UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

In the Matter of:

OIG-509

WITNESS: NUMBER 28

PAGES: 1 - 50

PLACE: GIBSON, DUNN & CRUTCHER LLP

200 Park Avenue
New York, New York

DATE: April 30, 2009

The above-entitled matter came on for hearing at 2:55 p.m.
APPEARANCES:

On behalf of the Securities and Exchange Commission

H. DAVID KOTZ, ESQ.
NOELLE FRANGIPANE, ESQ.
United States Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

On behalf of the Witness

RANDY M. MASTRO, ESQ.
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, New York 10166-0193
MR. KOTZ: On the record at 2:55 p.m. on April 30, 2009 at the law offices of Gibson, Dunn & Crutcher LLP.

MARK SCHONFELD,

having first been duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. KOTZ:

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

A. Mark, M-A-R-K, middle initial K, Schonfeld, S-C-H-O-N-F-E-L-D.

Q. Mr. Schonfeld, my name is David Kotz. I'm the Inspector General of the United States Securities and Exchange Commission. I have here with me from the Office of Inspector General Noelle Frangipane. I know that you have representing you Randy Mastro from Gibson, Dunn & Crutcher LLP.

This is an investigation by the Office of Inspector General, case number OIG-509. I'm going to ask you certain
seeing this document before?
A. No.
Q. When did you first hear the name Harry Markopolis?
A. Sometime within the last couple months in connection with the publicity and hearing about this matter.
Q. So you don't remember anything about Harry Markopolis providing information to your office in either 2001 or 2005?
A. No.
Q. I show you another document. We're going to mark this as Exhibit 4.
(Whereupon, the aforementioned E-mail was marked as Exhibit 4 for identification.)
Q. This is an E-mail from you to dated 4/3/2001, 7:08 p.m. Do you recall anything about having check names in NRSI regarding Bernie Madoff?
A. No.
Q. Who is
A. She was my secretary as of the
Q. Do you know why you would have names checked in NRSI after receiving some information from the Boston office with reference to a possible complaint?

A. Well, I can't state why I -- I have no recollection of doing it, so I can't state specifically why I did in this case, but I can tell you why under these circumstances I would do such a thing.

Q. Okay.

A. NRSI is or was at the time a database of existing investigations and contained the names of relevant people and entities connected with investigations. So, it is the way in which I would search to determine if there was any existing investigation or prior cases involving anybody about whom we received a referral.

Q. It's fairly common that if you get a referral you would look at NRSI to see if you already have an ongoing case about the same individual?

A. Right.

Q. I'm going to show you another
document. We're going to mark this as Exhibit 5. This is an E-mail from Leslie Kazon to you dated 4/5/2001, 11:54 a.m. .

(Whereupon, the aforementioned E-mail was marked as Exhibit 5 for identification.)

Q. Do you recall any discussions with Leslie Kazon about a complaint received about performance claims for funds managed by Bernie Madoff and making a determination that the complaint would not be pursued?

A. No.

Q. If you could take a look briefly at Exhibit 3, which is the complaint. Just take a quick look through it for me.

A. Okay.

Q. Did you from time to time receive various tips and complaints in your office about purported violations of securities laws?

A. Yes.

Q. Comparing the different types of complaints you've received over time, would you say the complaint in Exhibit 3
from Harry Markopolis was more or less
detailed than the average complaint that
you received?
A. I guess I would say more
detailed than the average.
Q. What is the process that one
would go through when a complaint comes in
to determine if you would follow-up and
open a matter under inquiry or do an
investigation?
A. Well, at the time of this I was
probably an associate director. So, if
something came into me I would typically
assign it to somebody to do some level of
triage to determine whether it was worth
pursuing further.
Q. What would that triage be?
A. That's really hard to answer
because it would depend on what kind of
complaint it was and the issues it
raised.
Q. So let's assume the complaint
was Exhibit 3 the Harry Markopolis's
complaint, what do you think would
constitute appropriate triage of that?
A. Well, I have to say I have not read this closely enough to answer that specifically. Do you want me to take time to look through it?

Q. Just a minute or two. I'm not asking for specific investigative steps, I'm just asking generally what you would do to triage it?

A. Well, let me try to answer it a little more generally.

Q. Sure.

A. If you characterize the nature of the complaint most basically as an allegation that an investment manager is purporting to make returns that don't seem plausible, I suppose the only way to actually investigate it would be to conduct an investigation of the managers stated returns and determine whether there's a basis for them.

I think your question was how to triage something. I mean certainly one way would be to look at the complaint itself and try to assess whether it has enough information that suggests it may...
have a basis.

Q. Might that include going back to the individual who submitted the complaint and asking for further information?

A. That certainly could be, yes.

Q. Now, given your position at the time, do you think it was likely that it would have been Leslie Kazon not you who did the triage and she may have discussed it with you, but do you think it was likely that she actually reviewed the document?

A. Well, her E-mail to me in Exhibit 5 says after reviewing the complaint, so I presume she did.

MR. KOTZ: Off the record.

(Discussion was held off the record.)

MR. KOTZ: Back on the record.

Q. If you look at Exhibit 2. It seems to indicate that the documents were overnighted to you on or about 4/3/2001. Then if you look at Exhibit 5, Leslie Kazon's E-mail to you where she says, "I don't think we should pursue the matter
further," was dated only two days later, 4/5/2001. Are you surprised that a
decision whether to investigate or pursue
this type of complaint, the Harry
Markopolis complaint in Exhibit 3, was
done so quickly?

A. It's hard to answer that
question outside of everything that's
transpired since. But, you know, since I
don't know or have no recollection of what
she did, it's hard to say whether or not
it was adequate. You know, one of the
issues you're always dealing with in this
kind of situation is determining what's
worth pursuing and devoting resources to
and what's not. It's hard to say whether
I'm surprised. In the context of
everything that's happened since, yes.

Q. I mean, you said the complaint
was more detailed kind of than the average
complaint, it certainly has some specific
information in it. The question is how
could Leslie Kazon have made that
determination in such a short period of
time that the matter wasn't worth pursuing
at all?

A. I understand the question. Without knowing what analysis was behind her conclusion it's really hard to say. So, it's hard for me to answer that in any other way.

Q. Do you know generally when complaints with that kind of detail of the Harry Markopolis' complaint in Exhibit 3, came in, decisions would be made so quickly not to pursue the matter?

A. Can you repeat the question.

Q. Were there other occasions, was it a regular thing that complaints that came in of the level of detail as the Harry Markopolis complaint in Exhibit 3 were determined not to be pursued after only two days?

A. Well, if you're asking me if I can think of another specific example, no. But I can give you -- for example, we received inside trading referrals and sometimes you would get a referral that would have a lot of detail to it, but at the end of day if you looked at it it was
referring a relatively small amount of trading which even assuming an actual violation wouldn't have made it a good use of our resources to pursue. So, it's -- and I'm not saying that that's the case with this complaint, obviously. But, I think that only an example that there can be referrals, complaints with a lot of detail but which could result in a very quick conclusion or to give you another example. Sometimes we would get referrals or complaints about things that had nothing to do with securities, but they would be very detailed and you could determine very quickly that this is not something within our jurisdiction. So, you know, I understand your point about this particular case, but it's really hard for me to say without knowing what actually went into her analysis whether it was inadequate.

Q. Other than a resource issue, simply the SEC didn't have sufficient resources to handle the matter, can you think of another reason why a decision
would be made to not pursue the issues identified by Mr. Markopolis in Exhibit 3?

A. I can't think of one sitting here today, but I don't know what analysis Leslie had in mind when she sent that E-mail in Exhibit 5.

Q. I'm going to show you another document. We're going to mark this as Exhibit 6. This is an E-mail from Silvester Fontes to you dated 5/7/2001, 4:18 p.m..

(Whereupon, the aforementioned E-mail was marked as Exhibit 6 for identification.)

Q. Do you remember Mr. Fontes sending you a Barron's article?

A. No.

Q. Let me show you the article and just ask you if you recognize that. I'm going to mark that as Exhibit 7. It's a Barron's article, Monday, May 7, 2001.

"Don't ask, don't tell. Bernie Madoff is so secretive he even asked investors to keep mum."

(Whereupon, the aforementioned

DIVERSIFIED REPORTING SERVICES
(202) 467-9200
article was marked as Exhibit 7 for identification.)

Q. Other than a minute ago, have you ever seen this article before or do you recognize the article?
A. No.

Q. If you had a case like this where information was sent in from the Boston office, do you think that folks in New York might go back to Boston and ask them questions about the referral or about the individual who brought forward the referral?
A. I'm sorry, can you say that again.

Q. Well, Boston refers you a matter, something that came into them, would there be situations where in order to make a decision on whether to bring a case you would go back to Boston and ask them questions about the referral or potentially ask them questions about the person who made the initial complaint to them?
A. If they had actually -- if they
had actually done something or had some information, sure. I mine can't tell from this, for example, whether they had any substantive interaction with the person or merely are conveying something from him.

Q. So, if you had someone who provided a complaint such as Exhibit 3, Harry Markopolis' complaint, and then later on, a month later there was an article in the newspaper that seemed to suggest the same issues, would that be more of a reason to open up a matter, would that be relevant in the triage determination?

A. Well, maybe, but maybe not. I mean the initial E-mail from Silvester back in April refers to a reporter working on a story. So, the fact that a story then comes out --

Q. But this is actually a different story.

A. Yes, you're right. This refers to two different stories. So, it could cause somebody to go back and re-analyze the issue, but since somebody referenced
the fact that a writer was doing a story and a story then came out, might not cause one to think there was really any reason
to do anything more.

Q. Were you familiar with Barron's as a publication?
A. Sure.

Q. Is it a reputable publication?
A. As far as I know, yes.

Q. Do you know if there's anything prohibiting enforcement lawyers from contacting a reporter who did an article to get more information if it could be the subject of an investigation?
A. Well, there's nothing prohibiting it. There can be strategic reasons not to. Such as the SEC investigations are suppose to be non-public, and by calling a reporter and asking questions about somebody could give the reporter sufficient basis for them to write a story that the SEC is conducting an investigation of a person, and so that can be a reason not to contact a reporter for information.
Q. Would the fact that in addition to a complaint being provided to you that there were two newspaper articles providing similar information as the complainant, would that be a factor in the triage effort to determine whether to investigate the matter?

A. Well, I would say that all of those things would be factors to consider in triaging, yes. If the original complaint and the articles are cumulative, it may or may not cause someone to then go back and do more analysis, but certainly media reports are -- actually media reports are one of several potential sources for investigations. So, in that sense media reports are relevant.

Q. So, in fact there are times on the basis of just one media report an investigation would be opened on a matter or could be opened?

A. Yes.

Q. Are you aware of other situations where not only was there a detailed complaint provided, but two media
articles about the same subject that
seemed to support the complaint?

A. Well, yes. Although without
pointing to a specific example, sometimes
what happens is when somebody is
complaining about something within our
jurisdiction they are also talking to the
press, and so it's not atypical or not
unusual that media reports will accompany
us receiving, the SEC receiving
complaints.

Q. Are you aware of any other
situation where a complaint was provided
to you and there were two media reports
and a decision was made not to pursue it,
other than this one?

A. I can't think of something off
the top of my head. I can think of
examples where we did investigate under
those circumstances, but ultimately we
determined not to bring cases for them.

Q. But overall, I'll try one more
time, are you surprised that given this
detail level of information provided in
the Harry Markopolis complaint and that
there were two newspapers articles about
the same topic at the same time including
one by Barron's, that the decision was
made not to go forward and pursue it in
two days?

A. I think the question sort of
conflates a series of events, because the
decision not to pursue it that Leslie made
was made based solely on the complaint.
And the article, I only actually have one
article here, came out later and, you
know, arguably nobody went back and then
reevaluated the original decision.

Q. But I mean the first article is
referenced in the E-mail to you on
4/2/2001, assuming that you would have
provided this information to Leslie or
made the determination or looked into the
matter, she would have been aware of at
least the first article?

A. Well, it says the person is
potentially working on a news story. In
retrospect it was an unfortunate decision,
but it's hard to -- it's impossible to
evaluate that decision without knowing