

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

 **COPY**

WITNESS: Number 9  
PAGES: 1 through 52  
PLACE: Room 2264  
          Securities and Exchange Commission  
          100 F Street, N.E.  
          Washington, D.C. 20549  
DATE: Monday, March 16, 2009

The above-entitled matter came on for hearing, pursuant to notice, at 2:03 p.m.

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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

8 100 F Street, N.E.

9 Washington, D.C. 20549

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11 On behalf of the Witness:

12 GENE ALLEN GOHKLE, PRO SE

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C O N T E N T S

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WITNESS

EXAMINATION

Gene A. Gohlke

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EXHIBITS:

DESCRIPTION

IDENTIFIED

1 E-mail from [REDACTED] to Kelly,  
5/21/03

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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 three minutes after 2:00 on March 16, 2009 at the United States Securities and Exchange Commission Office of Inspector General.

Okay, I'll swear you in. Could you please raise your right hand?  
Whereupon,

GENE A. GOHLKE

was called as a witness 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, please?

A Gene Allen Gohlke, G-e-n-e, Allen, A-l-l-e-n, G-o-h-l-k-e.

Q Okay, Mr. Gohlke. 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 Number OIG-509. I'm going to ask you certain questions. You'll be providing answers under oath. The court reporter will record and later transcribe everything that is said. Please provide verbal answers to the

1 indirectly.

2 A Yes.

3 Q Okay. Going back to 2003, can you tell me if in  
4 2003, OC had any formal procedures or guidelines for how  
5 complaints or tips were to be handled?

6 A I don't know either way.

7 Q You don't know --

8 A If there -- if there was a formal guideline, I  
9 simply don't recall. Informal? Yes.

10 Q Okay. So you're not aware of any formal guideline  
11 that was in place, is that right?

12 A I'm not -- I can't recall one, no --

13 Q Okay.

14 A -- not at this point.

15 Q What was the informal procedure then, in 2003?

16 A That if a tip or complaint was received, we would  
17 review it, determine if it seemed to be an appropriate matter  
18 to be handled by the field office where the particular firm  
19 named in the response was located, and if that's the case,  
20 then we would refer that complaint to the field office, if it  
21 involved investment advisors or investment companies.

22 If it involved another type of entity, a broker  
23 dealer, we would refer it to the broker dealer staff in OC --

24 Q Were there particular individuals in -- during that  
25 time period, in 2003, who had responsibilities for accepting

1 Q Okay. Okay. Generally, these complaints that  
2 you've seen, how detailed would they be?

3 A You know, some come in telephonically, so --

4 Q Okay.

5 A -- others are on paper, could be on the one side,  
6 maybe a page, two pages, other times maybe three, four, five  
7 pages --

8 Q Okay.

9 A -- or a conversation -- might spend half an hour  
10 or 45 minutes talking to somebody --

11 Q Okay.

12 A -- trying to understand what it is they're saying.

13 Q Now you mentioned they could be referred different  
14 places. So are there some times where a complaint or a tip  
15 would be sent to enforcement?

16 A That's very possible, yes.

17 Q Okay. How would one decide whether you would send  
18 a complaint or a tip to enforcement?

19 A Well, if a firm is not -- if it's not an advisor or  
20 an investment company that's registered with the SEC, then  
21 the inspection staff doesn't deal with that matter. So if  
22 it's an unregistered entity, it would probably be sent to  
23 enforcement, because they are able to deal with those types  
24 of entities.

25 Q Is there any scenario in which it was a registered

1 Q Okay. Okay. Could you take a look at -- you had  
2 looked a little bit at the first two pages of the tip. Could  
3 you just -- I'm going to ask you a few questions about the  
4 document.

5 A All right.

6 Q This document that is marked as Exhibit 1, the  
7 cover letter here itself, the two-page e-mail.

8 A Mm-hmm.

9 Q How would you view this? Would you characterize  
10 this as providing some specific information about Bernie  
11 Madoff?

12 A It seems to do that, yes.

13 Q Okay. Do you think that this would be -- what  
14 would you do if you got this complaint in?

15 A Well, I see that Bernie Madoff Securities is one of  
16 the largest broker dealers in New York. We would probably  
17 look to see if he was registered as an advisor, which I don't  
18 think he was at the time, so we would have referred it to our  
19 broker dealer staff.

20 Q Okay. And so what would you expect the broker  
21 dealer side then to do with it?

22 A I don't want to speak for them, but I would suppose  
23 they would review it in more detail, perhaps take a look at  
24 when Madoff as a broker was previously examined, either by  
25 FINRA or by ourselves.

1 Q Okay.

2 A And then go from there.

3 Q Okay. Would you expect -- if you can see that at  
4 the end of the e-mail it says, "You guys can call us if you  
5 have any other questions."

6 Would you expect that the broker dealer side would  
7 follow up with this individual who provided this information  
8 to -- if there were any questions about what -- the  
9 information that he was providing?

10 A That would seem reasonable, but to color that, or  
11 to say also, depending upon when the broker dealer staff last  
12 had contact with Madoff Securities. You know, if they had  
13 just finished an examination, and were aware of this and had  
14 looked at it, then maybe not. So it --

15 Q Okay.

16 A -- sort of depends on the context.

17 Q But if they hadn't just finished an examination,  
18 would you expect that the broker dealer side would follow up  
19 with the complainant?

20 A It would seem like it would be reasonable to at  
21 least give the complainant a call.

22 Q Okay. Let me ask you about a couple of particular  
23 items mentioned in this e-mail, Exhibit 1.

24 A Mm-hmm.

25 Q It says, "Here are some of our concerns. According

1           A     Again, I don't want to speak for the broker dealer  
2 staff. I have never been in that area, but I think it would  
3 be something that the advisor staff would have done.

4           Q     Okay. Now from the time that Bernie Madoff was, or  
5 did register as an investment advisor pursuant to the  
6 enforcement settlement, there was no examination by the  
7 investment advisor side of Bernie Madoff, is that right?

8           A     Correct, correct.

9           Q     Do you believe that if there had been such an  
10 examination, the -- your folks would have discovered the  
11 Ponzi scheme?

12          A     Speculative, in terms of answering it, but from  
13 what I'm -- know what we do during examination, the  
14 information that we request, I think it's likely that we  
15 would have.

16          Q     Okay. What information that you normally do in  
17 those examinations would you have requested that would have  
18 likely disclosed or discovered the Ponzi scheme?

19          A     Well, as I mentioned before, the trade blotter for  
20 client trades. More than likely we would have requested a  
21 trade blotter for at least a six month period, and I don't  
22 know what that trade blotter would have shown, who -- because  
23 advisors cannot trade with advisory clients on a principal  
24 basis, without getting approval for each trade.

25                 So one would have, or one would suspect that all of

1 customer accounts.

2 Q And if you had done that, what would you have  
3 discovered?

4 A I don't know. I'm not a broker dealer examiner.

5 Q What about enforcement? Did you have occasion to  
6 read the complaint that Harry Markopolos provided?

7 A I scanned it, yes.

8 Q What was your sense of that?

9 A Oh, it provided interesting facts, interesting  
10 ideas. You can take the facts away, interesting ideas.

11 Q Are you surprised that enforcement, given that  
12 information, wasn't able to uncover the Ponzi scheme?

13 A I don't know. I didn't -- I wasn't there when  
14 enforcement did their work. I don't know exactly what they  
15 did, what they didn't do. It's hard for me to say.

16 Q Have you had any conversations with Mavis Kelly  
17 about getting tips in, related to Madoff?

18 A Not beyond the fact that somebody requested, I  
19 guess, the thing she got regarding this e-mail. Beyond that,  
20 no, not that I'm aware of, anyway.

21 Q Okay. But you never had a conversation with Mavis  
22 Kelly where she discussed what happened with that complaint,  
23 or why the complaint wasn't followed up, or issues related to  
24 the ██████████ complaint in Exhibit 1?

25 A You mean back in '03?

1 Q No, no, subsequent.

2 A I think she said something to the effect, "This --  
3 this e-mail was being requested," and of course at that  
4 point, we were aware of what happened at Madoff, so it was,  
5 you know, probably part of the conversation that, well,  
6 somebody looked at it and didn't find it, or something like  
7 that.

8 BY MS. STEIBER:

9 Q Do you feel that the broker dealer staff calls upon  
10 the investment advisor expertise in OC often enough? And I  
11 say that, because if you look at this tip, it involves a  
12 hedge fund, but also a registered broker dealer. So do you  
13 think that the investment advisor expertise would have been  
14 helpful to the broker dealer staff in investigating this  
15 complaint?

16 A Probably it would have.

17 Q And do you find that the broker dealer staff, you  
18 know, calls upon your expertise, when it involves a hedge  
19 fund such as this?

20 A At times they do. I don't know whether it is --  
21 how frequently it's done. I, sort of, haven't done that type  
22 of survey, or --

23 BY MR. KOTZ:

24 Q But is that a source of any frustration in the  
25 office on your side, that the broker dealer side maybe

1           A     Because we don't have the authority to request  
2 records from unregistered entities.

3                   BY MS. STEIBER:

4           Q     So that --

5                   BY MR. KOTZ:

6           Q     But you could assist, and provide expertise to the  
7 BD side, who --

8           A     We could --

9           Q     -- could request those records.

10          A     Well, BD doesn't have the ability as far as I know  
11 either, only enforcement.

12                   BY MR. WILSON:

13          Q     What about the difference -- there used to be  
14 discretionary accounts that BDs could have and I think that  
15 they were --

16          A     Right.

17          Q     -- advising some clients in advisory capacity.  
18 How would that have come into --

19          A     But those were brokerage accounts.

20          Q     Brokerage accounts.

21          A     Those were brokerage accounts.

22                   BY MS. STEIBER:

23          Q     In this case when you -- where you have brokerage  
24 accounts that are alleged to be used for a hedge fund,  
25 couldn't you have a combined OC BD IA team do the

1 examination?

2 A Well, we could, and we can look at broker dealer  
3 records.

4 Q So you still -- there was no rule saying that an  
5 investment advisor OC employee couldn't work with the --

6 A Oh, no, no, none whatsoever. No, no, it's just SEC  
7 staff in the inspection program requesting records or doing  
8 an examination of an unregistered entity. Okay?

9 Q I see what you're saying. So I just want to be  
10 clear --

11 A Yeah.

12 Q -- if in this case, there was only one entity --

13 A There was --

14 Q -- and the entity was a broker dealer --

15 A Right.

16 Q -- that was being used to advise clients.

17 A Yes.

18 Q There would be no books or records that OC couldn't  
19 see.

20 A Not of the broker dealer, right.

21 Q Of the broker dealer.

22 A Right, right. No, no. I'm -- that's not what I --  
23 I hope I didn't say that. What I was saying is that to the  
24 extent there is an unregistered entity, we can't go off and  
25 examine that unregistered entity, but in this case, yes, if

1 it is a registered broker dealer, and he had, what in  
2 retrospect appeared to be discretionary accounts, yes, those  
3 would be fair game for examination.

4 BY MR. KOTZ:

5 Q So in retrospect, do you think that had the broker  
6 dealer side come to the investment advisor side for  
7 expertise, they would have been able to uncover the scheme  
8 that Madoff was doing?

9 A I mean, it's possible, had we requested, you know,  
10 as I've said, the trade blotter, and had --

11 Q Is it more likely that they would have uncovered  
12 it?

13 A I don't want to speculate. I don't know. I don't  
14 know. No comments.

15 Q So it's possible even with the investment advisor  
16 expertise, they might still not have uncovered this Ponzi  
17 scheme.

18 A It would depend totally on the scope of the exam,  
19 you know, how much information we would request, and whether  
20 the information we got, which from what I've been reading  
21 seems to be fairly skillfully put together, and crafted --  
22 all false, but yet it all hung together, so would we have, in  
23 the context of doing a broker dealer exam, I don't know.

24 BY MS. STEIBER:

25 Q But you've read this tip now, correct?

1           A     Yeah.

2           Q     If you were doing the exam, would you have looked  
3     at front running, and then stopped the exam if you didn't  
4     find front running?

5           A     More than likely not. We would have -- because --  
6     this more or less doesn't say front running in it. This says  
7     suggesting that trades are done, but apparently information  
8     in the market didn't support the fact that those trades were  
9     being done. And so that doesn't necessarily mean front  
10    running at all.

11          Q     Okay.

12          A     It means something else.

13                MR. KOTZ: Okay. Okay. I don't think we have any  
14    more questions. I just want to ask you -- in order the  
15    preserve the integrity of the investigation, just ask you not  
16    to share with anyone what we talked about in this --

17                THE WITNESS: Okay.

18                MR. KOTZ: -- testimony, and just not tell anybody  
19    about what we talked about.

20                THE WITNESS: Okay.

21                MR. KOTZ: Okay? Otherwise, thank you for your  
22    time --

23                THE WITNESS: Okay. You're welcome.

24                MR. KOTZ: -- and we're done.

25                THE WITNESS: All right.