



OFFICE OF
INSPECTOR GENERAL

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

MEMORANDUM

January 23, 2009

TO:

[REDACTED]
Associate General Counsel for Litigation
and Administrative Practice
Office of General Counsel

[REDACTED]
Associate Executive Director for Human Resources

[REDACTED]
Senior Counsel
Office of General Counsel

FROM:

H. David Kotz *[Signature]*
Inspector General

SUBJECT: Notification to Office of Inspector General (OIG) of Decisions on
Disciplinary Action and Settlement Agreements Involving Subjects of
OIG Investigations (Investigative Memorandum No. 464)

A June 24, 2008 Report of Investigation issued by the OIG found evidence that the subject of the investigation had intentionally falsified her employment application with the Securities and Exchange Commission (SEC), as well as two Standard Forms 50 that she filed in support of her application. Accordingly, the OIG referred the matter to management for disciplinary action, up to and including dismissal. The OIG informed the SEC Office of General Counsel (OGC) and Office of Human Resources (OHR) that it had made a criminal referral of the matter to the Public Integrity Section of the Criminal Division of the U.S. Department of Justice (DOJ).

The results of the aforementioned investigation were also publicly announced four months ago at page 48 of the OIG's Semiannual Report to Congress (SAR) for the semiannual reporting period ending September 30, 2008. The SAR reported that the subject admitted to OIG investigators that she had committed serious criminal offenses. The SAR also disclosed at page 49 that, "Management removed the employee from her position effective July 31, 2008, relying on the employee's admissions to the OIG that she had falsified her SF50s and employment."

On January 9, 2009, the OIG was advised by DOJ's Trial Attorney (DOJ Counsel) who is responsible for the criminal prosecution of the subject that he was recently informed by the subject's defense attorney that the subject and the Commission entered into a Stipulation and Agreement of Settlement (Settlement) in December 2008. The Settlement was entered into in connection with the subject's appeal of the Commission's July 31, 2008 decision removing her from federal service to the Merit Systems Protection Board (MSPB). The OIG, however, had not been informed or kept apprised of the appeal, the ensuing settlement discussions or the settlement itself. In fact, on January 14, 2009, the OIG learned for the first time from a representative of the MSPB that the subject filed her appeal of the Commission's July 31, 2008 removal decision on August 27, 2008 – nearly 3½ months before the Settlement.

It has also recently come to our attention that during the discussions leading up to the Settlement, management had actually considered the possibility of reinstating the subject, which could have seriously compromised the ongoing criminal prosecution. Notwithstanding the fact that the subject was not reinstated, there remains a concern as to how serious a negative impact the Settlement will have on DOJ's ability to prosecute this individual successfully. In fact, DOJ Counsel expressed grave concern with SEC management's decision to settle with the subject and its failure to have notified the OIG of the settlement.

Recommendation 1

OGC, or OHR, shall provide the OIG with at least three business days written notice prior to making a final decision in response to recommendations for disciplinary action made in OIG reports of investigation.

Recommendation 2

OGC shall provide the OIG with at least five business days written notice prior to the Commission executing a settlement agreement with a subject who has appealed a disciplinary action stemming from a recommendation made in an OIG report of investigation.