

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

ORIGINAL

In the Matter of:)
) File No. OIG-509
OIG-509)
WITNESS: Number 70
PAGES: 1 through 20
PLACE: Securities and Exchange Commission
 100 F Street, N.E., Room 6735
 Washington, D.C.
DATE: Thursday, July 9, 2009

The above-entitled matter came on for hearing, pursuant to notice, at 10:34 a.m.

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1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

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5 Inspector General

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11 On behalf of the Witness:

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C O N T E N T S

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WITNESS:

EXAMINATION

Annette L. Nazareth

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EXHIBITS:

DESCRIPTION

IDENTIFIED

(None)

P R O C E E D I N G S

1
2 MR. KOTZ: We are on the record at 10:34 a.m. on
3 July 9, 2009 at the United States Securities and Exchange
4 Commission, Office of the Inspector General.

5 This is a telephonic interview with Annette
6 Nazareth, And her counsel is on the line, and his name is
7 Scott Muller.

8 Whereupon,

9 ANNETTE L. NAZARETH

10 was called as a witness and, having been first duly sworn,
11 was examined and testified as follows:

12 MR. KOTZ: Annette, can you just state and spell
13 your full name for the record?

14 THE WITNESS: It's Annette, A-n-n-e-t-t-e, middle
15 initial L, Nazareth, N-a-z-a-r-e-t-h.

16 MR. KOTZ: Scott, can you just identify yourself
17 for the record?

18 MR. MULLER: Sure. Scott, S-c-o-t-t, W. Muller,
19 M-u-l-l-e-r. I'm with Davis Polk, and I am one of Annette's
20 partners.

21 MR. KOTZ: My name is David Kotz, and I'm Inspector
22 General of the United States Securities and Exchange
23 Commission. This is an investigation by the Office of
24 Inspector General, case number OIG-509.

25 I'm going to ask you certain questions, and a court

1 reporter will record and later transcribe everything that is
2 said. Please provide verbal answers to the questions, as a
3 nod of the head or some other non-verbal response certainly
4 won't be able to be picked up on the telephone.

5 Please, so the record will be clear, let me finish
6 my question before you provide your response, and I'll try to
7 let you finish your response before I ask the next question.

8 It is important that you understand the questions,
9 and if there is anything that you do not understand or
10 anything that you do not know or are not sure about, please
11 let me know; otherwise, I will assume that you heard and
12 understood the question.

13 Do you understand those instructions?

14 THE WITNESS: Yes, I do.

15 EXAMINATION

16 BY MR. KOTZ:

17 Q Okay, great. I'm just going to start with a little
18 bit of background. Can you tell me what year did you begin
19 working at the SEC?

20 A I began working in 1998, September of 1998.

21 Q How long did you work at the SEC?

22 A I left the SEC January 31st of 2008.

23 Q And what positions were you in the SEC?

24 MR. MULLER: Annette, is it 2008 or 2009?

25 THE WITNESS: It's 2008. I took time off.

1 MR. MULLER: I'm sorry, okay.

2 BY MR. KOTZ:

3 Q What positions did you hold at the SEC?

4 A I started in 1998 as senior counsel to Chairman
5 Arthur Levitt. I was briefly, either at the end of '98 or
6 beginning of 1999, for eight weeks I was the interim director
7 of the Division of Investment Management, or acting director.

8 Then, in March of 1999, I became the director of
9 the Division of Market Regulation, which is now called the
10 Division of Trading and Markets.

11 And in August of 2005, I was appointed a
12 commissioner of the SEC, and I left as commissioner on
13 January 31, 2008.

14 Q Okay. What were your duties as the Director of
15 Market Regulation?

16 A Market Regulation is primarily a policy division,
17 and I was in charge of the division that oversaw the
18 regulation of broker/dealers, exchanges, ECNs, ATSS, clearing
19 agencies, transfer agents -- and that's basically it.

20 Q And who did you report to at that time?

21 A In that position, I always reported to the
22 chairman.

23 Q And how many people did you have under you, just
24 approximately?

25 A Approximately 170.

1 Q And what were your duties, just generally, as a
2 commissioner?

3 A As a commissioner, you basically vote on
4 enforcement matters and vote to approve new rules and
5 regulations.

6 Q When did you first hear of Bernard Madoff?

7 A When did I first hear?

8 Q Yeah, did you hear of him before you met him, or
9 was the first time you heard of him when you met him at some
10 point?

11 A I did not know him before I was at the SEC.

12 Q Okay.

13 A I believe that I first met him in my capacity as
14 senior counsel to Chairman Levitt.

15 Q How many times would you say you've met him or seen
16 him?

17 A I would say several. I would certainly think in
18 excess of ten.

19 Q Okay. And did you ever have one-on-one
20 conversations -- I'm sorry, one-on-one meetings, just the two
21 of you?

22 A I don't believe so.

23 Q Did you ever go to lunch with him, just the two of
24 you?

25 A No.

1 **Q Did you ever go to lunch with him with a bunch of**
2 **other people?**

3 A Did I have lunch with him? I believe -- I don't
4 know if we had food. Chairman Levitt had meetings with a
5 variety of people who he thought were sort of thought leaders
6 in the area of the markets and market structure. And I
7 believe he was invited to those meetings in maybe late '99 or
8 2000, or something like that. So I've been at meetings like
9 that with him.

10 I also attended a board dinner for the Securities
11 Industry Association at one of their annual meetings that he
12 attended. He was a dinner guest there.

13 **Q And were there many other people at that dinner?**

14 A I beg your pardon?

15 **Q Were there many other people at that dinner?**

16 A Oh, easily over 60 or something like that, yeah.

17 **Q And were there also SEC panels or events that you**
18 **and he were at? I have in front of me this, "SEC announces**
19 **the agenda for public hearing on proposed regulation MNS,**
20 **April 21, 2004."**

21 A Right.

22 **Q And Chairman Donaldson gave opening remarks and you**
23 **gave introduction of issues and he appeared on a couple of**
24 **panels.**

25 A Exactly.

1 **Q** So how many occasions were there like that, where
2 there were these kind of panels or events that Bernie Madoff
3 would appear at that you were at?

4 A Well, I really can't remember how many, but he
5 certainly was a fixture -- for lack of a better term -- in
6 the industry, and someone who was highly regarded for his
7 knowledge of the workings of the markets and market
8 structure.

9 And a good deal of my time in market regulation was
10 spent sort of studying the current state of the markets, the
11 changes that had occurred in the markets, and to analyze what
12 the Commission should be doing in terms of new regulation,
13 which ultimately resulted in regulation MNS.

14 I mean he was certainly a person who periodically,
15 in connection with our fact-finding, fact-gathering, we would
16 have dealings with him.

17 **Q** Did he ever ask you to help him out with a matter
18 that related to him or his company?

19 A The only thing -- nothing that was not public. The
20 only thing I recall -- and I don't believe I dealt with him.
21 I think my staff -- I may have spoken to Peter Madoff once
22 about it myself, and I know the staff analyzed it -- a
23 no-action position in relation with the short-sale rule.

24 There was something about the way they were trading
25 that they thought it was appropriate to have special

1 treatment or some sort of exemption under the short-sale
2 rule. But again, that was publicly. It's in the record as
3 one of the exceptions to the short-sale rule.

4 **Q And what time period was that?**

5 A I don't remember. It was before I was a
6 commissioner. I had completely forgotten about it, but I saw
7 it cited in the short-sale release as one of the --

8 You know, there are a number of exceptions to the
9 short-sale ruling for market making and things like that.

10 And it was something in the way they did their
11 trading that they wanted it clarified that the way they were
12 doing it was appropriate and I just remember that that's the
13 only thing I can remember where they came in and asked for
14 specific relief on something.

15 **Q And you say it was in the short-sale rule. Do you**
16 **know where that would be?**

17 A Where is the short-sale rule?

18 **Q Well, I mean -- so it was a Commission rule?**

19 A Well, there are lots of --

20 If you look in the recent releases, there
21 are -- you know, the Commission is now considering further
22 changes to the short-sale regulations. And there was a
23 period where they eliminated the up-tick rule.

24 **Q Right.**

25 A If the up-tick rule was in effect, you would have

1 various market participants come in and say I've got this
2 trading system. We do transactions in this way. He was
3 asking for relief because he had an electronic system and it
4 was something -- you know, a technical issue that he wanted
5 clarification on. It wasn't any sort of huge policy issue.

6 But it's a technical issue that I just happened to
7 notice recently in the Commission's current -- you know,
8 they've got this big release out there on whether or not to
9 re-institute some form of an up-tick rule. And it talks
10 about the history of how short sales were regulated in the
11 past. And I'm not sure if it's even identified as Madoff,
12 but one of the exceptions was pursuant to a no-action release
13 that Madoff and company got. This wasn't him personally.

14 **Q Was that the broker/dealer?**

15 MR. MULLER: The broker/dealer, right.

16 THE WITNESS: Absolutely. Yes, the broker/dealer.
17 That's the only thing I ever --

18 BY MR. KOTZ:

19 **Q So did you have any involvement at all with Bernard**
20 **Madoff Investment Securities, the hedge fund side, the**
21 **investment/advisor side?**

22 A No.

23 **Q Were you aware --**

24 MR. MULLER: You might even ask her if she was
25 aware that it existed.

1 MR. KOTZ: Yeah, that's what I was just getting to.

2 BY MR. KOTZ:

3 Q Were you aware that Madoff did investments for
4 people?

5 A Not at all.

6 Q And you mentioned Peter Madoff. What other members
7 of Bernie Madoff's family did you meet?

8 A Over the course of the years, I met Peter,
9 Shana -- because she was the lawyer -- and I guess I have met
10 both Mark and Andy. But Mark I met on more occasions. I
11 think with Andy, there was a period where he wasn't involved
12 in the business.

13 Q And did you see each of them on multiple occasions?

14 A Yes, but again, I think it was because they were
15 active again in things like the Securities Industry
16 Association, so I would see them either at industry
17 conferences or things like that.

18 Q Was that mostly during the time period that you
19 were head of Market Regulation or as a Commissioner?

20 A Oh, much more in Market Regulation. That's when I
21 was so involved in fact-gathering.

22 MR. MULLER: David, you know those things. There
23 are literally hundreds -- if not more -- people in those
24 things.

25 THE WITNESS: Right.

1 MR. KOTZ: Okay, that's good to point out.

2 BY MR. KOTZ:

3 Q Let me tell you what Bernard Madoff said. I just
4 want you to react to it. He says he knows you very well. Is
5 that accurate; do you think? I mean, you don't really know
6 him in a social sense, you know him only in a professional
7 in terms of sense activities; right?

8 A Right. Correct, I only knew him through work. I
9 wasn't -- I didn't --

10 Q So you were never really in any social settings
11 with Bernard Madoff?

12 MR. MULLER: Annette, you ought to make clear for
13 the record your answer to that.

14 THE WITNESS: Yeah, let me make it clear.

15 Look, I mean social settings, board dinners for
16 SIFA; is that a social setting? It's a business setting,
17 it's a social setting.

18 The only other social thing I can recall was when I
19 had my going-away party at the SEC, I invited about -- I
20 don't know -- 150 senior people from the industry who I had
21 met over the course of my ten years at the Commission, and he
22 was one of the people who was invited.

23 MR. MULLER: I think what he is asking about is,
24 for example, dinner together, lunch -- you know, that kind of
25 activity.

1 THE WITNESS: Bernie Madoff never once called me,
2 and it never occurred to me to ever just sort of have lunch
3 with him, not that I can recall.

4 BY MR. KOTZ:

5 Q Okay. So it was all directed around some work
6 event or function?

7 A Oh, yes.

8 Q Okay. Now, were you aware that the SEC had
9 conducted or was conducting an examination of Madoff or
10 Madoff Securities?

11 A No.

12 Q In an examination that was conducted in the
13 2005/2006 time frame, in a conversation between Bernard
14 Madoff and one of the examiners, Madoff brought your name up
15 as somebody he knows well. Do you have any idea why he would
16 do that?

17 A No.

18 Q Did you ever get a call in the context of an
19 examination that the SEC was doing about the examination?

20 A No. Never.

21 Q Okay. And you have never invested with Bernard
22 Madoff?

23 A No. Thank God for that.

24 Q Right. Were you aware prior to December 2008 that
25 the Enforcement Division of the SEC had received numerous

1 **referrals questioning the legitimacy of Bernard Madoff's**
2 **claimed returns?**

3 A No, never.

4 **Q Were you aware prior to December 2008 that Harry**
5 **Markopolos had alleged that Madoff was running a Ponzi**
6 **scheme?**

7 A No.

8 **Q Had you heard the name Harry Markopolos prior to**
9 **December 2008?**

10 A No.

11 **Q Were you aware prior to December 2008 that OC had**
12 **conducted examinations of Madoff?**

13 A No.

14 **Q And just for the record, did you play any role at**
15 **all in the Enforcement investigation or any OC examinations**
16 **of Madoff at any time while you were at the SEC or otherwise?**

17 I'm sorry I didn't catch the answer.

18 A No. I'm sorry.

19 **Q Can you just repeat it one more time?**

20 MR. MULLER: We seem to be losing you.

21 THE WITNESS: I don't know why. I said no. That's
22 interesting.

23 BY MR. KOTZ:

24 **Q We want to get that one on the record.**

25 A I'm sorry. No. The answer is no.