Description of document:	Securities and Exchange Commission (SEC) Office of Inspector General (OIG) Investigation Report: Case No. OIG-505, Failure to Timely Investigate Allegations of Financial Fraud 2010
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

April 3, 2025

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **24-00010-OIG**

This is the final response to your July 5, 2024 request for the following records:

1. A copy of SEC OIG Report OIG-505 entitled "Failure to Timely Investigate Allegations of Financial Fraud" dated February 26, 2010;

2. A copy of each Exhibit from the OIG Investigation that resulted in OIG-505; and

3. A copy of the SEC response to the Report of Investigation, from 2010.

With respect to No. 1 of your request, OIG-505 can be found in redacted form on the OIG's webpage at Report of Investigation: Failure to Timely Investigate Allegations of Financial Fraud. Information within the report is being withheld under 5 U.S.C. § 552(b)(5), (6) and (7)(C). No additional information is being disclosed at this time.

For No. 2 of your request, I am providing copies of records previously released under the FOIA. Information within these records is being withheld under 5 U.S.C. § 552(b)(5), (6) and (7)(C). No additional information is being disclosed at this time.

Finally, regarding No. 3 of your request, access is granted in full to the attached records consisting of 16 pages. Please be advised that I have considered the foreseeable harm standard in preparing my response to your entire request.

April 3, 2025

Since information within the records responsive to Nos. 2 and 3 of your request forms an integral part of the pre-decisional process, it is protected from release by the deliberative process privilege embodied in FOIA Exemption 5.

Further, under Exemption 6 the release of certain redacted information would constitute a clearly unwarranted invasion of personal privacy. Under Exemption 7(C) release of this 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.

I am the deciding official with regard to this adverse 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 other options available to you, please see the attached addendum.

Sincerely,

Mark P. Siford
Attorney Adviser
Office of FOIA Services

Attachment

ADDENDUM

For further assistance you can contact a SEC FOIA Public Liaison by calling (202) 551-7900 or visiting https://www.sec.gov/oso/help/foia-contact.html.

SEC FOIA Public Liaisons are supervisory staff within the Office of FOIA Services. They can assist FOIA requesters with general questions or concerns about the SEC's FOIA process or about the processing of their specific request.

In addition, you may also contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. OGIS can be reached at 1-877-684-6448 or via e-mail at ogis@nara.gov. Information concerning services offered by OGIS can be found at their website at Archives.gov. Note that contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal.

REPORT OF INVESTIGATION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
OFFICE OF INSPECTOR GENERAL

Case No. OIG-505

Failure to Timely Investigate Allegations of Financial Fraud

February 26, 2010

Report of Investigation

Failure to Timely Investigate Allegations of Financial Fraud

Case No. 505

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REPORT OF INVESTIGATION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
OFFICE OF INSPECTOR GENERAL

Failure to Timely Investigate Allegations of Financial Fraud

Case No. OIG-505

Introduction and Summary

On or about November 16, 2008, the Securities and Exchange Commission ("SEC" or "Commission") Office of Inspector General ("OIG") opened an investigation into whether the SEC had vigorously enforced the securities laws with regard to complaints received from Matthew Kevin McLaughlin ("McLaughlin") about Metromedia International Group, Inc. ("Metromedia")[1].

The OIG investigation revealed that from February 2005 through November 2007, the SEC received more than twenty complaints from McLaughlin, a registered representative, raising serious allegations of financial fraud about Metromedia. McLaughlin's complaints primarily focused on allegations that Metromedia's financial reporting was delinquent and erroneous, Metromedia assets were being sold at below market prices, and Metromedia management had engaged in self-dealing. McLaughlin repeatedly requested that the SEC stop the proposed acquisition of Metromedia by an investor group until the SEC had investigated his allegations.

The OIG investigation found that from February 2005 through September 2007, at least sixteen of McLaughlin's complaints were provided to current or former staff in the Division of Enforcement ("Enforcement"). However, the OIG investigation further found that McLaughlin's allegations were not reviewed, analyzed, or investigated over this two-and-a-half-year period due to multiple instances of mishandling and mismanagement.

SEC records and witness testimony showed that McLaughlin's first two complaints were referred to the Enforcement's Office of Chief Accountant ("Enforcement Accounting Group"), but were not reviewed. McLaughlin's first complaint was received by a Legal Advisor in the Enforcement Accounting Group. The Legal Advisor sent it to a Branch Chief in Enforcement, who was listed in Enforcement's database as having an open investigation of Metromedia. Although the Legal Advisor specifically asked the Branch Chief to let him know if his branch was not going to be

[1] Metromedia was a Delaware media and communications corporation that developed communications businesses in Eastern Europe, the former Soviet Republics, and other emerging markets. Metromedia is currently a private company that controls interests in communications businesses in the country of Georgia.

pursuing the complaint and the Branch Chief immediately e-mailed back, "I know my branch will not be pursuing this," the Legal Advisor did not take any further action on the complaint and did not forward it to anyone else in the SEC for review or investigation.

McLaughlin's second complaint was also received by the Legal Advisor, who forwarded it to the Enforcement Accounting Group's Administrative Assistant requesting that this second complaint be added "to the referral file." However, no "referral file" was created, and although the procedure was for the Administrative Assistant to log complaints into the Enforcement Accounting Group's Financial and Accounting Referrals Tracking System, McLaughlin's first two complaints were not entered into the system and were not reviewed or analyzed.

SEC records indicated that McLaughlin's third complaint was referred to a former Enforcement Branch Chief who had recently left Enforcement to join another SEC office. The former Branch Chief did not recall receiving the complaint, and there is no evidence that McLaughlin's third complaint was ever reviewed.

Similar to McLaughlin's first and second complaints, McLaughlin's fourth and fifth complaints were referred to the Enforcement Accounting Group. The OIG investigation found that while these complaints were entered into the Accounting Group's tracking system and assigned to an accountant for review, they sat unreviewed with the accountant for more than two years.

The OIG investigation further found that the Enforcement Accounting Group employed review was a "referral triage process," which was intended to be only a swift initial review to determine whether the complaint was worthy of further investigation. McLaughlin's fourth and fifth complaints were assigned to an Assistant Chief Accountant for triage in or about September 2005. We found that the Assistant Chief Accountant never reviewed or analyzed these complaints. The Assistant Chief Accountant remarked that his impression was that the complaints "looked real complicated, like it would require some work," but the work was not performed. One year later, in September 2006, the Assistant Chief Accountant reported to his supervisor that the McLaughlin complaints were one of three uncompleted referrals that he had outstanding at that time and that he would complete his review of the McLaughlin complaints "as soon as possible." However, the OIG investigation found that over a year after informing his supervisor that he would complete his review "as soon as possible" and two years after receiving the complaints, he had still not completed his review. The Assistant Chief Accountant explained that he had reviewed other complaints during that time period and McLaughlin's "was always one at the bottom of the pile." We found that the Assistant Chief Accountant's supervisors received periodic updates showing that the Assistant Chief Accountant's review was not completed, but took no action to follow-up with him.

We also found that the Enforcement Accounting Group's referral procedures for monitoring the progress of referrals of complaints like those submitted by McLaughlin

were not followed in the 2005-2007 time period. For example, regular meetings to decide the disposition of referrals were not being held and no timelines were established for the triage review process.

Despite the lack of action on his prior complaints, we found that McLaughlin continued to submit complaints to the SEC in 2006. According to SEC records, McLaughlin's sixth, seventh, eighth, and ninth complaints were submitted to the SEC in 2006 and 2007 and referred to an Enforcement Staff Attorney who had left an investigative position to assume another position within Enforcement. The Staff Attorney testified that all of McLaughlin's complaints that the attorney received were forwarded to the Assistant Director of the attorney's former group. The OIG investigation revealed that these complaints were not reviewed, analyzed, or investigated by anyone.

We found that a failure to properly close an earlier unrelated investigation of Metromedia or to update staff information in Enforcement databases contributed to the SEC's failure to review McLaughlin's sixth through ninth complaints. The OIG investigation revealed that after working in Enforcement for years, the Staff Attorney and the Assistant Director working on the unrelated investigation did not know the procedures necessary to close an investigation. We also found that it could take up to two years for Enforcement's Office of Chief Counsel to complete the investigation closing process after the staff submitted the proper paperwork to close an investigation. Moreover, the status of investigations and the identity of the staff assigned to investigations were often not updated in Enforcement databases causing complaints to be sent to the wrong SEC personnel.

Thus, while the Assistant Director, Branch Chief, and Staff Attorney working on the unrelated 2002 Metromedia investigation had decided to close that investigation, they failed to take the necessary steps to formally close it. As a result, McLaughlin's sixth, seventh, eighth and ninth, complaints were mistakenly sent to the Enforcement attorneys who worked on this unrelated, and not formally closed, Metromedia investigation. Because these Enforcement attorneys were not actively working on the unrelated Metromedia investigation, they did not review McLaughlin's complaints that were sent to them. In addition, the Assistant Director did not inform anyone that his group was not going to be reviewing or considering the complaints and, accordingly, McLaughlin's complaints were never sent or referred to another office for review or investigation.

Meanwhile, despite the fact that no one at the SEC was reviewing or investigating McLaughlin's complaints, the SEC responded to McLaughlin's sixth complaint on March 16, 2006, with a letter stating, "We are taking your complaint very seriously and have referred it to the appropriate people within the SEC." In actuality, at that time, McLaughlin's sixth complaint (along with McLaughlin's first five complaints) had not been "referred to the appropriate people within the SEC," and not only was it not being considered "very seriously," it was not being considered at all.

SEC records further reflected that McLaughlin sent his tenth through sixteenth complaints to the SEC in August and September 2007, but the complaints were not immediately referred for review. In late September 2007, McLaughlin sent his seventeenth complaint to an official in the former SEC Chairman's Office, complaining about the SEC's failure to investigate Metromedia. This complaint was then circulated among head Enforcement personnel, and it was determined that McLaughlin's complaints should be reviewed. McLaughlin's tenth through sixteenth complaints were then referred to the Enforcement Assistant Director who had received earlier McLaughlin complaints (and not reviewed them) and whose group was tasked with evaluating McLaughlin's allegations. In October and November 2007, staff assigned to the investigation received at least five additional complaints from McLaughlin.

Thus, the OIG investigation found that by late September 2007, no Enforcement group had reviewed, analyzed, or investigated any of the at least sixteen complaints that McLaughlin had submitted to the SEC from February 2005 through September 2007.

The OIG investigation also found that after McLaughlin contacted the Chairman's Office and multiple members of Congress, Enforcement finally conducted an appropriate review of McLaughlin's complaints. The OIG investigation found, however, that soon after Enforcement began its review of McLaughlin's complaints, the Enforcement attorneys assigned to the investigation determined that, even if McLaughlin's allegations were true, it was too late to take meaningful action against Metromedia. The Enforcement attorney determined that Metromedia was no longer a public company registered with the SEC[2] and many of the potential claims would fall outside the statute of limitations.

The OIG investigation found that beginning in late 2007, Enforcement attorneys assigned to the investigation finally performed the extensive work analyzing McLaughlin's complaints that should have been done years earlier. Work performed by the staff included interviewing McLaughlin, analyzing his complaints, reviewing Metromedia's filings, interviewing McLaughlin's accountant, speaking to other law enforcement organizations familiar with McLaughlin's allegations, and reviewing documents from private litigation involving Metromedia.

The OIG investigation also found that there were additional investigative steps that the Enforcement staff did not undertake, including requesting Metromedia audit workpapers and interviewing Metromedia executives. The Associate Director in Enforcement responsible for the investigation testified that the additional steps would have been undertaken if they had concluded that a full investigation of Metromedia should have been pursued.

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[2] Metromedia had been sold in a merger in August 2007 and had terminated its registration with the Commission in early September 2007.

In April 2008, the Enforcement attorneys assigned to the investigation determined that the Metromedia investigation should be closed due to the age of the alleged conduct, the fact that Metromedia was no longer a public company registered with the SEC, and a lack of evidence that Metromedia or its executives had committed fraud. However, the investigation was not closed at that time, at least in part, because the accountant assigned to the investigation (who had been the supervisor responsible for McLaughlin's unreviewed fourth and fifth complaints) would not agree that the investigation should be closed. The Enforcement Accounting Group, which had been tasked with reviewing McLaughlin's complaints since 2005, requested even more time to consider McLaughlin's allegations and to review Metromedia filings. The Accountant assigned to the Metromedia investigation agreed in November 2008 that the investigation should be closed.

In January 2009, the Associate Director responsible for the investigation requested that an Enforcement Deputy Director provide a second review of the issues McLaughlin had raised and determine whether closing the investigation was appropriate. After the Deputy Director independently reviewed McLaughlin's allegations and supporting documentation and interviewed him, the Deputy Director supported the staff's decision to close the investigation due to the age of the conduct and the difficulty in obtaining evidence. In October 2009, the Metromedia investigation was officially closed.

In summary, the OIG identified significant flaws in the processes Enforcement used to handle complaints and to close cases. The OIG investigation concluded that from February 2005 through September 2007, multiple McLaughlin complaints were mishandled and mismanaged and, consequently, these complaints were simply not reviewed, analyzed or investigated. The OIG also concluded that by late 2007 and early 2008, when McLaughlin's allegations were finally reviewed by Enforcement staff, a full investigation of Metromedia was no longer meaningful because many of McLaughlin's allegations were stale and Metromedia was no longer a public company registered with the Commission.

Accordingly, the OIG is referring this Report of Investigation ("ROI") to the Director of Enforcement, the Director of the Office of Investor Education and Advocacy ("OIEA"), the Associate Executive Director for Human Resources, the Associate General Counsel for Litigation and Administrative Practice, and the Ethics Counsel. We recommend that SEC Management carefully review the portions of this ROI that relate to performance deficiencies by those employees who still work at the SEC, so that appropriate action (which may include performance-based action, as appropriate) is taken, on an employee-by-employee basis, to ensure that future complaints are better handled and that the mistakes outlined in this ROI are not repeated. We are also making specific recommendations with respect to the Enforcement complaint handling system and case closing process to ensure that the flaws we identified are remedied.

Scope of the Investigation

The OIG obtained and reviewed voluminous documents related to this matter, including the e-mails of current and former SEC employees; records maintained by the OIEA; documents produced by Enforcement related to investigations of Metromedia from 2002 to 2009; information from Enforcement's internal case tracking systems; and documents submitted to the OIG from McLaughlin.

The OIG took sworn, on-the-record testimony of the following witnesses:

(1) Matthew Kevin McLaughlin, Registered Representative, taken on December 12, 2008, excerpted portions of which are at Exhibit 1.

(2) (b)(7)(C) Branch Chief, Division of Enforcement, Securities and Exchange Commission, taken on September 24, 2009, excerpted portions of which are at Exhibit 2.

(3) (b)(7)(C) Staff Attorney, Division of Enforcement, Securities and Exchange Commission, taken on September 25, 2009 and September 29, 2009, excerpted portions of which are at Exhibit 3.

(4) (b)(7)(C) Division of Enforcement, Securities and Exchange Commission, taken on November 3, 2009, excerpted portions of which are at Exhibit 4.

(5) (b)(7)(C) Assistant Chief Accountant, Division of Enforcement, Securities and Exchange Commission, taken on November 4, 2009, excerpted portions of which are at Exhibit 5.

(6) (b)(7)(C) Administrative Assistant, Division of Enforcement, Securities and Exchange Commission, taken on November 6, 2009, excerpted portions of which are at Exhibit 6.

(7) (b)(7)(C) Staff Attorney, (b)(7)(C) (former Branch Chief, Division of Enforcement), Securities and Exchange Commission, taken on November 10, 2009, excerpted portions of which are at Exhibit 7.

(8) (b)(7)(C) Special Counsel, Office of Investor Education and Advocacy, Securities and Exchange Commission, taken on November 12, 2009, excerpted portions of which are at Exhibit 8.

(9) (b)(7)(C) Associate Chief Accountant, Division of Enforcement, Securities and Exchange Commission, taken on November 17-18, 2009, excerpted portions of which are at Exhibit 9.

(10) George Curtis, former Special Advisor to the Director, Division of Enforcement and former Deputy Director, Division of Enforcement, Securities and Exchange Commission, taken on November 24, 2009, excerpted portions of which are at Exhibit 10.

(11) (b)(7)(C) Staff Attorney, Division of Enforcement, (former Staff Attorney, Division of Enforcement and former Staff Attorney, Office of Chief Counsel, Division of Enforcement), Securities and Exchange Commission, taken on November 25, 2009, excerpted portions of which are at Exhibit 11.

(12) Susan Markel, former Chief Accountant, Division of Enforcement, Securities and Exchange Commission, taken on December 4, 2009, excerpted portions of which are at Exhibit 12.

(13) Joan McKown, Chief Counsel, Office of Chief Counsel, Division of Enforcement, Securities and Exchange Commission, taken on December 10, 2009, excerpted portions of which are at Exhibit 13.

(14) Christopher Conte, Associate Director, Division of Enforcement, Securities and Exchange Commission, taken on December 15, 2009, excerpted portions of which are at Exhibit 14.

In addition, the OIG also conducted the following interviews of persons with knowledge of relevant facts in the investigation:

(1) (b)(7)(C) Assistant Director, Division of Enforcement, Securities and Exchange Commission, conducted on January 4, 2010, at Exhibit 15.

(2) (b)(7)(C) Branch Chief, Division of Enforcement, Securities and Exchange Commission, conducted on January 8, 2010 and January 26, 2010, at Exhibit 16 and 17, respectively.

(3) (b)(7)(C) (b)(7)(C) (b)(7)(C) Office of Mergers and Acquisitions, Division of Corporation Finance, Securities and Exchange Commission, conducted on January 13, 2010, at Exhibit 18.

(4) (b)(7)(C) Case Management Specialist, Division of Enforcement, Securities and Exchange Commission, conducted on February 2, 2010, at Exhibit 19.

The OIG also obtained the Official Personnel Folders ("OPFs") of Enforcement Assistant Director (b)(7)(C) 3. (b)(7)(C) Staff Attorney (b)(7)(C) (b)(7)(C) Enforcement Staff Attorney (b)(7)(C) (b)(7)(C) and Enforcement Staff Attorney (b)(7)(C)

1(b)(7)(C) did not testify. (b)(7)(C) Joan McKown, Enforcement Chief Counsel, (b)(7)(C) unable to provide testimony (b)(7)(C) (b)(7)(C) McKown Testimony Tr. at pg. 27.

Relevant Commission and Government Regulations and Rules

The SEC's Enforcement staff has the obligation to continuously and diligently investigate instances of securities fraud, as set forth in the Commission Canon of Ethics in the Code of Federal Regulations. The Policy of the Canon recognizes that "[i]t is characteristic of the administrative process that the Members of the Commission and their place in public opinion are affected by the advice and conduct of the staff, particularly the professional and executive employees."[4] Hence, "it shall be the policy of the Commission to require that employees bear in mind the principles specified in the Canons."[5] The Preamble of the Canon clearly states the serious duty placed upon members of the Commission and the staff, as follows:

> Members of the Securities and Exchange Commission are entrusted by various enactments of the Congress with powers and duties of great social and economic significance to the American people. It is their task to regulate varied aspects of the American economy, within the limits prescribed by Congress, to insure that our private enterprise system serves the welfare of all citizens. Their success in this endeavor is a bulwark against possible abuses and injustice which, if left unchecked, might jeopardize the strength of our economic institutions.[6]

The Canon further provides: "In administering the law, members of this Commission should vigorously enforce compliance with the law by all persons affected thereby."[7] The Canon also affirms that "Members should recognize that their obligation to preserve the sanctity of the laws administered by them requires that they pursue and prosecute, vigorously and diligently but at the same time fairly and impartially and with dignity, all matters which they or others take to the courts for judicial review."[8]

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[4] 17 C.F.R. § 200.51 (2009).

[5] *Id.*

[6] 17 C.F.R. § 200.53 (2009).

[7] 17 C.F.R. § 200.55 (2009).

[8] 17 C.F.R. § 200.64 (2009).

Results of the Investigation

I. McLaughlin's First Two Complaints to the SEC in February 2005 Were Not Reviewed or Analyzed

On February 8, 2005, the National Association of Securities Dealers ("NASD") (now the Financial Industry Regulatory Authority) referred a complaint ("McLaughlin Complaint No. 1")[9] regarding Metromedia to the SEC's OIEA. On February 15, 2005, McLaughlin sent a "follow-on" complaint ("McLaughlin Complaint No. 2") directly to the SEC. Although McLaughlin's February 2005 complaints were received by the SEC, they were not reviewed due to errors made in the Enforcement Accounting Group.

A. SEC's Handling of McLaughlin Complaint No. 1

On February 8, 2005, the NASD referred McLaughlin Complaint No. 1 regarding Metromedia to OIEA. The ten-page complaint was dated February 2, 2005 and sent by McLaughlin, a registered representative in Des Moines, Iowa, to Mary L. Schapiro, then the president of NASD Regulation. Exhibit 20.

The first page of McLaughlin Complaint No. 1 was a handwritten cover letter stating that it was in reference to a "Metromedia Demand Letter." McLaughlin wrote in the body of the cover letter that "[t]he last of Metromedia's assets are up for sale, and I'm doing all I can to get answers to important questions." *Id.*

The second and third pages of McLaughlin Complaint No. 1 consisted of a cover e-mail for a January 28, 2005 five-page demand letter from McLaughlin's attorneys to Metromedia's Board of Directors. *Id.* The letter demanded that the Board of Directors take "legal action" against five former or current Metromedia officers and directors for "causing substantial damage to Metromedia." *Id.* The letter contained four primary allegations. *Id.* First, it raised questions about Metromedia's purported "liquidity crisis," asserting that in 2003 Metromedia restated its financial statements for earlier periods and that these restatements indicated the "disappearance" of over $70 million "from the asset side of Metromedia's balance sheet" for which Metromedia "ha[d] failed to account." *Id.* In support of the argument that assets had disappeared, the letter stated that Metromedia's auditors had resigned after having "taken issue with the Company's lack of disclosures" and after having "described significant internal control deficiencies in the Company's reporting of financial data." *Id.*

The next major allegation contained in the demand letter was that "Metromedia has disposed of its 'non-core' assets at below-market prices, without any due diligence on the part of the Company's Board of Directors regarding the fairness of the consideration

[9] Hereinafter, any letter, e-mail, or other correspondence from McLaughlin to OIEA is referred to as a "complaint."

received by the Company for the assets." *Id.* The letter provided examples of four such transactions, all occurring in 2003. *Id.* The third allegation was that the proposed acquisition of Metromedia by an investor group for $300 million was "grossly inadequate." *Id.* The final allegation in the demand letter was that Metromedia's "late filing of disclosure agreements required by the SEC also raise[d] concerns about the quality of its disclosures and the integrity of its controls and corporate governance." *Id.* The last two pages of McLaughlin Complaint No. 1 contained a minor correction to his submission. *Id.*

On February 9, 2005, (b)(7)(C) (b)(7)(C) of the OIEA e-mailed the NASD referral containing McLaughlin Complaint No. 1 to (b)(7)(C) (b)(7)(C) (b)(7)(C) (b)(7)(C) in the Enforcement Accounting Group. Testimony Transcript of (b)(7)(C) Testimony Tr.") November 3, 2009, at Exhibit 4, at pgs. 11-12; Exhibit 20. (b)(7)(C) sent the complaint to (b)(7)(C) because he viewed the complaint as making allegations of financial fraud and, at the time, (b)(7)(C) was "the designated OIEA liaison for referrals from OIEA to Enforcement regarding financial fraud."[10] Testimony Transcript of (b)(7)(C) Testimony Tr.") November 12, 2009, at Exhibit 8, at pgs. 19-20; (b)(7)(C) Testimony Tr. at pg. 16.

Later that evening, (b)(7)(C) e-mailed McLaughlin Complaint No. 1 to (b)(7)(C) (b)(7)(C) (b)(7)(C) an Enforcement Branch Chief, and copied (b)(7)(C) (b)(7)(C) (b)(7)(C) Susan Markel ("Markel"), (b)(7)(C) (b)(7)(C) (b)(7)(C) (b)(7)(C) and (b)(7)(C) on the e-mail. Exhibit 20.

Other than (b)(7)(C) and (b)(7)(C) all of the e-mail recipients were involved in Enforcement's complaint handling process. (b)(7)(C) was an Assistant Director in Enforcement and (b)(7)(C) which reviewed referrals related to (b)(7)(C) Exhibit 21; (b)(7)(C) Interview Notes (b)(7)(C) Interview Notes") January 4, 2010, at Exhibit 15. Markel was the Enforcement Chief Accountant and a co-head of the Financial Fraud Task Force (along with former Associate Director Paul Berger). Testimony Transcript of Susan Markel ("Markel Testimony Tr.") December 4, 2009, at Exhibit 12, at pg. 10; (b)(7)(C) Interview Notes. Markel testified that she "was responsible for the referrals that we received" and

[10] (b)(7)(C) testified that he "may have made a mistake" and should have searched the Name Relationship Search Index ("NRSI") database for an open investigation of Metromedia. (b)(7)(C) Testimony Tr. at pg. 20. If he had searched NRSI, he should have discovered that there was an open investigation of Metromedia and, according to OIEA's policy at the time, sent the complaint to "one of the attorneys responsible for an open case if there is an open case." *Id.* Therefore, he would have sent the complaint to (b)(7)(C) who was listed in NRSI as the Branch Chief on the then-open investigation of Metromedia. However, (b)(7)(C) failure to identify that there was an open investigation of Metromedia NRSI does not appear to have affected the handling of McLaughlin's complaint because the Enforcement Accounting Group did search NRSI and sent the complaint to (b)(7)(C) In addition, the information in NRSI had not been updated to show that the Metromedia investigation was no longer active. If (b)(7)(C) had learned that the investigation was no longer active, OIEA procedure would have called for him to send the complaint to (b)(7)(C) designated liaison in Enforcement, which is to whom he referred the complaint initially. *Id.* at pgs. 20, 23.

"was involved in delegating the referrals and working on the follow-through." Markel Testimony Tr. at pg. 10. (b)(7)(C) was an Associate Chief Accountant in the Enforcement Accounting Group and assisted Markel with handling referrals. Markel Testimony Tr. at pg. at pgs. 24-25. (b)(7)(C) was an administrative assistant in the Enforcement Accounting Group and was responsible for entering the referrals into the Enforcement Accounting Group's Financial and Accounting Referrals Tracking System.[11] After (b)(7)(C) entered the referrals into the system, (b)(7)(C) or Markel would assign the referrals to a supervisor in the group who would, in turn, assign the referral to one of his or her staff for review. *Id.* at pg. 25; (b)(7)(C) Testimony Tr. at pg. 97; Testimony Transcript of (b)(7)(C) Testimony Tr.") November 6, 2009, at Exhibit 6, at pgs. 6-7; Markel Testimony Tr. at pgs. 18-19.

In the February 9, 2005 e-mail to (b)(7)(C) (b)(7)(C) asked (b)(7)(C) to let him know if his group was not going to investigate the attached Metromedia referral from OIEA. Exhibit 20. The e-mail stated,

> (b)(7)(C) -- I received the attached email from OIEA. It is [sic] concerns Metromedia International & would seem to be part of your open investigation HO-09695. Please let me know if you are NOT going to pursue this . . . .

Id.

(b)(7)(C) appeared to have sent McLaughlin Complaint No. 1 to (b)(7)(C) after performing a search in the NRSI system, which contains a record of matters under investigation and the staff person responsible for each matter. (b)(7)(C) Testimony Tr. at pgs. 17-19. (b)(7)(C) branch in the Enforcement Division had opened an inquiry into Metromedia for self- reported violations of the Foreign Corrupt Practices Act ("FCPA") on November 26, 2002, and it had been converted to an investigation on February 1, 2003. Exhibit 22.

Six minutes after receiving the e-mail from (b)(7)(C) (b)(7)(C) responded to (b)(7)(C) without copying anyone on his response. Exhibit 23. (b)(7)(C) stated that that his branch would not be pursuing McLaughlin Complaint No. 1:

> The Metromedia matter is in the queue to be closed. While I haven't see[n] the referral, I know that my branch will not be pursuing this.

Id.

[11] The Enforcement Accounting Group's referral tracking system was not linked to Enforcement's larger NRSI system and could not be searched by other groups in Enforcement or by OIEA. (b)(7)(C) Testimony Tr. at pg. 21; (b)(7)(C) Testimony Tr. at pg. 32.

On February 10, 2005, (b)(7)(C) sent (b)(7)(C) a second e-mail (again not copying other members of the Enforcement Accounting Group), stating that he had reviewed part of McLaughlin Complaint No. 1, and it did not contain issues similar to the ones his branch had investigated. Exhibit 24. The second e-mail stated,

> Having read the first few pages of [the] demand letter, it appears that there is no similarity in issues between the Metromedia case we had opened and this one. Ours dealt with a couple of stale FCPA issues, based on its investments/joint ventures with Eastern European Companies.

Id.

A few minutes later, (b)(7)(C) responded thanking (b)(7)(C) for his response. *Id.* (b)(7)(C) testified that he "kicked" the complaint "back to" (b)(7)(C) and believed a new investigation needed to be opened to look at McLaughlin's complaint. (b)(7)(C) Testimony Tr. at pg. 41.[12]

Notwithstanding (b)(7)(C) e-mail to (b)(7)(C) that his branch would not be pursing McLaughlin Complaint No. 1, (b)(7)(C) did not forward McLaughlin Complaint No. 1 to anyone else within the SEC and it was not reviewed or analyzed.

B. SEC's Handling of McLaughlin Complaint No. 2

On February 17, 2005, (b)(7)(C) of the OIEA forwarded (b)(7)(C) a February 15, 2005 complaint from McLaughlin ("McLaughlin Complaint No. 2"). Exhibit 25. (b)(7)(C) wrote that the e-mail was a "follow-on" to the e-mail he had sent on February 9, 2005 regarding Metromedia International. *Id.* McLaughlin stated in the e-mail that he was contacting the SEC at the suggestion of an NASD employee and that the SEC should contact McLaughlin or his attorneys with any questions. At the end of his e-mail, McLaughlin stated that Metromedia's assets "still [were] being sold to entities without any evidence of due diligence being done in regard to the identities of the buyers, and with other important questions still remaining unanswered." *Id.*

On February 17, 2005, (b)(7)(C) replied to McLaughlin thanking him for his February 2005 complaints and stating that they were referred "to the appropriate SEC office or divisions." (b)(7)(C) also stated that "because the SEC generally conducts its

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[12] As discussed below in Section IV. C., the relationship between (b)(7)(C) and Assistant Director (b)(7)(C) (b)(7)(C) was frayed, which appeared to have affected (b)(7)(C) willingness to pursue referrals of McLaughlin's complaints. With regard to the referral from (b)(7)(C) (b)(7)(C) stated, "This was not going to be under me. At this point, my group had been eviscerated. Eviscerated. And (b)(7)(C) was saying: Leave (b)(7)(C). I was not opening a case. Who was going to do it? Me?" (b)(7)(C) Testimony Tr. at pg. 41.

investigations on a confidential basis . . . [w]e cannot provide you with updates on the status of your complaint[s] or of any pending SEC investigation." Exhibit 26.

On February 28, 2005, (b)(7)(C) forwarded McLaughlin Complaint No. 2 to (b)(7)(C) the Enforcement Accounting Group's (b)(7)(C) and copied (b)(7)(C) (b)(7)(C) and Markel. *Id.* (b)(7)(C) requested that (b)(7)(C) "add this to the referral file for this complaint." *Id.* Although the Enforcement Accounting Group's process was for (b)(7)(C) to send the OIEA referrals to (b)(7)(C) who would log them into the Enforcement Accounting Group's Financial and Accounting Referrals Tracking System, neither McLaughlin Complaint No. 1 nor McLaughlin Complaint No. 2 was logged into the system. (b)(7)(C) Testimony Tr. at pgs. 97-99; (b)(7)(C) Testimony Tr. at pgs. 13, 21; Exhibit 27. (b)(7)(C) stated that they were not entered probably due to "an oversight." (b)(7)(C) Testimony Tr. at pg. 13. Thus, McLaughlin Complaint No. 2 was not reviewed or analyzed either.

II. McLaughlin's Third, Fourth, and Fifth Complaints to the SEC in the Summer and Fall of 2005 Were Not Reviewed or Analyzed

Despite that McLaughlin Complaint Nos. 1 and 2 were not reviewed, McLaughlin's concerns should have been evaluated in the summer of 2005 when he submitted additional complaints to the SEC. Unfortunately, the complaints McLaughlin submitted in the summer of 2005 met a fate similar to those that the SEC had received in February 2005.

OIEA records indicated that McLaughlin sent a letter to the SEC in June 2005 ("McLaughlin Complaint No. 3"), which was referred to an Enforcement Branch Chief. The Branch Chief did not recall receiving it and it appeared that McLaughlin Complaint No. 3 was never reviewed. The Enforcement Accounting Group acknowledged receipt of McLaughlin's August 2005 complaint ("McLaughlin Complaint No. 4") and September 2005 complaint ("McLaughlin Complaint No. 5"), but the accountant who was assigned to review the complaints never reviewed or analyzed them.

A. SEC's Handling of McLaughlin Complaint No. 3

According to OIEA records, (b)(7)(C) received McLaughlin Complaint No. 3 on June 14, 2005 and forwarded a hard-copy of the complaint to (b)(7)(C) then Branch Chief in Enforcement, on June 17, 2005.[13] Exhibit 28. (b)(7)(C) stated that he did not recall receiving or handling a June 2005 complaint. In (b)(7)(C) (b)(7)(C) had left Enforcement to work (b)(7)(C) and expressed doubt that he received McLaughlin Complaint No. 3. Testimony Transcript of (b)(7)(C) (b)(7)(C) (b)(7)(C) Testimony Tr.") November 10, 2009, at Exhibit 7, at pgs. 8-9; Exhibit

[13] The OIG requested the production of McLaughlin Complaint No. 3 from the OIEA. The OIEA performed a search of its on-site records and determined that, due to its age, McLaughlin Complaint No. 3 had been moved to off-site archives. The OIEA has requested its retrieval, but stated that it expected a lengthy wait. As of this date, the complaint has not been produced.

29; Exhibit 30; Exhibit 31. (b)(7)(C) stated that if he had received a complaint related to Metromedia after leaving Enforcement, he would have forwarded it to his former Enforcement Group. Exhibit 31.

The OIG found that neither (b)(7)(C) nor any other Enforcement attorney reviewed or analyzed McLaughlin Complaint No. 3.

B. SEC's Handling of McLaughlin Complaint No. 4

On August 16, 2005, McLaughlin submitted another substantive complaint ("McLaughlin Complaint No. 4") to OIEA that raised two central issues. Exhibit 32. The first issue McLaughlin raised was that Metromedia filed an 8-K with the SEC on June 7, 2005, stating that the company was restating its 10-Qs and 10-Ks going back to 2002, and that its prior filings could not be relied upon. *Id.* The second issue raised was that on June 14, 2005, Metromedia filed an 8-K with the SEC stating that the company had reached an agreement to sell PeterStar, one of Metromedia's major assets, and that the Metromedia shareholders had not approved the sale. *Id.*

On August 26, 2005, (b)(7)(C) sent a letter to McLaughlin stating that McLaughlin Complaint No. 4 had been referred "to the appropriate SEC office or division" and that if the "person receiving [the] referral . . . has any questions about the information provided, he will contact you." Exhibit 33. (b)(7)(C) then forwarded McLaughlin Complaint No. 4 to (b)(7)(C) in the Enforcement Accounting Group. Exhibit 32.

(b)(7)(C) then gave the referral to (b)(7)(C) for entry into the Enforcement Accounting Group's "referral triage process," writing on the first page of the referral, "(b)(7)(C) please check referral database. I think this has come in before — if not, 3x [copies] for referral process." *Id.*; (b)(7)(C) Testimony Tr. at pgs. 27-28, 30. (b)(7)(C) stated that he believed (b)(7)(C) would assign the referral to an Associate Chief Accountant who would then assign it to a staff accountant. (b)(7)(C) Testimony Tr. at pg. 32. (b)(7)(C) logged McLaughlin Complaint No. 4 into the Enforcement Accounting Group's Financial and Accounting Referrals Tracking System and assigned the referral to Associate Chief Accountant (b)(7)(C) Exhibit 34; (b)(7)(C) Testimony Tr. at pg. 14.

(b)(7)(C) stated that (b)(7)(C) then assigned the referral to (b)(7)(C) who was an Assistant Chief Accountant under (b)(7)(C) supervision. *Id.* (b)(7)(C) however, had a slightly different recollection. (b)(7)(C) recalled that (b)(7)(C) assigned the referral directly to (b)(7)(C) after asking her permission. Testimony Transcript of (b)(7)(C) (b)(7)(C) (b)(7)(C) Testimony Tr.") November 17-18, 2009, at Exhibit 9, at pg. 17. (b)(7)(C) did not have a clear recollection of who assigned the referral to him, but stated "it's more than likely it was (b)(7)(C) (b)(7)(C) Testimony Transcript of (b)(7)(C) Testimony Tr.") November 4, 2009, at Exhibit 5, at pg. 12. Whether it was (b)(7)(C) or (b)(7)(C) who provided the referral to (b)(7)(C) it is undisputed that (b)(7)(C) was assigned to review McLaughlin Complaint No. 4 under (b)(7)(C) supervision and that (b)(7)(C) was aware of

the assignment. (b)(7)(C) Testimony Tr. at pgs. 17-18, 180. The OIG investigation found that McLaughlin Complaint No. 4 sat idle with (b)(7)(C) for over two years.

C. SEC's Handling of McLaughlin Complaint No. 5

On September 28, 2005, McLaughlin sent yet another complaint to (b)(7)(C) regarding Metromedia ("McLaughlin Complaint No. 5"). McLaughlin Complaint No. 5 consisted of a letter to (b)(7)(C) outlining his concerns about Metromedia and his "latest demand letter" to Metromedia, dated September 22, 2005. Exhibit 35. McLaughlin copied law enforcement officials, former Metromedia executives, and others on the complaint. *Id.* McLaughlin's central assertions in the complaint were that (1) Metromedia continued to inaccurately report financial information and had not provided an "adequate explanation of the total collapse of the Company's financial reporting system"; (2) the Metromedia Board of Directors breached their duty of good faith to Metromedia by selling assets at below-market prices before having sufficient information about the sales; and (3) the Board improperly approved the sale of the PeterStar assets (which the letter stated were "all or substantially all" of Metromedia's remaining assets) to a related party without shareholder approval. *Id.*

As with McLaughlin's prior complaint, (b)(7)(C) responded to McLaughlin that McLaughlin Complaint No. 5 had been referred "to the appropriate SEC office or division," and then forwarded McLaughlin Complaint No. 5 to (b)(7)(C) on September 29, 2005. *Id.* (b)(7)(C) appeared to have provided the referral to (b)(7)(C) who then provided it to (b)(7)(C) *Id.*; (b)(7)(C) Testimony Tr. at pgs. 17-19.

(b)(7)(C) recalled reviewing McLaughlin Complaint No. 5 and stated that she "could see that it looked like it was a case, to me. That was my reaction. . . . [I]t did occur to me that there's a lot in this letter, yes." (b)(7)(C) Testimony Tr. at pgs. 17-18. Like McLaughlin Complaint No. 4, McLaughlin Complaint No. 5 was provided to (b)(7)(C) for review. *Id.* at pg. 19. (b)(7)(C) recalled "thinking [McLaughlin Complaint No. 5] involve[d] more analysis than I had the time to give it, and (b)(7)(C) was a new employee — relatively new employee — and I thought he had more time than I did and could devote the time to look at it." *Id.* (b)(7)(C) also had extensive accounting experience. (b)(7)(C) Testimony Tr. at pgs. 6-7, 25. Prior to joining the SEC in (b)(7)(C) 2005, (b)(7)(C) a Certified Public Accountant (CPA), had amassed over (b)(7)(C) years of accounting experience, including (b)(7)(C) years of employment at a major public accounting firm. *Id.*

D. McLaughlin Complaint Nos. 4 and 5 Sat for Two Years in the Enforcement Accounting Group Without Review

Notwithstanding the assignment of McLaughlin Complaint Nos. 4 and 5 to (b)(7)(C) the OIG investigation found that (b)(7)(C) never reviewed and analyzed either of McLaughlin's complaints. *Id.* at pg. 14. (b)(7)(C) recalled being assigned the Metromedia matter for review and that his impression was that "it looked real complicated, like it would require some work." *Id.* at pg. 20. We found that this work was not performed.

Id. at pg. 20. (b)(7)(C) also recalled that he "needed more information" because a page in McLaughlin Complaint No. 4 was missing from the referral. *Id.* at pgs. 14, 20. The OIG found that (b)(7)(C) requested the missing page from (b)(7)(C) in late November 2005 and that, by early December 2005, he had all of the materials necessary to review and analyze McLaughlin complaints. *See* Exhibit 36 (b)(7)(C) forwarding McLaughlin's February 2005 correspondence to (b)(7)(C) Exhibit 37 (b)(7)(C) apologizing for being "unexpectedly away from the office" and stating that he was sending "copies of the Metromedia materials" to (b)(7)(C) that day); (b)(7)(C) Testimony Tr. at pg. 57; (b)(7)(C) Testimony Tr. at pgs. 18-20; (b)(7)(C) Testimony Tr. at pgs. 28-29.

Approximately a year after being assigned the referral, (b)(7)(C) received an update from (b)(7)(C) about referrals that he had outstanding. On September 20, 2006, (b)(7)(C) reported that he had three uncompleted referrals, one of which consisted of McLaughlin Complaint Nos. 4 and 5. Exhibit 38. Six days later, (b)(7)(C) responded, "These seem pretty old. Is there anything I can do[?]" *Id.* On September 27, 2006, (b)(7)(C) responded that he would complete his review of the Metromedia matter as soon as possible, stating:

> No, I don't think there is anything you can do. I just haven't been focusing on them for a while. I will make a renewed effort to complete them as soon as possible.

Id.

However, over a year after (b)(7)(C) e-mail and two years after receiving the Metromedia referrals (b)(7)(C) still had not completed his review of the Metromedia referrals (b)(7)(C) Testimony Tr. at pgs. 28-29. (b)(7)(C) explained that he did not complete his review of the referrals because he had "a full case load" and "worked on [the referrals] when he had time. . . . I worked on it if (b)(7)(C) (b)(7)(C) was pressuring me to get them done." *Id.* at pg. 25 (b)(7)(C) stated there was nothing about the Metromedia referrals that made their consideration take longer than other referrals, explaining that "I just didn't focus on it, there was no issue." *Id.* at pgs. 25-26. (b)(7)(C) testified that he "completed some referrals during the time Metromedia was outstanding, but I probably worked on the ones that I could knock out quicker." *Id.* at pg. 26. (b)(7)(C) stated that "the whole time I was still getting assigned more referrals. I would try and work on the ones that I could knock out, and Metromedia was always one at the bottom of the pile." (b)(7)(C) Testimony Tr. at pg. 45.

The OIG investigation found that (b)(7)(C) supervisors, including (b)(7)(C) and Markel, were periodically sent updates showing that (b)(7)(C) had not completed his review of the Metromedia complaints. *See, e.g.*, Exhibit 39; Exhibit 40; Exhibit 41 (estimating that (b)(7)(C) sent referral reports to Markel and the other supervisors six to eight times a year); Markel Testimony Tr. at pg. 34.

Markel recalled in the following testimony that when she and (b)(7)(C) learned that the Metromedia referral (containing Complaints Nos. 4 and 5) had not been completed

two years after having been assigned for review in the Enforcement Accounting Group, they found the explanation for the delay "disappointing" and "frustrating":

> [A]t some point, I think I have learned that (b)(7)(C) (b)(7)(C) had the referral and he had indicated there was a page missing or something and so that was what he was waiting for or something or that's why it was still there, because he had requested that the additional page be provided, and I don't think he was provided that and that's where it stayed. . . . [It was] disappointing, certainly, that you know, that that's the explanation that was provided for that. . . . the idea that, you know, something came in and a piece of paper was – you're waiting for that. If that was the only thing holding you up, then I guess you would either close it and say I don't have sufficient information or try again to get it. So it wasn't a very satisfying response. . . . I think he (b)(7)(C) was frustrated. . . . [I]n the discussions of, you know, the referral and, you know, why it didn't get processed or the explanation that, well, one piece of paper was missing, that was not satisfying to me or to him. So we may have talked about that.

Markel Testimony Tr. at pgs. 41-42, 65.

The Metromedia referrals may have continued to sit in the Enforcement Accounting Group without action, but as discussed below in Section V.C., in the last days of November 2007, (b)(7)(C) was assigned to assist Enforcement attorneys with an investigation of Metromedia and she took over review of the Metromedia referrals from (b)(7)(C) (b)(7)(C) Testimony Tr. at pgs. 27-28.

E. Enforcement Accounting Group Review Was Intended to Swiftly Determine Whether an Investigation Was Warranted

The Enforcement Accounting Group's failure to complete a review of McLaughlin's complaints in over two years is additionally troubling because the group's referral process was intended as only a swift initial review to determine whether the complaint was worthy of further investigation by an Enforcement attorney group. As stated by an April 17, 2003 Memorandum regarding "Procedures for Review of Financial Reporting and Accounting Related Enforcement Referrals from the Division of Corporation Finance and Other Sources" ("Financial Fraud Memorandum") that outlined procedures for review of financial reporting and accounting related enforcement referrals, "[t]he initial goal of the review of each referral will be to determine whether there is a sufficient basis to warrant further investigation and, if warranted, to refer the matter to the appropriate Enforcement personnel for that purpose." Exhibit 21.

(b)(7)(C) stated that the purpose of the Enforcement Accounting Group's review of referrals was to "assess the credibility of the complaint, the plausibility." (b)(7)(C) Testimony Tr. at pgs. 21-22. If the reviewing accountant and his or her supervisor found the complaint to be not credible, then they would "recommend no further action." *Id.* at pg. 21. If the complaint was found to be credible or contain "compelling evidence, [they] would recommend further action, and if a senior officer agree[d], it would be assigned to an attorney group." *Id.* at pg. 22. (b)(7)(C) stated that the accountant reviewing the referral was supposed to fill out a "short report form," stating background information about the referral and listing "some basic financial information . . . a background of the issue, and then [their] recommendation." (b)(7)(C) Testimony Tr. at pg. 14.

Despite that the Enforcement Accounting Group's review was designed to be a swift preliminary assessment, prior to 2009, the Enforcement Accounting Group did not have a timeline within which referrals were to be completed. (b)(7)(C) Testimony Tr. at pg. 20-21. Markel testified that she "wanted [referrals] done as quickly as possible," but during her testimony would not state a time period during which she expected them to be reviewed. Markel Testimony Tr. at pg. 20-21. According to (b)(7)(C) the current guideline is that referrals should be completed within six weeks. *Id.* (b)(7)(C) estimated that he expected an accountant to review a referral within 30-45 days and, in (b)(7)(C) experience, it was atypical for an accountant to take two years to complete a review of a referral. (b)(7)(C) Testimony Tr. at pg. 41; (b)(7)(C) Testimony Tr. at pgs. 16-17.

F. Failure of Enforcement Accounting Group to Follow Written Procedures May Have Contributed to McLaughlin's Complaints Not Being Acted Upon

It appeared that the Enforcement Accounting Group's referral procedures for monitoring the progress of referrals were not followed in the 2005-2007 time period. Markel Testimony Tr. at pgs. 16, 19. This failure to follow procedures may have been a factor in allowing McLaughlin's complaints to sit in the Enforcement Accounting Group without action for over two years.

The procedures outlined in the April 17, 2003 Financial Fraud Memorandum stated, "Each referral will be reviewed by staff, senior supervisory staff . . . and by the front office [the Associate Director and/or the Chief Accountant]." Exhibit 21, at pg. 1. The senior supervisory staff "will meet on a bi-weekly basis with [the front office], or more often if needed, to regularly decide the disposition of the referrals." *Id.* The Financial Fraud Memorandum also provided specific procedures for handling referrals. *Id.* at pg. 3. The procedures for the disposition of referrals were as follows:

> The review and ultimate disposition of each referral will take place in three steps. First, the accountants/lawyers will conduct the review and form their own proposed recommendation. Second, [the senior supervisory staff] will meet with each accountant/lawyer team approximately

> every week to discuss their review and reach a consensus for a proposed disposition. Finally, [the senior supervisory staff] will meet with . . . [the] Chief Accountant every two weeks, or more often as required, to present the referral and to collectively make a final decision for the disposition of the referral.

Id.

Markel testified that in 2005, the referral meetings were not occurring as frequently as described in the 2003 Financial Fraud Memorandum: "I'm not sure that we met on a regular biweekly basis. We would try to meet as – as frequently as we could, given, you know, the number of referrals that might have been queued up. . . . At some point . . . we would have these meetings later on in the process. I'm not sure who always attended." Markel Testimony Tr. at pgs. 16, 19. (b)(7)(C) recalled that the meetings to discuss the final disposition of referrals "were discontinued at some point, primarily because of scheduling difficulties." Exhibit 42, at pg. 2.

III. McLaughlin's Sixth Through Seventeenth Complaints to the SEC in 2006 and 2007 Were Not Reviewed or Analyzed

Despite the lack of action on his prior complaints, McLaughlin continued to submit complaints to OIEA in 2006. By late September 2007, no Enforcement group was reviewing, analyzing, or investigating any of the approximately seventeen complaints that McLaughlin had submitted between February 2005 and September 29, 2007. Exhibit 43. Problems contributing to the inaction on McLaughlin's complaints included the failure to formally close an earlier unrelated Enforcement investigation of Metromedia or to update the NRSI system. However, the primary reason that the complaints were ignored appeared to be human error – the Assistant Director and staff who received the complaints did not review the complaints or make certain that someone was taking responsibility for handling the complaints.

On March 10, 2006, McLaughlin faxed (b)(7)(C) a letter dated March 6, 2006 ("McLaughlin Complaint No. 6"), asserting that (1) Metromedia continued to have accounting issues; (2) McLaughlin and his attorneys were considering filing a derivative action; (3) they were looking at a potential FCPA violation by Metromedia; and (4) they believed that more than $141 million in assets were missing at Metromedia. Exhibit 44. After receiving McLaughlin Complaint No. 6, (b)(7)(C) searched the NRSI system, which showed that there was an ongoing investigation of Metromedia that had been opened on November 26, 2002. *Id.* at pgs. 3-5.

Staff on the Metromedia investigation consisted of (b)(7)(C) (b)(7)(C) Assistant Director; (b)(7)(C) (b)(7)(C) then Branch Chief; and (b)(7)(C) then Staff Attorney.

[14] As noted in footnote 3, (b)(7)(C) was unable to testify (b)(7)(C).

Testimony Transcript of [redacted] Testimony Tr.") November 25, 2009, at Exhibit 11, at pg. 14. Because [redacted] was listed in the NRSI system as the staff person on the Metromedia investigation, [redacted] sent the referral of McLaughlin Complaint No. 6 to [redacted] and [redacted].[15] *Id.* at pg. 1. By the time the SEC received McLaughlin Complaint No. 6, [redacted] and [redacted] had left [redacted] group. Exhibit 30; Exhibit 46. [redacted] and [redacted] was working in Enforcement's Office of Chief Counsel. *Id.* Despite that [redacted] no longer worked in [redacted] group, [redacted] sent three additional McLaughlin complaints to her in 2006 because of her listing in the NRSI system. Exhibit 43.

A. Failure to Follow Proper Procedures to Close the 2002 Metromedia Investigation Contributed to McLaughlin's Complaints Sitting in Enforcement Without Action

1. Background of the 2002 Investigation of Potential FCPA Violations at Metromedia

Unknown to [redacted] the Enforcement staff had intended to close an unrelated 2002 Metromedia investigation in early 2004. This informal Enforcement investigation of Metromedia beginning in 2002 involved self-reported violations of the FCPA and had no connection to McLaughlin's complaints. Exhibit 47, at pg. 1. According to a 2003 memorandum written by [redacted] summarizing the investigation, Metromedia-related companies had paid bribes and kickbacks in two former Soviet Republics – Georgia and Kazakhstan. *Id.* In Georgia, a company in which Metromedia had a minority ownership made $9,000 in payments "to reduce tax liability and lower tower transmission costs." *Id.* There was no evidence of further bribes paid after Metromedia became the majority owner of the company. *Id.* In Kazakhstan, over $118,000 in kickback payments were made in 1998, prior to Metromedia purchasing the company. *Id.* at pg. 2. In addition, two one-time bribes were made to government officials (one in 1999 and one in the mid-1990s) to prevent the government from seizing license rights and to get a lawsuit dismissed. *Id.* at pg. 3.[16] The memorandum highlighted "that all improper payments ceased and all employees who paid or approved the payments have been terminated or disciplined." *Id.* at pg. 1.

As part of their investigation, [redacted] and [redacted] met with attorneys for Metromedia and discussed potential charges against Metromedia with [redacted] of the Department of Justice. [redacted] Testimony Tr. at pg. 17; [redacted] Testimony Tr. at pgs. 17-18; [redacted] learned from [redacted] that a case against Metromedia for violations of the FCPA

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[15] [redacted] did not recall why he sent the referral to [redacted] a former SEC employee. [redacted] Testimony Tr. at pg. 30. At the time of the referral, [redacted] in the Division of Corporation Finance [redacted] appeared to have received McLaughlin Complaint Nos. 6 and 7 because they alleged that Metromedia was delinquent in their filings. Exhibit 44; Exhibit 58. The Division of Corporation Finance placed Metromedia on its delinquent filer "watch list." Exhibit 45.

[16] In a February 11, 2004 memorandum, [redacted] also described "a $1 million bribe to the former prime minister of Kazakhstan to keep a license from being revoked, ... probably paid in 1995." Exhibit 48.

faced statute-of-limitations issues.[17] According to e-mails (b)(7)(C) wrote summarizing her conversations with (b)(7)(C) criminal charges could only be brought for payments made within the last five years. Exhibit 49; Exhibit 50. Therefore, (b)(7)(C) believed that the only payment that could be charged was a $10,000 payment made to a member of the Russian Duma. Exhibit 49.

(b)(7)(C) and (b)(7)(C) brainstormed (b)(5) but by February 2004, they determined that a case against Metromedia should not be pursued and that the informal investigation of Metromedia should be closed. (b)(7)(C) Testimony Tr. at pgs. 23-24; (b)(7)(C) Testimony Tr. at pgs. 20-23. On February 12, 2004, (b)(7)(C) e-mailed (b)(7)(C) and (b)(7)(C) a memorandum entitled, "Closing MUI [Matter Under Investigation] of Metromedia, MHO-09607," stating why the FCPA investigation should be closed without action. Exhibit 48. The attached memorandum stated that although the statute of limitations may not be a total bar to bringing civil charges against Metromedia (as it would be with respect to criminal charges), there would be substantial hurdles to overcome in bringing a successful action. *Id.* In the memorandum, (b)(7)(C) summarized as follows the reasons why the team recommended that the unrelated 2002 investigation of Metromedia for potential FCPA violations be closed:

> Because of the age of the matter and (b)(5) (b)(5) a lack of evidence of the violations, the extreme cost of obtaining better evidence, the small amount of money involved, and the light trading in Metromedia's stock . . . the staff recommends that the investigation be closed. . . . On balance, the extraordinary effort and expense to obtain admissible evidence do not appear justified in this matter.

Id. at pgs. 2-3.

2. Steps Necessary to Close an Enforcement Investigation

During the relevant time period, Joan McKown ("McKown"), the Chief Counsel of the Division of Enforcement, supervised the closing of matters under investigation. Testimony Transcript of Joan McKown ("McKown Testimony Tr.") December 24, 2009, at Exhibit 13, at pg. 6. According to McKown, matters that are closed "without an enforcement action follow fairly routine process." *Id.* at pg. 7. McKown described the process as follows:

> The staff, generally the staff attorney working on the case fills out the form, answers certain questions and writes a narrative as to what happened. . . . It's reviewed by a

[17] (b)(7)(C) and (b)(7)(C) stated that they believed the Department of Justice did not pursue an FCPA case against Metromedia. (b)(7)(C) Testimony Tr. at pg. 67; (b)(7)(C) Testimony Tr. at pg. 18.

> branch chief and an assistant director and that's the recommendation. That recommendation then goes to the case management specialist, who then makes sure that it complies with certain procedural things . . . [a]nd they make sure that certain technical requirements are complied with . . . [s]uch as seeing whether there was a FOIA [Freedom of Information Act] request, making sure that access grants were properly recorded. They're basically making sure that what should be in the systems [*e.g.*, Case Activity Tracking System (CATS)[18]] is appropriately in the systems. It's then sent to (b)(7)(C) (b)(7)(C) . . . . She then goes through and actually does a double check to make sure that everything that was supposed to be entered into the system is correct and she goes through the narrative as well . . . and then she'll send it to me, and I review it. And then after I'm done, if it's okay, I write "okay, JM," up in the corner. I send it back to (b)(7)(C) and also [to] (b)(7)(C) (b)(7)(C) who's a case management specialist who works with (b)(7)(C) . . . (b)(7)(C) then informs the case management specialist, who then goes to the senior officer responsible for the investigation, who then actually signs the closing itself, which is a piece of paper that goes on top of the recommendation.

McKown Testimony Tr. at pgs. 7-10.

Associate Director Chris Conte ("Conte") estimated that after the closing memorandum was written, the rest of the steps that the Enforcement team needed to take before submitting the matter to the Office of the Chief Counsel for closing should take "a couple of days at the most, a day or two, not even two, to finish that piece of it." Testimony Transcript of Christopher Conte ("Conte Testimony Tr.") December 15, 2009, at Exhibit 14, at pgs. 18-19.

Conte was not aware of any Enforcement procedures stating that a certain person on the Enforcement team is responsible for closing an investigation. *Id.* at pgs. 16-17. Rather, he felt that the entire Enforcement team – including the staff attorney, the branch chief, the assistant director, and the associate director – are responsible for making sure an investigation is closed. Specifically, he testified, "I would say that all of us have responsibility to make sure that cases are ultimately closed and processed . . . as

[18] CATS is an Enforcement Division information technology system "that tracked the progress of its MUIs, investigations, and Enforcement actions." Exhibit 51, at pg. 12. During the relevant time period, the CATS system fed information into the NRSI system. Although the CATS system is still in use, Enforcement is transitioning to the Hub system, which has enhanced functionality. (b)(7)(C) Interview Notes (b)(7)(C) Interview Notes"), February 2, 2010 at Exhibit 19. The Hub system allows Enforcement staff to update information (such as staff changes) in the system directly. *Id.*

required." *Id.* at pg. 16. McKown asserted that "the assistant director ultimately was supposed to make certain that the closing process kept moving forward . . . [a]lthough the staff attorney did most of the actual work." McKown Testimony Tr. at pg. 13. McKown had "no idea" if there was training for new attorneys on how to properly close a case. *Id.* at pg. 13. McKown stated that an assistant director could check the status of an investigation in NRSI or could ask an Enforcement case management specialist to find out the status of an investigation. *Id.* at pgs. 16-18.

3. Closing Documentation Could Take 1-2 Years to Process

McKown was unable to state approximately how much time the closing process would take after a matter was submitted to the Office of Chief Counsel for closing. *Id.* at pgs. 11-12. McKown explained that the Office "sometimes ha[d] a huge backlog [of matters to close] and it can take a considerable period of time." *Id.* McKown stated that it could have taken her office as long as a year to close a matter under investigation, but not over two years. *Id.* at pgs. 12-13. McKown testified that sometimes staff would believe a matter was in the closing process, when it was not, and that more transparency should be added to the closing process:

> So I couldn't tell you how long the backlog was, but I can tell you that the backlog would periodically get cleared up. I would still hear from people afterwards, "Oh, that's been in the closing process for a couple of years." And the answer was, "No, it hasn't been. We don't have the closing." Sometimes what would happen, and one of the things that we need to work on in the closing process is more transparency to the system so that people understand where it is. What would sometimes happen is we would send a closing back to a staff attorney or a branch chief. They would not tell their supervisors. The supervisors would think that it was still sitting with the home office case-closing part of the process. They would think it was there, but in fact we had returned it.

Id. at pgs. 11-12.[19]

4. Official Closing Documentation Was Not Prepared

Although (b)(7)(C) (b)(7)(C) and (b)(7)(C) had decided to close the 2002 Metromedia investigation, there is no evidence indicating that anyone on the team took the necessary steps to officially close it. (b)(7)(C) was an Enforcement Branch Chief from

[19] McKown testified that Enforcement has undergone "a dramatic change in terms of the processing" of case closings and that currently Enforcement is only "about a month behind." McKown Testimony Tr. at pg. 13.

approximately (b)(7)(C) to approximately (b)(7)(C) when he left to work in (b)(7)(C) (b)(7)(C) Testimony Tr. at pgs. 7-9. (b)(7)(C) stated that as a Branch Chief his responsibilities included preparing documentation to close matters. *Id.* at pg. 12. (b)(7)(C) stated that he was aware of the steps necessary to officially close an investigation. *Id.* at pg. 13. (b)(7)(C) had no specific recollection of taking any steps to close the Metromedia investigation, but he believed that all of the necessary documentation had been completed, and as of December 1, 2004, there was "[n]othing that wasn't ministerial" left to do to close the Metromedia case. *Id.* at pgs. 24, 49-51.

(b)(7)(C) stated that he was not alarmed when he learned over a year later that the Metromedia matter was still open because he thought it must still be sitting in the "long queue" with (b)(7)(C) group in the Office of Chief Counsel. *Id.* at pg. 39. According to (b)(7)(C) there was a general problem throughout all of the Enforcement with closing cases because of the inadequate procedures in place.[20] *Id.* at pgs. 30-31. (b)(7)(C) explained that, "all the closing memos were funneled through one individual in Enforcement and there could be a backlog of a year or more. That was a constant complaint people heard." *Id.* at pg. 30.

In contrast to (b)(7)(C) recollection, (b)(7)(C) did not recall official documentation being completed and the OIG found no evidence indicating that the documentation was prepared. (b)(7)(C) Testimony Tr. at pgs. 59-60. (b)(7)(C) recalled that at the time she e-mailed the February 11, 2004 memorandum to (b)(7)(C) and (b)(7)(C) she had (b)(7)(C) (b)(7)(C) (b)(7)(C) *Id.* at pg. 28. (b)(7)(C) stated that writing the February 11, 2004 memorandum "was the only step that I took" to close the investigation. *Id.* at pg. 30. (b)(7)(C) specifically recalled that she had not prepared any official documentation to close the case, nor did (b)(7)(C) or (b)(7)(C) ask her to do so. *Id.* at pg. 59-60. (b)(7)(C) stated that the only step she was asked to take was to draft the closing memorandum:

> (b)(7)(C) (b)(7)(C) had asked me to write the closing memo, which is this memo that I . . . finalized on February 11, and at that time, I thought I was done. I had given it to (b)(7)(C) . . . Nobody ever told me where to find the list of the steps. Nobody told me anything. And again, I had done this [memorandum] after I had already left the group, so . . . even drafting this memo, I was just trying to be a nice team player. I mean had they asked me to do it, I probably would've done all those steps because they weren't that

[20] On March 13, 2009, (b)(7)(C) sent an e-mail to (b)(7)(C) Enforcement Counsel, stating that "my old group had 'issues' about closing cases." Exhibit 5 (b)(7)(C) testified that his comment in the e-mail was about the general "issue of the queue" of cases waiting for closing and "generally speaking, that things could be on [former Associate Director Paul] Berger's desk for a while. I don't know why that was the case. I have my own thoughts on that, that my stuff wasn't really a priority." (b)(7)(C) Testimony Tr. at pgs. 34-35.

> onerous since this investigation was very small and focused, but nobody asked me.

Id. at pg. 60.

(b)(7)(C) who had been an Enforcement staff attorney since (b)(7)(C), stated that as of February 2004, she had not received training on how to officially close matters.[21] *Id.* at pgs. 10, 31, 60. (b)(7)(C) explained as follows:

> I did not know there were several steps to take to close a case. I had no idea. I thought that, at that time, I was asked to write the closing memo, so I did, and my understanding was you send the closing memo somewhere, that I was supposed to send it to my assistant director and my branch chief and then thecase would be closed. That was my understanding, which was imperfect.

Id. at pg. 31.

Similarly, Assistant Director (b)(7)(C) appeared not to have understood the steps necessary to officially close an investigation. McKown stated that she believed the Metromedia investigation was not closed in the system because "there was a misunderstanding by the person who was the assistant director (b)(7)(C) as to what it took to close a case." McKown Testimony Tr. at pgs. 22-23. McKown stated that when she met with (b)(7)(C) about Metromedia, he "showed me the closing, and I said, 'This is not a closing. This was what I would call a memo to file.'" *Id.* at pgs. 23-24.

Conte's recollection of why the Metromedia investigation was not closed was similar to McKown's recollection. Conte recalled the following:

> [W]hen I saw what was identified as the closing [memo], it was apparent to me that if that was all there was, that wasn't an official closing memo either. . . . The information that I saw in the memo certainly could have been part of what would go into the closing memo. Here's why we opened it, here's the work we did. Here's why we decided not to pursue it. So the substantive information, I could have seen being made part of a closing memo, but it

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21 (b)(7)(C) stated that the Metromedia investigation was the first investigation that she had attempted to close. (b)(7)(C) Testimony Tr. at pg. 31. However, after being shown an additional document in which she wrote to (b)(7)(C) that she thought she had closed a matter but it continued to show up in the CATS system, she acknowledged that, although she had no recollection of doing so, she must have attempted to close another case. *Id.* at pgs. 34-35; Exhibit 53.

> didn't have the other aspects that are required to actually submit and have it closed.

Conte Testimony Tr. at pgs. 13-14.

Conte, (b)(7)(C) and (b)(7)(C) stated that (b)(7)(C) should have been aware that the Metromedia investigation had not been closed. According to Associate Director Conte, the assistant director should know whether the closing documentation had been completed because, as part of the closing package that is submitted to the Office of Chief Counsel, the assistant director is supposed to sign a form representing that the technical requirements for closing were completed. *Id.* at pg. 20. Moreover, (b)(7)(C) and (b)(7)(C) believed that (b)(7)(C) should have been aware that the Metromedia investigation had not been closed because open investigations showed up on reports provided to assistant and associate directors. (b)(7)(C) Testimony Tr. at pgs. 52-53; (b)(7)(C) Testimony Tr. at pg. 61.[22]

According to McKown, "NRSI is the interfrace for members of the staff Commission wide." McKown Testimony Tr. at pgs. 9-10. "NRSI is an index that sits on top of a number of Commission systems ... [and] one of the systems it sits on top of is CATS." *Id.* at pg. 9. Changes in the CATS system would transfer to the NRSI system because "NRSI is fed by CATS." *Id.* at pg. 18. McKown stated that some branch chiefs had direct access to the CATS system to find out if their matters under investigation were still open. *Id.* at pgs. 16-17. Staff attorneys, branch chiefs, and assistant directors who did not have access to the CATS system could check the status of an investigation on NRSI or "could go to the case management specialists and they could tell them how it was reflected . . . in the CATS system." *Id.*

5. It Was Not Unusual for Inactive Enforcement Investigations to Be Left Open for More Than a Year

The problem of the Metromedia investigation being left open for years after it had become inactive was not an isolated one. According to a 2007 GAO Report, the problem of unclosed Enforcement investigations was recurrent with "potentially negative consequences":

> Enforcement may leave open for years many investigations that are not being actively pursued with potentially negative consequences for individuals and companies no longer under review. According to CATS data, about two-thirds of Enforcement's nearly 3,700 open investigations as of the end of 2006 were started 2 or more years before, one-third

[22] (b)(7)(C) an Enforcement case management specialist, stated although the staff could not print directly from the CATS system prior to Enforcement's transition to the Hub system, the staff could always request that a case management specialist print reports containing case status and other information. (b)(7)(C) Interview Notes.

> of investigations at least 5 years before, and 13 percent at least 10 years before. According to an Enforcement official, technical limitations in CATS make it difficult to readily determine how many of these investigations resulted in enforcement actions and how many did not. Nevertheless, other data suggest that the number of aged investigations that did not result in an enforcement action may be substantial. For example, Enforcement officials at one SEC regional office said that as of March 2007, nearly 300 of 841 (about 35 percent) were more than 2 years old, had not resulted in an enforcement action, and were no longer being actively pursued. . . . As a result, the subjects of many aged and inactive investigations may continue to suffer adverse consequences until closing actions are completed. . . . [T]he failure to address this issue – potentially through expedited administrative closing procedures for particularly aged investigations – would limit Enforcement's capacity to manage its operations and ensure the fair treatment of individuals and companies under its review.

Exhibit 51, at pgs. 21-23.

As of October 10, 2008, (b)(7)(C) group had twelve open cases without action that were older than five years. Exhibit 54. Moreover, according to a July 2007 e-mail from (b)(7)(C) (b)(7)(C) group also had 27 cases that were listed as active, but not assigned to any attorneys. Exhibit 55.[23]

B. SEC's Handling of McLaughlin Complaint No. 6

As discussed above, despite that (b)(7)(C) had left (b)(7)(C) group in (b)(7)(C) (b)(7)(C) to join Enforcement's Office of Chief Counsel, (b)(7)(C) of the OIEA referred McLaughlin Complaint No. 6 to (b)(7)(C), on March 16, 2006 because the Metromedia investigation was an open investigation in the NRSI system and (b)(7)(C) was still listed as the staff attorney on the investigation. Exhibit 44, at pgs. 3-4; (b)(7)(C) Testimony Tr. at pg. 11; Exhibit 46. (b)(7)(C) did not have access to the Enforcement Accounting Group's

[23] Following the 2007 GAO Report, "there was a big push" in Enforcement to identify and close cases "that were open in our systems where there had been no action taken in over five years." Conte Testimony Tr. at pg. 58. According to Associate Director Conte, of the 27 investigations that were listed as active but not assigned, (a) 15 investigations have been closed (three with action(s) and 12 without action); (b) 5 investigations involve instances where closing recommendations have been approved and those recommendations and closing memoranda have been submitted for closing (three with action(s) and two without action); (c) two have been recommended for closing (with action(s)); and (d) five remain open, after action(s) were brought, due to outstanding debts, collection efforts, and/or planned distributions. Exhibit 55.

Financial and the Accounting Referrals Tracking System and the system was not connected to NRSI, so (b)(7)(C) was unaware that, at the time he referred the complaint to (b)(7)(C) the Enforcement Accounting Group had an open referral of McLaughlin's 2005 complaints. (b)(7)(C) Testimony Tr. at pg. 32.

(b)(7)(C) described her reaction when she received McLaughlin Complaint No. 6, as follows: "I was really startled and I couldn't believe that this matter was, number one, still open. I thought it had closed. And number two, that my name was still on it, and that was sad." (b)(7)(C) Testimony Tr. at pg. 39. (b)(7)(C) then recalled, "very briefly looking at the letter, seeing it had nothing to do with the case that I had looked at, and I recall[ed] forwarding this [the March 16, 2006 Referral] on to (b)(7)(C) and trying to be deferential." *Id.* at pgs. 39-40. On March 24, 2006, (b)(7)(C) sent (b)(7)(C) an e-mail about the referral, in which she stated she was forwarding him the complaint, he did not need to do anything in response, and that he should look into why the investigation was still open:

> I was given a copy of a letter from OIEA to an investor who had complained about Metromedia. I'm going to forward it to you, for your files. No action is required. It's been a long while, but I could have sworn the Metromedia matter was closed shortly after I left your group. If you think it was closed, you might want to get your admin person to check NRSI. Ah, the joys of the bureaucracy!

Exhibit 56.

(b)(7)(C) stated that when she wrote to (b)(7)(C) "No action is required," she was not making a judgment about the merits of the referral; she was "inartfully summarizing" (b)(7)(C) statement on the referral, which was, "You do not have to respond unless you feel it is appropriate." (b)(7)(C) Testimony Tr. at pg. 44. However, (b)(7)(C) appeared to have misinterpreted the last sentence on the cover page of the referral and not focused on the entire paragraph, which indicated that a response to the investor was not required, not that review and investigation of the complaint was unnecessary. The last paragraph of the cover page of the referral stated the following:

> OIEA has responded to the investor. A copy of our response is attached. You do not have to respond unless you feel it is appropriate.[24]

Exhibit 44, at pg. 1.

[24] This quoted language on the referral appeared to be OIEA boilerplate because the exact language, or variations of it, is included in several of the other McLaughlin referrals. *See, e.g.*, Exhibit 32; Exhibit 57, at pg. 2.

Rather than interpreting the line to mean no response to McLaughlin was necessary because OIEA has already responded to McLaughlin, (b)(7)(C) apparently read the paragraph to mean that the Enforcement attorneys did not have to respond to (b)(7)(C) about the referral or investigate the complaint because the referral was unrelated to their 2002 FCPA investigation. (b)(7)(C) Testimony Tr. at pgs. 41-42. (b)(7)(C) explained her e-mail to (b)(7)(C) in the following testimony:

> At this moment sitting here, boy, I wish I could go back in time and rewrite that sentence and I wish I had quoted Mr. (b)(7)(C) completely to say, 'You don't have to respond unless you feel it is appropriate.' I know what I was thinking at the time was this complaint has nothing to do with our matter, which should be closed, so you don't have to respond to this in relation to the Foreign Corrupt Practices Act investigation. I did not at that time take a look at a complaint — an investor complaint and say, 'I am opining as to whether this is worthy of an investigation or not.' That's not what I intended to say. As I said, I wish I could go back in time.

Id. at pg. 45.

Neither (b)(7)(C) nor (b)(7)(C) communicated to (b)(7)(C) that they had no intention of reviewing or analyzing McLaughlin Complaint No. 6.

C. SEC Form Letter Gave McLaughlin a Misimpression of What the SEC Was Doing With McLaughlin Complaint No. 6

Despite the fact that no one at the SEC was reviewing or investigating McLaughlin's complaints, (b)(7)(C) responded to McLaughlin Complaint No. 6 on March 16, 2006, with a letter stating, "We are taking your complaint very seriously and have referred it to the appropriate people within the SEC." Exhibit 44, at pg. 2. (b)(7)(C) explained that the letter he sent to McLaughlin was a form letter that OIEA sends in response to complaints that are referred to Enforcement whether or not Enforcement actually investigates. (b)(7)(C) Testimony Tr. at pgs. 31-32. However, (b)(7)(C) thought someone in Enforcement had been assigned to the investigation and would have reviewed and analyzed McLaughlin's complaints *Id.* (b)(7)(C) explained as follows:

> Q. When you wrote this [March 16, 2006 Letter to McLaughlin], did you believe that [the SEC was] taking the complaint seriously?
>
> A. This is a form letter that we send out when we refer information to another office. We use the "taking the complaint very seriously" language. If we don't refer

> it, we say — you know, we give them the investigation policy language about how investigations are confidential and we have done everything we can for you. So, I don't really know that — I really can't speak for the Division of Enforcement as to whether they're taking something seriously or not.
>
> Q. But to your knowledge since you had now referred — this would be the [sixth] McLaughlin complaint that you had referred to Enforcement . . . So, you thought somebody had read these complaints and analyzed them?
>
> A. That's true. If this was the time where they informed me that it was assigned to someone, that indicated to me that it was going somewhere.

Id.

McLaughlin was unaware that the letter he received from the OIEA was merely a form letter. He interpreted the letter to mean that the SEC was finally paying attention to his complaints and investigating Metromedia:

> I heard from (b)(7)(C) . . . in a letter that he dated March 16, 2006 saying that he took my concerns and the SEC took my concerns very seriously, and that they were being reported to the proper authority, or agency, within the SEC and I took that to mean [the Division of] [E]nforcement, although he did not say that in the letter. . . . My attorneys and I also took that as a sign for a reason for conspicuous encouragement because we thought that the SEC, at that point, was obviously doing its job. If they were on the case my attorneys thought that they should have been on the case by 2004 or 2005 at the latest, so our indication was that yes, someone was paying attention and that this was important to them.

Testimony Transcript of Matthew Kevin McLaughlin ("McLaughlin Testimony Tr.") December 12, 2008, at Exhibit 1, at pgs. 9-10.

In actuality, McLaughlin Complaint No. 6 (along with McLaughlin Complaint Nos. 1-5) had not been "referred to the appropriate people within the SEC" and, not only was it not being considered "very seriously," it was not being considered at all. Conte Testimony Tr. at pg. 11 (explaining that he "came to learn . . . that (b)(7)(C) and

the attorney that worked under him had not actually undertaken a substantive review of the complaints and hadn't pursued them in any particular way").

D. SEC's Handling of McLaughlin Complaint Nos. 7, 8, and 9

The same situation that occurred with McLaughlin Complaint No. 6 appeared to have re-occurred with McLaughlin Complaint Nos. 7, 8, and 9. According to OIEA records, McLaughlin Complaint No. 7 was faxed to the SEC on April 27, 2006 and was referred to (b)(7)(C) and (b)(7)(C) that same day. Exhibit 58. McLaughlin Complaint No. 8 was also a facsimile sent on October 17, 2006 and was referred to (b)(7)(C) on November 2, 2006. Exhibit 59. OIEA records reflected that in response to McLaughlin Complaint No. 8, (b)(7)(C) called McLaughlin and "[t]old him [OIEA] had referred the information to the appropriate office at the SEC." *Id.* McLaughlin Complaint No. 9 was an e-mail from McLaughlin that was received on November 21, 2006 and was referred to (b)(7)(C) on November 27, 2006. Exhibit 60. OIEA records reflected that (b)(7)(C) responded to McLaughlin Complaint No. 9 with a letter to McLaughlin. *Id.*

Although (b)(7)(C) did not recall the specific complaints, she recalled receiving documents from (b)(7)(C) that she forwarded to (b)(7)(C) communicating to him that she was displeased that he had not closed the 2002 Metromedia investigation or had her removed from NRSI as the staff person working on the investigation. (b)(7)(C) Testimony Tr. at pgs. 48-50, 78. When she forwarded McLaughlin Complaint No. 8 to (b)(7)(C) (b)(7)(C) attached a note requesting that (b)(7)(C) "take my name off NRSI as contact for this matter." Exhibit 57, at pg. 1.

On the cover page of McLaughlin Complaint No. 8[25], McLaughlin stated that he had attached "a complete set of my correspondence to Mark Hauf., CEO of [Metromedia], along with supporting documentation." Exhibit 57, at pg. 3. The attached materials consisted of a four page letter, dated October 16, 2006, to Hauf in which McLaughlin complained that his demand for accounting workpapers had not been met and restated many of the issues raised in his earlier complaints. *Id.* at pgs. 4-7. McLaughlin also questioned Metromedia's decision to file for bankruptcy, claiming that it was for the purpose of "avoiding a shareholder vote to approve the asset sale." *Id.* at pg. 4. McLaughlin attached to his submission several news articles about unanswered questions surrounding Metromedia transactions and corruption in Georgia and the former Soviet Union. *Id.* at pgs. 8-16.

In response to (b)(7)(C) requests that (b)(7)(C) remove her name from NRSI as the staff attorney responsible for the Metromedia investigation, on December 11, 2006, (b)(7)(C) requested that OIEA remove her as the contact person for Metromedia complaints. (b)(7)(C) Testimony Tr. at pg. 52; Exhibit 61. However, (b)(7)(C) request to the OIEA to "remove (b)(7)(C) name as contact person with respect to Metromedia International" would have had no effect on the information in the NRSI

[25] Documents produced to the OIG did not include the text of McLaughlin Complaint Nos. 7 and 9.

system, which in January 2007, appeared still to have had the 2002 Metromedia investigation listed as an active investigation with (b)(7)(C) as the staff attorney to whom the matter was assigned.

Because (b)(7)(C) was still listed in NRSI as the staff attorney on the Metromedia investigation, on January 4, 2007, (b)(7)(C) received correspondence related to Metromedia from (b)(7)(C) in the Division of Corporation Finance. Exhibit 62. Metromedia had come to (b)(7)(C) attention because the company was delinquent in their filings but had "just filed [its] 2004 10-K."[26] *Id.* (b)(7)(C) wanted to know if the investigation was "slated for closure," since the investigation had been opened in 2002 and "it [didn't] look like anything ha[d] happened with it." *Id.*

(b)(7)(C) responded to (b)(7)(C) (with a copy to (b)(7)(C) that she had not "been in the group that handled this matter for about three years," adding, "When I left (b)(7)(C) group, my understanding was that this matter was slated for closing." *Id.* (b)(7)(C) then responded, on January 9, 2007, to (b)(7)(C) and (b)(7)(C) that Metromedia was in the closing queue, stating, (b)(7)(C) (b)(7)(C) Closing memo for this case has been drafted and has been forwarded to (b)(7)(C) (b)(7)(C) [sic]." *Id.* It is unclear upon what basis (b)(7)(C) stated that the closing memorandum had been sent to (b)(7)(C) as the OIG investigation found no evidence that proper closing documentation had ever been prepared or sent to anyone. Moreover, if (b)(7)(C) had the impression that (b)(7)(C) memorandum had been sent to (b)(7)(C) in February 2004, he would have been acknowledging when he sent the e-mail to (b)(7)(C) and (b)(7)(C) in January 2007, that the closing memorandum had been in the closing queue for almost three years.

Both (b)(7)(C) and (b)(7)(C) were focused on getting (b)(7)(C) to remove their names from the NRSI system and not on making certain that someone was investigating McLaughlin's complaints. They both expressed frustration that (b)(7)(C) had not closed the Metromedia investigation and that their names continued to appear in the NRSI system as attorneys responsible for the Metromedia investigation years after they had left (b)(7)(C) group. (b)(7)(C) Testimony Tr. at pgs. 57, 63. (b)(7)(C) stated that "it look[ed] like" (b)(7)(C) "[couldn't] even get simple things done." *Id.* at pg. 63. To (b)(7)(C) "the bottom line is, why wasn't it closed? You see this matter on your sheets. You know it's not closed. You follow up on it. You know, you do something. So, three and a half years later, nothing has been done." *Id.* at pg. 65.

The OIG investigation found that McLaughlin Complaint Nos. 7, 8, and 9 were not reviewed or analyzed by anyone. Conte Testimony Tr. at pg. 11.

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[26] (b)(7)(C) stated that she thought the Division of Corporation Finance should have contacted Enforcement staff in 2007 and included them in discussions with Metromedia and that the "communication could have been better." (b)(7)(C) Testimony Tr. at pgs. 154-155. However, the Division of Corporation Finance appeared to have made some effort to contact Enforcement and was told that the investigation was slated for closure. Exhibit 62.

E. Failure to Update NRSI Database Affected Ability to Effectively Investigate Complaints

This was not the first instance when (b)(7)(C) referred a complaint to the incorrect staff person because the NRSI database had not been updated to show that an investigation was no longer active or that staff members had left the group assigned to the investigation. (b)(7)(C) Testimony Tr. at pgs. 32-33. According to (b)(7)(C) he "very often" found incorrect information in the NRSI database, which could lead to complaints not being reviewed or pursued and wasted time for the referring staff. *Id.* (b)(7)(C) described his experiences with NRSI, in the following testimony:

> Q. And have you ever attempted to contact someone listed as a contact in NRSI and learned that the information in NRSI was wrong or outdated?
>
> A. That happens very often; and often we will find like it was in this case. An investigation is left open but nobody is really looking into it anymore. So, we're sending information to people who don't necessarily want to see it but should see it.
>
> Q. How does that affect your ability to handle these complaints?
>
> A. Well, I think it affects the effectiveness of what we do. If we're not sending the information to the people we should send it to that [sic] might take a look at it then we're probably wasting our time.

Id.

The OIG found that if staff changed on an investigation, the assistant director could request that an Enforcement case management specialist enter the change into the CATS system, which fed case information to NRSI. McKown Testimony Tr. at pg. 18. However, there is no evidence such a request was made in this case.

F. SEC's Handling of McLaughlin Complaint Nos. 10-16

In 2007, McLaughlin continued to submit complaints to OIEA. In August and September 2007, McLaughlin sent OIEA at least eight complaints ("McLaughlin Complaint Nos. 10-17") and inquired about the status of his prior complaints. Exhibit 63; Exhibit 64; Exhibit 65; Exhibit 66; Exhibit 67; Exhibit 68; Exhibit 69; Exhibit 70; Exhibit 71.

OIEA records reflected that (b)(7)(C) did not forward McLaughlin Complaint Nos. 11-15 until after September 25, 2007 when, as discussed below, Enforcement requested information related to McLaughlin's complaints. (b)(7)(C) did not recall why there was a delay in referring these complaints, but stated that he handles "thousands of contacts every year" and could not "remember the specific circumstances surrounding these particular referrals."[27] Exhibit 72. After September 25, 2007, (b)(7)(C) forwarded six of the August-September 2007 complaints to (b)(7)(C) (McLaughlin Complaint Nos. 10-15). *Id.*

IV. Enforcement Finally Began to Examine McLaughlin's Complaints After He Contacted Congress and the Chairman's Office, But the Investigation Began Too Late for the SEC to Stop the Sale of Metromedia's Assets

While the failure to formally close the earlier unrelated Enforcement investigation of Metromedia or to update the NRSI system contributed to the inaction on McLaughlin's complaints, the primary reason that McLaughlin's complaints were ignored appeared to be the failure of the Assistant Director and the staff who received the complaints to review them or take any action to ensure that someone was taking responsibility for handling the complaints.

McLaughlin's years of complaints may have remained unexamined had McLaughlin not persisted and sent a complaint ("McLaughlin Complaint No. 18") about the SEC's failure to investigate to Peter Uhlmann ("Uhlmann") (then Chief of Staff to SEC Chairman Cox) and copied a Congressional staffer, (b)(7)(C) and others. Exhibit 73. McLaughlin stated that he had been introduced to Uhlmann "by a member of Senator Sam Brownback's staff." McLaughlin Testimony Tr. at pg. 17.

McLaughlin Complaint No. 18 stated that McLaughlin "assumed . . . that [the SEC] investigators were at work" because (b)(7)(C) had sent a letter to him "early in 2006 saying that [the SEC] . . . [was] taking my allegations about Metromedia's accounting failures and lack of fiduciary care 'very seriously.'" Exhibit 73, at pgs. 8-9. However, McLaughlin continued, "I still have not received a subpoena for the documents I have uncovered over the past four years in my legal challenge and efforts to get answers for all of Metromedia's shareholders . . . ." *Id.* at pg. 9. He went on to ask the SEC to investigate before all of Metromedia's assets were sold, stating: "My point to you is that it isn't too late to stop the sale of Metromedia and do the full audit and investigation. . . . [T]he Titanic hasn't gone down yet and the damages can still be repaired." *Id.* at pgs. 9-10.

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[27] (b)(7)(C) stated that OIEA now has a policy "that allegations of wrongdoing must be referred within twenty-four hours of receipt." Exhibit 72. This policy was not in place in 2007. *Id.* In 2007, OIEA handed correspondence alleging wrongdoing "in due course along with all of the many other pieces of correspondence that [it] received." *Id.*

As discussed in greater detail in Section V.D., by the time the SEC began investigating McLaughlin's complaints in late 2007, it appeared to Enforcement and Division of Corporation Finance staff that it was too late for the SEC to stop the sale of Metromedia's assets. Metromedia had been sold in a merger in August 2007 and had terminated its registration with the Commission in early September 2007. *See* Exhibit 74 (stating that "On August 22, 2007, the acquisition of the Company by Parent was completed"); Exhibit 75. (b)(7)(C) (b)(7)(C) (b)(7)(C) (b)(7)(C) in the SEC's Division of Corporation Finance, stated that she does not believe the SEC would have had jurisdiction to stop a sale of Metromedia's assets after Metromedia terminated its registration with the SEC. (b)(7)(C) (b)(7)(C) Interview Notes (b)(7)(C) Interview Notes"), January 13, 2010, at Exhibit 18.

A. Head Enforcement Personnel Learned that McLaughlin Complaints Had Never Been Reviewed, Analyzed, or Investigated

McLaughlin's e-mail to Uhlmann began a scramble within Enforcement to learn what had happened to McLaughlin's complaints. Ultimately, head Enforcement personnel learned that none of McLaughlin's complaints had been reviewed, analyzed, or investigated. Conte Testimony Tr. at pg. 15. Uhlmann e-mailed McLaughlin's complaint to (b)(7)(C) who served as Counsel to former Chairman Cox. Exhibit 73. (b)(7)(C) then forwarded the e-mail to Walter Ricciardi ("Ricciardi"), then Deputy Director of the Division of Enforcement. *Id.* Ricciardi forwarded the e-mail to (b)(7)(C) and Mark Schonfeld who worked in the Enforcement Division and asked if "someone [was] working on Metromedia." *Id.* at pg. 6. (b)(7)(C) responded that "NRSI show[ed] (b)(7)(C) in the Home Office, with an investigation opened in 2003." *Id.* at pg. 5. (b)(7)(C) copied (b)(7)(C) on the e-mail and asked for "a brief update on status" of the matter. *Id.* On September 24, 2007, (b)(7)(C) responded that the Metromedia investigation was supposed to have been closed years before:

> Metromedia is a very old FCPA investigation that went nowhere. The closing memo was drafted at least 2 years ago and (to my knowledge) has been in the "closing" queue with (b)(7)(C) office since that time. (As far as I am concerned, the matter has been closed for sometime.) Please contact (b)(7)(C) or (b)(7)(C) for more information.

Id. at pgs. 4-5.[28]

Ricciardi then forwarded the e-mail chain to Enforcement Chief Counsel McKown, who responded to Ricciardi and added (b)(7)(C) (b)(7)(C) and (b)(7)(C) as

[28] The memorandum referred to in (b)(7)(C) September 24, 2007 e-mail was actually prepared in February 2004, three-and-a-half years before. Exhibit 48.

e-mail recipients. *Id.* at pgs. 3-4. McKown wrote that the Chief Counsel's Office had no record of the Metromedia investigation ever being submitted for closing, stating: "We have no record of receiving this closing. If this case should be closed please send us the closing memo." *Id.* at pg. 3.

(b)(7)(C) responded that his "notes indicate this closing memo was processed long ago. Our investigation did not, however, address concerns raised by Mr. McLaughlin." *Id.* at pg. 2. In response, McKown restated that the Chief Counsel's Office had not received the closing documents and again requested, "If [the case] should be closed send us the appropriate closing documentation and we will process it." *Id.* at pg. 2.

(b)(7)(C) also sent an e-mail to (b)(7)(C) and (b)(7)(C) asking them if "this required documentation had been prepared at the time the closing memo was drafted." Exhibit 76. (b)(7)(C) responded, "My (vague) recollection is that a closing memorandum was prepared and submitted to (b)(7)(C) I could be wrong about that, and I haven't kept any records." *Id.*

B. The 2002 Metromedia FCPA Investigation Had Not Been Properly Closed

In response to McKown's request for closing documentation, (b)(7)(C) sent McKown the closing memorandum that (b)(7)(C) had drafted in 2004. Exhibit 77. McKown sent an e-mail to (b)(7)(C) in response and added (in addition to Ricciardi, (b)(7)(C) and (b)(7)(C) Associate Director Conte and Staff Attorneys (b)(7)(C) and (b)(7)(C) to the e-mail chain. *Id.* McKown stated in the e-mail that the memorandum that (b)(7)(C) had sent her that morning (b)(7)(C) 2004 memorandum) was insufficient to close an investigation:

> [T]he attached memo (b)(7)(C) sent me this morning is not a closing memo that would have been processed, rather it is an informal memo circulated amongst the investigative staff. I assume what people are looking for is the official closing documentation which would have had signatures showing that staff had signed off on the decision and making all the appropriate representations regarding FOIA and the disposition of the documents.

Id.

(b)(7)(C) had been an assistant director in Enforcement since (b)(7)(C) Exhibit 78. However, according to an e-mail exchange between Conte and McKown, after (b)(7)(C) years as an assistant director, (b)(7)(C) did not appear to know the procedures for closing an investigation. Exhibit 79. Conte described (b)(7)(C) apparent

understanding of what a closing memorandum was as "sad." *Id.* In the following testimony, Conte explained his reaction to (b)(7)(C) submission:

> All I can say is that if (b)(7)(C) believed that the memo that he forwarded on to me in this time period was a closing memo that was sufficient to actually close a matter in the system, then he was mistaken about that.

Conte Testimony Tr. at pg. 15.

In an e-mail exchange with Conte, McKown blamed (b)(7)(C) apparent lack of understanding about the closing process on his not "coming up through the ranks" as a (b)(7)(C) Exhibit 79. (b)(7)(C) closing memorandum submission also made McKown question his supervision on other matters, stating, "It also makes me wonder about how carefully he has looked at the closings he has signed." *Id.*

C. Assistant Director Claimed Not to Have Received McLaughlin's Complaints

As Enforcement attempted to find out what happened to McLaughlin's complaints, (b)(7)(C) either did not recall receiving the complaints from (b)(7)(C) or attempted to shift the blame to her for the ignored complaints. For example, in a September 25, 2007 e-mail, (b)(7)(C) wrote Conte that he was "not aware of the complaint . . . reference[d]" in McLaughlin's e-mail to Uhlmann or a letter McLaughlin received from OIEA. Exhibit 73. However, (b)(7)(C) should have been aware of the complaint and the OIEA response letter because the OIG found that those documents were part of the March 16, 2006 referral (McLaughlin Complaint No. 6) that (b)(7)(C) had forwarded to (b)(7)(C) in 2006. Exhibit 73; Exhibit 56; Exhibit 44.

In addition to writing to senior Enforcement personnel that he was unaware of an earlier McLaughlin complaint that had been sent to him, (b)(7)(C) sent an e-mail to Conte on September 25, 2007, stating that (b)(7)(C) had received McLaughlin's complaints and that he had not received them:

> (b)(7)(C) advises (by phone) that he contemporaneously provide all information/correspondence from McLaughlan [sic] to (b)(7)(C) [sic], who was one of the

> staff attorneys on this matter, now works for Joan [McKown].[29] We saw/received none until today.

Exhibit 80.

Later that afternoon, (b)(7)(C) sent a second e-mail to Conte attaching (b)(7)(C) March 16, 2006 complaint and stating, "This apparently went to (b)(7)(C) [sic]." Exhibit 81. What (b)(7)(C) omitted was that after (b)(7)(C) received the complaint, she forwarded it to him by interoffice mail. Exhibit 56.

(b)(7)(C) testified that she "would strenuously disagree" with (b)(7)(C) representations that he had not received McLaughlin complaints. (b)(7)(C) Testimony Tr. at pg. 63. (b)(7)(C) testified that she had forwarded to (b)(7)(C) all of the complaints that she received related to Metromedia:

> I would disagree that he (b)(7)(C) saw none of that. I forwarded everything to him. I do recall speaking to him at some point. I e-mailed him. . . . He had his facts incorrect. . . . I would say that this letter [the March 16, 2006 referral], I sent to him. . . . I forwarded it to him in interoffice mail. I specifically remember doing that, and I also sent him an e-mail telling him that I was forwarding it to him. So his statement to Chris Conte is correct but incomplete. It did come to me, but it was then forwarded by me to him. He also misspelled my name.

Id. at pgs. 63, 66-67.

Months after he first told Conte that he had not received any McLaughlin complaints, (b)(7)(C) continued to imply to Conte that he had not seen McLaughlin's complaints. (b)(7)(C) wrote in a March 31, 2008 e-mail to Conte that he had "nothing on the [Metromedia] case between 2/12/2004 and 9/25/2007." Exhibit 82. To the contrary, (b)(7)(C) testified that she sent (b)(7)(C) all of the complaints that she received during that time period:

> The information that (b)(7)(C) is giving to Christopher Conte in [the March 31, 2008 e-mail] is incorrect. He absolutely was given some information between . . . February 12, 2004 and September 25, 2007. I sent him an e-mail. I know I talked to him at least once. There were other e-mails. . . . I would've forwarded [other

[29] (b)(7)(C) was no longer working in the Office of Chief Counsel and had returned to being an investigative attorney in (b)(7)(C) (b)(7)(C) Testimony Tr. at pg. 68.

> complaints I received]. . . . I would've done more than just forwarded them. I would've also telephoned him to let him know to look for them, but I definitely forwarded all of them.

(b)(7)(C) Testimony Tr. at pgs. 78-79. The OIG investigation revealed evidence that in addition to sending McLaughlin Complaint No. 6 to (b)(7)(C) (b)(7)(C) sent him McLaughlin Complaint No. 8. Exhibit 57, at pg. 1.

(b)(7)(C) poor relationship with his staff may have indirectly contributed to the mishandling of McLaughlin's complaints. Both (b)(7)(C) and (b)(7)(C) appeared to have changed positions at the SEC, at least in part, to stop working for (b)(7)(C) After (b)(7)(C) and (b)(7)(C) left his group, they both refused to do additional work for him and appear to have avoided extraneous communication with him. Exhibit 83; Exhibit 84; (b)(7)(C) Testimony Tr. at pg. 54.

(b)(7)(C) stated that she "didn't have a great relationship with (b)(7)(C)," and (b)(7)(C) and (b)(7)(C) appeared to have had a hostile relationship. (b)(7)(C) Testimony Tr. at pg. 54; (b)(7)(C) Testimony Tr. at pg. 28. (b)(7)(C) stated that (b)(7)(C) "chased [him] out of the Division [of Enforcement]. (b)(7)(C) said: You've got to go." (b)(7)(C) Testimony Tr. at pg. 28. (b)(7)(C) believed that there was a problem with closing cases for which he was responsible for because of personal animus, stating: "I can only conjecture that the problem [with closing cases] involved my group because I was not liked." *Id.* at pg. 36.

D. The Decision Was Made to Leave Open the Unrelated 2002 Metromedia Investigation

In late September 2007, (b)(7)(C) expressed that his group would take care of the documentation necessary to close the Metromedia investigation despite that McLaughlin's complaints had never been reviewed, analyzed, or investigated. Exhibit 85; Exhibit 86. Associate Director Conte had a different view, however. Conte determined that the Metromedia investigation should not be closed until Enforcement determined whether McLaughlin's complaints had "any potential merit," even though he acknowledged that the FCPA investigation was "unrelated" to McLaughlin's complaints. Exhibit 79.

The decision to investigate McLaughlin's complaints under the 2002 FCPA investigation number veiled the fact that McLaughlin's complaints, which had been coming into the SEC since early 2005, had not been investigated. Conte, however, testified that his decision to have the McLaughlin complaints investigated under the 2002 FCPA investigation number, rather than under a new matter number, was based entirely on practical considerations. Conte Testimony Tr. at pgs. 21-22. Conte explained in the following testimony:

> [W]hile it had been originally opened as an FCPA matter, for my purposes, there really was no distinction that I could sort of think of about, well, we'll close the FCPA and re-open a new matter entitled, 'Metromedia.' . . . So to me, at the time, I never really gave any consideration to, okay, let's close the FCPA piece and then re-open it in the name of something else since . . . it just would have another number, but it would still have the same name as far as I was concerned. And that would be sufficient to, you know, identify us as people to bring concerns to.

Id.

Conte's decision to add the investigation of McLaughlin's complaints to the 2002 Metromedia investigation appeared to have fallen within Enforcement protocol. McKown testified that Enforcement did not have a procedure in place for determining whether an investigation about a new issue should be added to an existing investigation involving the same company or whether a new investigation should be opened. McKown Testimony Tr. at pg. 19. McKown stated that how a new issue is handled is a "judgment call" that is usually made by the assistant director. *Id.* at pgs. 18-20. McKown further explained as follows:

> There's a judgment that's made as to whether it's similar. If it's a similar allegation or complaint, it could be just rolled into the current investigation, the open investigation. . . . Sometimes it's more efficient to open a new investigation. Sometimes it's so related that you just merge it into — you just take it on as part of the open investigation.

Id. at pgs. 19-20.

However, although Enforcement protocol did not require the opening of a new investigation number, some of the confusion that had occurred (and continued to occur) may have been avoided if the 2002 Metromedia investigation had been officially closed and a new investigation had been opened to investigate McLaughlin's complaints. (b)(7)(C) stated that adding a new issue to an existing investigation about a particular company "wouldn't be crazy or inappropriate, but if a matter's closed, you think it's closed, then it should be closed and if there's a new referral, then ideally you'd open something else up, but, again, as a staff attorney, that's my way of doing things." (b)(7)(C) Testimony Tr. at pgs. 40-41, 73. (b)(7)(C) thought that technically the new Metromedia complaints could have been investigated under the old case number, but noted that, in this case, a new matter number needed to be opened because "the reality is that Metromedia was finished for us." (b)(7)(C) Testimony Tr. at pg. 41.

V. Enforcement Finally Began an Examination of McLaughlin's Complaints

After learning that Conte would not close the Metromedia investigation without the allegations in McLaughlin's complaints being examined, on September 25, 2007 (b)(7)(C) sent an e-mail to (b)(7)(C) one of the Branch Chiefs under his supervision, stating that no one had previously examined the McLaughlin complaints and Conte wanted the complaints "look[ed] into":

> Possible McLaughlin has some basis to his complaint.
> Chris [Conte] is interested in having someone look into it.
> Appears no one has. Let's discuss tomorrow.

Exhibit 87. The OIG found (b)(7)(C) should have been aware that no one had looked at McLaughlin complaints since (b)(7)(C) had received McLaughlin complaints and did not appear to have reviewed them or assigned anyone to do so.

On September 25, 2007, (b)(7)(C) contacted (b)(7)(C) regarding McLaughlin's complaints, and (b)(7)(C) sent to (b)(7)(C) McLaughlin Complaint Nos. 10-15 and several newly-received complaints related to Metromedia. Exhibit 80; *see, e.g.*, Exhibit 63, at pg. 2 (showing McLaughlin Complaint No. 10 referred to (b)(7)(C) on 9/25/2007).

A. (b)(7)(C) and (b)(7)(C) Were Briefly Assigned to the Investigation

The discussion between (b)(7)(C) and (b)(7)(C) led to (b)(7)(C) and Enforcement Staff Attorney (b)(7)(C) being assigned to examine McLaughlin's complaints in October and November 2007. (b)(7)(C) Interview Notes (b)(7)(C) January 8, 2010 Interview Notes"), January 8, 2010, at Exhibit 16. (b)(7)(C) had joined the SEC in (b)(7)(C) and had been a staff attorney for (b)(7)(C) prior to being assigned the Metromedia investigation. Exhibit 88.

When (b)(7)(C) was assigned to review McLaughlin's complaints, he appeared to have believed the Metromedia investigation would be quickly closed. A Branch Chief that later took over the Metromedia investigation recalled that (b)(7)(C) told her, "Metromedia was a case that needed to be closed so it wasn't a case that there was going to be a full-blown investigation out of, was my understanding." Testimony Transcript of (b)(7)(C) Testimony Tr.") September 24, 2009, at Exhibit 2, at pg. 11. (b)(7)(C) stated that he did not recall stating that the Metromedia investigation needed to be closed, but he did recall having the impression that the conduct alleged was "old conduct from the early 2000s." (b)(7)(C) Interview Notes ((b)(7)(C) January 26, 2010 Interview Notes"), January 26, 2010, at Exhibit 17.

Although the attorneys tasked with examining McLaughlin's complaints may have initially believed that the Metromedia investigation would be quickly concluded, the OIG found that an appropriate review of McLaughlin's complaints was performed, at least partially in response to attention from Congress. Beginning in the fall of 2007, the

SEC received numerous letters from Members of Congress inquiring about the status of the Metromedia investigation.[30]

After (b)(7)(C) and (b)(7)(C) were assigned to the Metromedia investigation, (b)(7)(C) forwarded approximately five additional McLaughlin complaints to (b)(7)(C) in October and November 2007. Exhibit 99; Exhibit 100; Exhibit 101; Exhibit 102; Exhibit 103.[31]

The primary work that (b)(7)(C) and (b)(7)(C) performed on the case consisted of background internet research on Metromedia and an October 6, 2007 telephone interview

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[30] For example, on October 9, 2007, Senator Gordon H. Smith of Oregon sent the SEC a letter, requesting that the SEC look into McLaughlin's request for the SEC "to stop the sale of the remaining assets of Metromedia" and to send the SEC's findings to Smith, which was referred to (b)(7)(C) Exhibit 89, at pgs. 3, 8. On the cover sheet to (b)(7)(C) (b)(7)(C) of Enforcement wrote, (b)(7)(C) – HO = I know you are closing the FCPA investigation, but please look at the constituent's allegations. Pls also send response re 'we follow up on all leads, but can neither confirm nor deny.'" *Id.*

On November 7, 2007, Senator Charles Grassley of Iowa sent a letter to the SEC enclosing a letter from McLaughlin requesting that the SEC stop the sale of the remaining assets of Metromedia. Exhibit 90, at pgs. 5-7. Grassley requested "any assistance [the SEC] could provide pertaining to this matter." *Id.* at pg. 5. (b)(7)(C) referred the Grassley letter to (b)(7)(C) on November 15, 2007. *Id.* at pg. 1. Also in November 2007, the SEC received a letter from Senator Tom Harkin of Iowa, asking the SEC to review the issues raised by McLaughlin and to send a response to Harkin's office. Exhibit 91, at pgs. 3-8.

In early December 2007, Senator Grassley's office called the SEC to find out the status of the SEC's investigation of Metromedia, which was just getting underway. Exhibit 92. In addition, on February 1, 2008, Senator Christopher Dodd sent a letter to Chairman Cox, attaching a letter from McLaughlin and stating that McLaughlin "indicated that he brought this concern to the attention of the SEC at least twenty months ago." Exhibit 93, at pg. 4. Then, on February 28, 2008, Representative Tom Latham of Iowa sent a letter to the SEC stating that "a group of Iowans" who invested money in Metromedia believed "there was serious financial impropriety at Metromedia." Exhibit 94, at pg. 3. Latham attached a letter from McLaughlin and requested that the SEC provide "an update on this matter." *Id.* at pgs. 3-5.

On March 20, 2008, Representative Leonard Boswell of Iowa requested that the SEC review McLaughlin's allegations about Metromedia and send Boswell "answers to the questions he has raised." Exhibit 95, at pg. 3. Similarly, on November 18, 2008, Representative Bruce Braley of Iowa asked the SEC to review a complaint from one of McLaughlin's clients about Metromedia and the SEC's inaction and to "provide answers." Exhibit 96, at pg. 3.

Finally, on March 3, 2009, the United States House of Representatives Committee on Financial Services sent Chairman Schapiro a letter stating that they it had received documents from McLaughlin "alleging violations of the securities laws regarding Metromedia International Group Incorporated" and that they "hope[d] your staff w[ould] thoroughly review these documents." Exhibit 97.

In November 2008, Senator Grassley requested that the OIG "take whatever action it deem[ed] necessary to examine Mr. McLaughlin's allegations including whether or not the SEC Division of Enforcement properly handled the allegations regarding Metromedia International Group." Exhibit 98. On November 16, 2008, the OIG opened an investigation, which culminated in this Report of Investigation.

[31] Several McLaughlin complaints received by the SEC have not been discussed in this report because they were considered by OIEA to be repetitive and were not referred to Enforcement.

of McLaughlin. Testimony Transcript of (b)(7)(C) Testimony Tr.") September 25, 2009 and September 29, 2009, at Exhibit 3, at pgs. 11-12; (b)(7)(C) January 8, 2010 and January 26, 2010 Interview Notes.

B. Staff Changes and Failure to Update NRSI Affected Referral of Complaints

By late November 2007, the staff on the Metromedia investigation was replaced once again. (b)(7)(C) was reassigned to an urgent matter, and (b)(7)(C) (b)(7)(C) another new Enforcement staff attorney who had (b)(7)(C) (b)(7)(C) took (b)(7)(C) place on the Metromedia investigation under the supervision of Branch Chief (b)(7)(C) Testimony Tr. at pg. 10; (b)(7)(C) Testimony Tr. at pgs. 9-11; Exhibit 104. (b)(7)(C) was a (b)(7)(C) (b)(7)(C) Testimony Tr. at pgs. 7-8.

As discussed previously, staff changes on the Metromedia investigation had not been updated in NRSI and (b)(7)(C) of the OIEA was provided with ad hoc instructions regarding to whom to send Metromedia complaints. For example, (b)(7)(C) told (b)(7)(C) to stop sending Metromedia complaints to (b)(7)(C) then (b)(7)(C) appeared to have instructed (b)(7)(C) to send the complaints to (b)(7)(C) then (b)(7)(C) told (b)(7)(C) to send the complaints to (b)(7)(C) instead of to her. Exhibit 61; Exhibit 104. (b)(7)(C) found this high level of turnover on one investigation to be unusual, and that the failure to update NRSI was detrimental to the referral process. (b)(7)(C) Testimony Tr. at pgs. 32-33, 59-60.

(b)(7)(C) was not the only one whose attempts to refer complaints were frustrated by the failure to update the Metromedia information in the NRSI database. On May 30, 2007, Enforcement attorney (b)(7)(C) e-mailed (b)(7)(C) because his group was looking at Metromedia "for a possible 12(j) proceeding." Exhibit 105, at pg. 2.[32] (b)(7)(C) stated he was contacting (b)(7)(C) even though "I believe you are no longer in Enforcement," because (b)(7)(C) was listed in the computer system. *Id.* (b)(7)(C) replied to (b)(7)(C) that he should check with (b)(7)(C) or (b)(7)(C) *Id.* at pg. 1.

On September 27, 2007, (b)(7)(C) of the Internet Enforcement Group sent (b)(7)(C) a complaint from McLaughlin because the NRSI database still showed the 2002 Metromedia investigation as open with (b)(7)(C) as the staff attorney. Exhibit 106. (b)(7)(C) responded that she had not been on the matter "for years" and copied (b)(7)(C) *Id.* (b)(7)(C) replied that the Metromedia investigation "looked a bit old." *Id.*

[32] Under Section 12(j) of the Securities and Exchange Act of 1934, the Commission is authorized to deny, suspend or revoke the registration of a security if it finds, after notice and opportunity for hearing, that the issuer has failed to comply with any provision of the Act, or the rules and regulations thereunder.

On October 4, 2007, (b)(7)(C) forwarded a Metromedia-related complaint to (b)(7)(C) and asked him to "pass this along to whomever took your place on the Metromedia matter." Exhibit 107. (b)(7)(C) forwarded the e-mail to (b)(7)(C) and sent a copy to (b)(7)(C) *Id.* Then on October 5, 2007, (b)(7)(C) forwarded (b)(7)(C) another Metromedia complaint received by Internet Enforcement, and (b)(7)(C) responded, "(b)(7)(C) (b)(7)(C) in my group is investigating this one." Exhibit 108. (b)(7)(C) who had directed Metromedia-related complaints to at least four different people, asked (b)(7)(C) to change the contact information in NRSI:

> (b)(7)(C) Would somebody kindly change the contact information on NSRI for this matter, so we can avoid any future mix-ups?

Id. It did not appear that the NRSI contact information was updated in response to the request.

C. In Late November 2007, the Enforcement Accounting Group Began to Analyze McLaughlin's Complaints as Part of the Enforcement Investigation

As discussed above in Section II.D., McLaughlin's 2005 complaints may have continued to sit without review in the Enforcement Accounting Group indefinitely had Associate Chief Accountant (b)(7)(C) not been assigned to assist the Enforcement attorneys with their Metromedia investigation in late November 2007. (b)(7)(C) Testimony Tr. at pg. 27. (b)(7)(C) recalled that when Markel assigned her to assist the Enforcement attorneys with the Metromedia investigation, she "realized that Metromedia was also on the [Enforcement Accounting Group's] referral list"[33] and had the Metromedia files in (b)(7)(C) possession provided to her. *Id.* at pg. 27; Exhibit 109. (b)(7)(C) recalled, "This is the first time, in my mind, that I was being assigned to . . . an investigation in a while, and in my mind I was being assigned to an investigation involving Metromedia, and that the allegation was that there was something like $100 million missing." (b)(7)(C) Testimony Tr. at pg. 28.

[33] When (b)(7)(C) was assigned to assist with the investigation, Staff Attorney (b)(7)(C) was not initially aware that the Enforcement Accounting Group had received McLaughlin's complaints for review in 2005. (b)(7)(C) did not learn that (b)(7)(C) had been the supervisor responsible for the McLaughlin referrals until approximately February of 2008 when she reviewed e-mails from 2005. (b)(7)(C) Testimony Tr. at pg. 21. When (b)(7)(C) and (b)(7)(C) discussed the 2005 McLaughlin referrals, (b)(7)(C) learned that (b)(7)(C) had received copies of McLaughlin's complaints, but the Enforcement Accounting group had done "no work" on the referrals. *Id.* at pg. 22.

D. Examination of McLaughlin's Complaints Began Too Late for the SEC to Take Meaningful Action

In late 2007, Enforcement attorneys finally undertook an appropriate analysis of McLaughlin's allegations. However, by the time they began investigating, it appeared to the Enforcement attorneys that it was too late for the SEC to take meaningful action.

Many of McLaughlin's complaints were focused on the SEC stopping the sale of Metromedia's remaining assets pending an investigation. *See, e.g.*, McLaughlin Complaint Nos. 8, 11, 18, 23; Conte Testimony Tr. at pg. 27. In addition, several of McLaughlin's clients submitted complaints in 2007, asserting that the SEC had failed to investigate and requesting that the SEC halt the sale of Metromedia's remaining assets. *See collectively at* Exhibit 110.

However, as discussed above in Section IV., by the time the SEC began to examine McLaughlin's allegations, Metromedia had already been sold in a merger. Exhibit 74. In September 2007, Metromedia had terminated its registration with the Commission and it appeared to Enforcement and Division of Corporation Finance personnel that the SEC could not have stopped a sale of Metromedia's assets. Exhibit 75; (b)(7)(C) Interview Notes. As (b)(7)(C) stated, "the sale became complete or final in August. So I didn't feel that [McLaughlin's request for the SEC to stop the sale of Metromedia] was a complaint that merited a lot of investigation because it was over." (b)(7)(C Testimony Tr. at pg. 27.

Associate Director Conte, who was supervising[34] the Metromedia investigation, stated that when he initially began looking at Metromedia, he understood that "McLaughlin was talking about the [SEC] need[ing] to stop the transaction" so he "evaluate[d] whether or not there was some need for an emergency action," and he learned that the sale of Metromedia had already occurred. Conte Testimony Tr. at pgs. 22, 27-28. Conte explained the reasons why Metromedia's new status as a private company weighed against allocating Commission resources to pursue an investigation:

> Q. [W]ould it be important to your investigation whether or not Metromedia was a private company or not?
>
> A. Yes.
>
> Q. Why?
>
> A. Sort of a couple of things. One, we would — if you have a public company, then you have a public

[34] From late September 2007, when the Chairman's Office brought McLaughlin's complaints to the attention of head personnel in Enforcement, Associate Director Conte "was ultimately supervising the consideration of whether or not there was anything that we could do in the Division to pursue, as an Enforcement matter, the complaints that Mr. McLaughlin had been raising over time." Conte Testimony Tr. at pg. 22.

> company to charge, ultimately, with potential violations. If you have a public company, it is a lot easier to obtain documents, obtain, I think, cooperation. And this one is also more complicated by the fact that the last financial statements this company actually issued were 2004, which they didn't issue until 2006, I believe. So they had not filed any financial statements in '05, '06, and '07. So and more particularly, this was a private company, but it had very little operations by the time we got around to looking at it in '07. It had sold most of its assets, you know. And again, its operations were primarily in the former Soviet Union, China, Georgia. And so there was a concern about the location of records, the ability to [receive] records. And that would be even more complicated by the fact that the company was private, at least in my estimation.

Conte Testimony Tr. at pg. 30.

E. Investigative Steps Taken By Enforcement to Analyze McLaughlin's Complaints

Despite that the Enforcement attorneys assigned to the investigation of McLaughlin's complaints recognized from the outset that Metromedia was no longer a public company registered with the Commission and that the alleged unlawful conduct occurred several years prior, they finally undertook an appropriate examination of McLaughlin's complaints at the end of 2007.

As part of their examination, the Enforcement attorneys reviewed and analyzed McLaughlin's complaints, Metromedia's filings, and documents produced by McLaughlin and his attorney, including Metromedia discovery materials from private litigation. *See, e.g.*, Exhibit 111; Exhibit 112 (McLaughlin stating, "I am beginning to produce confidential documents based on a waiver granted to me by Metromedia International Grou p, Inc."). (b)(7)(C) Testimony Tr. at pgs. 60-61. (b)(7)(C) and (b)(7)(C) viewed

(b)(5),(b)(7)(C)

35 (b)(5)

(b)(5)

company [Metromedia] and neither of those raised issues of securities fraud." (b)(7)(C) Testimony Tr. at pg. 70.

One of McLaughlin's allegations that appeared to fall within the statute of limitations involved Metromedia's sale of ZAO PeterStar, a company in which Metromedia held an interest. *Id.* McLaughlin had alleged that Metromedia sold ZAO PeterStar at too low a price and that the sale involved self-dealing because Metromedia executives received significant bonuses upon the completion of the sale. Exhibit 114, at pgs. 6-7. After reviewing Metromedia's filings and other documents, (b)(5)

(b)(5)

Likewise, after consulting with staff from the Division of Corporation Finance,

(b)(5) (b)(7)(C)

In addition to reviewing and analyzing documents, Enforcement attorneys contacted other law enforcement organizations that were familiar with McLaughlin's allegations against Metromedia. Exhibit 114, at pgs. 3-4. Enforcement attorneys spoke to staff at the Office of the United States Attorney for the Southern District of New York, the Office of the United States Attorney for the Southern District of Iowa, and the Office of the Attorney General for the State of Iowa (b)(5)

(b)(5)

F. The Enforcement Attorneys Determined the Metromedia Investigation Should Be Closed

In early April 2008, the Enforcement attorneys and accountants working on the Metromedia investigation met to discuss the investigation. Exhibit 117. At the meeting, Associate Director Conte stated that he believed that the Metromedia investigation should be closed. Exhibit 118; Conte Testimony Tr. at pg. 39. Conte expressed in testimony that his view that the investigation should be closed was primarily based (b)(5)

(b)(5)

(b)(5) Following the April meeting, (b)(7)(C) sent Conte an e-mail stating that he and the attorneys working on the investigation also believed that the matter should be closed. Exhibit 118.

(b)(7)(C) recalled that Conte's view was that although "there were apparently opportunities to have addressed this [conduct] before 2007[,] . . . we can't turn back the clock to bring us back to that time . . . and so we have to look at the case as it presents itself today and decide whether the investigation is worth pursuing where we sit here today." (b)(7)(C) Testimony Tr. at pg. 80. When the attorneys evaluated the conduct in 2008, there were "several" reasons they believed the Metromedia investigation should be closed. *Id.* at pg. 104. According to (b)(7)(C) the reasons for closing the investigation included a lack of evidence the company or any of the individuals committed fraud, the majority of the alleged conduct appeared to have occurred outside of the statute-of-limitations period, and Metromedia was no longer a public company registered with the Commission:

> The first [reason] is that there was no evidence indicating that Metromedia had committed fraud. . . . What we had, at most, was evidence of reporting violations or delinquent financials and those were done by a company that no longer existed in the form in which those violations might have occurred. The second issue or reason was that most of the allegations or complaints about Metromedia predated the statute of limitations period. And again, given that the company no longer existed, it didn't seem worth the investment of resources that it would take to bring an enforcement action solely to obtain injunctive relief against the company. We did not have evidence indicating that any of the individuals committed fraud or was individually responsible for the reporting violations or anything else of that nature.

Id.

(b)(7)(C) felt that developing evidence against individual executives would have required a "significant investment of [SEC] resources to obtain documents and to travel to eastern Europe and the former Soviet Union and Georgia . . . and none of it seemed like it would further our goal of protecting the investors, given that" the company was now privately held. *Id.* at pgs. 104-105. (b)(7)(C) felt similarly, stating, "We just didn't think it was a good use of Commission resources to pursue something as old as this." (b)(7)(C) Testimony Tr. at pg. 76.

G. The Metromedia Investigation Was Closed Over a Year After the Enforcement Attorneys Began the Closing Process

Following the April 2008 meeting at which the Metromedia investigation was discussed, the Enforcement attorneys began drafting a closing memorandum. However, the investigation was not closed in the spring of 2008, in part, because Associate Chief Accountant (b)(7)(C) expressed the view that she did not have enough information to support closing the investigation despite that the Enforcement Accounting Group had had

McLaughlin's complaints since 2005. (b)(7)(C) Testimony Tr. at pgs. 43-44; (b)(7)(C) Draft Referral Profile and Summary, dated May 16, 2008 (recommending further investigation); Conte Testimony Tr. at pgs. 60-61. [36]

The Enforcement attorneys continued to take investigative steps while waiting for a final analysis from the Enforcement Accounting Group. In May 2008, (b)(7)(C) (b)(7)(C) and (b)(7)(C) spoke to McLaughlin's accountant. Exhibit 118. They learned from the accountant that he had spent a limited time examining Metromedia's filings, had not been able to reach substantive conclusions, and had not prepared a report. *Id.*; (b)(7)(C) Testimony Tr. at pgs. 34, 85. In April and May 2008, (b)(7)(C) reviewed additional materials obtained from Metromedia's counsel. *Id.* at pgs. 126-127.

While the Enforcement attorneys appear to have done extensive work analyzing McLaughlin's complaints, there were additional investigative steps that the Enforcement attorneys could have taken. For example, the attorneys did not request from Metromedia's former auditors work papers that may have been in the United States. Conte Testimony Tr. at pgs. 47-48. In addition, the Enforcement attorneys did not take testimony from Metromedia's officers and relied instead on transcripts of depositions transcripts taken in civil litigation. *Id.* Conte testified that had Enforcement decided to move forward with the investigation, they would have sought workpapers and testimony, but he felt that the "resources and the circumstances, as they existed and as we understood them, didn't justify taking any further investigative steps." Conte Testimony Tr. at pgs. 47-50.

Beginning in no later than June 2008, the attorneys tried without success to obtain a final decision from the Enforcement Accounting Group about whether that group was comfortable with the Metromedia investigation being closed. *See, e.g.*, Exhibit 119; Exhibit 120; Exhibit 121; (b)(7)(C) Testimony Tr. at pgs. 68-69. (b)(7)(C) repeatedly followed up with Enforcement Chief Accountant Markel, but Markel still had not provided the Enforcement Accounting Group's final determination about the merits of an investigation of Metromedia by January 2, 2009, when Markel left the SEC to join a consulting firm. (b)(7)(C) Testimony Tr. at pgs. 52, 68-69, 81; Markel Testimony Tr. at pg. 14; Exhibit 122; Exhibit 123; Exhibit 121. Markel stated that she was waiting for (b)(7)(C) to provide her with a firm opinion of the case before making a final decision, but she did not believe she received one from (b)(7)(C) Markel Testimony Tr. at pgs. 69, 75.

[36] (b)(7)(C) testified that she felt that the Enforcement attorneys did not view McLaughlin's complaints as having merit and that within the first few months of 2008, they had made up their minds that the investigation should be closed. (b)(7)(C) Testimony Tr. at pg. 36. Some witnesses stated that they felt (b)(7)(C) reluctance to close the investigation was not tied to the merits and arose because "she felt somewhat responsible for not having pursued the case earlier" and because she was overly concerned about Congress's interest in the investigation. (b)(7)(C) Testimony Tr. at pg. 49; (b)(7)(C) Testimony Tr. at pgs. 72-73, 75.

[37] Although Markel stated she could not recall whether she ever came to a position on the merits of the case, (b)(7)(C) recalled that Markel "repeatedly expressed interest in closing the case when [she] met with [Markel]." Markel Testimony Tr. at pg. 108; (b)(7)(C) Testimony Tr. at pg. 73.

(b)(7)(C) recalled that by November 2008, she was no longer opposed to closing the Metromedia investigation. (b)(7)(C) Testimony Tr. at pgs. 95-96. (b)(7)(C) explained that she had "changed [her] mind" about pursuing an investigation due to "the financial debacle of the fall of 2008." *Id.* (b)(5)

(b)(7)(C)

(b)(7)(C) stated that he did not have any reservations about closing the investigation. (b)(7)(C) Testimony Tr. at pg. 89.

H. After Conducting an Independent Review, an Enforcement Deputy Director of Supported Closing the Investigation

By January 2009, the Enforcement attorneys had prepared several drafts of a closing memorandum for the Metromedia investigation. Conte Testimony Tr. at pg. 23. Conte brought the Metromedia matter to the attention of former Enforcement Deputy Director George Curtis ("Curtis") (who later became the Special Advisor to the Director of the Division of Enforcement) in order to have Curtis provide a second review of the issues McLaughlin had raised and to ascertain whether Curtis supported closing the investigation. *Id.* at pg. 23; Testimony Transcript of George Curtis ("Curtis Testimony Tr.") November 24, 2009, at Exhibit 10, at pg. 8-9.

Curtis, a former law firm partner with over thirty years of experience, independently reviewed McLaughlin's allegations and ultimately supported the staff's recommendation to close the investigation. Exhibit 114, at pg. 10. As part of his review, Curtis examined the central documents from the investigation – including McLaughlin's submissions and draft closing memoranda – and interviewed McLaughlin. *Id.* at pgs. 10-11. Curtis stated that he and Chief Counsel McKown interviewed McLaughlin "to make sure we had in mind all the points that he had raised." Curtis Testimony Tr. at pg. 50.

At the end of his review, Curtis supported the Enforcement staff's recommendation to close the investigation. Curtis testified that he supported closing the investigation because of the age of the conduct, Metromedia's non-public status, and the difficulty in obtaining evidence:

> I had not seen anything that changed or that really relieved, resolved my fundamental concern that this was very old conduct, that we were now dealing with a company that had gone private, and that many of the sources of information and evidence would be, to the extent it was still available, would be located in different parts of the world, some of which were not particularly amenable to our processes.

Curtis Testimony Tr. at pgs. 70-71.

McKown expressed a view similar to that of Curtis, stating that the age of the case was the primary reason she supported closing the investigation:

> Q. And did you have an opinion of the merits of continuing to investigate Metromedia?
>
> A. I was very concerned about the age of the investigation.
>
> Q. Why?
>
> A. There were very serious allegations, but at that point in time I didn't think that it merited putting resource — continued resources into [it].
>
> ...
>
> Q. And — but you recall that the key reason that you supported the closing decision was the age of the case?
>
> A. Yes. That's my recollection. It was that I was concerned about the age.

McKown Testimony Tr. at pgs. 25-26.

The Enforcement staff presented their closing memorandum to Division of Enforcement Director, Robert Khuzami. On August 6, 2009, Khuzami expressed his support for closing the investigation. Exhibit 125. The Metromedia investigation was officially closed on October 8, 2009. Exhibit 126.

Conclusion

In summary, the OIG identified significant flaws in the processes Enforcement used to handle complaints and to close cases. The OIG found that from February 2005 through September 2007, the SEC received multiple complaints from McLaughlin that raised serious allegations of financial fraud. The OIG found that these complaints were mishandled and mismanaged and, consequently, a review or investigation of McLaughlin's allegations was not begun until two-and-a-half-years after the SEC first received complaints from McLaughlin. Ultimately, Enforcement did provide an appropriate review of McLaughlin's allegations. However, the OIG found that by the time the review of McLaughlin's allegations began, it was too late for the SEC to take meaningful action because Metromedia had been sold, it was no longer a public company registered with the Commission, and much of the conduct at issue had grown too old to justify expending Commission resources to investigate. Thus, it was not until four-and-a-half years after the SEC first received McLaughlin's complaints that Enforcement decided not to pursue a full investigation of Metromedia and to close the case.

The OIG understands that the SEC's complaint-handling process is currently being revamped as part of the SEC's Post-Madoff Reforms and that the new system should be implemented in 2010. In response to OIG Report No. 509, *Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme* (August 31, 2009) and OIG Report No. 467, *Improvements Needed Within the SEC's Division of Enforcement* (September 29, 2009), Enforcement has represented that the SEC's new system for handling complaints will centralize the SEC's processes for intake, triage and analysis of all tips, complaints, and referrals received by the agency. Exhibit 127. Enforcement has also represented to the OIG that it has created a new Office of Market Intelligence that will consolidate the handling of all tips, complaints, and referrals that come to the attention of Enforcement from both internal and external sources. *Id.* The OIG recommends that as part of these changes to the complaint handling system, the SEC and Enforcement make certain that: (a) the databases used to refer complaints are updated to accurately reflect the status of investigations and the identity of the staff handling such investigations; (b) complaints are reviewed, responded to, and referred for investigation in a timely and appropriate manner; and (c) referrals are monitored to ensure that they are being actively investigated and that complainants are being provided with accurate information.

In addition, the OIG understands that Enforcement has altered its processes for closing cases since the events described in this ROI took place. Responsibility for closing cases has changed from Enforcement's Office of Chief Counsel to Enforcement's Office of Collections and Distributions. Joan McKown Testimony Tr. at pgs. 15-16. The OIG also understands that Enforcement is attempting to make its case-closing process more efficient by converting it from a paper-based system to an electronic one. *Id.* We recommend as part of the changes to the case-closing system, that Enforcement ensure that (a) cases that are not actively being pursued are closed promptly; (b) Enforcement staff have access to accurate information about the status of investigations and the status of staff requests to close investigations; and (c) staff at all levels be appropriately trained in case-closing procedures.

Accordingly, the OIG is referring this ROI to the Director of Enforcement, the Director of OIEA, the Associate Executive Director for Human Resources, the Associate General Counsel for Litigation and Administrative Practice, and the Ethics Counsel. We recommend that SEC Management carefully review the portions of this ROI that relate to performance deficiencies by those employees who still work at the SEC, so that appropriate action (which may include performance-based action) is taken, on an employee-by-employee basis, to ensure that future complaints are better handled and that the mistakes outlined in this ROI are not repeated.

Submitted: Heidi Steiber Date: 2/24/2010

Concur: Mary Beth Sullivan Date: Feb. 26, 2010

Approved: H. David Kotz Date: Feb. 26, 2010

MEMORANDUM

TO: Carl W. Hoecker, Inspector General
Office of the Inspector General

FROM: Vincente L. Martinez, Chief
Lori Walsh, Deputy Chief
Office of Market Intelligence
Division of Enforcement

DATE: June 14, 2013

RE: Response to the Office of Inspector General's Report of Investigation No. 505, "*Failure to Timely Investigate Allegations of Financial Fraud*"

I. Introduction

On April 14, 2010, the Division of Enforcement ("Division") submitted a Corrective Action Plan to your office describing planned steps to address the recommendations set forth in the Office of Inspector General's Report of Investigation No. 505, entitled "*Failure to Timely Investigate Allegations of Financial Fraud*" (the "Report"). The Division previously requested, and the Office of Inspector General agreed to, closure of all but one of the recommendations related to the Report. The Division has taken the actions outlined in this memorandum in response to Recommendation One, and requests that the Recommendation be closed. Your agreement to close Recommendation One will resolve all recommendations related to the Report.

II. Recommendation

***Recommendation One**: As part of changes to the complaint handling system, make certain that the databases used to refer complaints are updated to accurately reflect the status of investigations and the identity of the staff handling such investigations.*

The Division is in the process of redesigning its system for handling tips, complaints and referrals ("TCRs") to add functionality, including enhanced integration with the HUB case management system. This is part of a larger cross-Commission project to upgrade our technologies and move applications to a common data platform – the Oracle 11g platform.

While integration of the TCR and HUB systems must wait until the Oracle upgrade is at a stage where further system-specific work can begin, the primary databases utilized by the Office of Market Intelligence ("OMI") to refer TCRs to other staff members already have been updated to provide enhanced data related to the status of investigations and the identity of the staff handling such investigations. Specifically, we enhanced the HUB in June 2011 to include additional data fields that reflect the sub-status of an investigation (e.g., "ongoing investigation: no enforcement action filed," "open for action(s) only," and "to be closed"). This enables OMI triagers to determine whether a matter is being investigated actively or is open for other reasons, such as

collection activity. In addition, the HUB reflects the names of staff currently working on a matter, their roles and contact information, and the names of formerly assigned staff, where relevant. Likewise, the Name Relationship Search Index ("NRSI") system – also used by OMI to make referral determinations – was enhanced in March of 2013 and now draws on the data contained in the HUB. The Division's Policies and Procedures require the staff to update the HUB to correct any inaccurate or out-of-date information on an ongoing basis.

Section II.E.4. of the Commission-wide TCR Policies and Procedures requires the staff assigned to resolve a TCR to choose a disposition from the appropriate drop down menu in the TCR System, and to include a comment as needed to explain the reason for the disposition chosen. Among the available drop-down options is the category, "MUI/investigation initiated from work item." The TCR disposition protocol is reiterated in Section III.A. of the Division's Policies and Procedures for Handling Tips, Complaints and Referrals. As an added measure, the Division has revised its policies and procedures to make clear that, in cases where a TCR is resolved by opening a matter under inquiry ("MUI") or an investigation, the comment explaining the disposition chosen in the TCR System must include the MUI or investigation number. This information, already commonly included in the TCR System, will assist staff in locating any necessary corresponding information in the HUB.

Status: Complete – See attached supporting documentation.

- Commission Policies and Procedures for Handling Tips, Complaints and Referrals (Section II.E.4.)

- Division of Enforcement Policies and Procedures for Handling Tips, Complaints and Referrals (Section III.A.)

- Second Addendum to Division of Enforcement Policies and Procedures for Handling Tips, Complaints and Referrals

- Enforcement Manual (Section 2.1.2)

Commission Policies and Procedures for Handling Tips, Complaints and Referrals (Section II.E.4.)

POLICIES AND PROCEDURES FOR HANDLING TIPS, COMPLAINTS AND REFERRALS

Current as of September 23, 2011

Notes to the TCR Governance Board and relevant Divisions and Offices. RSFI will also conduct periodic reviews and audits of the related policies and procedures.

C. WHISTLEBLOWER REQUIREMENTS

To be eligible for whistleblower status under Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"), a whistleblower must submit a complaint in writing.[7] A TCR based on an oral conversation will not qualify for whistleblower status. However, if a would-be whistleblower provides sufficient oral information to create a TCR, the staff should enter the information to ensure that it is memorialized. Staff should also note if they have advised a whistleblower source to submit a TCR in writing.

Staff should refrain from answering questions about the whistleblower program, and should refer all such questions to the Whistleblower Office.[8]

D. MANUAL TRIAGE

Manual triage is the process by which a TCR is evaluated to (i) determine whether the information submitted suggests a possible violation of the federal securities laws, (ii) identify the relevant parties, (iii) gather additional information needed to assess the credibility and potential risk associated with the TCR, and (iv) make an initial determination as to whether and where the TCR should be assigned for resolution. Triage staff decide what matters should be considered for examination or investigation, and what matters may be kept within the originating Division or Office through self-assignment.

Each Division and Office that performs manual triage will establish a policy for approval by the TCR Governance Board that describes its manual triage procedures and outlines its criteria for assigning and resolving TCRs, including any criteria under which the Division or Office will refrain from assigning certain matters.

E. RESOLUTION

1. Reassignment Requests and Disagreements

All Divisions and Offices may reassign Work Items internally and among each other through a process of request and mutual agreement. The same is true for reassigning TCRs between active Work Items.[9] Any party seeking to reassign a Work Item or TCR must seek the consent of the proposed receiving party before attempting to

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[7] The Commission is working on adopting rules relating to the Dodd-Frank whistleblower provisions. This aspect of the policy will be updated upon adoption of final rules.

[8] Current information on the whistleblower program can be found at http://www.sec.gov/complaint.shtml. Questions regarding the program can be emailed to owb@sec.gov.

[9] A TCR can be assigned to one Work Item only at any given time. Assigning a TCR from an active Work Item to a closed Work Item is prohibited.

reassign. All reassignment requests must contain an explanation of the request in a Work Item Comment or TCR Note as appropriate.

Each Division and Office must designate particular staff to consider and resolve internal reassignment disagreements.[10] Reassignment disagreements between two or more Divisions or Offices, after working through appropriate management channels, will be resolved by the TCR Governance Board.

2. Outside Referrals

When the holder of a Work Item decides to resolve the matter by referring it to an outside agency or SRO, he or she must memorialize the referral in a Comment, and upload a copy of the referral communication to the TCR System and attach it to the Work Item.[11] Work Items recommending referrals to foreign regulators should be assigned to the Office of International Affairs (OIA), who will decide whether and how to make any such referrals.

3. Monitoring Resolutions

It is the primary responsibility of the holder of a Work Item to ensure that it is resolved in a timely manner. Assignment PoCs should also monitor the status of Work Items assigned to their Divisions, Offices or groups periodically to ensure that they are being resolved appropriately. The investigative and exam staff should also search the TCR System periodically to ensure that they are aware of, and acting upon, related TCRs. Staff members are expected to conduct periodic searches within the TCR System to identify and request assignment of Work Items related to their open matters.

4. Memorializing Resolutions

The staff assigned to resolve a Work Item must choose a disposition from the appropriate drop down menu, and should also include a Comment as needed to explain the reason for the disposition chosen. While there is no prescribed format for resolution comments, they should be written with enough clarity and detail so that the action taken, and the reasoning behind it, are clear to any person not closely familiar with the matter.

F. PROCESS MEASUREMENT, MONITORING AND CONTROL (PMMC) AND QUALITY ASSURANCE (QA) ANALYSES

PMMC and QA reviews will be used as the basis for recommendations to the TCR Governance Board to modify policies, procedures, or the TCR System itself. RSFI will conduct SEC-wide PMMC and QA reviews that will cover intra-Division and intra-Office issues. RSFI will provide basic PMMC and QA reviews for those Divisions and

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[10] See Section III.D.4. below for a list of staff designated to handle reassignment disagreements.

[11] Any information that reflects work done by the SEC may be shared only to the extent permitted by Rule 24c-1 under the Securities Exchange Act of 1934, Rule 2 of the SEC's Rules Relating to Investigations, and the Enforcement Manual.

Division of Enforcement Policies and Procedures for Handling Tips, Complaints and Referrals (Section III.A.)

DIVISION OF ENFORCEMENT POLICIES AND PROCEDURES FOR HANDLING TIPS, COMPLAINTS AND REFERRALS

Updated June 6, 2013

and Consumer Protection Act of 2010 (Dodd-Frank Act) should be forwarded to the Office of the Whistleblower for processing. In instances in which staff create a TCR but do not upload all documents provided by the submitter, a TCR Work Item note should be created to reflect the existence of additional documents maintained outside of the system.[6]

Enforcement staff who open a MUI or investigation from a Work Item should make sure that they obtain any original documents not uploaded into the TCR system from the office that entered the TCR for inclusion in the investigatory record.

G. Related Matter Inquiries

Work Items clearly related to open MUIs and investigations should be assigned to the appropriate group's PoC. However, it is sometimes difficult to determine if a Work Item is related to an open matter.

Where a Work Item appears to relate to more than one open MUI or investigation, it should be assigned to the group handling the matter with the strongest connection. Other groups handling potentially related matters should be notified of the Work Item by email to the relevant staff. In determining where to assign a Work Item with more than one potentially related open matter, OMI will consider whether the individuals or entities who are the most significant subjects of the Work Item are also the central subjects of the open matter, whether the Work Item and open matter relate to the same event, or to the same conduct in the same timeframe, and whether the conduct described in the Work Item is the focus of the open matter.

III. RESOLUTION

A. Overview of Commission-Wide Guidance on TCR Resolution

Resolution is the process that begins after a Work Item has been triaged and assigned to Enforcement staff. In general, Enforcement staff will resolve a Work Item by (i) closing it as inappropriate for further action, (ii) opening a MUI or investigation, (iii) referring it to exam staff, or (iv) referring it to an outside agency or SRO.

The Commission P&P describes:

- the general procedure by which a Work Item is assigned to a PoC for resolution by a particular office or investigative group;
- the duty of assignment PoCs to monitor Work Items to ensure that resolutions are being made in a timely fashion; and

[6] Commission-wide policies and procedures for the retention and destruction of TCR-related records are currently under development. Until further notice, staff should retain all records created, received or maintained related to TCRs.

- the ability of offices and groups to reassign Work Items among each other.

See Sections II.E. and III.D. of the Commission P&P. Most important, Section II.E.4. of the Commission P&P states that:

> The staff assigned to resolve a Work Item must choose a disposition from the appropriate drop down menu, and should also include a Comment as needed to explain the reason for the disposition chosen. While there is no prescribed format for resolution comments, they should be written with enough clarity and detail so that the action taken, and the reasoning behind it, are clear to any person not closely familiar with the matter.

B. The Resolution Process

Staff who receive a Work Item should consult with their supervisors concerning their preferred mode of review and disposition. Enforcement supervisors maintain the discretion to determine what matters staff will work on and how resources will be allocated among matters being pursued by the Division. Work Items relating to existing investigations, as always, are to be used as the investigating attorneys and their supervisors deem appropriate. It will be the responsibility of all Specialized Unit Chiefs, Regional Directors and Home Office Associate Directors to design and implement procedures for reviewing and resolving TCRs assigned to their offices or groups, including procedures for approving, reviewing and auditing decisions made to take no further action (NFA) on TCRs.

OMI will assist in the audit process by semi-annually providing each Associate group with a random sample representing 10% of all NFA decisions made by the group during the previous six-month period.. In recognition of the fact that varying considerations may impact the decision to NFA a work item and, thus, the number of NFA decisions may vary substantially among the different Associate groups, such sample will consist of a minimum of 5 and a maximum of 100 NFAs. OMI will distribute the random sample to each of the Associate Directors, who will then be responsible for conducting their respective audits. In the event that a Senior Officer (Associate Director or higher) was involved in the decision to NFA a particular work item on the sample list, then no further inquiry will be required and the Associate Director may certify that he or she has reviewed and approved the NFA decision. If, however, a Senior Officer was not involved in the initial decision to NFA a work item, then the Associate Director should conduct a further inquiry to ascertain the basis for the NFA decision and confirm that the underlying justification was sound and properly documented in the TCR System.

C. Resolution Timeframe

Work Items must be resolved within 30 business days of assignment to the group PoC, absent extraordinary extenuating circumstances. Examples of extenuating circumstances may include waiting for further information from a source needed to resolve the TCR, or waiting for advice or assistance from another Division or Office. If a

Second Addendum to Division of Enforcement Policies and Procedures for Handling Tips, Complaints and Referrals

FOR INTERNAL USE ONLY – CONTAINS NON-PUBLIC INFORMATION

SECOND ADDENDUM TO
DIVISION OF ENFORCEMENT POLICIES AND PROCEDURES
FOR HANDLING TIPS, COMPLAINTS AND REFERRALS

June 13, 2013

I. PUPRPOSE

This document serves as an addendum to the Division of Enforcement's Policies and Procedures for Handling Tips, Complaints and Referrals (TCRs) (P&Ps). The purpose of this addendum is to provide an update to the resolution procedures related to TCRs assigned by OMI to Enforcement staff.

II. AMENDMENT

Section III.A. of the P&Ps provides an overview of the Commission-wide guidance on TCR Resolution. Among other things, the guidance requires that staff assigned to resolve a Work Item choose a disposition from the appropriate drop down menu in the TCR system and include a comment as needed to explain the reason for the disposition chosen.

Section III.A. of the P&Ps is hereby amended by adding the following sentence at the end of the section:

> "Where a TCR is resolved by the opening of a MUI or investigation, the Comment must include the MUI or investigation number."

Accordingly, Section III.A. of the P & Ps, as amended, reads as follows:

> ...
>
> The staff assigned to resolve a Work Item must choose a disposition from the appropriate drop down menu, and should also include a Comment as needed to explain the reason for the disposition chosen. While there is no prescribed format for resolution comments, they should be written with enough clarity and detail so that the action taken, and the reasoning behind it, are clear to any person not closely familiar with the matter.

"Where a TCR is resolved by the opening of a MUI or investigation, the Comment must include the MUI or investigation number."

Enforcement Manual (Section 2.1.2)

Securities and Exchange Commission
Division of Enforcement

Enforcement Manual

Office of Chief Counsel

November 1, 2012

Ongoing Updates to Hub System:

- The assigned staff should review the investigation and periodically update in Hub the status of an ongoing investigation.

- The Executive Summary in Hub should summarize what the matter is about, the activity to date, current status, and plans for the upcoming period. For example, the staff might note that they are taking testimony, that they are conducting settlement negotiations, or that a potential defendant has been indicted.

- Any inaccurate or out-of-date information should be corrected.

2.2 Tips, Complaints, and Referrals

2.2.1 Complaints and Tips From the Public

2.2.1.1 Processing Tips and Complaints from the Public

Public complaints and tips are primarily received through the SEC's online web form (*http://www.sec.gov/complaint.shtml*) or through contact with staff at any of the SEC's offices. The vast majority of complaints and tips received by the Division are in electronic form and the Division encourages the public to communicate with it through the online web form. Every complaint is carefully reviewed by Division staff for apparent reliability, detail and potential violations of the federal securities laws. After review, the complaint or tip generally is processed according to the guidelines below.

Guidelines for Processing of Public Complaints and Tips:

- Complaints that appear to be serious and substantial are usually forwarded to staff in the home office or the appropriate regional office for more detailed review, and may result in the opening of a MUI.

- Complaints that relate to an existing MUI or investigation are generally forwarded to the staff assigned to the existing matter.

- Complaints that involve the specific expertise of another Division or Office within the SEC are typically forwarded to staff in that particular Division or Office for further analysis.

- Complaints that fall within the jurisdiction of another federal or state agency are forwarded to the SEC contact at that agency.

- Complaints that relate to the private financial affairs of an investor or a discrete investor group are usually forwarded to the Office of Investor Education and Advocacy ("OIEA"). Comments or questions about agency practice or the federal securities laws are also forwarded to OIEA.