UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:  
   ) File No. OIG-509
OIG-509  

WITNESS: Number 3

PAGES: 1 through 61

PLACE: Securities and Exchange Commission
   100 F Street, N.E.
   Washington, D.C. 20549

DATE: Thursday, February 19, 2009

The above-entitled matter came on for hearing, pursuant to notice, at 2:20 p.m.

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APPEARANCES:

On behalf of the Securities and Exchange Commission:

H. DAVID KOTZ, ESQ., Inspector General
HEIDI STEIBER, ESQ. Investigator
CHRISTOPHER WILSON, ESQ. Investigator
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Washington, D.C. 20549
202-551-6037

On behalf of the Witness:

OCIE Staff Accountant, PRO SE
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### WITNESSES

**OCIE Staff Accountant**

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MR. KOTZ: We are on the record at on February 19, 2009 at the United States Securities and Exchange Commission Office of Inspector General.

I'm going to give you the oath. Would you please raise your right hand?

Whereupon,

was called as a witness herein, and after being first duly sworn, was examined and testified as follows:

MR. KOTZ: Could you state and spell your full name for the record?

THE WITNESS:

MR. KOTZ: Great. My name is David Kotz. I'm the Inspector General of the United States Securities and Exchange Commission. This is an investigation by the Office of Inspector General, case No. OIG-509.

I'm going to ask you certain questions. You're going to provide answers under oath. The court reporter will record and later transcribe everything that is said.

Please provide verbal answers to your questions.

If you give a nod of the head or another nonverbal response, it won't be able to be picked up by the court reporter.

Also, so the record will be clear, please let me
Q Okay. Did he ever confide in you about romantic relationships he was having?
A He did.
Q Okay. When you first met him in February 2001, was he involved with somebody, do you remember?
A If I remember correctly, he was dating a girl from
Q And how long did that last?
A I don't have numbers on that, not that far back.
Q Do you know if he ever had a very serious relationship with somebody other than Shana Madoff, who he eventually married?
A Yes. As far as the serious nature of a relationship, meaning like somebody I know he was with for a period of time,
Okay. Now, in the 2003 time period, around say April to August 2003, we have some documents which I can show
you which demonstrate some communications between Eric and Shana Madoff.

A Okay.

Q Do you know if during that period of time he was friendly with Shana?

A All I know is that I really never even heard of Shana Madoff until he started dating her.

Q Okay.

A But I will -- but I do know that he was -- he and John McCarthy used to go and do these symposiums, these speaking events. And as far -- and I did have a very -- I had a front-row seat with him and Shana as their relationship grew once I -- you know.

But in my opinion, and this is -- I'm almost certain of it, Eric's a very emotional guy, okay, to the point to where he and I would really talk and he would -- you know. He had -- things just sprang up between him and her. And basically what happened was is somewhere between the dissolving of his marriage, the marriage that was supposed to happen, and I would probably say late spring/early summer --

Q And this is 2005?

A No. This is 2006.

Q Okay. Because October 2005 --

A October 2005 he was supposed to be marrying Jane Doe.
Q Right.

A And they were in a very serious relationship.

Q Right.

A I never even heard of Shana probably -- and I'm telling you what -- my dates could be off by two or three months. I would say -- but I will say the earliest that I probably heard of Shana was probably late spring 2006.

Now, once again, I would probably err to a month before that. But it could have been -- I guess it couldn't have been too far after that because basically what happened, it was just out of the blue, bam, all of a sudden, you know. I know from his conversations with me that they had known each other through the symposium, but that it was never anything more than a working relationship for most of that time.

After the dissolving of the relationship and probably into the spring, it remained the same until at some point during, I don't know, one of the dinners or something afterwards, you know, I think it became a little more personal. I think there was some kind of connection there.

Q And you think, given your relationship with Eric, that if he had feelings for her prior, in the 2003/2004 time frame, you would have known about it?

A Absolutely.

Q So when he first talked about the fact that
A: I can't -- I don't remember. I don't -- in my mind, until this thing came up in the news, I had no idea that she was compliance. He may have said it and I just didn't -- I wasn't really paying attention to that part of it because, you know, all I remember is being -- I always thought it was kind of funny how she kind of did what I did but she did it in the industry, you know.

Q: And so when was the first time you heard that Eric was interested in her?

A: Once again, I think it was either late spring or early summer. He kind of bemoaned his relationship with for a period of time, to the point to where I was almost kind of like, hey, Eric, you know, you've been broken up with her almost as long as you were with her, you know, like in my head.

So he really did go through a mourning period. So let's just say November, December, January, February, March, April, May. You know, now you're talking about six or seven months. They might have been together for nine months before things broke down with the wedding.

BY MS. STEIBER:

Q: Had he ever dated anyone during the time that he met to the point where he met Shana? Do you know if he ever saw any other women?

A: No. Eric Swanson is a -- he's not the type of guy
that plays the field. He's a relationship guy. When he gets in a relationship, you know, he kind of -- just kind of sets the tone. But he also gets very involved very quickly, you know.

MR. KOTZ: Okay. I'm going to show you a couple of documents.

This is an e-mail on March 4, 2006. And it's from Alex Sadowski to Eric Swanson. And then --

THE WITNESS: This is it right here?

MR. KOTZ: Yeah. And then Eric Swanson to Alex Sadowski. And we're going to mark this as Exhibit 1.

(SEC Exhibit No. 1 was marked for identification.)

BY MR. KOTZ:

Q Take a look at this, and maybe this will give you a better sense of the time frame in which the relationship between Swanson and Shana Madoff started.

A Oh, okay. (Examining) This is Eric to Alex. "There was an option. I took a pass."

Q Then it says, "Quite an earful from last night re Madoff. Apparently I'm a sycophant."

Do you have any idea what that refers to?

A Who's

Q Could it be

A It could be because I know who was a branch chief
Eric truly did not want to lose John as a friend. He didn't want to end the relationship with Shana because he was falling in love with her.

Honestly, I'm not so sure how -- I think eventually -- let's just say none of this stuff happened, and let's say John never mentioned any problems with Eric dating Shana. I'm pretty sure that, down the road, Eric probably -- because she was firmly planted in New York. I'm sure he would have left the SEC, taken a job in New York anyway. But I think he left earlier because of the deteriorating relationship with John McCarthy.

Q So did his relationship -- Eric's relationship with John McCarthy ever recover from this situation?
A I do believe so. John McCarthy was at the wedding.
Q Okay. But there was -- how long of a time period where John McCarthy and Eric Swanson were at odds, so to speak, over this matter?
A Once again, I don't have a definitive time. But I would say six weeks, maybe more. Can I ask, when did this stuff start hitting the fan, and when did Eric leave? Do you have those dates?
Q Yeah. Let me show you another document. This is a farewell reception for Eric Swanson.
A Yes. And when did this stuff start?
Q We'll mark this as Exhibit 6. And this is from
met Shana. I don't remember the first time I've gone out, once again, date-wise. But I do have specifics of when, you know --

Q And was John McCarthy ever out as well?

A John McCarthy out? I was never -- I can't recall ever being at a restaurant with Shana, Eric, and John at a time that this was happening. I was at the wedding. I can't -- I don't believe I was ever -- off the top of my head, I don't remember ever being with John, Shana, and Eric during the time -- with all three together at a time that this stuff was going on.

Q Okay. As Eric and Shana's relationship got more serious, did Eric ever talk to you about the fact that, you know, Shana was from a well-to-do family or a rich family?

A Well, yeah. He told me who she was, you know. But he didn't --

Q How did he describe that as who she was?

A You know, he didn't really go into detail. Eric --

Q That she was the niece of Bernie Madoff?

A Yeah. I don't know if he said the niece of Bernie Madoff. He said -- let’s put it this way. When the stuff hit the fan, I didn't know whether her father was Bernie or the other guy. Okay? Honestly --

Q So Eric talked about the fact that Shana was in the Madoff family?