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# INVESTIGATIVE MEMORANDUM G - 398 / 402

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April 14, 2005

**To:** Giovanni Prezioso  
Stephen Cutler

**From:** Walter Stachnik

**Re:** Additional Employee Ethics Training

During two investigations recently conducted by the Office of Inspector General (OIG-398 and OIG-402), it came to our attention that additional ethics guidance is needed in two areas:

- Clearer guidance for departing employees, particularly attorneys, on post-employment restrictions and notification requirements; and
- Specialized training for Enforcement attorneys on ethical issues, particularly those that arise while attorneys are on official government travel.

## POST EMPLOYMENT RESTRICTIONS & NOTIFICATION REQUIREMENTS

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We recently investigated whether a former Commission attorney violated post-employment restrictions contained in 18 U.S.C. § 207(a)(1)<sup>1</sup> and 17 C.F.R. § 200-735-82 (OIG-398). Under Commission Rule 8(b)(1), 17 C.F.R. § 200-735-8(b)(1), for two years after leaving the SEC, all former employees must provide notice to the Secretary upon being retained as the representative of anyone in any matter in which it is contemplated that the former employee will appear before the Commission or communicate with Commission staff. Under this rule, notice must be given “within ten days of such retainer or employment, or of the time when

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<sup>1</sup> 18 U.S.C. § 207(a)(1) provides that “[a]ny person who is an officer or employee (including any special Government employee) of the executive branch of the United States . . . and who, after the termination of his or her service or employment with the United States . . . knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States . . . on behalf of any other person (except the United States . . . ) in connection with a particular matter . . . (A) in which the United States . . . is a party or has a direct and substantial interest, (B) in which the person participated personally and substantially as such officer or employee, and (C) which involved a specific party or specific parties at the time of such participation . . . shall be punished as provided in section 216 of this title.”

<sup>2</sup> 17 C.F.R. § 200-735-8(a)(1) provides that “[n]o person shall appear in a representative capacity before the Commission in a particular matter if such person, or one participating with him or her in the particular matter, participated personally and substantially in that matter while he or she was a member or employee of the Commission.”

appearance before, or communications with the Commission or its employees if first contemplated.” Id.

During our investigation, the former Commission attorney informed us that, prior to attending a presentation by the Commission’s Ethics Counsel at “SEC Speaks,” he was not aware that the Commission’s Office of Ethics Counsel interpreted Rule 8(b)(1) to require that a former employee not communicate with Commission staff until after receiving clearance from the Office of the Secretary. The former attorney indicated that he received a memorandum on post-employment restrictions when he left the Commission, but did not have a briefing on those restrictions. The Office of Ethics Counsel’s written guidance on post-employment restrictions, dated November 24, 1997, paraphrases the language of Rule 8(b)(1), but does not specifically state that clearance from the Secretary’s Office must be received before the former employee may communicate with Commission staff on a matter. We believe that it would be helpful, to avoid any confusion in this area, if the Office of Ethics Counsel within the Office of General Counsel (OGC) provided additional guidance (both verbal and written) to departing employees on post-employment restrictions and notification requirements.

### **Recommendation A**

OGC should provide additional guidance (both written and verbal) for departing employees concerning post-employment restrictions and, in particular, the proper interpretation of the notice requirement of Commission Rule 8(b)(1). OGC might consider requiring departing employees to sign a document stating they have read and understood OGC’s guidance on post-employment restrictions.

## **SPECIALIZED ETHICS TRAINING FOR ENFORCEMENT ATTORNEYS**

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In another investigation (OIG-402), we found that Commission attorneys, while on official travel, accepted meals and local transportation expenses (*e.g.*, taxis) from outside sources, such as court-appointed receivers, opposing counsel, and court reporters, possibly in violation of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). Commission Enforcement attorneys encounter many situations, particularly while on official travel, when they need to make on-the-spot determinations as to what constitutes a gift under the Standards and whether to accept a gift.

We believe that it would be beneficial if Commission Enforcement attorneys were provided with specialized ethics training, in addition to the ethics training currently provided by the Office of Ethics Counsel. This additional training could provide Enforcement attorneys with guidance on how to handle situations that may arise, particularly when attorneys are on official travel, such as:

- When it is (or is not) appropriate for Enforcement attorneys to accept meals and entertainment from outside parties, and appearance concerns that may be created by dining and socializing with outside parties;

- Whether Enforcement attorneys may share taxis with outside parties and when it is (or is not) appropriate to permit an outside party to pay for a shared taxi;
- Whether Enforcement attorneys are permitted to accept rides in private automobiles from outside parties, such as court-appointed receivers; and
- Under what circumstances Enforcement attorneys are permitted to accept seat upgrades, vouchers and other airline benefits, and what, if any, travel expenses incurred due to voluntarily taking a later flight may be claimed.

The Division of Enforcement should consider making the additional ethics training mandatory and tracking whether Enforcement attorneys complete the training. One option for providing this training might be to develop computer-based training that would include quiz sections based on scenarios illustrative of situations Enforcement attorneys might experience, particularly while on official travel. Enforcement attorneys who complete the training could receive a certificate of completion (via e-mail).

## **Recommendation B**

The Division of Enforcement, in coordination with the OGC and the Office of Financial Management, should provide additional ethics training to Commission Enforcement attorneys focusing on situations that may be encountered by these attorneys, particularly when they are on official travel. An appropriate time frame should be determined for conducting the training (*e.g.*, upon joining the Commission and annually thereafter).

cc: Michelle Barrans  
Margaret Carpenter  
James Clarkson  
David Kornblau  
William Lenox  
James McConnell  
Joan McKown  
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