THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:

OIG-509

WITNESS: Witness #72

PAGES: 1 through 41

PLACE: Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C. 20549

DATE: Thursday, July 30, 2009

The above-entitled matter came on for hearing, pursuant to notice, at 2:35 p.m.

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APPEARANCES:

On behalf of the Securities and Exchange Commission:

H. DAVID KOTZ, ESQ., Inspector General
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On behalf of the Witness:

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MR. KOTZ: We are on the record at 2:35 p.m. on July 30, 2009 at the United States Securities and Exchange Commission, Office of the Inspector General. Whereupon,

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

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

THE WITNESS: My name is

MR. KOTZ: Okay, my name is David Kotz and I am the Inspector General of the United States Securities and Exchange Commission. I have with me my colleagues from the Office of Inspector General, David Witherspoon and David Fielder. This is an investigation by the Office of Inspector General, case number OIG-509. I'm going to ask you certain questions and you will have to provide answers under oath.

A court reporter will record and later transcribe everything that is said. Therefore, please provide verbal answers to the questions as a nod of the head or some other non-verbal response won't be picked up by the court reporter. Also, so the record will be clear, please let me finish my
A: I know that there was a complaint received in, I
would have to look at my notes for a minute, I believe in
late 2004. But I didn't learn that until late 2008 I believe
but I'm not sure.

Q: Any other complaints that you are aware of other
than this one you just mentioned?
A: No, sir.

Q: All right. Why don't I show you a document? Okay,
this is an e-mail from to,
Friday, November 18, 2005, 1:20 p.m. and it attaches an
e-mail from Nomen Nescio, Saturday, October 1, 2005, 10:10
a.m. And we're going to mark this as Exhibit No. 1.

(Exhibit No. 1 was marked for
identification.)

Take a minute to just read Exhibit No. 1.

Have you ever seen Exhibit No. 1 before?
A: It's from Nomen Nescio to enforcement but it's a
forwarded e-mail from -- appears to have
forwarded from . I think you characterized it
from Nomen Nescio?

Q: No, I think I said it was from to
and the date and then at the bottom --
A: Oh, okay. I apologize.

Q: Anyway, Exhibit No. 1 as it is, have you seen this
document before?
A: I've seen a part of it.

Q: Okay, which part?

A: The bottom from the Nomen Nescio portion, I believe, I saw this.

Q: Okay, when did you see that?

A: It was the day after Bernie Madoff was arrested.

Q: So in 2008?

A: Yes, if that was -- I believe he was arrested in December of 2008. So it was the day after that. I don't remember the date. But yes, sir.

Q: Now you mentioned before you were familiar with a complaint relating to Madoff that you thought was late 2004. Is that the same one or is there a different one?

A: No, this is the one.

Q: So you've seen that in 2005 but you think that's the same complaint you were referring to?

A: Oh it's 2005. Yeah, this is the one I was referring to. I apologize.

Q: That's all right. I just wanted to make sure there wasn't another one. So you're not aware of any other complaints that came in at any time relating to Bernard Madoff?

A: No, sir.

Q: Okay. Do you have an understanding of what happened with the complaint from Nomen Nescio, Saturday,
October 1, 2005, 10:10 a.m. to enforcement?

A I've heard what happened to it, but only in small detail. So I don't know ultimately where it was sent or what was done with it, so no.

Q What have you heard?

A That we received this the day after Madoff was arrested. That one of them received it. I mean they discussed it with each other.

Q But when you say we received it the day after Madoff was arrested --

A Oh I'm sorry, that's when I learned, I had --

Q Did your group receive it in October of 2005, or did they first time receive it in December of 2008?

A My understanding is they received it around this time, October of 2005, yes, sir.

Q Go ahead. And then you said discussed it?

A Yes. From what I understand there was some dialogue between and about what to do about with this complaint.

Q And what was that dialogue?

A I don't know.

Q And what did they ultimately decide?

A I don't know.

Q So you don't know if this complaint was referred to
enforcement?

A No, I don't.

Q Do you know if an NRSI search was done on Madoff?

A Yes. I'm sorry, by whom?

Q Either or somebody else on your staff?

A Yes, I do know that they both ran NSRI searches on Madoff around the time of this complaint, yes.

Q And do you know what they found, if anything?

A I don't.

Q Are you aware that there was an ongoing investigation of Bernard Madoff --

A No.

Q -- around this time by the enforcement division?

A I'm sorry. Can you repeat the question?

Q Are you aware that around this time in October of 2005 that there was an investigation of Bernard Madoff conducted by the enforcement division?

A Am I aware now that there was an investigation then?

Q Yes.

A No.

Q Pursuant to your procedures in your group and if an NSRI search had been done and found an investigation that was ongoing, a matter under inquiry or an actual formal
investigation, under those procedures would this complaint have been referred to enforcement?

A If you receive a complaint and it pertains to an investigation, you refer it to the staff attorney assigned to that investigation. That is our standard procedure, yes, sir.

Q Okay, so looking at this complaint in front of us that is in Exhibit No. 1, if an NSRI search had been conducted and they found an ongoing investigation involving Bernie Madoff, under your procedures would this complaint have been sent to the staff attorney involved in that investigation?

A Yes, if there is an existing investigation, certainly.

Q Are you certain that you never had a conversation with either Enforcement Senior Counsel or Enforcement Staff Attorney about the complaint from Nomen Nescio, Saturday, October 1, 2005, 10:10 a.m.?

A What timeframe?

Q In the October 2005 timeframe?

A I don't recall ever speaking to either of them about this complaint.

Q Okay. But it was several years ago. So is it possible you did have a conversation with them about it?

A I doubt it. But anything is possible.
Q  Why do you say you doubt it?
A  Because if I had seen a complaint about Madoff in front of me, I would remember it because my were victims of the Madoff fraud.
Q  But they weren't victims of the Madoff fraud in 2005.
A  No. I knew at that time that my had some sort of investment with treasury securities with, I think, and Bernie Madoff.
Q  Okay. Tell me about that. How long had your had an investment with Bernie Madoff?
A  I don't know.
Q  Do you know, I mean, approximately? When did you first learn that your had an investment with Bernie Madoff?
A  It was about ten years ago. We only had -- We never talked about investments, my and I. And I think around ten years ago, in the context of a conversation about something, he said that he had treasuries and muni bonds with and Bernie Madoff.
Q  Do you know how much of the value of those treasuries and muni bonds or of his investment with Bernie Madoff was?
A  No. I know how much was in their account when it the fraud was revealed.
Q How much was that?
A Personal Privacy

Q Did you ever have personally any investments with Bernie Madoff or any funds relating to Bernie Madoff?
A No, sir.

Q Anybody else in your family other than your ever have an investment with Bernie Madoff?
A Yes.

Q Who was that?
A My

Q How long has your had an investment with Bernie Madoff?
A I don't know.

Q When did you first hear of having an investment with Bernie Madoff?
A After Bernie Madoff was arrested.

Q And do you know how much was in account after Bernie Madoff was arrested and the fraud came out.

Q What is your name?

Q And what was your name?
Q Anybody else in your family have investments with Bernie Madoff?

A Not that I know of.

Q So you only know of and

A Yes, sir.

Q Do you know if the two of them ever met Bernie Madoff, either of them?

A Yes.

Q Both of them did?

A Yes.

Q Do you know on how many occasions?

A No.

Q Did they tell you about their meeting with Bernie Madoff? I mean how do you know?

A I know that my friend, with Bernie Madoff so there were times when my socialized with and saw Bernie Madoff. I don't know if my, I know of at least one occasion where my may have seen Bernie Madoff.

Q Do you know if your were ever at Bernie Madoff's house or apartment?

A I don't know.

Q Was there something about babysitting for Bernie Madoff's kids or grandkids or something?
A No, sir.

Q Okay. Have you ever met Bernie Madoff?

A Yes.

Q When was that?

A Once.

Q And did you talk to him at that point?

A Yes.

Q For a long period of time?

A No.

Q Just a few minutes?

A Just a few minutes.

Q And when was that?

Q Okay, so it was before Madoff had confessed to the Ponzi scheme.

A Yes, sir.

Q So Madoff confessed to the Ponzi scheme in December of 2008. This would have been December of 2007 do you think?
believe that the complaint as written should have been referred? If you were to look at this complaint, you're the head of the office, what is your determination as to whether this complaint should have been referred?

MS. GROHOVSKY: So you're asking him to speculate about what he would have done in 2005?

MR. KOTZ: Well just tell me know. You're getting the complaint in and you're looking at it. Your job is to oversee the group that makes these decisions. So my question is what decision to be made on this kind of complaint?

THE WITNESS: I think any time a complaint involves a registered entity, it should be referred to either the Office of Compliance Inspections and Examinations or referred to enforcement staff or further looked at. Anytime a registered entity is involved, that's my view. I'm not sure if this is a registered entity.

BY MR. KOTZ:

Q All right, but I'm asking in looking at this complaint itself, Nomen Nescio, Saturday, October 1, 2005, 10:10 a.m. in Exhibit No. 1, in reading this complaint, do you believe this is a complaint that should have been referred?

A Yes.

Q You became aware of this complaint after Bernie Madoff confessed and was arrested, right?
A Yes, sir.

Q Was there concern expressed in the office about what happened to this complaint?

A Yes.

Q And did you investigate as to what happened to the complaint based on that concern, look into it?

A No.

Q Did you ever ask \[\text{Enforcement Staff Attorney} \] or \[\text{Enforcement Senior Counsel} \] how come it wasn't referred or what happened?

A No, I recused myself. I'm sorry. Maybe I should explain. Can I walk you through what happened that day?

Q Please.

A When I came into the office everybody was talking about Madoff so I believe I instructed the phase-one people to do an archive search to see if we had ever received anything, which is fairly standard when one of these types of situations happens. And they found this complaint and they figured out that \[\text{Enforcement Staff Attorney} \] and \[\text{Enforcement Senior Counsel} \] had gotten it during phase three. So I immediately informed my supervisor, \[\text{Personal Privacy} \] of the complaint a few hours into that morning and told her that I was recused from any sort of investigation or anything having to do with Madoff. And at that point I don't know what happened next.

Q And then since that point, you haven't been involved in whatever inquiry was done to find out what
weren't caught. But on the other hand, I've been here for 18
years and I know how difficult the investigations can be,
especially when someone is a real con artist. So I guess I
don't have an answer.

BY MR. KOTZ:

Q Okay, that's fine. Do you know anybody else who
works for the SEC whose family had had investments with
Madoff?

A No.

Q Would that be something that you might have talked
to people about? Or do you think it would have come up at
all? I mean this thing hits and obviously it hits you more
personally than a lot of the people. Did you have
conversations with, do you know anybody else or is it
something that came up at all?

A No.

BY MR. FIELDER:

Q Did you ever hear from [redacted] that she had
referred the complaint sometime in 2005 when it came in or
that she thought she had?

A Yeah, she told me that she thought she had. I
thought it had been referred.

Q When did that conversation occur and can you tell
me a little bit more about that conversation?

A It was right around the time that we did the