We informed (b)(6); that a review of his sector fund holdings revealed that as of December 31, 2020, he held (b)(6); shares of the XLF having a total value of a little over \$49,000, and that a review of XLF’s filings in EDGAR revealed that between December 31, 2020, and March 31, 2021, XLF held (b)(6); (b)(7)(C) securities, among other holdings. When asked if he was aware that XLF held (b)(6); (b)(7)(C) securities at the time that he was working on the (b)(6); (b)(7)(C) examination, (b)(6); replied, “No, sir, I was not aware that that was a holding in the fund.” We also informed (b)(6); that further review of his sector fund holdings disclosed that on January 19, 2021, he purchased an additional (b)(6); shares of XLF, increasing the value of his investment to over \$50,000. When asked if he was aware that XLF held (b)(6); (b)(7)(C) securities at the time of that purchase, (b)(6); stated, “...I was not aware, one, that (b)(6); (b)(7)(C) was part of the underliers in XLF, and two I was not aware that that transaction had even taken place. I believe it was one of the transactions that was done without -- without pre-approval, you know, pre-approval from my advisor at the time.”

Additionally, (b)(6); stated that he was also not aware that his holdings of XLF shares had exceeded the \$50,000 *de minimus* threshold. He was further not aware that his financial advisor had engaged in trading that resulted in his holdings of XLF to exceed \$50,000. (b)(6); (b)(7)(C)

continued that after he discovered that these transactions had taken place, without his knowledge or approval, he had a discussion with the financial advisor handling his accounts. (EXHIBIT 8)

We also interviewed (b)(6); (b)(7)(C) Senior Financial Disclosure Counsel, OEC, who shared information with us regarding her discussions with (b)(6); (b)(7)(C) about his holdings of XLF. She told us that in January 2021, (b)(6); (b)(7)(C) informed her that there might be a conflict of interest regarding the fact that he was a member of (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) told her that given the information (b)(6); (b)(7)(C) is gathering (pertaining to (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) two of the sector funds that he holds (XLF and Technology Select Sector Fund (XLK)) may present the appearance of a conflict (b)(6); (b)(7)(C) initially informed (b)(6); (b)(7)(C) that he was correct, that XLF and XLK were in fact sector funds and explained the importance of keeping them below the \$50,000 *de minimis* threshold. (b)(6); (b)(7)(C) informed her that he was 20% below the *de minimis* threshold for XLF and that he would make sure monitor the fund on a monthly basis.

After some discussion about the purpose of (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) role in it, (b)(6); (b)(7)(C) ultimately advised (b)(6); (b)(7)(C) as follows:

“In sum, you may continue to work in your group while holding the Financial Select Sector SPDR Fund (XLF) (as long as the fund remains below the *de minimis*). The Technology Select Sector Fund (XLK) is a diversified mutual fund, not a sector fund; therefore, you do not have a conflict with the underlying holdings even if you own more than \$50,000 of XLK.” (b)(6); (b)(7)(C) also informed (b)(6); (b)(7)(C) that, “...As I said in my email, it is permissible for you to own Financial Select Sector SPDR Fund (XLF) and work in your group. The Ethics Office generally recommends that employees to stay comfortably below the \$50,000 *de minimis*. It is not mandated but it may make your life easier (and less stressful).

The financial conflict of interest statute (18 U.S.C. 208) is a criminal statute. To the best of my knowledge, criminal prosecutions for 208 violations are rare, especially if the violation was accidental. Nevertheless, it can lead to some very stressful situations. When we spoke yesterday, you told me the value of your XLF holdings. You have some wiggle room under the \$50,000 cap but you may want to consider reallocating a bit more to give yourself a slightly bigger cushion. Again, you are not required to do this but I wanted to raise it with you in case you thought that it made sense.”

(b)(6); (b)(7)(C) told us that she reminded (b)(6); (b)(7)(C) of her previous guidance to him and told him, “... as long as you didn’t work on any matters at the SEC, that can impact your financial interests, it’s okay, but you have to put it in PTCS.” (b)(6); (b)(7)(C) also provided documentation wherein (b)(6); (b)(7)(C) related, “I had not worked on any SEC matter that would have impacted my financial interest.” (EXHIBIT 10)

2. Allegation that (b)(6); (b)(7)(C) failed to report certain reportable assets on his OGE Form 450.

Our investigation found that (b)(6); (b)(7)(C) failed to report his holdings of Utilities Select Sector SPDR Fund (XLU), an asset valued at greater than \$1,000, on his CY 2020 OGE Form 450.

Based on his position within the SEC, (b)(6); (b)(7)(C) is required to file the annual OGE Form 450. In accordance with the applicable regulations and the *OGE Confidential Financial Disclosure Guide: OGE Form 450*, employees must generally report all “assets held for investment or the production of income that ended the reporting period with greater than \$1,000.” However, the regulations exclude diversified mutual funds from reporting requirements.⁷

We compared (b)(6); (b)(7)(C) December 31, 2020, brokerage statements to the holdings reported on his OGE Form 450 filed on (b)(6); (b)(7)(C) 2021, for the calendar year that ended December 31, 2020. We determined that the following holdings were valued greater than \$1,000 and not reported on (b)(6); (b)(7)(C) CY 2020 OGE Form 450: **(EXHIBIT 2)**

Table 2: (b)(6); (b)(7)(C) Holdings Exceeding \$1,000 and Not Reported on CY 2020 OGE Form 450

| Security | Value as of December 31, 2015 |
|--|-------------------------------|
| Technology Select Sector SPDR Fund (XLK) | \$78,402.06 |
| Utilities Select Sector SPDR Fund (XLU) | \$3,448.50 |
| Fidelity VIP Mid Cap Portfolio | \$3,331.47 |
| MetLife Stock Index Portfolio | \$4,364.48 |

We also compared (b)(6); (b)(7)(C) December 31, 2021, brokerage statements to the holdings reported on his CY 2021 OGE Form 450 filed on (b)(6); (b)(7)(C) 2022.

We determined that there was no requirement for (b)(6); (b)(7)(C) to report XLK, a diversified mutual fund, Fidelity VIP Mid Cap Portfolio or MetLife Stock Index Portfolio on his OGE Form 450. However, (b)(6); (b)(7)(C) was required to report XLU, a sector mutual fund, on his Form 450, which he failed to do. **(EXHIBIT 6)**

We asked (b)(6); (b)(7)(C) why he did not report the assets listed in Table 2 on his CY 2020 OGE Form 450. He stated he did not believe he needed to report the Fidelity VIP Mid Cap Portfolio because it was a diversified mutual fund, and that he did not need to report the Met Life Stock Portfolio because it was a 401(k) from a former employer. With respect to XLK and the Utilities XLU, (b)(6); (b)(7)(C) stated that the failure to report these assets was due to an oversight on his part.

⁷ 5 C.F.R. § 2634.907(c)(3)(vii).

(b)(6); (b)(7)(C) also told us that he received guidance from someone at the OEC, whose name he could not recall, that XLK was considered a diversified mutual fund, not a sector-specific fund.

He stated he received similar guidance regarding XLK for the year ended December 31, 2021. (b)(6); (b)(7)(C) provided copies of email conversations, between himself and (b)(6); (b)(7)(C) which disclosed that (b)(6); (b)(7)(C) informed (b)(6); (b)(7)(C) that, “the Technology Select Sector Fund (XLK) is a diversified mutual fund, not a sector fund... Despite the fact that XLK has the word “sector fund” in its name, we do not consider XLK to be a sector fund for purposes of the financial conflict of interest statute (18 U.S.C.208 (b)).” (EXHIBIT 8)

Our coordination with (b)(6); (b)(7)(C) corroborated (b)(6); (b)(7)(C) assertion that he was told by OEC that XLK was considered a diversified mutual fund, not a sector fund. As such, (b)(6); (b)(7)(C) was not required to report his holdings of XLK securities on his OGE Form 450. (EXHIBIT 10)

3. Allegations that (b)(6); (b)(7)(C) failed to pre-clear certain transactions in PTCS.

CY 2014-2016

Our review of (b)(6); (b)(7)(C) PTCS reports found that in CY 2014-2016, there were seven instances where (b)(6); (b)(7)(C) failed to request pre-approval for the initial purchase of securities that he later sold. Specifically, in May 2020, (b)(6); (b)(7)(C) entered seven pre-trade (sale) requests into PTCS, including comments noting the initial purchase date for each security, ranging from October 29, 2014, to April 25, 2016. All of these initial purchase dates were after (b)(6); (b)(7)(C) started at the SEC, and there were no corresponding pre-trade purchase request in PTCS. (EXHIBIT 2)

Table 3: CY 2014-2016 Transactions with No Pre-Trade Request in PTCS

| Security | Ticker Symbol | Date Sold | Reported Date of Most Recent Purchase |
|---|---------------|-----------|---------------------------------------|
| Amcap Fund, Inc. | AMPCX | 5/1/2020 | 4/25/2015 |
| Goldman Sachs Tr Strategic Income Fund | GSZAX | 5/1/2020 | 4/25/2016 |
| Oakmark Select Fund Investor Class | OAKLX | 5/1/2020 | 4/25/2015 |
| Invesco Developing Markets Fund | ODMAX | 5/1/2020 | 10/30/2015 |
| Invesco Oppenheimer International Growth Fund | OIGCX | 5/1/2020 | 4/24/2015 |
| T. Rowe Price New Horizon's Fund | PRNHX | 5/1/2020 | 10/30/2015 |
| Dodge & Cox International Stock Fund | DODFX | 5/4/2020 | 10/29/2014 |

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CY 2020

Our review of (b)(6); (b)(7)(C) brokerage statements and records in PTCS for CY 2020 found that 23 transactions took place between May 6, 2020, and December 31, 2020, that (b)(6); (b)(7)(C) failed to pre-clear in PTCS. (b)(6); (b)(7)(C) retroactively reported these transactions on January 6, 2022. (EXHIBIT 2)

Table 4: CY2020 Transactions Not Pre-Cleared in PTCS

| Account | Trade Date (from statement) | B/S | Quantity | Symbol | Description | Price per Share |
|----------------------------------|-----------------------------|-----|----------|--------|--|-----------------|
| First Republic (b)(6); (b)(7)(C) | 5/6/2020 | S | 20.0000 | XLC | Communication Services Select Sector SPDR Fund | \$50.45300 |
| First Republic (b)(6); (b)(7)(C) | 5/12/2020 | B | 32.0000 | XLF | Financial Select Sector SPDR Fund | \$21.64500 |
| First Republic (b)(6); (b)(7)(C) | 5/12/2020 | S | 11.0000 | XLC | Communication Services Select Sector SPDR Fund | \$51.77750 |
| First Republic (b)(6); (b)(7)(C) | 6/12/2020 | B | 19.0000 | XLF | Financial Select Sector SPDR Fund | \$23.63490 |
| First Republic (b)(6); (b)(7)(C) | 6/19/2020 | B | 3.0000 | XLI | Industrial Select Sector SPDR Fund | \$70.37730 |
| First Republic (b)(6); (b)(7)(C) | 8/10/2020 | B | 6.9560 | OANIX | Oakmark International Fund Class Institutional | \$20.37000 |
| First Republic (b)(6); (b)(7)(C) | 8/10/2020 | B | 27.9900 | SGOIX | First Eagle Overseas Fund | \$23.95000 |
| First Republic (b)(6); (b)(7)(C) | 8/10/2020 | B | 69.3620 | TINGX | Thornburg International Growth Fund | \$28.21000 |
| First Republic (b)(6); (b)(7)(C) | 8/12/2020 | B | 6.2990 | OANIX | Oakmark International Fund Class Institutional | \$21.14000 |
| First Republic (b)(6); (b)(7)(C) | 8/12/2020 | B | 86.5640 | OANIX | Oakmark International Fund Class Institutional | \$21.14000 |
| First Republic (b)(6); (b)(7)(C) | 8/12/2020 | B | 10.0610 | SGOIX | First Eagle Overseas Fund | \$24.08000 |
| First Republic (b)(6); (b)(7)(C) | 8/12/2020 | B | 82.4320 | SGOIX | First Eagle Overseas Fund | \$24.08000 |
| First Republic (b)(6); (b)(7)(C) | 8/12/2020 | B | 23.3620 | TINGX | Thornburg International Growth Fund | \$28.54000 |
| First Republic (b)(6); (b)(7)(C) | 8/12/2020 | B | 180.6140 | TINGX | Thornburg International Growth Fund | \$28.54000 |
| First Republic (b)(6); (b)(7)(C) | 8/17/2020 | B | 14.0000 | XLI | Industrial Select Sector SPDR Fund | \$77.38990 |
| First Republic (b)(6); (b)(7)(C) | 8/17/2020 | S | 6.0000 | XLK | Technology Select Sector SPDR Fund | \$114.66500 |
| First Republic (b)(6); (b)(7)(C) | 11/9/2020 | B | 35.0000 | XLF | Financial Select Sector SPDR Fund | \$26.73180 |
| First Republic (b)(6); (b)(7)(C) | 11/9/2020 | B | 7.0000 | XLI | Industrial Select Sector SPDR Fund | \$84.26000 |
| First Republic (b)(6); (b)(7)(C) | 12/14/2020 | B | 19.0000 | XLB | Materials Select Sector SPDR Fund | \$70.89970 |
| First Republic (b)(6); (b)(7)(C) | 12/14/2020 | B | 10.0000 | XLRE | Real Estate Select Sector SPDR Fund | \$36.45300 |
| First Republic (b)(6); (b)(7)(C) | 12/14/2020 | S | 6.0000 | XLK | Technology Select Sector SPDR Fund | \$125.45790 |
| First Republic (b)(6); (b)(7)(C) | 12/14/2020 | S | 1.0000 | XLP | Consumer Staples Select Sector SPDR Fund | \$67.80500 |
| First Republic (b)(6); (b)(7)(C) | 12/14/2020 | S | 8.0000 | XLV | Health Care Select Sector SPDR Fund | \$112.65050 |

Table 5: Total CY 2020 Transactions Not Pre-Cleared in PTCS

| Number of Purchases | Total Shares Purchased | Total Value of Purchases |
|---------------------|------------------------|--------------------------|
| 17 | 632.64 | \$18,453.90 |

| Number of Sales | Total Shares Sold | Total Value of Sales |
|-----------------|-------------------|----------------------|
| 6 | 52 | \$3,988.24 |

CY 2021-2022

Our review of (b)(6); PTCS records found that there were 82 transactions that took place between January 1, 2021, and January 4, 2022, that (b)(6); failed to pre-clear in PTCS. (b)(6); retroactively reported that transactions on January 5 - 6, 2022. (EXHIBIT 2)

Table 6: CY 2021-2022 Transactions Not Pre-Cleared in PTCS

| Trade Date (from PTCS) | B/S | Quantity | Symbol |
|------------------------|-----|-----------|--------|
| 1/5/2021 | B | 67.0000 | SPY |
| 1/19/2021 | B | 7.0000 | XLE |
| 1/19/2021 | B | 49.0000 | XLF |
| 1/19/2021 | B | 16.0000 | XLRE |
| 2/5/2021 | B | 15.0000 | XLE |
| 2/5/2021 | B | 6.0000 | XLI |
| 3/11/2021 | B | 328.2200 | FIHBX |
| 3/11/2021 | B | 1321.9500 | PFORX |
| 3/11/2021 | B | 2052.1200 | PIMIX |
| 3/15/2021 | B | 36.0000 | XLB |
| 3/15/2021 | B | 20.0000 | XLE |
| 3/15/2021 | B | 13.0000 | XLI |
| 4/8/2021 | B | 72.2100 | ODVYX |
| 5/25/2021 | B | 3.0000 | XLV |
| 6/3/2021 | B | 8.0000 | XLE |
| 6/3/2021 | B | 6.0000 | XLI |
| 7/16/2021 | B | 1.0000 | XLK |
| 7/16/2021 | B | 23.0000 | XLRE |
| 8/24/2021 | B | 9.0000 | XLF |

Report of Investigation

Case Title: (b)(6); (b)(7)(C)

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| | | | |
|------------|---|----------|-------|
| 10/27/2021 | B | 5.0000 | XLY |
| 11/26/2021 | B | 13.0000 | XLRE |
| 11/26/2021 | B | 4.0000 | XLV |
| 12/6/2021 | B | 233.4300 | EILDX |
| 12/6/2021 | B | 12.9100 | OANIX |
| 12/6/2021 | B | 172.1400 | PICYX |
| 12/6/2021 | B | 8.9000 | SGOIX |
| 12/6/2021 | B | 1.5300 | TINGX |
| 12/6/2021 | B | 4.0000 | XLE |
| 12/6/2021 | B | 6.0000 | XLF |
| 12/6/2021 | B | 1.0000 | XLK |
| 12/6/2021 | B | 3.0000 | XLRE |
| 12/6/2021 | B | 3.0000 | XLU |
| 12/6/2021 | B | 3.0000 | XLV |
| 12/6/2021 | B | 1.0000 | XLY |
| 12/8/2021 | B | 314.0500 | EILDX |
| 12/8/2021 | B | 75.5400 | OANIX |
| 12/8/2021 | B | 124.3700 | PFORX |
| 12/8/2021 | B | 436.4600 | PICYX |
| 12/8/2021 | B | 37.6900 | PIMIX |
| 12/8/2021 | B | 71.5300 | SGOIX |
| 12/8/2021 | B | 5.0000 | SPY |
| 12/8/2021 | B | 157.1700 | TINGX |
| 12/8/2021 | B | 12.0000 | XLB |
| 12/8/2021 | B | 33.0000 | XLC |
| 12/8/2021 | B | 8.0000 | XLE |
| 12/8/2021 | B | 87.0000 | XLF |
| 12/8/2021 | B | 28.0000 | XLI |
| 12/8/2021 | B | 33.0000 | XLK |
| 12/8/2021 | B | 15.0000 | XLP |
| 12/8/2021 | B | 28.0000 | XLRE |
| 12/8/2021 | B | 29.0000 | XLV |
| 12/8/2021 | B | 18.0000 | XLY |
| 12/20/2021 | B | 4.0000 | XLP |
| 12/20/2021 | B | 4.0000 | XLV |
| 1/5/2021 | S | 156.0000 | XLK |
| 1/5/2021 | S | 44.0000 | XLV |
| 1/19/2021 | S | 12.0000 | XLK |
| 1/19/2021 | S | 5.0000 | XLY |
| 2/5/2021 | S | 5.0000 | XLP |

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Report of Investigation

Case Title: (b)(6), (b)(7)(C)

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| | | | |
|------------|---|-----------|-------|
| 2/5/2021 | S | 4.0000 | XLV |
| 3/11/2021 | S | 416.6200 | AGDYX |
| 3/11/2021 | S | 624.6200 | SDGIX |
| 3/11/2021 | S | 2216.3500 | STRYX |
| 3/15/2021 | S | 33.0000 | XLC |
| 3/15/2021 | S | 22.0000 | XLK |
| 4/8/2021 | S | 158.6300 | EILDY |
| 4/8/2021 | S | 269.8700 | PICYX |
| 5/25/2021 | S | 5.0000 | XLB |
| 5/25/2021 | S | 11.0000 | XLF |
| 6/3/2021 | S | 14.0000 | XLC |
| 7/16/2021 | S | 7.0000 | XLF |
| 7/16/2021 | S | 7.0000 | XLV |
| 8/24/2021 | S | 5.0000 | XLV |
| 10/27/2021 | S | 7.0000 | XLV |
| 11/19/2021 | S | 72.2100 | ODVYX |
| 11/26/2021 | S | 8.0000 | XLK |
| 12/6/2021 | S | 13.7300 | FIHBX |
| 12/6/2021 | S | 22.0800 | PFORX |
| 12/6/2021 | S | 70.9200 | PIMIX |
| 12/6/2021 | S | 3.0000 | XLB |
| 12/6/2021 | S | 4.0000 | XLP |
| 12/20/2021 | S | 3.0000 | XLV |

| Trade Date (from PTCS) | B/S | Quantity | Symbol |
|------------------------|-----|----------|--------|
| 1/4/2022 | B | 73.0000 | EFA |
| 1/4/2022 | B | 123.0000 | EFG |
| 1/4/2022 | B | 402.0000 | EFA |
| 1/4/2022 | B | 676.0000 | EFG |
| 1/4/2022 | B | 32.0000 | EFA |
| 1/4/2022 | B | 54.0000 | EFG |
| 1/4/2022 | S | 162.4700 | SGOIX |
| 1/4/2022 | S | 170.8800 | OANIX |
| 1/4/2022 | S | 359.7500 | TINGX |
| 1/4/2022 | S | 895.5000 | SGOIX |
| 1/4/2022 | S | 902.3100 | OANIX |

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| | | | |
|----------|---|-----------|-------|
| 1/4/2022 | S | 2004.3900 | TINGX |
| 1/4/2022 | S | 71.5300 | SGOIX |
| 1/4/2022 | S | 76.7200 | OANIX |
| 1/4/2022 | S | 157.1700 | TINGX |

Table 7: Total CY 2021 and 2022 Transactions Not Pre-Cleared in PTCS

| Number of Purchases | Total Shares Purchased |
|---------------------|------------------------|
| 60 | 7,406.22 |
| Number of Sales | Total Shares Sold |
| 37 | 9,020.75 |

The comments included in PTCS for each of the CY 2020-2022 retroactively entered transactions stated, “Financial Advisor inadvertently executed transactions prior to receiving approval in [PTCS]. I had not worked on any SEC matter that would have impacted my financial interest.” (EXHIBIT 2)

When questioned about the transactions that occurred in CY 2020-2022, (b)(6); (b)(7)(C) stated that “...those transactions were done without my knowledge by my financial advisor, and once I found out that those transactions had taken place I went back and retroactively reported them.” He explained that he discovered the transactions when he was compiling documentation/information in support of the submission of his OGE Form 450. He stated he had transferred his account from a longtime advisor to another individual and “the account got miscoded,” resulting in trades being made in the account without his knowledge. (b)(6); (b)(7)(C) stated he subsequently moved his account to a traditional brokerage account where he had to be notified of transactions.

When asked why he did not request pre-approval for the seven securities purchased between October 2014 and April 2016 and sold in May 2020, (b)(6); (b)(7)(C) stated that he did not recall, but the securities may have been transferred over from a previous account. (EXHIBIT 8)

We also interviewed (b)(6); (b)(7)(C) wealth manager for First Republic Investment Management who managed (b)(6); (b)(7)(C) accounts. (b)(6); (b)(7)(C) stated that he began working as (b)(6); (b)(7)(C) financial advisor in July/August 2017. At the time, his group was affiliated with Wells Fargo. On February 15, 2019, his group left Wells Fargo and moved to First Republic Investment, and (b)(6); (b)(7)(C) accounts were also moved to First Republic Investment at that time.

(b)(6); (b)(7)(C) confirmed that on January 14, 2022, he had a discussion with (b)(6); (b)(7)(C) regarding placing a “no new purchase of securities” note on his accounts, notifying compliance personnel at First Republic Investment that (b)(6); (b)(7)(C) was an SEC employee. (b)(6); (b)(7)(C) continued that (b)(6); (b)(7)(C) was, “...very, very adamant that transactions had to be approved prior to being made, we (First Republic) had no malintent.” (b)(6); (b)(7)(C) continued, “...it’s just that we went from Wells Fargo, from discretionary to discretionary and then I guess there was a problem because it was

not in the correct account titling.” (b)(6); explained that during the initial rebalancing of (b)(6); accounts, it was agreed that the accounts should be an ETF/Mutual Fund portfolio given the compliance obligations on individual stocks. (b)(6); related that in April 2022, (b)(6); both emailed and called him regarding a discrepancy with these accounts, which resulted in an agreement to move (b)(6); accounts from managed discretionary accounts to full service brokerage accounts. (b)(6); continued that the securities in the managed accounts were sold so (b)(6); would not be charged a commission once in full service. According to (b)(6); subsequent to the discovery of the discrepancies, (b)(6); had these sales/purchases retroactively approved by the SEC.

(b)(6); explained that regarding trades that were made without (b)(6); knowledge, (b)(6); had a managed portfolio and when First Republic Investment makes an adjustment to change an allocation, it is done in bulk trades. Subsequently, if First Republic Investment increases or decreases exposure to a sector or asset class, it is done across the board to remove any conflict between clients. (b)(6); stated that managing (b)(6); accounts in this manner ceased as a result of the January 14, 2022, discussion with (b)(6); (b)(7)(C) related that First Republic Investment also had to adhere to the \$50k “max” in a sector ETF. (EXHIBIT 9)

4. Allegation that (b)(6); (b)(7)(C) reported certain transactions erroneously in PTCS.

Our review of (b)(6); brokerage statements and PTCS records found that (b)(6); entered the incorrect number of shares purchased in the following nine transactions, which were effectuated on May 1, 2020. (EXHIBIT 2)

Table 8: Incorrect Number of Shares Entered in PTCS

| Security | Ticker Symbol | Shares Purchased | Shares Reported in PTCS |
|-------------------------------------|---------------|------------------|-------------------------|
| First Eagle Overseas Fund | SGOIX | 139.998 | 138.78 |
| First Eagle Overseas Fund | SGOIX | 729.256 | 722.9 |
| Oakmark International Fund | OANIX | 151.662 | 147 |
| Oakmark International Fund | OANIX | 790.14 | 765.73 |
| Thornburg International Growth Fund | TINGX | 1,608.092 | 1,588.93 |
| Thornburg International Growth Fund | TINGX | 308.712 | 305.03 |
| Pioneer Strategic Income Fund | STRYX | 2,210.493 | 2,208.27 |
| Pioneer Bond Fund | PICYX | 3,917.736 | 3,913.6 |
| Pioneer Bond Fund | PICYX | 4,152.408 | 4,148.03 |

In addition, (b)(6); entered the wrong trade date when confirming the following two sales affected on May 4, 2020. (EXHIBIT 2)

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Case Title: (b)(6); (b)(7)(C)

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Table 9: Wrong Trade Date Entered in PTCS

| Security | Ticker Symbol | Actual Trade Date | Reported Trade Date |
|--|---------------|-------------------|---------------------|
| JPMorgan Income Builder Fund – Class A | JNBAX | 5/4/2020 | 5/1/2020 |
| JPMorgan Income Builder Fund – Class C | JNBCX | 5/4/2020 | 5/1/2020 |

When asked why he entered into PTCS the incorrect numbers of shares purchased when confirming the nine transactions effectuated on May 1, 2020, (b)(6); (b)(7)(C) stated that the number of shares he entered for the purchases were likely fractional shares based on proposed purchase or redemption amounts. When asked about the incorrect trade date when confirming two sales effectuated on May 4, 2020, he stated that entering the wrong trade date might have been a “key punch error.” (EXHIBIT 8)

U.S. Attorney’s Office Coordination

On June 7, 2022, we coordinated with Assistant United States Attorney (AUSA) (b)(6); (b)(7)(C) General Crimes Unit, United States Attorney’s Office (USAO), Southern District of New York and presented the facts pertaining to this investigation. AUSA (b)(6); (b)(7)(C) related that her office would not pursue criminal charges against (b)(6); (b)(7)(C) (EXHIBIT 7)

Signatures

Case Agent:

(b)(6); (b)(7)(C)
(b)(6); (b)(7)(C) Senior Special Agent

July 11, 2023
Date

Concurrence:

(b)(6); (b)(7)(C) Digitally signed by (b)(6); (b)(7)(C)
Date: 2023.07.11 23:22:54 -04'00'
(b)(6); (b)(7)(C) Special Agent in Charge Date

Approved:

KATHERINE REILLY Digitally signed by KATHERINE REILLY
Date: 2023.07.12 08:19:02 -04'00'

Katherine Reilly, Acting Deputy Inspector General
for Investigations

Date

Report of Investigation

Case Title: (b)(6); (b)(7)(C)

Case # 22-EXA-0010-1

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Exhibits

1. Predicating document, E-mail from the OEC, dated January 27, 2021.
2. Memorandum of Activity, PTCS Analysis, dated February 8, 2022.
3. Memorandum of Activity, Trends Report Review, dated February 8, 2022.
4. Memorandum of Activity, LEAP Training Record Review, dated February 9, 2022.
5. Memorandum of Activity, Sector Fund Holdings Review, dated February 14, 2022.
6. Memorandum of Activity, 1st Republic Brokerage statements and 450 Review, dated February 17, 2022.
7. Memorandum of Activity, AUSA coordination/presentation, dated June 7, 2022.
8. Memorandum of Activity, Interview of (b)(6); (b)(7)(C), dated June 22, 2022.
9. Memorandum of Activity, Interview of (b)(6); (b)(7)(C), dated October 24, 2022.
10. Memorandum of Activity, Interview of (b)(6); (b)(7)(C), dated October 28, 2022.



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION



MEMORANDUM

September 26, 2023

TO: FILE

FROM: (b)(6); (b)(7)(C)
Senior Special Agent
Office of Investigations

THROUGH: (b)(6); (b)(7)(C)
Special Agent in Charge
Office of Investigations

SUBJECT: Case No. 22-OWB-0031-I
Office of the Whistleblower Backdated Declarations

The purpose of this memorandum is to document the Office of Inspector General's (OIG) investigative activities and to recommend case closure.

We initiated this investigation based on a referral from our Office of Audits (OA) regarding potential backdating of Division of Enforcement (ENF) Office of the Whistleblower (OWB) documents.¹ In accordance with 17 C.F.R. § 240.21F, the OWB posts on its website a Notice of Covered Action (NoCA) when an ENF investigation results in a sanction or \$1 million or greater. A potential whistleblower can file a claim for an award within 90 days of this posting identifying any tips, complaints, or referrals they submitted to the SEC in association with that ENF action. Once a claim is filed, OWB obtains and reviews materials outlined in 17 C.F.R. § 240.21F-12 that may form the basis for an award declaration, including, among other things, "sworn declarations" from Commission staff. OWB requests a declaration from the ENF attorney that worked on the matter to determine the level of the claimant's involvement and if they may be entitled to an award. The OA reported that, during an audit of the OWB, it discovered that ENF attorneys "backdated" declarations to make it appear that they

¹ The OA referral listed 5 observations that the OA audit team compiled during the course of their audit of the Office of the Whistleblower. We investigated the allegation related to the backdating of declarations.

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Office of Inspector General – Investigations
U.S. Securities and Exchange Commission

had been signed on a different date than they were actually signed. These declarations contained an attestation indicating that the declarations were made under penalty of perjury.

The scope of OA's audit was October 1, 2016, to September 30, 2021. During this period, OWB posted 438 NoCAs on its website. The OA sampled 29 NoCAs and identified two instances of potential "backdating" of ENF attorney declarations associated with these NoCAs. During our investigation, we conducted a comprehensive review of the ENF attorney declarations associated with all 438 NoCAs issued during the audit scope timeframe. We found no additional instances in which declarations contained date discrepancies or were backdated. We also determined that both of the "backdated" ENF attorney declarations OA identified were dated as of the date that the OWB Claims Review Staff (CRS) made a "preliminary determination" as to the claim's outcome but were physically or digitally signed on a later date, admittedly due to an oversight on the part of OWB staff. OWB staff stated the date the declaration is signed/sworn is often the preliminary determination date, but this is not always the case.

Our investigation found no evidence of misconduct or intent to provide false or misleading information on the part of OWB or ENF attorneys. Rather, we found cogent reasons for discrepancies between the date the two backdated declarations were prepared and the date they were signed. We interviewed OWB staff, who explained that a claims package, which includes the ENF attorney declarations, is prepared and reviewed by OWB management and/or the CRS and a preliminary determination is made as to whether the potential whistleblower's claim will be approved or denied. The time between when a NoCA is posted, a claim is filed, and the claims package is reviewed and preliminary determination made can be months, if not years. If the preliminary determination is that the claim will result in a denial, the award determination can be declared final and closed. If determined the claim will result in an approval, the award determination moves forward for Commission approval. It is not until OWB management, or the CRS make a preliminary determination that the accompanying ENF attorney declaration is deemed "effective" or "final." OWB considers a declaration to be final and effective the date of the preliminary determination, regardless of when the declaration was prepared or signed.

Our investigation determined that the two instances of backdating did not result in an adverse effect on the claims process, the preliminary determination, or the whistleblowers' claims. Therefore, this matter does not warrant additional investigation and administratively closing this case is recommended.

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U.S. Securities and Exchange Commission

Concurrent (b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)
Special Agent in Charge

9-26-2023

Date

Approved: **KATHERINE REILLY** Digitally signed by KATHERINE REILLY
Date: 2023.09.27 15:08:36 -04'00'

Katherine H. Reilly, Acting Deputy Inspector General
for Investigations

Date

Office of Audits Notified: BSM Rebecca Sharek 9-27-2023
By (Initials) Person Notified Date

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Office of Inspector General – Investigations
U.S. Securities and Exchange Commission



U.S. Securities and Exchange Commission
Office of Inspector General



Report of Investigation

Subject: (b)(6); (b)(7)(C)

Title: [REDACTED]

SK-Level/Grade: (b)(6); [REDACTED]

Office: Office of Information Technology

Region: N/A

Case #: 22-SEC-0005-I

Origin: Fort Worth Regional Office

Investigation Initiated: November 22, 2021

Investigation Completed: March 30, 2023

SUMMARY

This report summarizes the results of an investigation conducted by the U.S. Securities and Exchange Commission's (SEC) Office of Inspector General (OIG) into allegations that a picture of the screen of an alleged SEC laptop was posted on the social media site Reddit. Specifically, the Fort Worth Regional Office (FWRO) provided information concerning a post on a Reddit discussion website that appeared to be a picture of an SEC employee's laptop with a personal identification verification (PIV) card partially visible (Exhibit 1). The picture in question showed the alleged SEC laptop along with a single sheet of paper containing a printed report entitled (b)(6); (b)(7)(C) with a hand-written notation that stated in part, (b)(6); (b)(7)(C) filings." The same picture was also discovered on the online forum called StockTwits. (b)(7)(A); (b)(7)(E) (b)(7)(A); (b)(7)(E) we determined that SEC employee (b)(6); (b)(7)(C) is the only known end user that matched on all data sets.

We consulted with the United States Attorney's Office (USAO), (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) which initially accepted the matter for criminal prosecution, and we worked this case jointly with the Federal Bureau of Investigation (FBI). We ultimately could not determine with certainty who took the picture; however, we were able to determine that a person unaffiliated with the SEC posted the picture online. When we interviewed (b)(6); [REDACTED] she denied both taking the picture and posting the picture on social media, and she did not have an explanation for the Reddit and StockTwits posts. However, she acknowledged leaving her SEC laptop unattended and unsecured while teleworking from her residence where it could be accessible to other occupants and guests. The USAO, (b)(6); (b)(7)(C) ultimately declined this matter.

¹ The printed report appears to be (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

BACKGROUND

On November 22, 2021, we opened an investigation based on information from the SEC's FWRO regarding an alleged picture of an SEC laptop posted on Reddit and StockTwits. At the time the laptop picture was posted online on Reddit and StockTwits, (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Reddit

Is an American social news aggregation, content rating, and discussion website. Registered users may submit content to the site such as links, text posts, images, and videos, which are then voted up or down by other members.

StockTwits

Is a social media platform designed for sharing ideas between investors, traders, and entrepreneurs. By mid-2019, users had increased to 2 million and the company premiered free online trading via an iOS app. In 2022, the StockTwits platform added crypto and equities trading to the platform.

SCOPE

We found the following potential violations relating to (b)(6); (b)(7)(C) leaving her laptop unattended and/or unsecured in her residence:

The OIT Rules of the Road OP 24-04B v9 dated December 21, 2017, which was in effect during the time period relevant to this investigation contains, in part, the following rules (Exhibit 2).

Employee responsibilities:

- Following all SEC policies, processes and controls
- Protecting IT resources within your control or possession

SEC user responsibilities related to passwords and network credentials:

- Lock your computer whenever it will be left unattended, even briefly, by pressing the "Ctrl+Alt+Delete" keys simultaneously and then selecting "Lock Computer" or use the Window button "L" shortcut

INVESTIGATIVE FINDINGS

OIG (b)(7)(E) Analysis

The OIG (b)(7)(E) assisted the investigation by reviewing the picture that was posted to Reddit and StockTwits to gather information including the (b)(7)(A); (b)(7)(E) (b)(7)(A); (b)(7)(E) The (b)(7)(E) also obtained (b)(7)(A); (b)(7)(E) (b)(7)(A); (b)(7)(E) determined that SEC employee (b)(6); (b)(7)(C) was the only user identified by the data sets (Exhibit 3).

Financial Disclosure Forms

We reviewed (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) for calendar years 2017 through 2021. Of note, (b)(6); reported brokerage accounts that held various mutual funds (b)(6); (b)(7)(C) (b)(6); did not report holding any individual stocks (Exhibit 4).

Brokerage Statements

We reviewed (b)(6); brokerage records which were uploaded to the SEC's Personal Trading Compliance System (PTCS) for the past two reporting cycles. A review of the account detail section revealed that the accounts held exchange traded funds (ETFs), closed-end mutual funds (CEFs), certificates of deposit (CDs), and cash. None of the accounts held individual stocks (Exhibit 5).

E-mail Review

We reviewed (b)(6); e-mail files, which did not produce any content relevant to this investigation (Exhibit 6).

Interviews

The Individual that Posted the SEC Laptop Picture

We developed confidential information from other law enforcement sources which led us to identify the individual who posted the picture on Reddit and StockTwits. The individual has no known nexus to the SEC or (b)(6); The subject acknowledged posting the picture online, but said they could not remember where or how they obtained the picture (Exhibit 7).

(b)(6); (b)(7)(C)

We interviewed (b)(6); who denied taking the picture or posting any picture of her SEC laptop on any internet forum. Further, (b)(6); said that she never heard of (b)(6); (b)(7)(C)

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(b)(6); (b)(7)(C) also denied trading on SEC insider information. (b)(6); (b)(7)(C) consented to a walk-through of her residence. We did not observe furniture similar in appearance to the item pictured under the laptop in the relevant Reddit/StockTwits post. (b)(6); (b)(7)(C) acknowledged that she has left her SEC laptop unattended in her residence, potentially accessible to other occupants and guests.

During the course of the interview (b)(6); (b)(7)(C) identified (b)(6); (b)(7)(C) that could have had access to her SEC laptop while visiting her residence. We identified (b)(6); (b)(7)(C) brokerage account and obtained and reviewed records relevant to the time frame of this investigation. There was no noteworthy trading activity (Exhibit 8).

Coordination

On June 14, 2022, the facts and evidence of the investigation were presented to the USA (b)(6); (b)(7)(C). The matter was accepted for prosecution and worked jointly with the FBI (Exhibit 9). Based on the additional evidence collected during the course of our investigation, on February 15, 2023, the USAO (b)(6); (b)(7)(C) declined the matter for criminal prosecution (Exhibit 10).

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Case Title: (b)(6); (b)(7)(C)

Case # 22-SEC-0005-I

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Signatures

Case Agent:

(b)(6); (b)(7)(C) Digitally signed by (b)(6); (b)(7)(C)
Date: 2023.03.30 11:29:42 -04'00'

(b)(6); (b)(7)(C) Senior Special Investigator Date

Concurrence:

(b)(6); (b)(7)(C) Digitally signed by (b)(6); (b)(7)(C)
Date: 2023.03.30 11:38:40 -04'00'

(b)(6); (b)(7)(C) Special Agent in Charge Date

Approved:

KATHERINE REILLY

Digitally signed by KATHERINE

REILLY

Date: 2023.03.30 09:39:18 -04'00'

Katherine Reilly, Acting Deputy Inspector General
for Investigations

Date

Exhibits

1. Predicating document, E-mail from FWRO, dated September 23, 2021.
2. SEC OP 24-04B (*Rules of the Road*), dated December 21, 2017.
3. (b)(7)(E) review support notes, dated February 7, 2022.
4. Memorandum of Activity, Records Reviewed (b)(6); (b)(7)(C) dated June 3, 2022.
5. Memorandum of Activity, PTCS Records Reviewed, dated June 3, 2022.
6. Memorandum of Activity, E-mail Reviewed, dated July 18, 2022.
7. Memorandum of Activity, FBI Interview of Witness, dated August 29, 2022.
8. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated January 11, 2023.
9. Memorandum of Activity, Case Presentation for Prosecution, dated June 14, 2022.
10. Memorandum of Activity, Case Declined for Prosecution, dated February 15, 2023.



U.S. Securities and Exchange Commission
Office of Inspector General



Report of Investigation

Subject: (b)(6); (b)(7)(C)
Title: (b)(6); (b)(7)(C)
SK-Level/Grade: (b)(6);
Office: Division of Economic and Risk
Analysis
Region: (b)(6); (b)(7)(C)

Case #: 23-SEC-0001-I

Origin: Office of Security Services

Investigation Initiated: 10/25/2022

Investigation Completed: 05/25/2023

SUMMARY

This report summarizes the results of our investigation involving an allegation that a prospective SEC employee may have had an outstanding International Criminal Police Organization (Interpol) “Red Notice” arrest warrant. The “Red Notice” was discovered by Office of Security Services (OSS) when (b)(6); (b)(7)(C) Division of Economic and Risk Analysis (DERA), was undergoing a suitability and background investigation for a position with the SEC, and preliminary information from the Defense Counterintelligence and Security Agency (DSCA) indicated his name may be associated with an outstanding Interpol warrant from (b)(6); (EXHIBIT 1)

As a result of the allegation, we initiated an investigation and ultimately did not substantiate the allegation. We found that based on a fingerprint and photo identification analysis conducted by (b)(6); authorities (b)(6); was not the same person sought after in the Red Notice. However, DCSA’s review of (b)(6); background investigation resulted in the discovery of some discrepancies in information he provided on his Standard Form (SF) 85, specifically that he omitted information about his finances; other names he used in the past; and foreign travel outside the U.S. Ultimately, OSS confronted (b)(6); about the discrepancies and he advised the omissions were not intentional. He received a letter of counseling and reminder to provide accurate information on investigative forms. In (b)(6); (b)(7)(C) OSS favorably adjudicated (b)(6); background investigation and closed the matter.

We did not refer the matter to the U.S. Department of Justice because we did not uncover any evidence (b)(6); (b)(7)(C) was the person sought in a Red Notice.

BACKGROUND

When an SEC applicant is selected for employment, OSS initiates the background investigation process by sending the applicant an e-mail with instructions to complete an electronic questionnaire for investigative processing (e-QIP)¹, also known as the electronic version of the SF-85P. OSS requires the applicant to complete the eQIP within 5 days of receiving the e-mail. Following the applicant's e-QIP submission, OSS conducts a review of the information for any discrepancies and will require the applicant to clarify any discrepancies with a response. However, if there are no issues, or previously identified issues are resolved, OSS will issue an "interim favorable adjudication" and submit a request for DCSA to begin the applicant's background investigation. After receiving DCSA's background investigation results, OSS reviews the information and follows up on any outstanding issues before adjudicating the case and closing it. (EXHIBIT 2)

(b)(6); (b)(7)(C) DERA selected (b)(6); as a candidate for a (b)(6); (b)(7)(C) position and, as a result, OSS initiated a background investigation. On (b)(6); (b)(7)(C) completed an SF-85P, and on (b)(6); (b)(7)(C) DCSA sent an e-mail to OSS advising that its preliminary background review using the information (b)(6); provided on his form revealed that he may be the subject of a Red Notice. (EXHIBIT 3)

On (b)(6); (b)(7)(C) DCSA processed (b)(6); fingerprints, which returned with "No Issues/No Record." As a result, he was provided an interim favorable adjudication and allowed to begin his employment with the SEC. On (b)(6); (b)(7)(C) entered on duty with DERA (b)(6); (b)(7)(C)

(b)(7)(E)

On (b)(6); (b)(7)(C) DCSA notified OSS that (b)(6); background investigation was completed and referred its findings to OSS. An FBI Criminal Justice Information Services Division report in the case file provided by DCSA revealed (b)(6); may have an outstanding Interpol warrant from (b)(6); that was issued in (b)(6);. The warrant related to a (b)(6); incident that resulted in someone with a name similar to (b)(6); being charged with arson, theft, drugs, and injury causing death/manslaughter/murder. OSS notified us of these findings and provided supporting documentation, which we referred to Interpol Washington in an effort to confirm whether (b)(6); was the subject of an active Red Notice. (EXHIBITS 3-5)

¹ According to DCSA's website, e-QIP is a "web-based automated system that was designed to facilitate the processing of standard investigative forms used by DCSA and other Investigation Service Providers (ISP) when conducting background investigations for Federal security, suitability, fitness and credentialing purposes. e-QIP allows the user to electronically enter, update and transmit their personal investigative data over a secure internet connection to a requesting agency."

SCOPE

We investigated the following potential violations:

- Title 18 United States Code § 1001 – False Statements
- Title 5 Code of Federal Regulations (C.F.R.) 2635.101- Standards of Ethical Conduct for Employees of the Executive Branch
- Title 17 C.F.R 200.735.1 *et seq*- Commission's Regulation Concerning Conduct of Members and Employees of the Commission

Additionally, we interviewed the following individual:

- (b)(6); (b)(7)(C) Personnel Security Operations Branch, OSS

RESULTS OF INVESTIGATIVE ACTIVITY

We did not substantiate that (b)(6); (b)(7)(C) was the subject of an active Red Notice.

INTERPOL Washington Confirmed (b)(6); (b)(7)(C) Was Not the Person Sought

In (b)(6); (b)(7)(C) Interpol Washington responded to our referral of this matter and advised that the Red Notice was not issued for (b)(6); (b)(7)(C) but rather for an unrelated person with a similar name and date of birth.

Interpol Washington advised that a fingerprint and photo identification examination conducted by (b)(6); (b)(7)(C) authorities confirmed "conclusively" that (b)(6); (b)(7)(C) was not the same person they sought with their warrant. (EXHIBIT 6)

SEC's Office of Security Services

We interviewed (b)(6); (b)(7)(C) Personnel Security Operations Branch, OSS, about the Interpol warrant issue. (b)(6); (b)(7)(C) advised that DCSA uncovered discrepancies with the information (b)(6); (b)(7)(C) provided on his SF-85. Specifically (b)(6); (b)(7)(C) had omitted information related to his finances; other names he used in the past; and his foreign travel outside the U.S. (b)(6); (b)(7)(C) told us that in (b)(6); (b)(7)(C) OSS sent (b)(6); (b)(7)(C) a letter of inquiry regarding the discrepancies noted in DCSA's findings, and he responded that the omissions were not intentional. (b)(6); (b)(7)(C) related that on (b)(6); (b)(7)(C) OSS sent a letter of counseling to (b)(6); (b)(7)(C) and notified him of his responsibility to provide honest and accurate information related to investigative forms. Subsequently, OSS issued a favorable adjudication of (b)(6); (b)(7)(C) background investigation and closed the matter. (EXHIBIT 3)

Report of Investigation

Case Title: (b)(6); (b)(7)(C)

Case # 23-SEC-0001-I

Page 4 of 5

Coordination

We did not refer the matter to the U.S. Department of Justice because we did not uncover any evidence that (b)(6); (b)(7)(C) was the person sought in a Red Notice.

Signatures

Case Agent:

(b)(6); (b)(7)(C)

5/19/2023

Date

Concurrence:

(b)(6); (b)(7)(C) Digitally signed by (b)(6); (b)(7)(C)
Date: 2023.05.23 12:35:01 -04:00

(b)(6); (b)(7)(C) Special Agent in Charge

Date

Approved:

KATHERINE REILLY Digitally signed by KATHERINE REILLY
Date: 2023.05.24 10:14:53 -04:00

Katherine Reilly, Acting Deputy Inspector General
for Investigations

Date

Report of Investigation

Case Title: (b)(6); (b)(7)(C)

Case # 23-SEC-0001-I

Page 5 of 5

Exhibits

1. Predicating Document, Complaint Intake, dated (b)(6); (b)(7)(C)
2. Memorandum of Activity, regarding records obtained, dated (b)(6); (b)(7)(C)
3. Memorandum of Activity, regarding the interview of (b)(6); (b)(7)(C) dated (b)(6); (b)(7)(C)
4. Memorandum of Activity, regarding records obtained, dated (b)(6); (b)(7)(C)
5. Memorandum of Activity, regarding records obtained, dated (b)(6); (b)(7)(C)
6. Memorandum of Activity, regarding records obtained, dated (b)(6); (b)(7)(C)



U.S. Securities and Exchange Commission
Office of Inspector General



Report of Investigation

Subject: Capital Growth Market

Title: N/A

SK-Level/Grade: N/A

Office: N/A

Region: N/A

Case #: 23-SEC-0002-I

Origin: Office of Investor Education and
Advocacy

Investigation Initiated: 10/25/2022

Investigation Completed: 6/12/2023

SUMMARY

This report summarizes the results of our investigation of an alleged investment fraud scheme involving the misuse of the SEC seal and the name of former SEC Chairman Jay Clayton. Specifically, an investor contacted the SEC's Office of Investor Education and Advocacy (OIEA) and reported that they invested \$2,500 in Bitcoin with Capital Growth Market (CGM), a company based in the United Kingdom. The investor said that within 30 days their investment account balance reflected \$40,000, but when they attempted to withdraw the balance they were required to pay a large tax. The investor became suspicious and determined through online research that CGM was not registered with the SEC. When the investor confronted the company, they were provided with a certificate of trade that contained Clayton's name, signature, and the SEC seal. (EXHIBIT 1)

We initiated an investigation and found that CGM misused the SEC seal and the former Chairman's name in furtherance of an investment fraud scheme. We determined that CGM was not a registered investment firm in the U.S. or in the U.K based on information provided by authorities to the U.S. National Central Bureau, Interpol Washington (Interpol), and through a review of companies registered with the SEC.

We did not refer this matter to the U.S. Department of Justice because we were unable to identify a perpetrator, and the complainant failed to respond to multiple requests to provide additional information. However, we alerted the Federal Trade Commission of CGM's website containing fraudulent references to the SEC. The CGM website is no longer active.

BACKGROUND

Clayton served as the SEC's Chairman from 2017-2020.

CGM¹ was advertised an investment management company.

SCOPE

We investigated the following potential violations:

- Title 18 United States Code (U.S.C.) § 912 - Officer or employee of the United States
- Title 18 U.S.C § 1017 - Government seals wrongfully used and instruments wrongfully sealed
- Title 18 U.S.C. § 1343 – Fraud by wire

Additionally, we interviewed the following individual:

- (b)(6); (b)(7)(C) Investor

RESULTS OF INVESTIGATIVE ACTIVITY

CGM's Website Contained the SEC Seal and Former Chairman's Name

Our review of CGM's website revealed a fraudulent SEC "Certificate of Trade" that contained inaccurate information and misspelled words. Specifically, the document cited, "THE INTERNATIONAL BUSINESS COMPANIES OF 1946 (Pub, L. 76768) of United States of America, Revied [sic] Addition... The Undersigned Chairman of the U.S. Securities and Exchange Commission hereby CERTIFIES pertinent to Section 12 of The International Business Companies Act of 1940, that all requirements of trade ACT in respect of Incorporation have been complied with...."

The certificate stated CGM was "...incorporated in The United State[sic] of America as an Investment Company this 4th day of March Two Thousand and Ten..." and listed Clayton's name and signature.

¹ On November 21, 2022, we reviewed CGM's website. (<https://capitalgrowthmarket.com/about-us/>). According to its no longer active website CGM is an "...online trading and investment platform for brokers interested in Foreign Exchange, Stock Market Trading, and Cryptocurrency Trading. We give our users the potential to generate financial returns on both rising and falling prices across indices, FX, commodities, shares and cryptocurrencies..."

Additionally, CGM's website did not list contact information for its owner or its employees and only listed an e-mail address, support@capitalgrowthmarket.com. (EXHIBIT 2)

Interview of the Investor

We interviewed the investor, (b)(6); (b)(7)(C) who reported the fraud scheme to the SEC. (b)(6); told us that in December 2021, she saw an advertisement for CGM on Instagram and was interested in investing with the company. She said before she decided to invest with the company, she researched the company's website; conducted Internet searches; and communicated with CGM representatives, and ultimately invested \$2,560 in CGM's strategy "10YX" trading in gold securities, which advertised an 865 percent yield on returns.

(b)(6); told us that a CGM representative advised her that her investment would yield 12 percent daily profit on the days the CGM broker conducted the trades and said that after 30 days her investment account balance would be between \$30,000 and \$45,000. The company representative also told her she would receive a five percent commission for any referrals that resulted in an investment account opened with CGM. As a result, (b)(6); referred (b)(6); and (b)(6); and they both opened investment accounts with CGM that she managed.

(b)(6); stated that on January 16, 2022, and January 17, 2022, she sent three separate payments to CGM totaling \$2,560 worth of Bitcoin via CashApp, using the Bitcoin address "BC1QJ7MKGCE9ZFUK98ZREEZGKS5KD6NAXW5ELYLLM."

(b)(6); said she logged-in to her account on February 14, 2022, and noticed her balance was approximately \$46,000 to \$47,000. Subsequently, she submitted an online withdrawal request through the CGM website but did not receive a response. She then emailed and reported being told by a company representative that, before she could withdraw any funds from her account, she would be required to pay taxes on the account's balance. (b)(6); said according to CGM, she owed \$3,400 because the tax rate was 12 percent; however, she received a 5 percent credit for referring (b)(6); and (b)(6); to the company. (b)(6); said CGM informed her the taxes would be used to pay the broker's commission fee and U.K. taxes. (b)(6); said the CGM representative assured her that the company was licensed with the "sec" and directed her to the company's website to view the "Capital Growth Market, Certificate of Trade." (b)(6); explained that she immediately became suspicious when the representative placed "sec" in lower case letters, and she reviewed the certificate and she searched the SEC's website finding many companies with similar names, but she was unable to locate specific information related to CGM. (b)(6); advised that all her communications with CGM were through email and a company chatroom. She did not have a telephone number for the company or any of its representatives.

(b)(6); stated she contacted CGM on several occasions and requested funds from her investment account but was unsuccessful. She said CGM representatives initially attempted to negotiate the taxes but later stopped answering her emails or chatroom requests. According to

her, CGM may have blocked her and (b)(6); (b)(7)(C) from accessing their accounts; when they attempted to log-on to their accounts using their previously established CGM credentials, they received an error message (b)(6); (b)(7)(C) explained that she was able to log-in to (b)(6); (b)(7)(C) account, and it reflected a low balance.

(b)(6); (b)(7)(C) said she contacted the SEC and was advised CGM's certificate of trade appeared fraudulent and contained inaccurate information. Specifically, she was advised that Clayton was not Chairman of the SEC in 2010, as stated on the "certificate." In addition, (b)(6); (b)(7)(C) stated "United State" was printed on the document rather than "United States." (EXHIBIT 3)

Attempts to Locate the CGM Bitcoin Address

Our Digital Forensics and Investigations Unit researched the Bitcoin address associated with CGM; however, we were unable to link the Internet Protocol address associated with it to an individual or company. (EXHIBIT 4)

Referral to Interpol Washington

On August 2, 2022, we sent a referral through our Interpol representative to Interpol Washington requesting assistance from U.K. authorities to obtain any information related to CGM. We (1) inquired whether CGM was a legitimate business; and (2) requested any/all information related to CGM, including, its incorporation, address, and contact information; and, (3) whether the company was under investigation by U.K. authorities for similar investment fraud schemes.

On September 15, 2022, Interpol Manchester responded advising that its queries did not produce any information about CGM. (EXHIBITS 5 and 6)

(b)(6); (b)(7)(C) Failure to respond to the OIG

Between August 1, 2022, and March 9, 2023, we sent several emails to (b)(6); (b)(7)(C) requesting copies of any communications between her and CGM, which she had asserted that she maintained during the time she invested with the company. Additionally, we inquired whether CGM had attempted to contact her since her interview with the OIG in June 2022. (b)(6); (b)(7)(C) did not respond to our requests. (EXHIBIT 7)

Coordination

Since we were unable to identify a subject in this matter, and the complainant failed to respond to multiple requests regarding the allegation, we did not refer it to the U.S. Department of Justice. However, on May 25, 2023, we alerted the Federal Trade Commission of CGM's website containing fraudulent references to the SEC. The website is no longer active.

Signatures

Case Agent:

(b)(6); (b)(7)(C)

6/12/2023
Date

(b)(6); (b)(7)(C)

06/12/2023
Date

(b)(6); (b)(7)(C) Special Agent in Charge

Approved:

KATHERINE REILLY

Digitally signed by KATHERINE REILLY
Date: 2023.06.12 09:26:31 -04'00'

Katherine Reilly, Acting Deputy Inspector General
for Investigations

Date

Exhibits

1. Predicating Document, Complaint Intake, dated April 7, 2022.
2. Memorandum of Activity, regarding records obtained, dated November 21, 2022.
3. Memorandum of Activity, regarding the interview of (b)(6); (b)(7)(C) dated May 24, 2022.
4. Memorandum of Activity, regarding the records obtained, dated June 29, 2022.
5. Memorandum of Activity, regarding records obtained, dated August 2, 2022.
6. Memorandum of Activity, regarding records obtained, dated September 15, 2022.
7. Memorandum of Activity, regarding records obtained, dated March 9, 2023.



OFFICE OF
INSPECTOR GENERAL

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION



MEMORANDUM

February 22, 2023

TO: FILE

FROM: (b)(6); (b)(7)(C)
Senior Special Investigator
Office of Investigations

THROUGH: (b)(6); (b)(7)(C)
Special Agent in Charge
Office of Investigations

SUBJECT: Case No. 23-SEC-0006-I
(b)(6); (b)(7)(C)
Unknown

The purpose of this memorandum is to document the Office of Inspector General's (OIG) investigative activities and to recommend case closure.

The OIG received a complaint forwarded from the U.S. Securities and Exchange Commission (SEC) Office of Investor Education and Advocacy (OIEA) from (b)(6); (b)(7)(C) who resides in (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) reported being scammed out of (b)(6); (b)(7)(C) by someone purporting to be (b)(6); (b)(7)(C) who used a likeness of the SEC logo and WhatsApp phone number (b)(6); (b)(7)(C) in furtherance of an apparent advanced fee fraud scheme. (b)(6); (b)(7)(C) purportedly informed (b)(6); (b)(7)(C) that his address was linked to money laundering and terrorist financing and that he had to send money to clear his name and identity. (b)(6); (b)(7)(C) told the OIG, in part, "I have copies of wire transfers showing amounts requested and sent to (b)(6); (b)(7)(C) for verification of my innocence."

The OIG investigation included a review of documents obtained from (b)(6); (b)(7)(C) and records obtained pursuant to financial intelligence reporting. We concluded (b)(6); (b)(7)(C) wired approximately (b)(6); (b)(7)(C) from his bank accounts to an unknown individual(s) using the name (b)(6); (b)(7)(C) who represented affiliation with the SEC. The communication between (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) was on the WhatsApp application. (b)(6); (b)(7)(C) told (b)(6); (b)(7)(C) among other things, that the SEC will, "cover you... because you helped with investigate [sic] the case, will pay you back, and then give you an additional \$40,000 as compensation." (b)(6); (b)(7)(C) never received any payment from (b)(6); (b)(7)(C).

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Office of Inspector General – Investigations
U.S. Securities and Exchange Commission

(b)(6); (b)(7)(C)

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The OIG presented the facts and evidence of the investigation to the United States Attorney's Office (USAO), (b)(6); (b)(7)(C). Upon considering the facts of the case, the USAO declined the matter for criminal prosecution.

In conclusion, the investigation found (b)(6); (b)(7)(C) was a victim of an advance fee fraud scheme. The OIG was unable to identify the subject(s) and the matter was declined by the USAO. Therefore, the issue does not merit further OIG investigation. Accordingly, a report to management is not warranted and administratively closing this case is recommended. If approved, OIEA will be notified of the closure.

Concurrence:

(b)(6); (b)(7)(C)

Digitally signed by (b)(6); (b)(7)(C)

Date: 2023.02.24 08:22:18 -05'00'

(b)(6); (b)(7)(C)

Special Agent in Charge

Date

Approved:

KATHERINE REILLY

Digitally signed by KATHERINE

REILLY

Date: 2023.02.22 16:17:28 -05'00'

Katherine Reilly, Acting Deputy Inspector General
for Investigations

Date

Office of Investor Education
and Advocacy Notified:

(b)(6); (b)(7)(C)

2/23/2023

By (Initials)

Person Notified

Date

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Office of Inspector General – Investigations
U.S. Securities and Exchange Commission



U.S. Securities and Exchange Commission
Office of Inspector General



Report of Investigation

Subject: (b)(6); (b)(7)(C)
Title: [REDACTED]
SK-Level/Grade: (b)(6); [REDACTED]
Office: (b)(6); (b)(7)(C)
Region: Headquarters

Case Number: 23-(b)(6); (b)(7)(C) 0013-I

Origin: Office of the General Counsel

Investigation Initiated: April 3, 2023

Investigation Completed: December 11, 2023

SUMMARY

We investigated an allegation that former U.S. Securities and Exchange Commission (SEC) employee (b)(6); (b)(7)(C) transmitted SEC nonpublic information (NPI) without authorization to (b)(6) personal email account and to (b)(6) counsel (b)(6); (b)(7)(C) had worked in the (b)(6); (b)(7)(C) and the alleged unauthorized NPI transfer included highly confidential, unredacted (b)(6); (b)(7)(C) declarations, (b)(6); (b)(7)(C) recommendations, and other (b)(6); (b)(7)(C) NPI (b)(6); (b)(7)(C) was terminated from employment at the SEC (b)(6); (b)(7)(C)

During our review of (b)(6); [REDACTED] email files from (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) we found that (b)(6); [REDACTED] sent 18 unencrypted emails to (b)(6) personal (b)(6); [REDACTED] account that contained NPI and/or personally identifiable information (PII). We also found that (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) sent emails containing (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) to (b)(6) personal (b)(6); [REDACTED] account in violation of SEC Regulation (SECR) 23-2, *Safeguarding Nonpublic Information*, and the SEC Rules of the Road ("Acceptable Use Policy"). (b)(6); (b)(7)(C) related to (b)(6) termination and subsequent litigation with the agency. (b)(6); [REDACTED] admitted that (b)(6) sent emails containing NPI to (b)(6) personal (b)(6); [REDACTED] account. We determined that (b)(6); [REDACTED] counsel signed non-disclosure agreements (NDAs) in connection with litigation with the agency. The NDAs contained provisions requiring that counsel protect confidential and nonpublic SEC information.

While reviewing (b)(6); [REDACTED] emails, we developed a second allegation (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (b)(6); (b)(7)(C)

Report of Investigation

Case Title: (b)(6); (b)(7)(C)

Case No. 23 (b)(6); 0013-1

Page 2 of 7

(b)(6); (b)(7)(C)

BACKGROUND

(b)(6); (b)(7)(C)

SCOPE

We considered the following rules and regulations relating to (b)(6); (b)(7)(C) sending SEC nonpublic information to (b)(6); (b)(7)(C) personal (b)(6); (b)(7)(C) account:

- SECR 23-2, *Safeguarding Nonpublic Information* (September 19, 2018)
- (b)(6); (b)(7)(C)
- SEC Rules of the Road (“Acceptable Use Policy”) (December 21, 2017)
- 5 U.S.C. § 552a, Records maintained on individuals (the Privacy Act)
- (b)(6); (b)(7)(C)
- (b)(6); (b)(7)(C)
- 17 C.F.R. § 200.735-3(b)(2)(i), Disclosure of nonpublic Commission information

Additionally, we interviewed the following individuals:

- (b)(6); (b)(7)(C)
- (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

RESULTS OF INVESTIGATIVE ACTIVITY

Allegation: (b)(6); sent SEC NPI to (b)(6); personal (b)(6); account.

Finding: (b)(6); sent SEC NPI and/or PII to (b)(6); personal (b)(6); account in violation of SECR 23-2, *Safeguarding Nonpublic Information* and SEC Rules of the Road (“Acceptable Use Policy”).

We received this allegation on March 31, 2023, from the Office of the General Counsel (OGC). (b)(6); last position at the SEC was (b)(6); (b)(7)(C) (b)(6); prior to (b)(6) termination from employment (b)(6); (b)(7)(C)
(b)(6); (b)(7)(C) (EXHIBITS 1 and 2)

We identified 727 emails, only one of which was encrypted, that were transmitted from (b)(6); SEC account to (b)(6); personal (b)(6); account at (b)(6); (b)(7)(C).com. Of these 727 emails, 18 unencrypted emails contained NPI, and of those 18 emails, 13 also contained PII. Seven of these emails (one of which was encrypted) contained attachments that were marked “Privileged and Confidential” and included (b)(6); (b)(7)(C)
(b)(6); (b)(7)(C) Additionally, 12 of the 18 unencrypted emails contained (b)(6); (b)(7)(C)

We found that in sending unencrypted emails containing NPI to (b)(6); personal (b)(6); account (b)(6); violated the following provision of SECR 23-2 dated September 19, 2018:

7.2 Protection of Nonpublic Information

If transmitting Nonpublic Information by email *outside the SEC domain* (“@sec.gov”), the information must be encrypted using the SEC’s approved technologies (*i.e.*, “smail” or Zixmail, the SEC’s enterprise mail encryption product). Use only your official SEC email to transmit or receive Nonpublic Information by email. (EXHIBIT 3)

In sending unencrypted emails to (b)(6); personal (b)(6); account (b)(6); also violated the following provisions of the SEC’s Rules of Road dated December 21, 2017:

DO NOT use e-mail to send material that is sensitive or that contains personally identifiable information (PII) to your personal e-mail account(s).

DO NOT use names or other personal identifiers that might be of a sensitive or confidential nature in electronic communications.

DO NOT disclose any PII contained in any systems of records except as authorized by federal law or by SEC regulation or directive.

DO NOT use any Internet-based e-mail accounts from SEC computers to conduct SEC business while at work or home or on travel unless authorized by OIT in the course of

Report of Investigation

Case Title: (b)(6); (b)(7)(C)

Case No. 23 (b)(6); 0013-1

Page 4 of 7

your duties. This includes e-mail portals such as Gmail, Hotmail, MSN, Yahoo, AOL, etc.

DO NOT transmit non-public information or sensitive data to authorized recipients outside the SEC through the Internet or via e-mail, unless you have encrypted it using the SEC's approved procedures and technologies.

DO NOT store or transmit non-public information or sensitive data on personal IT resources or SEC IT resources without proper protection/encryption.

(EXHIBIT 4)

(b)(6); further transmitted the NPI to (b)(6) counsel during the course of (b)(6) litigation with the agency. We found that (b)(6); counsel signed two NDAs, as required by SEC policy, that contained provisions requiring that counsel protect and not disclose confidential and nonpublic SEC information. **(EXHIBIT 5)** Therefore, we did not find that (b)(6); violated SEC policy in providing NPI to (b)(6) counsel.

We reviewed (b)(6); training records for the period of January 2017 (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) completed "Protecting NPI" training on September 23, 2021; August 25, 2020; September 30, 2019; September 27, 2018; and September 28, 2017. Further, (b)(6); completed the "Annual Privacy and Information Security Awareness" training on July 23, 2021; July 15, 2019; and the Initial Privacy and Information Security Awareness training on July 5, 2018. (b)(6); (b)(7)(C) also completed (b)(6); (b)(7)(C) on September 23, 2021, and (b)(6); (b)(7)(C) training on January 5, 2018. **(EXHIBIT 6)** (b)(6); acknowledged (b)(6); (b)(7)(C) (b)(6); that (b)(6); violated SEC policies when (b)(6); sent the emails containing SEC NPI, but she (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Report of Investigation

Case Title: (b)(6); (b)(7)(C)

Case No. 23-(b)(6); 0013-1

Page 5 of 7

(b)(6); (b)(7)(C)

(EXHIBIT 8)

(b)(6); (b)(7)(C)

Coordination

(b)(6); (b)(7)(C)

We learned from OGC that on June 7, 2023, during our investigation, the SEC entered into a settlement agreement with (b)(6); (b)(7)(C). According to the settlement agreement, (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Further, (b)(6); (b)(7)(C) agreed to be placed on LWOP retroactively from February 3, 2022, through December 31, 2023, and while on LWOP, (b)(6); (b)(7)(C) will not be provided with any SEC equipment, identification, email account, or any other instrument of employment. (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

We are providing our findings to SEC management for information only.

Report of Investigation

Case Title: (b)(6); (b)(7)(C)

Case No. 23(b)(6); 0013-1

Page 6 of 7

Signatures

Case Agent:

(b)(6); (b)(7)(C)

Digitally signed by (b)(6); (b)(7)(C)

Date: 2023.12.11 09:18:51 -05'00'

(b)(6); (b)(7)(C)

Senior Special Investigator

Date

Concurrence:

(b)(6); (b)(7)(C)

Digitally signed by (b)(6); (b)(7)(C)

Date: 2023.12.11 09:35:07 -05'00'

(b)(6); (b)(7)(C)

Special Agent in Charge

Date

Approved:

KATHERINE REILLY

Digitally signed by KATHERINE REILLY

Date: 2023.12.11 11:38:11 -05'00'

Katherine H. Reilly, Acting Deputy Inspector General
for Investigations

Date

Report of Investigation

Case Title: (b)(6); (b)(7)(C)

Case No. 23 (b)(6); 0013-1

Page 7 of 7

Exhibits

1. Complaint Intake Form dated, March 31, 2023.
2. Memorandum of Activity, Email Records Review, dated May 9, 2023.
3. Memorandum of Activity, SECR 23-2 Review, dated October 11, 2023.
4. Memorandum of Activity, Rules of the Road Review, dated September 11, 2023.
5. Memorandum of Activity, (b)(6); (b)(7)(C) dated September 12, 2023.
6. Memorandum of Activity, Training Records Review, dated June 21, 2023.
7. Memorandum of Activity, (b)(6); (b)(7)(C) dated June 27, 2023.
8. Memorandum of Activity, (b)(6); (b)(7)(C) dated September 12, 2023.
9. Memorandum of Activity, (b)(6); (b)(7)(C) dated September 8, 2023.
10. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated June 12, 2023.
11. Copy of email string between (b)(6); (b)(7)(C) Assistant Counsel, OIG, and (b)(6); (b)(7)(C) (b)(6); dated June 20, 2023.



OFFICE OF
INSPECTOR GENERAL

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

MEMORANDUM

October 25, 2024

TO: FILE

FROM: (b)(6); (b)(7)(C) Senior Special Agent

(b)(6); (b)(7)(C) Digitally signed by (b)(6); (b)(7)(C)
Date: 2024.10.29 08:40:45 -04'00'

THROUGH: (b)(6); (b)(7)(C) Special Agent in Charge

(b)(6); (b)(7)(C) Digitally signed by (b)(6); (b)(7)(C)
Date: 2024.10.29 07:54:45 -04'00'

SUBJECT: Closed Investigation, Case No. 24-DTM-0016-I

(b)(6); (b)(7)(C)

The purpose of this memorandum is to document the Office of Inspector General's (OIG) investigative activities and administrative closure of this case.

We investigated (b)(6); (b)(7)(C) Attorney, Division of Trading and Markets, based on the identification of suspicious electronic funds transfers indicative of possible money layering or attempts to evade Bank Secrecy Act (BSA) detection.

A detailed review of transfers made by (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) for the relevant time period revealed that they appeared consistent with investment activity. (b)(6); (b)(7)(C) also appropriately pre-cleared the investment purchases and sales, when required, and the transactions were reflected in the Personal Trading Compliance System. No transactions appeared to indicate possible money laundering or attempts to evade BSA detection.

Our investigation also noted that for most of the years reviewed (b)(6); (b)(7)(C) mandatory annual certifications of holdings submitted to the Office of the Ethics Counsel (OEC) did not cover transactions for the full calendar year or consistently include transaction dates, as required by the SEC Supplemental Ethics Regulations. Additionally (b)(6); (b)(7)(C) submitted statements for a (b)(6); (b)(7)(C) account showing a balance as of December 31, 2019, but did not submit any statements for 2020. These issues were relayed to OEC for review, as appropriate, at the time of the initial document request.

Accordingly, we are closing this case without any further action. A report to SEC management is not warranted and we are administratively closing this case.

cc: Katherine H. Reilly, Acting Deputy Inspector General for Investigations

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Office of Inspector General – Investigations
U.S. Securities and Exchange Commission



OFFICE OF
INSPECTOR GENERAL

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION



MEMORANDUM

TO: FILE

FROM: (b)(6); (b)(7)(C)
Senior Special Agent (b)(6); (b)(7)(C) Digitally signed by Wormsley,
Office of Investigations (b)(6); (b)(7)(C) Date: 2024.02.29 21:00:28 -05'00'

THROUGH: (b)(6); (b)(7)(C)
Special Agent in Charge
Office of Investigations

SUBJECT: Case No. 24-ENF-0003-1

(b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)

The purpose of this memorandum is to document the Office of Inspector General's (OIG) investigative activities and to recommend case closure.

We initiated this investigation based on information regarding the potential unauthorized disclosure of non-public information (NPI) developed from OIG case number 24-ENF-0001-I. Specifically, we identified an email from (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) instructing an SEC employee on how to automatically cc/bcc yourself in Outlook or Gmail when sending e-mails.

We reviewed (b)(6); (b)(7)(C) e-mail records provided by SEC OIT for the period from January 1, 2018, to September 15, 2023, and found no evidence (b)(6); (b)(7)(C) sent or received SEC NPI to or from his work e-mail address. Rather, we found several occasions between 2021 and 2023 in which (b)(6); (b)(7)(C) counseled the subject of OIG case number 24-ENF-0001-I for transmitting NPI outside the SEC. The unauthorized transmittal of NPI by the subject of OIG case number 24-ENF-0001-1 will be reported on under that matter.

This issue does not warrant additional investigation and administratively closing this case is recommended.

Concurrence:

(b)(6); (b)(7)(C)

Digitally signed by

(b)(6); (b)(7)(C)

Date: 2024.02.29 19:00:08 -05'00'

Amanda James, Special Agent in Charge

Date

Approved:

KATHERINE REILLY

Digitally signed by KATHERINE REILLY

Date: 2024.02.29 15:32:26 -05'00'

Katherine H. Reilly, Acting Deputy Inspector General
for Investigations

Date

Division of Enforcement Notified: N/A

By (Initials)

Person Notified

Date



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

MEMORANDUM

September 23, 2024

TO: FILE

FROM: (b)(6); (b)(7)(C) Senior Special Agent

THROUGH: (b)(6); (b)(7)(C) Special Agent in Charge

SUBJECT: Closed Investigation, Case No. 24-EXA-0017-I
Alleged Money Laundering and Financial Crimes

(b)(6);
(b)(7)(C)

Digitally signed by (b)(6);
(b)(7)(C)
Date: 2024.09.24 09:10:25
+000'

Digitally signed by (b)(6);
(b)(7)(C)
Date: 2024.09.24 09:13:46
-0400'

The purpose of this memorandum is to document the Office of Inspector General's (OIG) investigative activities and administrative closure of this case.

We initiated this investigation based on the OIG's identification of suspicious electronic funds transfers conducted by (b)(6); (b)(7)(C) Division of Examinations, San Francisco Regional Office, in round dollar amounts that appeared to be related to potential gambling on a scale that is high-risk for potential money laundering, bank secrecy act evasion, and other financial crimes.

During our investigation, we found that between 2021 and 2022 (b)(6); (b)(7)(C) numerous financial transfers using the global financial technology platform Cash App. During the same period, (b)(6); (b)(7)(C) on his Office of Government Ethics (OGE) Forms 450, *Confidential Financial Disclosure Reports*, assets and income with the online peer-to-peer lending platform Lending Club that appeared to correspond with the Cash App transactions. On his 2023 OGE Form 450, (b)(6); (b)(7)(C) no longer owned the lending notes, which aligned with the cessation of his Cash App (b)(6); (b)(7)(C) did not report the purchase or sale of the lending notes in the SEC's Personal Trading Compliance System (PTCS).

Coordination with the Office of Ethics Counsel (OEC) determined peer-to-peer lending is considered a security and SEC employees are "required to pre-clear any transactions" in PTCS and "must report these holdings and transactions on their Annual Certification of Holdings and on their financial disclosure forms." However, OEC has not posted this information SEC-wide and has only advised employees "on a case-by-case basis" if an employee specifically inquired about peer-to-peer lending or if OEC identified peer-to-peer lending when reviewing an employee's OGE Form 450.

We recommend no further investigative activity regarding this matter considering the lack of apparent intentional misconduct in light of the absence of published OEC guidance on the pre-clearance of peer-to-peer lending activity in PTCS and (b)(6); (b)(7)(C) did report the activity on his OGE Forms 450. A report to SEC management is not warranted and we are administratively closing this case.

cc: Katherine H. Reilly, Acting Deputy Inspector General for Investigations

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Office of Inspector General – Investigations
U.S. Securities and Exchange Commission



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

MEMORANDUM

November 19, 2024

TO: FILE

FROM: (b)(6); (b)(7)(C) Special Investigator

THROUGH: (b)(6); (b)(7)(C) Special Agent in Charge

SUBJECT: Closed Investigation, Case No. 24-EXA-0018-I
(b)(6); (b)(7)(C)

The purpose of this memorandum is to document the Office of Inspector General's investigative activities and administrative closure of this case related to (b)(6); (b)(7)(C) Securities Compliance Examiner, Division of Examinations, New York Regional Office.

We received confidential financial intelligence information that between January 7, 2021, and March 16, 2021, bank teller cash deposits totaling \$106,502 were made into (b)(6); (b)(7)(C). The dollar amounts deposited were between \$5,000 and \$9,800 and appear to have been deposited in a structured manner to potentially evade federal reporting requirements.

(b)(6); (b)(7)(C) reported on his Confidential Financial Disclosure Report, U.S. Office of Government Ethics (OGE) Form 450 for calendar year (CY) 2021 that he was the trustee of (b)(6); (b)(7)(C) and disclosed holdings which included one stock, mutual funds, exchange-traded funds (ETFs), and mutual funds and ETFs no longer held.

We also identified a \$160,000 transfer made on (b)(6); (b)(7)(C) 2021, from the (b)(6); (b)(7)(C) Trust to an account in the name of (b)(6); (b)(7)(C) held by (b)(6); (b)(7)(C) who we later determined were (b)(6); (b)(7)(C). We reviewed additional records related to this account, and interviewed finance and tax professionals associated with the identified (b)(6); (b)(7)(C) accounts but found nothing that warranted further inquiry.

We reviewed (b)(6); (b)(7)(C) Personal Trading Compliance System (PTCS) records, which included account statements for the period January 1, 2021, through June 1, 2021, and found that (b)(6); (b)(7)(C) complied with applicable SEC regulations by making PTCS requests prior to executing trades and reported the disposition of trading activity. We also found no discrepancies between his holdings for CY 2021 and his corresponding OGE Form 450.

In conclusion, the investigation did not find evidence that (b)(6); (b)(7)(C) engaged in unlawful financial transactions. Moreover, our examination of OGE Forms 450 and PTCS records for CY 2021 found that (b)(6); (b)(7)(C) obtained approval in PTCS prior to purchasing and selling holdings, in accordance with applicable

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Office of Inspector General – Investigations
U.S. Securities and Exchange Commission

Closed Investigation, Case No. 24-EXA-0018-I
November 18, 2024
Page 2

SEC ethics regulations. Accordingly, we are closing this case without any further action. A report to SEC management is not warranted.

cc: Katherine H. Reilly, Acting Deputy Inspector General for Investigations



U.S. Securities and Exchange Commission
Office of Inspector General



Report of Investigation

Subject: (b)(6); (b)(7)(C)
Title: [REDACTED]
SK-Level/Grade: (b)(6); [REDACTED]
Office: Division of Corporation Finance
Region: Washington, D.C.

Case #: 24-OHR-0002-I

Origin: Office of Human Resources

Investigation Initiated: 10/17/2023

Investigation Completed: 5/23/2024

SUMMARY

We investigated allegations that (b)(6); (b)(7)(C) [REDACTED] (b)(6); (b)(7)(C) Division of Corporation Finance (CorpFin), violated the SEC's telework program policy and the SEC's 2023 Collective Bargaining Agreement (CBA). Specifically, the SEC's Office of Human Resources (OHR) reported that (b)(6); [REDACTED] allegedly relocated to (b)(7)(C) [REDACTED] without prior approval and exclusively teleworked from that location while continuing to receive higher locality pay for Washington, D.C., to which he was no longer entitled. OHR also reported that (b)(6); (b)(7)(C) [REDACTED] may have submitted a falsified telework agreement by using the address of a home in Virginia that he had recently sold.

Our investigation substantiated that (b)(6); (b)(7)(C) [REDACTED] relocated from (b)(6); (b)(7)(C) [REDACTED] VA, to (b)(6); (b)(7)(C) [REDACTED] in (b)(6); [REDACTED] 2023 and continued to receive Washington, D.C., locality pay while exclusively teleworking from (b)(7)(C) [REDACTED] from (b)(6); [REDACTED] 2023 through (b)(6); [REDACTED] 2023. Although (b)(6); [REDACTED] had received unofficial approval from his supervisor to telework from (b)(7)(C) [REDACTED] he did not have an approved WorkSmart Agreement (WA) allowing him to do so, nor did he report to his assigned duty location at SEC Headquarters, as required. As a result, (b)(6); [REDACTED] received Washington, D.C., locality pay to which he was not entitled. Our investigation did not substantiate that (b)(6); [REDACTED] falsified his telework location in a WA.

We did not refer the matter to the U.S. Department of Justice because our investigation did not find evidence that (b)(6); [REDACTED] falsified his telework agreement or intended to obtain locality pay to which he was not entitled.

RESULTS OF INVESTIGATIVE ACTIVITY

Finding 1: (b)(6); (b)(7)(C) received locality pay to which he was not entitled because he failed to obtain formal approval in advance of working from a new telework location and did not report to his assigned duty station the requisite number of days per pay period.

Implicated Standards

SEC Administrative Regulation (SECR) 6-16, *Telework Program*, establishes the SEC's telework policy. SECR 6-16 Section 3.3 states that guidance and procedures to implement the policy for the telework program are described in Article 11, *Telework Program*, of the SEC's Collective Bargaining Agreement (CBA) with the National Treasury Employees Union (NTEU).

The SEC and the NTEU finalized new terms of the CBA in March 2023 (**Exhibit 8**). Article 11, *Telework Program*, of the 2023 CBA, establishes the SEC's telework program and defines key terms, such as Alternative Worksite, Official Worksite, Reporting Office, and Telework Agreement. Section 3, *Telework Arrangements*, Subsection B.2, establishes that an employee may request to telework up to eight days per pay period and work from their Reporting Office at least two days per pay period. Section 5, *Eligible Employees*, Subsection C, establishes the "Grandfather Clause," which states that employees with a pre-existing telework agreement in place allowing more than eight days of telework can continue under their existing schedule in a "grandfathered" status. If a "grandfathered employee requests to change the location of their Alternative Worksite, the [SEC] reserves the right to reject such locations that would increase costs to the [SEC]."

Article 11, Section 9, *Telework Agreement*, Subsection A, of the 2023 CBA states that an employee will submit a signed telework agreement to their supervisor, and the agreement "must be signed" by both the employee and their supervisor "prior to the start of teleworking." Subsection E states that an employee "must submit a new telework request" if the employee "wishes to make any change to the approved telework arrangement," including the location of the Alternative Worksite. Subsection G states that if an employee's telework request is denied, the employee "will be responsible for any tax and locality pay consequences associated with changing their Alternative Worksite."

OIG Findings

(b)(6); (b)(7)(C) had an approved WA, dated (b)(6); (b)(7)(C) 2022, pursuant to which he was authorized to work a compressed 5-4/9 schedule and to telework from his (b)(6); (b)(7)(C) VA residence. Under this approved schedule, (b)(7)(C) had grandfathered approval to report to his assigned duty location at SEC Headquarters one day per pay period, rather than two days (**Exhibit 4**).

In (b)(6); 2023, (b)(6); orally requested permission from his then supervisor, (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) CorpFin, to relocate and change his telework location from (b)(6); (b)(7)(C) VA, to (b)(6); (b)(7)(C) "unofficially approved" his

request and planned to confer with CorpFin's management (**Exhibit 2**). (b)(6) did not submit a new WA at this time. In (b)(6), 2023, (b)(6) sold his home in (b)(6), (b)(7)(C) VA, but maintained a rent-back agreement with the new owner to reside in the property through the end of (b)(6), 2023. He relocated to (b)(6), (b)(7)(C) in early (b)(6), 2023, where he continued to reside throughout the relevant time period (**Exhibit 6**).

On (b)(6), 2023, (b)(6) coordinated with (b)(6), (b)(7)(C) CorpFin, regarding (b)(6) request and (b)(6) intention to approve his (b)(6), (b)(7)(C) telework location (**Exhibit 2**). (b)(6) contacted (b)(6), (b)(7)(C) Legal Advisor and Program Telework Manager, OHR, regarding (b)(6) request. In (b)(6), 2023, (b)(6) notified (b)(6) that (b)(6) would not be allowed to telework from (b)(6), (b)(7)(C) and still report to his duty location one day per pay period as allowed under his grandfathered agreement. In an e-mail dated (b)(6), 2023, (b)(6) stated (b)(6) was informed of this decision (**Exhibits 3 and 5**). After receiving this information and consulting with the NTEU, (b)(6) submitted a new WA requesting to telework from (b)(6), (b)(7)(C) and still report to the office one day per pay period, which CorpFin denied. (b)(6) notified CorpFin via the NTEU that he planned to grieve the matter and submitted an updated WA on (b)(6), 2023, requesting to telework from (b)(6), (b)(6) and report to the office two days per pay period. CorpFin management approved this updated WA the same day (**Exhibits 3 and 6**).

In late (b)(6), 2023, CorpFin management offered (b)(6) a voluntary transfer to a fully remote position in the (b)(6), (b)(7)(C) in lieu of the grievance (**Exhibit 5**). (b)(6) accepted this offer and was reassigned to (b)(6), (b)(7)(C) 2023. On (b)(6), 2023, he was approved to work remotely from (b)(6), (b)(7)(C) (**Exhibit 4**). (b)(6) change in duty station from Washington, D.C., to (b)(6), (b)(7)(C) became effective on (b)(6), 2023, at the beginning of pay period (b)(6) but was not processed until pay period (b)(6). As a result, (b)(6) improperly received the higher Washington, D.C., locality pay for pay period (b)(6) an overpayment of \$740.80. (b)(6) repaid \$639.54, the amount owed after the required withholdings (**Exhibit 9 and 11**).

Between his relocation to (b)(6), (b)(7)(C) on (b)(6), 2023, and the approval of his new remote work location on (b)(6), 2023, (b)(6) requested and was approved for either annual leave or ad hoc telework on the days he was required to report to SEC Headquarters (**Exhibits 6 and 7**). However, (b)(6) stated OHR provided guidance to SEC managers in June 2023 advising leave should not be used to circumvent an employee's in office reporting requirements, and CorpFin should not have approved (b)(6) leave or ad hoc telework in lieu of reporting to the office during that time. Once (b)(6) began teleworking from (b)(6), (b)(7)(C) and no longer reported in person to his Washington, D.C. duty location at least two days per pay period, he was not entitled to Washington, D.C. locality pay (**Exhibit 10**).

OHR advised that the difference between the Washington, D.C., and (b)(6), (b)(7)(C) locality pay for pay periods (b)(6) through (b)(6) was approximately \$740.80 per pay period. This resulted in a potential overpayment totaling roughly \$2,963.20 (**Exhibit 11**). (b)(6) is willing to reimburse any overpayments pending the agency's final decision and stated, "...I only want to get paid

what I'm due, and so if the SEC paid me too much, then I need to give the money back to the government..." (Exhibit 6).

Finding 2: (b)(6); did not falsify his telework location in (b)(6); 2023 because he continued to reside at the (b)(6); (b)(7)(C) address following the sale of his home.

Implicated Standards

SECR 6-16, *Telework Program*, as previously described.

2023 CBA between the SEC and the NTEU, as previously described.

OIG Findings

(b)(6); 2023, following the finalization of the 2023 CBA and prior to (b)(6); relocation to (b)(6); (b)(7)(C) the SEC required all employees to complete updated WAs. (b)(6); did so and listed his home in (b)(6); (b)(7)(C) VA, as his telework location. While looking into (b)(6); relocation to (b)(6); (b)(7)(C) OHR discovered (b)(6); had sold his home in (b)(6); (b)(7)(C) VA, in (b)(6); 2023, one month prior to submitting it as his telework location on the updated (b)(6); 2023 WA. As a result, OHR believed (b)(6); may have falsified the telework location on his (b)(6); 2023 WA (Exhibit 3).

Although (b)(6); sold his (b)(6); (b)(7)(C) home in April 2023, (b)(6); (b)(7)(C) continued to reside at that property through (b)(6); 2023 under a rent-back agreement with the purchaser. (b)(6); relocated (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) in early (b)(6); 2023, at which time he submitted an updated WA with the (b)(6); (b)(7)(C) location, and currently resides at (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (Exhibit 6).

COORDINATION

We did not refer the matter to the U.S. Department of Justice because we did not find evidence that (b)(6); falsified his telework agreement or intended to obtain locality pay to which he was not entitled.

We are providing our findings to the Commission for any action deemed appropriate.

Report of Investigation

Case Title: (b)(6); (b)(7)(C)

Case # 24-OHR-0002-1

Page 5 of 6

Signatures

Case Agent:

(b)(6); (b)(7)(C)

Digitally signed by (b)(6); (b)(7)(C)

Date: 2024.05.22 07:13:33 -04'00'

(b)(6); (b)(7)(C)

Senior Special Agent

Date

Concurrence:

(b)(6); (b)(7)(C)

Digitally signed by (b)(6); (b)(7)(C)

Date: 2024.05.22 07:16:31 -04'00'

(b)(6); (b)(7)(C)

Special Agent in Charge

Date

Approved:

KATHERINE REILLY

Digitally signed by KATHERINE REILLY

Date: 2024.05.22 11:27:41 -04'00'

Katherine H. Reilly, Acting Deputy Inspector General
for Investigations

Date

Exhibits

1. Predicating Document, Complaint Intake, dated (b)(6); (b)(7)(C)
2. Memorandum of Activity, Interview of (b)(6); (b)(7)(C)
3. Memorandum of Activity, Interview of (b)(6); (b)(7)(C)
4. Memorandum of Activity, Review of (b)(6); (b)(7)(C) SEC WA, dated (b)(6); (b)(7)(C) 2023.
5. Memorandum of Activity, Interview of (b)(6); (b)(7)(C)
6. Memorandum of Activity, Interview of (b)(6); (b)(7)(C)
7. Memorandum of Activity, Review of (b)(6); time and attendance records, dated, December 11, 2023.
8. Memorandum of Activity, Review of 2023 CBA, dated December 12, 2023.
9. Memorandum of Activity, Review of (b)(6); e-mail regarding repayment of locality salary, dated (b)(6); (b)(7)(C)
10. Memorandum of Activity, Review of OHR's email regarding (b)(6); obligation to change locality, dated (b)(6); (b)(7)(C)
11. Memorandum of Activity, Review of OHR's e-mail regarding (b)(6); locality payment issues, dated (b)(6); (b)(7)(C)



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



MANAGEMENT IMPLICATION REPORT

May 1, 2024

To: Gary Gensler
Chair

From: Deborah J. Jeffrey *Deborah J. Jeffrey*
Inspector General

Subject: Management Implication Report (MIR) 24-002 – Failure to Cooperate with OIG
(b)(6); (b)(7)(C) Audit

Background: On September 27, 2021, the U.S. Securities and Exchange Commission (SEC) Office of Inspector General (OIG) Office of Audits (OA) announced an audit of the SEC's (b)(6); (b)(7)(C) program. (b)(6); (b)(7)(C) within the Division of (b)(6); (b)(7)(C). The purpose of the audit was to assess the growth of (b)(6); (b)(7)(C) and the functioning of key program controls, such as those for communicating with stakeholders, receiving information provided by (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) ENF assigned its audit liaison and individuals within (b)(6); (b)(7)(C) collectively, "the auditees") to assist OA in its fieldwork.

The OIG team requested and received access to (b)(6); (b)(7)(C) the system that manages and tracks (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) as well as to the (b)(6); (b)(7)(C) site (where (b)(6); (b)(7)(C) is located). The audit team used both (b)(6); (b)(7)(C) and the (b)(6); (b)(7)(C) site to gather relevant information. In March 2022, the auditors learned that their access to the (b)(6); (b)(7)(C) site had been terminated, and they began to suspect that the auditees misled them as to the reasons for this denial of access. Despite repeated requests, the audit team was unable to access the (b)(6); (b)(7)(C) site from March 3 through March 22, 2022, adversely affecting the efficiency and timeliness of the audit.

The auditors referred the matter to the OIG's Office of Investigations (OI), which reviewed pertinent email correspondence and other documentation and interviewed each of the auditees and members of the audit team. OI concluded that the auditees violated their duties under applicable SEC Regulations (SECRs), discussed below, to cooperate with OIG inquiries and not to provide false or misleading information to the OIG. Specifically, investigators determined that (1) the auditees intentionally terminated the auditors' access to the (b)(6); (b)(7)(C) site; and (2) when auditors inquired about the

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loss of access, the audit liaison provided false and misleading information about the reason for the loss of access, and (b)(6); (b)(7)(C) staff never corrected the false information provided by the audit liaison.

Investigative Summary:

1. The Auditees Intentionally Terminated the Auditors' Access to (b)(6); (b)(7)(C) Site.

On March 3, 2022, the auditors and auditees met virtually to discuss several items related to the audit. During the meeting, an auditor asked questions about certain un-redacted final orders that he had reviewed during fieldwork. The auditees asked how he had gained access to those final orders, and he explained that clicking hyperlinks within a spreadsheet provided by (b)(6); (b)(7)(C) opened those documents, which were located on the (b)(6); (b)(7)(C) site. According to the auditors present, (b)(6); (b)(7)(C) staff appeared surprised to learn of their access to the (b)(6); (b)(7)(C) site.

Email correspondence during and after the March 3rd meeting reflects the auditees' chagrin that the auditors were able to access the (b)(6); (b)(7)(C) site, rather than being limited to specific documents or databases provided to them by the auditees. The auditees made the decision to "delete" auditors' access to the site. (b)(6); (b)(7)(C) logs confirm that the auditors' access to the (b)(6); (b)(7)(C) site was terminated that same day, at 1:05 p.m.

From March 3rd – when access was terminated – through March 22nd – when access was restored – the auditees engaged in discussions, via email and phone, in an effort to determine how the auditors got access to the (b)(6); (b)(7)(C) site and whether (b)(6); (b)(7)(C) was required to restore the auditors' access.¹ When interviewed, (b)(6); (b)(7)(C) staff asserted that they relied upon guidance from the audit liaison about what access to grant the OIG auditors. The audit liaison stated (b)(6); (b)(7)(C) took direction from (b)(6); (b)(7)(C) staff on what information to provide to the auditors and had no authority to determine the extent of the auditors' access. Whatever the respective roles of the audit liaison and (b)(6); (b)(7)(C) staff in cutting off OIG's access to the (b)(6); (b)(7)(C) site, the termination was not incidental and reflected a deliberate decision by the auditees collectively, discussed in emails and at least one post-meeting telephone conference among them on March 3rd.

2. The Audit Liaison Misled the Auditors Regarding the Cause of Their Loss of Access to the (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) Staff Took No Steps to Inform OIG that the Termination of Access was Intentional.

¹ The audit team requested access to the (b)(6); (b)(7)(C) site and (b)(6); (b)(7)(C) on October 28, 2021, as Item 15 on a spreadsheet listing documentation to be prepared or provided by the audit client, (b)(6); (b)(7)(C) list). The auditees believed that OIG would require access to (b)(6); (b)(7)(C) only, and granted such access, not realizing that (b)(6); (b)(7)(C) afforded access to the (b)(6); (b)(7)(C) site. Having received access to (b)(6); (b)(7)(C) and other parts of the (b)(6); (b)(7)(C) site, the auditors considered (b)(6); (b)(7)(C) satisfied.

OIG quickly discovered that they could no longer access (b)(6); (b)(7)(C) site. On March 4th, an OIG auditor emailed the audit liaison, asking why this occurred. Instead of admitting that the termination of access was deliberate, the audit liaison responded: "I will ask folks on Monday. I believe (b)(6); (b)(7)(C) was 'de-commissioned' so I wonder if it's related." Between March 3rd and March 22nd, the audit team made numerous requests to regain access, explaining that access to the (b)(6); (b)(7)(C) site was necessary for completing their audit work. For example, on March 7, 2022, the OIG audit manager called (b)(6); (b)(7)(C) staff to report that the auditors could not access the (b)(6); (b)(7)(C) site or (b)(6); (b)(7)(C). Through emails, the auditees discussed the matter and decided to provide the auditors with access to "ONLY to the retired (b)(6); (b)(7)(C)." From March 7 to March 9, 2022, (b)(6); (b)(7)(C) staff worked with the (b)(6); (b)(7)(C) team to determine how to provide the auditors access to only the retired (b)(6); (b)(7)(C). On March 9, 2022, (b)(6); (b)(7)(C) staff provided the auditors access to (b)(6); (b)(7)(C) by using special permissions that prevented the auditors from accessing the (b)(6); (b)(7)(C) site. On March 10, 2022, an OIG auditor discovered that the restored access was "limited" and insufficient for completing the remaining audit work.

On March 17, 2022, the OIG audit manager emailed the audit liaison stating, in part, "I appreciate your willingness to collaborate and ensure the team is provided the information they need to complete the audit. I am reaching out to let you know that the team has lost access to the (b)(6); (b)(7)(C) site on or about March 6th. Can you please assist me in re-establishing their connection? I am not sure why we lost connection but it is a useful mechanism for gathering information and there are several items we identified on there that we wanted to go back to but cannot because we no longer have access." On March 22, 2022, the OIG audit manager again emailed the audit liaison requesting assistance restoring access to the (b)(6); (b)(7)(C) site, writing, in part, "I am reaching out to you today regarding our access to the (b)(6); (b)(7)(C) site. It was mentioned the other day that our access was removed and we would like to know if you can assist us in getting it restored. There are a few items that we were accessing on the (b)(6); (b)(7)(C) site that we need to conclude our analysis." That same day, the OIG audit manager also called an (b)(6); (b)(7)(C) staff member directly, requesting assistance in restoring the auditors' access to the (b)(6); (b)(7)(C) site, and access was finally restored that day.

Notwithstanding the auditors' repeated requests to regain access to the (b)(6); (b)(7)(C) site, none of the auditees told the auditors that their access had been intentionally terminated in order to restrict the information available to them, despite being fully aware of those facts.

On May 23, 2022, based on a referral from the Office of Audits, OI initiated an investigation of the circumstances that led to the loss of access. Emails among the auditees and interviews uncovered evidence to support concerns about the conduct of the audit liaison. OIG leadership met with ENF leadership on July 15, 2022, to express these concerns. On July 19, 2022, ENF notified the OIG that ENF had assigned another staff member to act as the OIG's audit liaison. Fieldwork on (b)(6); (b)(7)(C) audit was substantially completed in October 2022, and the audit report was issued on December 19, 2022.

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Relevant Laws and SECs: The IG Act authorizes the OIG “to have timely access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials available” to the SEC “which relate to the programs and operations” of the SEC, “notwithstanding any other provision of law...”² The SEC does not have the authority to withhold information that OIG requests in connection with its oversight of the Agency.

SECs 29-1 and 30-2³ implement the requirement that SEC personnel cooperate with OIG inquiries and ensure that OIG personnel have access the information we need to complete our work. In particular, SEC 29-1 states:

Employees shall not engage in any conduct intended to obstruct, interfere with, or impede an OIG audit, investigation, inspection, evaluation, or other review.

Supervisors and staff are not to impose burdensome administrative requirements or screening procedures that could impede OIG access to needed records, facilities, or personnel. The production of requested materials should be reasonably prompt and in the manner requested by the OIG.

The SEC’s regulations explicitly prohibit misleading the OIG. SEC 29-1 admonishes SEC staff that “[f]urnishing false or misleading information to the OIG may result in criminal or disciplinary action.”

The audit liaison (b)(6); (b)(7)(C) the events in question, making (b)(6) knowledgeable about these requirements. As SEC employees (b)(6); (b)(7)(C) staff, though they had not previously worked on an OIG audit, were responsible for understanding the SECs’ requirements.

Other Authorities: On December 3, 2021, the President issued Memorandum 22-04, *Promoting Accountability through Cooperation among Agencies and Inspectors General*, which reaffirmed that Agency personnel have an obligation to cooperate with their OIGs. The Memorandum went on to request that Agency leadership “communicate to your respective staffs about your expectation that all government employees and contractors fully cooperate with their IG.” In the months following the issuance of the Memorandum, OIG leadership worked closely with Agency leadership to develop a message to SEC personnel to comport with the Memorandum’s advisement. On June 14, 2022, Chief Operating Officer Ken Johnson and you issued the first annual message to SEC personnel, reminding them of our authority to access SEC records and SEC staff’s duty to cooperate with our work. This message was reissued on July 18, 2023, and we anticipate its reissuance this summer.

² 5 U.S.C. § 406(a).

³ SEC 30-2 reiterates SEC employees’ responsibility to cooperate with oversight: “All employees are expected to support the requests of OIG, GAO, and other auditors as they conduct their work, as appropriate.” See Section 5.2.1; see also Section 7.1.1.1, requires that all SEC employees “cooperate fully with OIG, GAO, and other external auditors.”

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Disposition: In lieu of a traditional Report of Investigation, we are presenting our findings in this Management Implication Report (MIR) in recognition of the following:

1. Since these events occurred in March 2022, the Agency has taken steps – such as the annual issuance of the cooperation memo – to inform and remind all SEC staff of their obligation to cooperate with OIG oversight and our broad authority to access Agency records, information, and personnel. We are not aware of any incidents similar to this one.
2. ENF leadership acted expeditiously to replace the audit liaison as soon as the OIG brought these events to their attention. Through our investigation, the other auditees have been made aware of their responsibilities to cooperate with us in future matters.
3. Agency leadership has reaffirmed to us and to all SEC employees that it does not condone staff actions that interfere with OIG oversight.
4. To ensure that SEC personnel refresh their understanding of their cooperation responsibilities and OIG oversight authorities at the beginning of each audit, the OIG recently developed a document entitled *OIG Authorities and SEC Employee Responsibilities*, to be included in audit and evaluation entrance conference materials. This document reinforces existing applicable law and SEC policies and complements – but does not replace – the Agency’s responsibility, as outlined in Memorandum 22-04, to communicate with its staff regarding these subjects.

We do not intend this MIR to understate the gravity of the intentional interruption to OIG’s access to the information it needed to complete an audit, or the false and misleading statements to auditors about the cause of the interruption. Rather, we want to highlight the importance of the SEC’s continued cooperation with the oversight work of the OIG, and to recognize the corrective actions taken by the SEC since these events occurred almost two years ago.

We look forward to continuing to build on our shared objective to ensure that all SEC personnel recognize the importance of cooperating with us and our work.

cc: Amanda Fischer, Chief of Staff, Office of Chair Gensler
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