



OFFICE OF
INSPECTOR GENERAL

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

MEMORANDUM

September 16, 2008

To: Linda Thomsen, Director, Division of Enforcement

Richard J. D'Anna, Director, Office of Collections and Distributions,
Office of the Executive Director

From: H. David Kotz, Inspector General *HDK*

Subject: The Division of Enforcement's Draft Policies and Procedures
Governing the Selection of Receivers, Fund Administrators,
Independent Distribution Consultants, Tax Administrators and
Independent Consultants, Report No. 454.

This memorandum transmits the Securities and Exchange Commission, Office of Inspector General's (OIG's) final memorandum detailing the results of our review of the Division of Enforcement's (Enforcement's) draft policies and procedures governing the selection of receivers, fund administrators, independent distribution consultants, tax administrators and independent consultants. This review was conducted as part of our continuous effort to assess the management of the Commission's programs and operations.

The final memorandum contains three recommendations, which if implemented, should improve Enforcement's operations. We received comments from Enforcement and the Office of the Executive Director on the draft report dated September 2, 2008, and incorporated these comments into the final report, as appropriate.

Should you have any questions regarding this memorandum, please do not hesitate to contact me. We appreciate the courtesy and cooperation that you and your staff extended to our staff during this review.

Attachment

cc: Peter Uhlmann, Chief of Staff
Diego Ruiz, Executive Director, Office of the Executive Director
Lynn Powalski, Deputy Director, Office of Collections and Distributions,
Division of Enforcement
Beth Badawy, Assistant Director, Office of Collections and Distributions,
Division of Enforcement
Darlene Pryor, Management Analyst, Office of Executive Director

Rick Hillman, Managing Director of Financial Markets and Community
Investment, GAO

OIG's Review of the Division of Enforcement's Draft Policies and Procedures Governing the Selection of Receivers, Fund Administrators, Independent Distribution Consultants, Tax Administrators and Independent Consultants

Background

Within the past year, the Office of Inspector General (OIG) has received complaints related to two enforcement matters alleging that the receivers who worked on these cases had a conflict of interest as a result of prior legal work they had performed, and is currently looking into these allegations. The OIG also issued Report No. 432, "Oversight of Receivers and Distribution Agents," December 12, 2007, to the Division of Enforcement. The report made recommendations for improvement in receiver and distribution agent oversight, and the OIG has continued to monitor the implementation of those recommendations. In connection with these ongoing efforts, the OIG has reviewed Enforcement's April 2008 draft "*Policies and Procedures Governing the Selection of Receivers, Fund Administrators, Independent Distribution Consultants, Tax Administrators and Independent Consultants*" and the attached applicant form entitled, "*Conflicts of Interest and Background Information.*"

Enhancements

We believe the draft policy and the attachment should be enhanced, as described below.

First, the attachment to the draft policy requires applicants to disclose information designed to assist Enforcement in determining if an applicant has a potential conflict of interest. However, the draft policy itself does not address actual or apparent conflicts of interest or provide guidance to Enforcement staff on how to address such conflicts. We believe that conflicts of interest on the part of a receiver or independent consultant is an important issue, as allegations that a receiver or independent consultant has an improper conflict of interest could be detrimental to an SEC enforcement case. This issue should, therefore, be covered in the policy itself and not just in the attachment.

Second, the attachment to the draft policy only requests information from applicants about responsive matters during a finite period of time (the last five years is suggested in the draft). We believe that, for certain information being solicited in the attachment, Enforcement should request information for a time period greater than five years and, in some instances, should not place any time limit on the request for information. For example, it would seem appropriate that, in order to learn of possible conflicts of interest, Enforcement should know whether an applicant has ever represented a respondent or defendant in a matter, and not just within the last five years as is proposed.

Third, while an applicant is required to sign the information form, the draft form does not require the applicant to certify that he or she provided complete and truthful information in the document, and that he or she understands the consequences for providing false information. Possible consequences for providing incomplete, false or misleading information could include, *inter alia*, immediate removal of the applicant from consideration, referral to state bar authorities (if the person is an attorney), or referral for criminal prosecution.

Recommendation 1

Enforcement should revise its policy on the selection of receivers and independent consultants, *Policies and Procedures Governing the Selection of Receivers, Fund Administrators, Independent Distribution Consultants, Tax Administrators and Independent Consultants*, to address actual and apparent conflicts of interest and provide guidance to Enforcement staff on how to handle such conflicts.

Recommendation 2

Enforcement should determine whether, depending on the nature of the information being sought, there should be any time limit placed on a request for particular conflict of interest or background information, or whether that information should be requested for a time period greater than five years. Enforcement should then revise the attachment to the policy, *Conflicts of Interest and Background Information*, accordingly to ensure that all pertinent information is disclosed.

Recommendation 3

Enforcement should include in the attachment to the policy, *Conflicts of Interest and Background Information*, the applicant's certification that the information provided is complete and truthful and that the applicant understands the possible consequences for providing false information.

Management's Response

Enforcement and the Office of the Executive Director stated that they would take the OIG's comments into account as Enforcement continues its drafting efforts with the Chairman's Working Group, regarding Enforcement's policies and procedures governing the selection of receivers, fund administrators, independent distribution consultants, tax administrators and independent consultants.