

MEMORANDUM

DATE: June 4, 2009

TO: H. David Kotz, Inspector General
Office of Inspector General

FROM: John H. Walsh, Associate Director - Chief Counsel
Office of Compliance Inspections and Examinations

SUBJECT: Office of Inspector General Request to the Office of Compliance
Inspections and Examinations for Case No. OIG-509

We are in receipt of your expanded supplemental request for documents relating to Bernard L. Madoff Securities LLP ("Madoff Firm") and related individuals and/or entities dated April 3, 2009 and your May 7, 2009 response to our request for clarification. We are also in receipt of Noelle Frangipane's email dated May 18, 2009 requesting additional records. We address each of these below.

The Expanded Supplemental Request and Your Clarifications

We are moving forward to respond to your expanded supplemental request of April 3, 2009 in light of your May 7, 2009 response to our request for clarification. Please be advised that responding to your expanded supplemental request will require our office to take a different approach than we have followed in responding to your previous requests.

First, your expanded supplemental request identifies email as records that should be produced. To date, we have not conducted email searches as part of our search for responsive records. You previously instructed us not to search emails, as you would receive emails from searches conducted by the Office of Information Technology ("OIT"). However, your expanded supplemental request specifically requests email. To respond to this request we will conduct searches for examination staff email. If you do not want us to search for email, please let us know.

Second, as we understand your expanded supplemental request, we are to produce to you all records of interest to you. Previously, you provided us with defined categories of records, such as examination reports, workpapers, modules, and so on. However, when we asked you to clarify your expanded supplemental request by identifying the categories of records of interest to you, you indicated that if we are uncertain whether documents or categories of documents are of interest to you, we should contact you and you will assist us in making that determination. This request appears to have no limitation as to scope. It also appears to be inconsistent with your prior instructions to us. As I previously noted to you in my memorandum dated April 13, 2009, at the outset of your investigation your office instructed us that we were not to conduct any

internal investigation of our own, or contact current or former employees who may have worked on Madoff matters except to seek assistance identifying records related to past completed examinations of the Madoff Firm. We have carefully sought to adhere to your instructions. Now, however, to respond to the open-ended scope of your expanded supplemental request, we will conduct a full review, including interviewing staff, to identify any potentially related documents, so that we can ask you if they are of interest to you. If you do not want us to contact or interview staff, please let us know.

Third, in your May 7, 2009 clarification you have identified certain examples of the types of documents of interest to you. While we recognize that the list contains examples of categories, and is not comprehensive, we will move forward to identify and collect documents responsive to the categories you have identified. As we noted above, identifying responsive documents will require us to conduct a full review including interviewing examination staff. In particular, we expect a full review will be necessary to identify documents related to the following: email or other documents in which Madoff employees communicate with current or former SEC employees; email or other documents that evidence a personal relationship between Madoff employees and current or former SEC employees; and email or other documents indicating that political or other pressure could or would be exerted to influence SEC examinations or investigations. If you do not want us to contact or interview staff, please let us know.

Finally, your May 7, 2009 clarification does not address several concerns that we raised in my memorandum of April 13 and during our meeting on the same date about the undefined scope of your request. For example, in my memorandum and during our meeting, we asked whether your supplemental request includes all press articles discussing the Madoff Firm and/or records reflecting discussions at public compliance conferences. We assume that you are not interested in such documents. Your request asks us to produce records regarding "current or former SEC employees." We assume that you are asking us only to respond regarding staff in the examination program. Similarly, your request asks us to produce documents regarding "SEC examinations or investigations." Again, we assume that your request to us is limited to examinations. If you disagree, please let us know.

May 18, 2009 Request

On May 18, 2009, we received an additional document request via email from Noelle Frangipane, in which she requested any records relating to any examination or review of Avellino and Bienes, or any examination or review of the Madoff Firm in or around 1992.

In regards to examinations or reviews of Avellino and Bienes, to the best of our knowledge, this firm has never been registered with the Commission. To the best of our knowledge, the examination program has not conducted any examination or review of Avellino and Bienes.

In regards to examinations or reviews of the Madoff firm in or around 1992, we have identified two examinations of the Madoff firm during the approximate time period of Ms. Frangipane's request. We informed your office of these examinations in our initial response and document production on January 16, 2009. Both were conducted by the New York Regional Office, one in 1990 and one in 1993. To date, we have not found workpapers relating to either examination.

This is not surprising, as staff in the Commission's Records Management Office informed us that examination records are typically maintained for 13 years and are then destroyed. We confirmed with the Records Management Office that the 1990 examination workpapers were destroyed in accordance with the record retention schedule. With regards to the 1993 examination, we spoke with staff from the New York Regional Office who informed us that records from past completed examinations were destroyed during the September 11, 2001 terrorist attack.

Conclusion

We were pleased in our meeting of April 13, 2009 when you stated that we had cooperated fully in your investigation. We intend to continue to do so. In keeping with this cooperative approach, the purpose of this memorandum is to let you know that responding to your expanded supplemental request will require our office to take a different approach than we have followed in responding to your previous requests. If you have any questions or comments, please do not hesitate to call me at 1-6471. If we have not heard from you by June 12, 2009, we will assume that you have no objection to the plans outlined in this memorandum.