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

Office of FOIA Services

June 5, 2025

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

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

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

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

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

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

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

June 5, 2025

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

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

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


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

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

June 5, 2025

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

Sincerely,


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](https://www.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.



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION



MEMORANDUM

May 14, 2024

TO: FILE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Concurrence:

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

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

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

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

Special Agent in Charge

Date

Approved:

KATHERINE REILLY

Digitally signed by KATHERINE REILLY

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

Katherine H. Reilly, Acting Deputy Inspector General
for Investigations

Date

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



OFFICE OF
INSPECTOR GENERAL

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION



MEMORANDUM

December 18, 2023

TO: FILE

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

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

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

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

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

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

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

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

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

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

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

Concurrence:

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

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

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

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

Special Agent in Charge

Date

Approved:

KATHERINE REILLY

Digitally signed by KATHERINE REILLY

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

Katherine H. Reilly, Acting Deputy Inspector General
for Investigations

Date

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

Report of Investigation

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

CASE NO: 22-DCF-0028-I

DECEMBER 9, 2024





Office of Inspector General

REPORT OF INVESTIGATION

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

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

EXECUTIVE SUMMARY

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

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

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

Background

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

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

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

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

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

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

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

⁴ <https://empowr.us/mission/>

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

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

Investigative Results

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

Implicated Standards

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

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

Supporting Evidence

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

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

⁸ *Id.*

⁹ Exhibit #15.

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

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

Implicated Standards

18 U.S.C. § 208.

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

Supporting Evidence

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

FINDING 3: Hinman's "miscellaneous contacts" with STB personnel did not violate OEC guidance.

Implicated Standard

18 U.S.C. § 208.

Supporting Evidence

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

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

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

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

Implicated Standards

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

¹⁰ Exhibit # 4: Hinman Resp. Q. 6(b).

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

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

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

Supporting Evidence

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

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

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

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

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

¹³ (b)(6); (b)(7)(C) Tr. 7:6 – 8:16.

¹⁴ (b)(6); (b)(7)(C) Tr. 16:3-4.

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

¹⁶ (b)(6); (b)(7)(C) Tr. 16:1-4.

¹⁷ (b)(6); (b)(7)(C) Tr. 18:13-18.

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

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

Implicated Standard

18 U.S.C. § 208.

Supporting Evidence

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

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

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

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

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

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

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

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

Hinman alone did not determine the content of the speech, nor was he its principal author. (b)(6); (b)(7)(C) during Hinman's tenure, told us that Hinman asked (b)(6); (b)(7)(C) to draft the Yahoo speech in collaboration with (b)(6); (b)(7)(C) along with others who worked (b)(6); (b)(7)(C) on (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) said that Hinman chose the subject because "the issue of how to treat digital assets" was "a hot topic" that (b)(6); (b)(7)(C) discussed with Hinman "a number of times in that time period. And I don't remember if it was him or me, or with someone else, but the idea came about to give a speech to give some kind of contour of the legal – of our legal thinking in this area."²¹ (b)(6); (b)(7)(C) to be the primary producer and distributor of the speech among SEC reviewers but characterized the speechwriting as "a collaborative process" with "multiple hands" involved.²³ We also spoke with (b)(6); (b)(7)(C) about the drafting process, who confirmed that multiple divisions and offices within the SEC provided input during the drafting of the speech.²⁴ Hinman told us that the then-Chairman and members of his staff reviewed and commented on the speech.²⁵ He further elaborated that the Chairman and other Division heads discussed the content of the speech at some length.²⁶

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

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

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

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

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

²² (b)(6); (b)(7)(C) Tr. 8:1-7.

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

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

²⁵ Exhibit # 4: Hinman Resp. Q. 7(b).

²⁶ Hinman Resp. Q. 10.

²⁷ Hinman Resp. Q. 10.

²⁸ Hinman Resp. Q. 10.

²⁹ Hinman Resp. Qs. 13 and 14(a).

³⁰ Hinman Resp. Q. 8.

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

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

Meeting with Ethereum Officials Was Within the Ordinary Course of Business

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

Coordination

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

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

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

³³ Hinman Dep. 45:19 – 46:14.

³⁴ https://finance.yahoo.com/news/yahoo-finance-presents-markets-summit-crypto-114756464.html?guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLnNvbS8&guce_referrer_sig=AQAAADeQgBJOlP7Wfgfidbh6MA9qMRE8RHY4eGrkCciCPJTKMtQstx6O64CudE7iNNgui5CJoO6_2syU5ACpy7hmOp5k1BtNB7zjfSQBdg2tC-P2PE1akrvzkWko2FBINyaLIKR8nk5Q6HTNkS0SKlo0iCDyvyz1Rz-GhbdFFC4thZ84&guccounter=2

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

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

³⁷ Hinman Resp. Q. 11(a).

Exhibits

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



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



Report of Investigation

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

Case #: 22-EXA-0010-I

Origin: Office of Ethics Counsel

Investigation Initiated: January 25, 2022

Investigation Completed: July 12, 2023

SUMMARY

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

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

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

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

BACKGROUND

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

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

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

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

² 18 U.S.C. § 208(a) and (b)(2).

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

⁴ 5 C.F.R. § 4401.102(d).

⁵ 5 C.F.R. § 4401.102(e).

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

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

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

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

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

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

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

(b)(6); (b)(7)(C) also stated that he was aware that SEC employees must report and certify all securities holdings annually on the OGE Form 450 and submit statements into PTCS for every account containing reportable securities. Finally, (b)(6); (b)(7)(C) confirmed that he was aware that

⁶ SEC Ethics Handbook, Chapter 11, Section C.

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

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

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

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

SCOPE

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

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

We coordinated with and/or interviewed the following individuals:

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

We reviewed the following documents/records:

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

RESULTS OF INVESTIGATIVE ACTIVITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁷ 5 C.F.R. § 2634.907(c)(3)(vii).

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

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

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

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

CY 2014-2016

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

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

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

CY 2020

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

Table 4: CY2020 Transactions Not Pre-Cleared in PTCS

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

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

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

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

CY 2021-2022

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b)(6); (b)(7)(C) confirmed that on January 14, 2022, he had a discussion with (b)(6); (b)(7)(C) regarding placing a “no new purchase of securities” note on his accounts, notifying compliance personnel at First Republic Investment that (b)(6); (b)(7)(C) was an SEC employee. (b)(6); (b)(7)(C) continued that (b)(6); (b)(7)(C) was, “...very, very adamant that transactions had to be approved prior to being made, we (1st republic) had no malintent.” (b)(6); (b)(7)(C) continued, “...it’s just that we went from Wells Fargo, from discretionary to discretionary and then I guess there was a problem because it was

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

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

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

Our review of (b)(6); (b)(7)(C); brokerage statements and PTCS records found that (b)(6); (b)(7)(C); entered the incorrect number of shares purchased in the following nine transactions, which were effectuated on May 1, 2020. (EXHIBIT 2)

Table 8: Incorrect Number of Shares Entered in PTCS

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

In addition, (b)(6); (b)(7)(C); entered the wrong trade date when confirming the following two sales affected on May 4, 2020. (EXHIBIT 2)

Table 9: Wrong Trade Date Entered in PTCS

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

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

U.S. Attorney’s Office Coordination

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

Signatures

Case Agent:

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

July 11, 2023
 Date

Concurrence:

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

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

Date

Approved:

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

Katherine Reilly, Acting Deputy Inspector General
 for Investigations

Date

Exhibits

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



OFFICE OF
INSPECTOR GENERAL

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION



MEMORANDUM

September 26, 2023

TO: FILE

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

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

SUBJECT: Case No. 22-OWB-003 I-I
Office of the Whistleblower Backdated Declarations

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

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

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

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

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

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

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

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

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

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

9-26-2023

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

Special Agent in Charge

Date

Approved:

KATHERINE REILLY

Digitally signed by KATHERINE REILLY

Date: 2023.09.27 15:08:36 -04'00'

Katherine H. Reilly, Acting Deputy Inspector General
for Investigations

Date

Office of Audits Notified: *BSM* *Rebecca Sharek* *9-27-2023*

By (Initials)

Person Notified

Date

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



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



Report of Investigation

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

Case #: 23-SEC-0001-I

Origin: Office of Security Services

Investigation Initiated: 10/25/2022

Investigation Completed: 05/25/2023

SUMMARY

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

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

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

BACKGROUND

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

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

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

(b)(7)(E)

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

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

SCOPE

We investigated the following potential violations:

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

Additionally, we interviewed the following individual:

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

RESULTS OF INVESTIGATIVE ACTIVITY

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

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

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

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

SEC's Office of Security Services

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

Report of Investigation

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

Case # 23-SEC-0001-I

Page 4 of 5

Coordination

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

Signatures

Case Agent:

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

5/19/2023

Date

Concurrence:

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

Digitally signed by (b)(6);

(b)(6);
Date: 2023.05.23 12:35:01 -04'00'

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

Special Agent in Charge

Date

Approved:

KATHERINE REILLY

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

Katherine Reilly, Acting Deputy Inspector General
for Investigations

Date

Report of Investigation

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

Case # 23-SEC-0001-I

Page 5 of 5

Exhibits

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



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



Report of Investigation

Subject: Capital Growth Market

Title: N/A

SK-Level/Grade: N/A

Office: N/A

Region: N/A

Case #: 23-SEC-0002-I

Origin: Office of Investor Education and
Advocacy

Investigation Initiated: 10/25/2022

Investigation Completed: 6/12/2023

SUMMARY

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

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

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

BACKGROUND

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

CGM¹ was advertised an investment management company.

SCOPE

We investigated the following potential violations:

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

Additionally, we interviewed the following individual:

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

RESULTS OF INVESTIGATIVE ACTIVITY

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

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

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

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

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

Interview of the Investor

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

(b)(6), told us that a CGM representative advised her that her investment would yield 12 percent daily profit on the days the CGM broker conducted the trades and said that after 30 days her investment account balance would be between \$30,000 and \$45,000. The company representative also told her she would receive a five percent commission for any referrals that resulted in an investment account opened with CGM. As a result, (b)(6), referred (b)(6), (b)(7)(C) and (b)(6), and they both opened investment accounts with CGM that she managed.

(b)(6), stated that on January 16, 2022, and January 17, 2022, she sent three separate payments to CGM totaling \$2,560 worth of Bitcoin via CashApp, using the Bitcoin address "BC1QJ7MKG8E9ZFUK98ZREEZGKS5KD6NAXW5ELYLLM."

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

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

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

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

Attempts to Locate the CGM Bitcoin Address

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

Referral to Interpol Washington

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

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

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

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

Coordination

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

Signatures

Case Agent:

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

6/12/2023

Date

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

06/12/2023

Date

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

Special Agent in Charge

Approved:

KATHERINE REILLY

Digitally signed by KATHERINE REILLY

Date: 2023.06.12 09:26:31 -04'00'

Katherine Reilly, Acting Deputy Inspector General
for Investigations

Date

Exhibits

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



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



Report of Investigation

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

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

Origin: Office of the General Counsel

Investigation Initiated: April 3, 2023

Investigation Completed: December 11, 2023

SUMMARY

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

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

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

Report of Investigation

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

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

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

BACKGROUND

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

SCOPE

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

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

Additionally, we interviewed the following individuals:

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

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

RESULTS OF INVESTIGATIVE ACTIVITY

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

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

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

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

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

7.2 Protection of Nonpublic Information

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

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

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

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

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

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

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

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

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

(EXHIBIT 4)

(b)(6); (b)(7)(C) further transmitted the NPI to (b)(6) counsel during the course of (b)(6) litigation with the agency. We found that (b)(6); (b)(7)(C) counsel signed two NDAs, as required by SEC policy, that contained provisions requiring that counsel protect and not disclose confidential and nonpublic SEC information. **(EXHIBIT 5)** Therefore, we did not find that (b)(6); (b)(7)(C) violated SEC policy in providing NPI to (b)(6) counsel.

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

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

Report of Investigation

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

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

Page 5 of 7

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

(EXHIBIT 8)

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

Coordination

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

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

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

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

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

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

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

Report of Investigation

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

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

Page 6 of 7

Signatures

Case Agent:

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

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

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

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

Senior Special Investigator

Date

Concurrence:

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

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

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

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

Special Agent in Charge

Date

Approved:

KATHERINE REILLY

Digitally signed by KATHERINE REILLY

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

Katherine H. Reilly, Acting Deputy Inspector General
for Investigations

Date

Exhibits

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



OFFICE OF
INSPECTOR GENERAL

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

MEMORANDUM

October 25, 2024

TO: FILE

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

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

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

(b)(6); (b)(7)(C) Digitally signed by (b)(6); (b)(7)(C)
Date: 2024.10.29 07:58:45 -04'00'

SUBJECT: Closed Investigation, Case No. 24-DTM-0016-I
(b)(6) (b)(7)(C)

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

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

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

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

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

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

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



OFFICE OF
INSPECTOR GENERAL

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

MEMORANDUM

September 23, 2024

TO: FILE

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

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

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

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

Digitally signed by (b)(6);

DN: cn=(b)(6);

Date: 2024.09.24 09:10:25

+0400

Digitally signed by (b)(6);

DN: cn=(b)(6);

Date: 2024.09.24 09:13:46

+0400

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

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

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

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

We recommend no further investigative activity regarding this matter considering the lack of apparent intentional misconduct in light of the absence of published OEC guidance on the pre-clearance of peer-to-peer lending activity in PTCS and (b)(6); (b)(7)(C) did report the activity on his OGE Forms 450. A report to SEC management is not warranted and we are administratively closing this case.

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

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



OFFICE OF
INSPECTOR GENERAL

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

MEMORANDUM

November 19, 2024

TO: FILE

FROM: (b)(6); (b)(7)(C) Special Investigator

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

SUBJECT: Closed Investigation, Case No. 24-EXA-0018-I
(b)(6); (b)(7)(C)

The purpose of this memorandum is to document the Office of Inspector General's investigative activities and administrative closure of this case related to (b)(6); (b)(7)(C) Securities Compliance Examiner, Division of Examinations, New York Regional Office.

We received confidential financial intelligence information that between January 7, 2021, and March 16, 2021, bank teller cash deposits totaling \$106,502 were made into (b)(6); (b)(7)(C). The dollar amounts deposited were between \$5,000 and \$9,800 and appear to have been deposited in a structured manner to potentially evade federal reporting requirements.

(b)(6); (b)(7)(C) reported on his Confidential Financial Disclosure Report, U.S. Office of Government Ethics (OGE) Form 450 for calendar year (CY) 2021 that he was the trustee of (b)(6); (b)(7)(C) and disclosed holdings which included one stock, mutual funds, exchange-traded funds (ETFs), and mutual funds and ETFs no longer held.

We also identified a \$160,000 transfer made on (b)(6); (b)(7)(C) 2021, from the (b)(6); (b)(7)(C) Trust to an account in the name of (b)(6); (b)(7)(C) held by (b)(6); (b)(7)(C) who we later determined were (b)(6); (b)(7)(C). We reviewed additional records related to this account, and interviewed finance and tax professionals associated with the identified (b)(6); (b)(7)(C) accounts but found nothing that warranted further inquiry.

We reviewed (b)(6); (b)(7)(C) Personal Trading Compliance System (PTCS) records, which included account statements for the period January 1, 2021, through June 1, 2021, and found that (b)(6); (b)(7)(C) complied with applicable SEC regulations by making PTCS requests prior to executing trades and reported the disposition of trading activity. We also found no discrepancies between his holdings for CY 2021 and his corresponding OGE Form 450.

In conclusion, the investigation did not find evidence that (b)(6); (b)(7)(C) engaged in unlawful financial transactions. Moreover, our examination of OGE Forms 450 and PTCS records for CY 2021 found that (b)(6); (b)(7)(C) obtained approval in PTCS prior to purchasing and selling holdings, in accordance with applicable

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

Closed Investigation, Case No. 24-EXA-0018-I
November 18, 2024
Page 2

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

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



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



Report of Investigation

Subject: (b)(6); (b)(7)(C)
Title: [REDACTED]
SK-Level/Grade: (b)(6); [REDACTED]
Office: Division of Corporation Finance
Region: Washington, D.C.

Case #: 24-OHR-0002-I

Origin: Office of Human Resources

Investigation Initiated: 10/17/2023

Investigation Completed: 5/23/2024

SUMMARY

We investigated allegations that (b)(6); (b)(7)(C) [REDACTED] (b)(6); (b)(7)(C) Division of Corporation Finance (CorpFin), violated the SEC's telework program policy and the SEC's 2023 Collective Bargaining Agreement (CBA). Specifically, the SEC's Office of Human Resources (OHR) reported that (b)(6); [REDACTED] allegedly relocated to (b)(7)(C) [REDACTED] without prior approval and exclusively teleworked from that location while continuing to receive higher locality pay for Washington, D.C., to which he was no longer entitled. OHR also reported that (b)(6); [REDACTED] may have submitted a falsified telework agreement by using the address of a home in Virginia that he had recently sold.

Our investigation substantiated that (b)(6); [REDACTED] relocated from (b)(6); (b)(7)(C) [REDACTED] VA, to (b)(6); (b)(7)(C) [REDACTED] in (b)(6); [REDACTED] 2023 and continued to receive Washington, D.C., locality pay while exclusively teleworking from (b)(7)(C) [REDACTED] from (b)(6); [REDACTED] 2023 through (b)(6); [REDACTED] 2023. Although (b)(6); [REDACTED] had received unofficial approval from his supervisor to telework from (b)(7)(C) [REDACTED] he did not have an approved WorkSmart Agreement (WA) allowing him to do so, nor did he report to his assigned duty location at SEC Headquarters, as required. As a result, (b)(6); [REDACTED] received Washington, D.C., locality pay to which he was not entitled. Our investigation did not substantiate that (b)(6); [REDACTED] falsified his telework location in a WA.

We did not refer the matter to the U.S. Department of Justice because our investigation did not find evidence that (b)(6); [REDACTED] falsified his telework agreement or intended to obtain locality pay to which he was not entitled.

RESULTS OF INVESTIGATIVE ACTIVITY

Finding 1: (b)(6); (b)(7)(C) received locality pay to which he was not entitled because he failed to obtain formal approval in advance of working from a new telework location and did not report to his assigned duty station the requisite number of days per pay period.

Implicated Standards

SEC Administrative Regulation (SECR) 6-16, *Telework Program*, establishes the SEC's telework policy. SECR 6-16 Section 3.3 states that guidance and procedures to implement the policy for the telework program are described in Article 11, *Telework Program*, of the SEC's Collective Bargaining Agreement (CBA) with the National Treasury Employees Union (NTEU).

The SEC and the NTEU finalized new terms of the CBA in March 2023 (**Exhibit 8**). Article 11, *Telework Program*, of the 2023 CBA, establishes the SEC's telework program and defines key terms, such as Alternative Worksite, Official Worksite, Reporting Office, and Telework Agreement. Section 3, *Telework Arrangements*, Subsection B.2, establishes that an employee may request to telework up to eight days per pay period and work from their Reporting Office at least two days per pay period. Section 5, *Eligible Employees*, Subsection C, establishes the "Grandfather Clause," which states that employees with a pre-existing telework agreement in place allowing more than eight days of telework can continue under their existing schedule in a "grandfathered" status. If a "grandfathered employee requests to change the location of their Alternative Worksite, the [SEC] reserves the right to reject such locations that would increase costs to the [SEC]."

Article 11, Section 9, *Telework Agreement*, Subsection A, of the 2023 CBA states that an employee will submit a signed telework agreement to their supervisor, and the agreement "must be signed" by both the employee and their supervisor "prior to the start of teleworking." Subsection E states that an employee "must submit a new telework request" if the employee "wishes to make any change to the approved telework arrangement," including the location of the Alternative Worksite. Subsection G states that if an employee's telework request is denied, the employee "will be responsible for any tax and locality pay consequences associated with changing their Alternative Worksite."

OIG Findings

(b)(6); (b)(7)(C) had an approved WA, dated (b)(6); (b)(7)(C) 2022, pursuant to which he was authorized to work a compressed 5-4/9 schedule and to telework from his (b)(6); (b)(7)(C) VA residence. Under this approved schedule, (b)(7)(C) had grandfathered approval to report to his assigned duty location at SEC Headquarters one day per pay period, rather than two days (**Exhibit 4**).

In (b)(6); 2023, (b)(6); orally requested permission from his then supervisor, (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) CorpFin, to relocate and change his telework location from (b)(6); (b)(7)(C) VA, to (b)(6); (b)(7)(C) "unofficially approved" his

request and planned to confer with CorpFin's management (**Exhibit 2**). (b)(6); did not submit a new WA at this time. In (b)(6); 2023, (b)(6); sold his home in (b)(6); (b)(7)(C) VA, but maintained a rent-back agreement with the new owner to reside in the property through the end of (b)(6); 2023. He relocated to (b)(6); (b)(7)(C) in early (b)(6); 2023, where he continued to reside throughout the relevant time period (**Exhibit 6**).

On (b)(6); 2023, (b)(6); coordinated with (b)(6); (b)(7)(C) CorpFin, regarding (b)(6); request and (b)(6); intention to approve his (b)(6); (b)(7)(C) telework location (**Exhibit 2**). (b)(6); contacted (b)(6); (b)(7)(C) Legal Advisor and Program Telework Manager, OHR, regarding (b)(6); request. In (b)(6); 2023, (b)(6); notified (b)(6); that (b)(6); would not be allowed to telework from (b)(6); (b)(7)(C) and still report to his duty location one day per pay period as allowed under his grandfathered agreement. In an e-mail dated (b)(6); 2023, (b)(6); stated (b)(6); was informed of this decision (**Exhibits 3 and 5**). After receiving this information and consulting with the NTEU, (b)(6); submitted a new WA requesting to telework from (b)(6); (b)(7)(C) and still report to the office one day per pay period, which CorpFin denied. (b)(6); notified CorpFin via the NTEU that he planned to grieve the matter and submitted an updated WA on (b)(6); 2023, requesting to telework from (b)(6); (b)(6); and report to the office two days per pay period. CorpFin management approved this updated WA the same day (**Exhibits 3 and 6**).

In late (b)(6); 2023, CorpFin management offered (b)(6); a voluntary transfer to a fully remote position in the (b)(6); (b)(7)(C) in lieu of the grievance (**Exhibit 5**). (b)(6); accepted this offer and was reassigned to (b)(6); (b)(7)(C) 2023. On (b)(6); 2023, he was approved to work remotely from (b)(6); (b)(7)(C) (**Exhibit 4**). (b)(6); change in duty station from Washington, D.C., to (b)(6); (b)(7)(C) became effective on (b)(6); 2023, at the beginning of pay period (b) but was not processed until pay period (b)(6). As a result, (b)(6); improperly received the higher Washington, D.C., locality pay for pay period (b) an overpayment of \$740.80. (b)(6); repaid \$639.54, the amount owed after the required withholdings (**Exhibit 9 and 11**).

Between his relocation to (b)(6); (b)(7)(C) on (b)(6); 2023, and the approval of his new remote work location on (b)(6); 2023, (b)(6); requested and was approved for either annual leave or ad hoc telework on the days he was required to report to SEC Headquarters (**Exhibits 6 and 7**). However, (b)(6); stated OHR provided guidance to SEC managers in June 2023 advising leave should not be used to circumvent an employee's in office reporting requirements, and CorpFin should not have approved (b)(6); leave or ad hoc telework in lieu of reporting to the office during that time. Once (b)(6); began teleworking from (b)(6); (b)(7)(C) and no longer reported in person to his Washington, D.C. duty location at least two days per pay period, he was not entitled to Washington, D.C. locality pay (**Exhibit 10**).

OHR advised that the difference between the Washington, D.C., and (b)(6); (b)(7)(C) locality pay for pay periods (b) through (b) was approximately \$740.80 per pay period. This resulted in a potential overpayment totaling roughly \$2,963.20 (**Exhibit 11**). (b)(6); is willing to reimburse any overpayments pending the agency's final decision and stated, "...I only want to get paid

what I'm due, and so if the SEC paid me too much, then I need to give the money back to the government..." (Exhibit 6).

Finding 2: (b)(6); did not falsify his telework location in (b)(6); 2023 because he continued to reside at the (b)(6); (b)(7)(C) address following the sale of his home.

Implicated Standards

SECR 6-16, *Telework Program*, as previously described.

2023 CBA between the SEC and the NTEU, as previously described.

OIG Findings

(b)(6); 2023, following the finalization of the 2023 CBA and prior to (b)(6); relocation to (b)(6); (b)(7)(C) the SEC required all employees to complete updated WAs. (b)(6); did so and listed his home in (b)(6); (b)(7)(C) VA, as his telework location. While looking into (b)(6); relocation to (b)(6); (b)(7)(C) OHR discovered (b)(6); had sold his home in (b)(6); (b)(7)(C) VA, in (b)(6); 2023, one month prior to submitting it as his telework location on the updated (b)(6); 2023 WA. As a result, OHR believed (b)(6); may have falsified the telework location on his (b)(6); 2023 WA (Exhibit 3).

Although (b)(6); sold his (b)(6); (b)(7)(C) home in April 2023, (b)(6); (b)(7)(C) continued to reside at that property through (b)(6); 2023 under a rent-back agreement with the purchaser. (b)(6); relocated (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) in early (b)(6); 2023, at which time he submitted an updated WA with the (b)(6); (b)(7)(C) location, and currently resides at (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (Exhibit 6).

COORDINATION

We did not refer the matter to the U.S. Department of Justice because we did not find evidence that (b)(6); falsified his telework agreement or intended to obtain locality pay to which he was not entitled.

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

Report of Investigation

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

Case # 24-OHR-0002-I

Page 5 of 6

Signatures

Case Agent:

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

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

Date: 2024.05.22 07:13:33 -04'00'

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

Senior Special Agent

Date

Concurrence:

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

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

Date: 2024.05.22 07:16:31 -04'00'

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

Special Agent in Charge

Date

Approved:

KATHERINE REILLY

Digitally signed by KATHERINE REILLY

Date: 2024.05.22 11:27:41 -04'00'

Katherine H. Reilly, Acting Deputy Inspector General
for Investigations

Date

Exhibits

1. Predicating Document, Complaint Intake, dated (b)(6); (b)(7)(C)
2. Memorandum of Activity, Interview of (b)(6); (b)(7)(C)
3. Memorandum of Activity, Interview of (b)(6); (b)(7)(C)
4. Memorandum of Activity, Review of (b)(6); (b)(7)(C) SEC WA, dated (b)(6); (b)(7)(C) 2023.
5. Memorandum of Activity, Interview of (b)(6); (b)(7)(C)
6. Memorandum of Activity, Interview of (b)(6); (b)(7)(C)
7. Memorandum of Activity, Review of (b)(6); time and attendance records, dated, December 11, 2023.
8. Memorandum of Activity, Review of 2023 CBA, dated December 12, 2023.
9. Memorandum of Activity, Review of (b)(6); e-mail regarding repayment of locality salary, dated (b)(6); (b)(7)(C)
10. Memorandum of Activity, Review of OHR's email regarding (b)(6); obligation to change locality, dated (b)(6); (b)(7)(C)
11. Memorandum of Activity, Review of OHR's e-mail regarding (b)(6); locality payment issues, dated (b)(6); (b)(7)(C)



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



MANAGEMENT IMPLICATION REPORT

May 1, 2024

To: Gary Gensler
Chair

From: Deborah J. Jeffrey
Inspector General *Deborah J. Jeffrey*

Subject: Management Implication Report (MIR) 24-002 – Failure to Cooperate with OIG
(b)(6); (b)(7)(C) Audit

Background: On September 27, 2021, the U.S. Securities and Exchange Commission (SEC) Office of Inspector General (OIG) Office of Audits (OA) announced an audit of the SEC's (b)(6); (b)(7)(C) program, (b)(6); (b)(7)(C) within the Division of (b)(6); (b)(7)(C). The purpose of the audit was to assess the growth of (b)(6); (b)(7)(C) and the functioning of key program controls, such as those for communicating with stakeholders, receiving information provided by (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) ENF assigned its audit liaison and individuals within (b)(6); (b)(7)(C) collectively, "the auditees") to assist OA in its fieldwork.

The OIG team requested and received access to (b)(6); (b)(7)(C) the system that manages and tracks (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) as well as to the (b)(6); (b)(7)(C) site (where (b)(6); (b)(7)(C) is located). The audit team used both (b)(6); (b)(7)(C) and the (b)(6); (b)(7)(C) site to gather relevant information. In March 2022, the auditors learned that their access to the (b)(6); (b)(7)(C) site had been terminated, and they began to suspect that the auditees misled them as to the reasons for this denial of access. Despite repeated requests, the audit team was unable to access the (b)(6); (b)(7)(C) site from March 3 through March 22, 2022, adversely affecting the efficiency and timeliness of the audit.

The auditors referred the matter to the OIG's Office of Investigations (OI), which reviewed pertinent email correspondence and other documentation and interviewed each of the auditees and members of the audit team. OI concluded that the auditees violated their duties under applicable SEC Regulations (SECRs), discussed below, to cooperate with OIG inquiries and not to provide false or misleading information to the OIG. Specifically, investigators determined that (1) the auditees intentionally terminated the auditors' access to the (b)(6); (b)(7)(C) site; and (2) when auditors inquired about the

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loss of access, the audit liaison provided false and misleading information about the reason for the loss of access, and (b)(6); (b)(7)(C) staff never corrected the false information provided by the audit liaison.

Investigative Summary:

1. The Auditees Intentionally Terminated the Auditors' Access to (b)(6); (b)(7)(C) Site.

On March 3, 2022, the auditors and auditees met virtually to discuss several items related to the audit. During the meeting, an auditor asked questions about certain un-redacted final orders that he had reviewed during fieldwork. The auditees asked how he had gained access to those final orders, and he explained that clicking hyperlinks within a spreadsheet provided by (b)(6); (b)(7)(C) opened those documents, which were located on the (b)(6); (b)(7)(C) site. According to the auditors present, (b)(6); (b)(7)(C) staff appeared surprised to learn of their access to the (b)(6); (b)(7)(C) site.

Email correspondence during and after the March 3rd meeting reflects the auditees' chagrin that the auditors were able to access the (b)(6); (b)(7)(C) site, rather than being limited to specific documents or databases provided to them by the auditees. The auditees made the decision to "delete" auditors' access to the site. (b)(6); (b)(7)(C) logs confirm that the auditors' access to the (b)(6); (b)(7)(C) site was terminated that same day, at 1:05 p.m.

From March 3rd – when access was terminated – through March 22nd – when access was restored – the auditees engaged in discussions, via email and phone, in an effort to determine how the auditors got access to the (b)(6); (b)(7)(C) site and whether (b)(6); (b)(7)(C) was required to restore the auditors' access.¹ When interviewed, (b)(6); (b)(7)(C) staff asserted that they relied upon guidance from the audit liaison about what access to grant the OIG auditors. The audit liaison stated (b)(6); (b)(7)(C) took direction from (b)(6); (b)(7)(C) staff on what information to provide to the auditors and had no authority to determine the extent of the auditors' access. Whatever the respective roles of the audit liaison and (b)(6); (b)(7)(C) staff in cutting off OIG's access to the (b)(6); (b)(7)(C) site, the termination was not incidental and reflected a deliberate decision by the auditees collectively, discussed in emails and at least one post-meeting telephone conference among them on March 3rd.

2. The Audit Liaison Misled the Auditors Regarding the Cause of Their Loss of Access to the (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) Staff Took No Steps to Inform OIG that the Termination of Access was Intentional.

¹ The audit team requested access to the (b)(6); (b)(7)(C) site and (b)(6); (b)(7)(C) on October 28, 2021, as item 15 on a spreadsheet listing documentation to be prepared or provided by the audit client, (b)(6); (b)(7)(C) list). The auditees believed that OIG would require access to (b)(6); (b)(7)(C) only, and granted such access, not realizing that (b)(6); (b)(7)(C) afforded access to the (b)(6); (b)(7)(C) site. Having received access to (b)(6); (b)(7)(C) and other parts of the (b)(6); (b)(7)(C) site, the auditors considered (b)(6); (b)(7)(C) 5 satisfied.

OIG quickly discovered that they could no longer access (b)(6); (b)(7)(C) site. On March 4th, an OIG auditor emailed the audit liaison, asking why this occurred. Instead of admitting that the termination of access was deliberate, the audit liaison responded: "I will ask folks on Monday. I believe (b)(6); (b)(7)(C) was 'de-commissioned' so I wonder if it's related." Between March 3rd and March 22nd, the audit team made numerous requests to regain access, explaining that access to the (b)(6); (b)(7)(C) site was necessary for completing their audit work. For example, on March 7, 2022, the OIG audit manager called (b)(6); (b)(7)(C) staff to report that the auditors could not access the (b)(6); (b)(7)(C) site or (b)(6); (b)(7)(C). Through emails, the auditees discussed the matter and decided to provide the auditors with access to "ONLY to the retired (b)(6); (b)(7)(C)." From March 7 to March 9, 2022, (b)(6); (b)(7)(C) staff worked with the (b)(6); (b)(7)(C) team to determine how to provide the auditors access to only the retired (b)(6); (b)(7)(C). On March 9, 2022, (b)(6); (b)(7)(C) staff provided the auditors access to (b)(6); (b)(7)(C) by using special permissions that prevented the auditors from accessing the (b)(6); (b)(7)(C) site. On March 10, 2022, an OIG auditor discovered that the restored access was "limited" and insufficient for completing the remaining audit work.

On March 17, 2022, the OIG audit manager emailed the audit liaison stating, in part, "I appreciate your willingness to collaborate and ensure the team is provided the information they need to complete the audit. I am reaching out to let you know that the team has lost access to the (b)(6); (b)(7)(C) site on or about March 6th. Can you please assist me in re-establishing their connection? I am not sure why we lost connection but it is a useful mechanism for gathering information and there are several items we identified on there that we wanted to go back to but cannot because we no longer have access." On March 22, 2022, the OIG audit manager again emailed the audit liaison requesting assistance restoring access to the (b)(6); (b)(7)(C) site, writing, in part, "I am reaching out to you today regarding our access to the (b)(6); (b)(7)(C) site. It was mentioned the other day that our access was removed and we would like to know if you can assist us in getting it restored. There are a few items that we were accessing on the (b)(6); (b)(7)(C) site that we need to conclude our analysis." That same day, the OIG audit manager also called an (b)(6); (b)(7)(C) staff member directly, requesting assistance in restoring the auditors' access to the (b)(6); (b)(7)(C) site, and access was finally restored that day.

Notwithstanding the auditors' repeated requests to regain access to the (b)(6); (b)(7)(C) site, none of the auditees told the auditors that their access had been intentionally terminated in order to restrict the information available to them, despite being fully aware of those facts.

On May 23, 2022, based on a referral from the Office of Audits, OI initiated an investigation of the circumstances that led to the loss of access. Emails among the auditees and interviews uncovered evidence to support concerns about the conduct of the audit liaison. OIG leadership met with ENF leadership on July 15, 2022, to express these concerns. On July 19, 2022, ENF notified the OIG that ENF had assigned another staff member to act as the OIG's audit liaison. Fieldwork on (b)(6); (b)(7)(C) audit was substantially completed in October 2022, and the audit report was issued on December 19, 2022.

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

Relevant Laws and SECs: The IG Act authorizes the OIG “to have timely access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials available” to the SEC “which relate to the programs and operations” of the SEC, “notwithstanding any other provision of law...”² The SEC does not have the authority to withhold information that OIG requests in connection with its oversight of the Agency.

SECs 29-1 and 30-2³ implement the requirement that SEC personnel cooperate with OIG inquiries and ensure that OIG personnel have access the information we need to complete our work. In particular, SEC 29-1 states:

Employees shall not engage in any conduct intended to obstruct, interfere with, or impede an OIG audit, investigation, inspection, evaluation, or other review.

Supervisors and staff are not to impose burdensome administrative requirements or screening procedures that could impede OIG access to needed records, facilities, or personnel. The production of requested materials should be reasonably prompt and in the manner requested by the OIG.

The SEC’s regulations explicitly prohibit misleading the OIG. SEC 29-1 admonishes SEC staff that “[f]urnishing false or misleading information to the OIG may result in criminal or disciplinary action.”

The audit liaison (b)(6); (b)(7)(C) the events in question, making (b)(6) knowledgeable about these requirements. As SEC employees (b)(6); staff, though they had not previously worked on an OIG audit, were responsible for understanding the SECs’ requirements.

Other Authorities: On December 3, 2021, the President issued Memorandum 22-04, *Promoting Accountability through Cooperation among Agencies and Inspectors General*, which reaffirmed that Agency personnel have an obligation to cooperate with their OIGs. The Memorandum went on to request that Agency leadership “communicate to your respective staffs about your expectation that all government employees and contractors fully cooperate with their IG.” In the months following the issuance of the Memorandum, OIG leadership worked closely with Agency leadership to develop a message to SEC personnel to comport with the Memorandum’s advisement. On June 14, 2022, Chief Operating Officer Ken Johnson and you issued the first annual message to SEC personnel, reminding them of our authority to access SEC records and SEC staff’s duty to cooperate with our work. This message was reissued on July 18, 2023, and we anticipate its reissuance this summer.

² 5 U.S.C. § 406(a).

³ SEC 30-2 reiterates SEC employees’ responsibility to cooperate with oversight: “All employees are expected to support the requests of OIG, GAO, and other auditors as they conduct their work, as appropriate.” See Section 5.2.1; see also Section 7.11.1, requires that all SEC employees “cooperate fully with OIG, GAO, and other external auditors.”

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Disposition: In lieu of a traditional Report of Investigation, we are presenting our findings in this Management Implication Report (MIR) in recognition of the following:

1. Since these events occurred in March 2022, the Agency has taken steps – such as the annual issuance of the cooperation memo – to inform and remind all SEC staff of their obligation to cooperate with OIG oversight and our broad authority to access Agency records, information, and personnel. We are not aware of any incidents similar to this one.
2. ENF leadership acted expeditiously to replace the audit liaison as soon as the OIG brought these events to their attention. Through our investigation, the other auditees have been made aware of their responsibilities to cooperate with us in future matters.
3. Agency leadership has reaffirmed to us and to all SEC employees that it does not condone staff actions that interfere with OIG oversight.
4. To ensure that SEC personnel refresh their understanding of their cooperation responsibilities and OIG oversight authorities at the beginning of each audit, the OIG recently developed a document entitled *OIG Authorities and SEC Employee Responsibilities*, to be included in audit and evaluation entrance conference materials. This document reinforces existing applicable law and SEC policies and complements – but does not replace – the Agency’s responsibility, as outlined in Memorandum 22-04, to communicate with its staff regarding these subjects.

We do not intend this MIR to understate the gravity of the intentional interruption to OIG’s access to the information it needed to complete an audit, or the false and misleading statements to auditors about the cause of the interruption. Rather, we want to highlight the importance of the SEC’s continued cooperation with the oversight work of the OIG, and to recognize the corrective actions taken by the SEC since these events occurred almost two years ago.

We look forward to continuing to build on our shared objective to ensure that all SEC personnel recognize the importance of cooperating with us and our work.

cc: Amanda Fischer, Chief of Staff, Office of Chair Gensler
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Kevin Burris, Counselor to the Chair and Director of Legislative and Intergovernmental Affairs
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Office of Inspector General – Investigations
U.S. Securities and Exchange Commission

MANAGEMENT IMPLICATION REPORT

MIR-24-002

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