

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

WITNESS: Number 7



PAGES: 1 through 45

PLACE: Securities and Exchange Commission
100 F Street, N.E.

Room 2465

Washington, D.C. 20549

DATE: Friday, March 13, 2009

The above-entitled matter came on for hearing, pursuant to notice, at 9:29 a.m.

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(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5 HEIDI STEIBER, Investigator

6 CHRISTOPHER WILSON, Investigator

7 Securities and Exchange Commission

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12 On behalf of the Witness:

13 OCIE Assistant Director, PRO SE

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C O N T E N T S

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WITNESS

EXAMINATION

OCIE Assistant Director

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EXHIBITS:

DESCRIPTION

IDENTIFIED

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Online Archive File - Alphabetical

13

2

Online Archive File - Chronological

21

3

E-Mail: Personal Privacy to OCIE Assistant Director and Personal Privacy

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4

E-Mail: [REDACTED] to Kelly

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Online Archive File - Most Recent

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Online Archive File - Most Recent Alpha

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Log Created from Online Archive Files

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P R O C E E D I N G S

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MR. KOTZ: Okay. We are on the record at 9:29 a.m. on March 13, 2009 at the United States Securities and Exchange Commission, Office of the Inspector General. I'm going to swear you in. Could you please raise your right hand?

Whereupon,

OCIE Assistant Director

was called as a witness herein and, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. KOTZ:

Q Okay. Could you state and spell your full name for the record?

A

Q Okay, thank you. My name is David Kotz, and I am the inspector general of the United States Securities and Exchange Commission.

This is an investigation by the Office of Inspector General, case number 509.

I am going to ask you certain questions, you will have to provide answers under oath. The court reporter will record and later transcribe everything that is said.

Therefore, you must provide verbal answers to the questions.

A nod of the head or some other non-verbal response won't be

1 generally --

2 A I don't know about the other groups.

3 Q Okay.

4 A I just know about ours.

5 Q Okay. Who had responsibility in your group, with
6 respect to handling tips or complaints?

7 A I would assume it would be me, because most
8 complaints that came in came to me. Not -- let me explain.
9 I never got the original complaint. It always -- almost 99,
10 100 percent of mine came through another office or division
11 of the Commission. So I never got a complaint directly from
12 a complainant.

13 Q Okay.

14 A They would either come from investment management,
15 OIEA, or Internet enforcement.

16 Q Okay.

17 A Those are the three major offices that sent
18 complaints to me.

19 Q Okay. And so you said there weren't formal
20 procedures. But informally, what happened when the complaint
21 would come in?

22 A It -- usually it's an e-mail that comes to me. I
23 will get it, I will look at it, determine primarily which
24 regional office it should go to. I will also look at it and
25 try to determine what's the situation here.

1 And then, I will forward that on to the regional
2 office, usually to an assistant or an associate director,
3 asking them to determine what they want to do, and let me
4 know what they're going to do with it.

5 Q Okay. And is there some kind of spreadsheet or
6 other document that all of the complaints during that time
7 period --

8 A Yes.

9 Q -- were --

10 A Yes, there is.

11 Q Okay.

12 A Yes. I have an archive file that, when all e-mails
13 come in, and when I forward them out to the regional offices,
14 and then we also created a log that would list the same
15 complaints. And I have a sample copy of that, which I will
16 give to you.

17 Q Okay, great. Do you have that with you, or --

18 A Yes, I do.

19 Q Okay. Why don't we take a look at it?

20 A Okay. I have, also, a page of my archive screen,
21 that you can see how it --

22 Q Okay.

23 A So actually, I have a couple of copies.

24 BY MS. STEIBER:

25 Q Did you bring the archives for 2003?

1 A So you can count it as an exhibit.

2 Q Okay. So why don't we make --

3 A This is something else, this is the first page.

4 MR. KOTZ: Why don't we make this as Exhibit No. 1?

5 This says, on the top, "Referral to FO Microsoft Outlook,"

6 and there is a date, 11/28 a.m.

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

9 BY MR. KOTZ:

10 Q Yes, tell me what Exhibit No. 1 is, please.

11 A Okay. Exhibit No. 1, it's a -- it's my archive
12 file, sorted by subject matter. And what I did is -- and it
13 only shows starting from -- it ends up with L, which is
14 Personal Privacy,
Not Related to
Madoff and then the next set, alphabetically, starts with
15 the M's.

16 And the reason I did that was to show you that I
17 have nothing in here on Madoff.

18 Q Is this current?

19 A Well, you can --

20 Q Or this is back then?

21 A No, you can see by the dates. It goes all the way
22 back.

23 Q Oh, I see.

24 A So L was here, then you had Monogenesis, Morgan
25 Stanley, Morning Star. So if Madoff -- if I had anything on

1 Madoff, it would have shown up M-a-d, here.

2 Q Okay. So you have no record of --

3 A No.

4 Q -- of having been -- having gotten a complaint
5 regarding Madoff?

6 A Absolutely none.

7 Q Okay.

8 A And remember, I told you I had two files online.

9 So here is the second part. I alphabetize that, also, by --

10 Q And this is the second page of Exhibit No. 1?

11 A Correct. So showing L, then starting with M,
12 M-a-g, M-d --

13 Q How far does this go back?

14 A I have this back to about 2000.

15 Q Okay. So according to this document, and the
16 research you did, going back to 2000 you have no record of
17 receiving a complaint relating to Madoff?

18 A None.

19 Q Okay.

20 BY MS. STEIBER:

21 Q Will you be able to check to see if you have any
22 record of a complaint coming from [REDACTED]?

23 A Yes. Let me -- [REDACTED]? Sure.

24 MR. KOTZ: Okay.

25 THE WITNESS: That sounds familiar. I mean, I

1 think they're a big insurance company or something.

2 MR. KOTZ: Okay.

3 THE WITNESS: So it's possible we have something on
4 them.

5 BY MR. KOTZ:

6 Q So this -- you showed me Exhibit No. 1, and this is
7 the manner in which the complaints are logged in?

8 A Correct.

9 Q Okay. And so, how many complaints or tips do you
10 generally get, say, per month?

11 A I would say about two to three.

12 Q Okay. And so, you would make the decision where to
13 send them?

14 A Yes.

15 Q Okay. And how would you decide where to --

16 A It's primarily based on the regional office, where
17 the registrant is located. All of these names that you see
18 by subject matter, that's the name of the -- and they're
19 mostly investment advisors. We don't get that many
20 complaints on investment companies from mutual funds.

21 Q Okay.

22 A It's primarily investment advisors.

23 Q Okay. And do you ever get complaints that you
24 simply don't send to anybody, because they're, you know, not
25 substantive, or --

1 A So I sent it to them, and I said, "Please see the
2 information, the complaint, and let me know what you're going
3 to do with it." [Personal Privacy] came back just yesterday
4 and said, "Apparently [Personal Privacy] is out of the country, but
5 they're going to make a note of it here, and they will
6 probably end up doing a joint exam of it." So it's --

7 Q Okay.

8 A That's what happened with it. And that's how the
9 process works.

10 Q Okay.

11 BY MS. STEIBER:

12 Q Let me ask you a question. If you were to receive
13 a tip or complaint, and you looked at it and realized that
14 it's a registered broker-dealer --

15 A Right.

16 Q -- but not a registered fund --

17 A Right.

18 Q -- would you log it into your spreadsheet, or --

19 A Probably not. I would probably just forward it
20 over to our broker-dealer people. I might.

21 I mean, first of all, it's possible I would just
22 put it in there because I got the e-mail, probably, is how it
23 would work.

24 Q But it's possible that you would look at it, assess
25 it, and send it to the broker-dealer side?

1 the attachments to it. Usually it's just a one-page document
2 that might come in from either OIEA or Internet enforcement,
3 although OIEA sometimes does give attachments also. I've
4 gotten some of theirs, where they have quite a few
5 attachments to it.

6 But I will send all of that information to the
7 regional office, including the attachments.

8 Q But from the complaints that you get, the one in
9 Exhibit No. 4 is a pretty substantive, detailed complaint,
10 wouldn't you say?

11 A Yes, absolutely.

12 Q Now, would you know who [REDACTED] -- does
13 that name mean anything to you?

14 A No, it does not.

15 Q And do you have any idea what happened with this
16 complaint, after it came into Mavis --

17 A Well, I heard about it, once we started to try to
18 search for complaints. And I think, from what I understood,
19 if this is the same complaint -- I think it's the only one
20 that I heard of where we got something about Madoff. I think
21 Mavis sent it to our other office on the 8th floor, or the --
22 I think it's Mark, I believe, is who she sent it to.

23 BY MS. STEIBER:

24 Q Mark who?

25 A Oh --

1 Q Donahue?

2 A Yes. Mark Donahue.

3 BY MR. KOTZ:

4 Q And what --

5 A Our SRO group, our SRO group, I'm sorry.

6 Q Okay.

7 A I just forgot the name for a second, sorry.

8 Q And what is your sense, from reading the document,
9 in terms of what the appropriate action might be, in response
10 to this complaint?

11 A Well, it's -- it appears to be dealing with
12 performance. So -- and that's something that is checked on
13 every examination, that I know of. So I would assume, if the
14 regional office got this -- and I don't know if the regional
15 office ever got it -- if they did an exam -- and they would
16 have to do it of [REDACTED] I assume -- if -- although Bernie
17 Madoff was a broker, so that's probably why Mavis sent it to
18 our SRO group, because it was a broker -- he wasn't
19 registered as an advisor at that time. So it could have gone
20 for that purpose.

21 Q All right. And what about the statements in this
22 complaint of Exhibit No. 4 that talk about the fact that,
23 "The options are traded with an 8 to 10 billion size. You
24 must see the volume, but unfortunately, you don't. We
25 actually checked with some of the largest brokers, which told

1 Q Okay. So --

2 A So I sent an e-mail around to the people in my
3 group, some 35 staff, and said -- and I will show you that,
4 if you want to --

5 Q No, just --

6 A Okay.

7 Q And did any of them come back and say they received
8 a complaint from --

9 A They all came back and said they did not receive a
10 complaint.

11 Q Okay.

12 A Two people did not send me an e-mail back, but I
13 got verbal confirmation from them.

14 Q Okay. So you've done a comprehensive and
15 exhaustive search, and there is no record of the complaint
16 from [REDACTED] regarding Madoff in Exhibit No. 4 ever
17 logged in. Is that right?

18 A Not to my -- correct.

19 Q Okay.

20 A Not -- at least the log that I keep, or the files
21 that I keep.

22 Q Okay. And obviously, these things happened some
23 time ago. But Exhibit No. 4 was provided to Mavis Kelly in
24 May of 2003. Mavis testified that she believed that she had
25 actually discussed this complaint with you.