May 2, 2018

HAND DELIVERED
EXCEPT FOR GAO AND OSC (MAILED)

TO: Commissioners, U.S. Securities and Exchange Commission
100 F St., NE
Washington, DC 20549
Jay Clayton, Chairman
Robert J. Jackson Jr.
Hester M. Peirce
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1730 M St., NW # 218
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RE: Report on Illegal Employment Practices and Corruption
in the U.S. Securities and Exchange Commission
and its Division of Economic and Risk Analysis

Enclosed please find a copy of the above-entitled document, which I submit for your review. Thank you for your time and attention.

Respectfully submitted,

Kimberly Earle
Associate Chief Accountant
Division of Economic and Risk Analysis
U.S. Securities and Exchange Commission

REPORT ON ILLEGAL EMPLOYMENT PRACTICES AND CORRUPTION IN THE U.S. SECURITIES AND EXCHANGE COMMISSION AND ITS DIVISION OF ECONOMIC AND RISK ANALYSIS

INTRODUCTION

1. My name is Kimberly Earle, and I am a certified public accountant. For more than twenty-seven years, I have worked in accounting positions in three divisions of the U.S. Securities and Exchange Commission ("SEC" or "Agency")[1].

2. My motivation in making this statement[2] is to expose the personal opportunism of certain SEC employees in highly placed positions, which has devolved into a loss of mission, and worse, corruption instead of the mission. My courage has been prompted by having become a target for employee extortion, as described below, to relinquish my job on the pretext of performance. I have discovered that the SEC has been using this model of treatment against other employees who are older, are more experienced in the SEC[3], and are typically women or minorities.

3. This report also describes instances and patterns of retaliation, harassment and discrimination by managers in the Division of Economic and Risk Analysis ("DERA").

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[1] I worked in the Division of Corporation Finance (1990-1996), the Division of Trading and Markets (1996-2012), and the Division of Economic and Risk Analysis (2012-present). During that time I was promoted into positions of increasing responsibility, from Staff Accountant to Assistant Chief Accountant, to my current position as Associate Chief Accountant.

[2] I submit this statement as a whistleblower and a private citizen pursuant to the Whistleblower Protection Act of 1989 and No FEAR Act of 2002, not as an SEC employee performing employment duties. In making this statement I assert my rights under the First Amendment of the United States Constitution, which include my right to not have my speech abridged and my right to petition government. The topics discussed herein are of public concern.

[3] I have witnessed targeting of older SEC employees for many years. Among the "benefits" to the SEC of driving out older employees is a reduction in salary costs for non-supervisory employees that enables creation of more unnecessary and over-paid supervisory positions. These are typically "gifted" to less experienced (and less qualified) younger employees who understandably become very loyal and obedient to their benefactors. Eliminating older employees, along with the mechanism of siloing information, purportedly for security purposes, prevents information from being used to reveal the individual objectives behind the rhetoric.

SEC'S USE OF EXTORTION AND CONSPIRACY TO ELIMINATE EMPLOYEES

4. The practice of extortion begins at the Agency level, where the Office of Human Resources ("OHR"), acting on behalf of managers throughout the SEC, has tasked the Office of General Counsel ("OGC") to extort certain SEC employees to relinquish their government employment on the pretext of unacceptable performance ("employee elimination by extortion").

Lacey Dingman, Director of OHR

5. The SEC Office of General Counsel ("OGC") has an entire group named the "Assistant General Counsel for Employment Law." Its Assistant General Counsel is James Blair, and he supervises a number of attorneys who taxpayers are financing to eliminate other SEC employees.[4]

Blair

6. The substantive reason for targeting an employee for elimination may be, and has been, illegal discrimination, such as age, sex, race, religion, ethnicity, or even personal dislike. However, "performance" is used as the pretext. Reasons are of no concern to this group; they are simply agents. Nor are these attorneys concerned about the propriety or legality of the process used to eliminate employees.

7. In its 2016 report to Congressional Committees on the SEC's Long-

[4] They apparently include Paul Brockmeyer, Christina Cotter, Daniel Garry, Melanie Jones, Kristin Mackert, David Pena, Iris Rossiter, and Laura Walker.

Standing Personnel Management Challenges,[5] the GAO reported that OGC is now "responsible" for "coordinating SEC's practices related to addressing unacceptable performance" and "tracks employees who receive an annual performance rating of 'unacceptable' (which would generally precipitate a performance improvement plan)." GAO, however, has no information about how OGC is manipulating "unacceptable" performances, and it has no knowledge of the true reason for some employees' "voluntary" resignations.

8. The SEC's systematic abuse of the merit and performance management systems to promote friends and remove anyone else for any reason, legal or otherwise, is not news. In 2013, the GAO Report observed that although "SEC had performance standards related to supervisors' use of the performance management system, we did not identify *specific mechanisms to monitor supervisors' use of the system*."[6]

9. Based on my experience and discussions with others, OGC uses extortion as its tool to eliminate employees. Extortion occurs when someone, the extortionist, *demands* that the victim give up his or her property. The extortionist induces compliance by threatening the victim: noncompliance will prompt the extortionist to *increase* the harm to the victim, either physically or economically or both. If the extortionist has the means of fulfilling the threat, the victim's fear of the threatened action often induces in the victim to comply with the demand. The victim would rather lose less than more.

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[5] GAO's *Report to Congressional Committees* entitled "Securities and Exchange Commission: Actions Needed to Address Limited Progress in Resolving Long-Standing Personnel Management Challenges", GAO-17-65 (December 2016), (hereinafter "GAO Report") p. 31.

[6] GAO Report, p. 25 (emphasis supplied.), see also, p. 11.

10. Extortion by federal employees is a federal crime. The statute entitled "Extortion by officers of employees of the United States," provides:

> Whoever, being an officer, or employee of the United States or any department or agency thereof, or representing himself to be or assuming to act as such, under color or pretense of office or employment commits or attempts an act of extortion, shall be fined under this title or imprisoned not more than three years, or both; but if the amount so extorted or demanded does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.[7]

11. Inducing fear in a victim of economic harm to take or attempt to take the victim's property[8] *or* property right[9] is extortion. Proof that the defendant has neither title nor a legitimate claim to such property is not required. A defendant need not even *cause* the victim's fear of harm, but may simply exploit the victim's already existing fear of harm.[10] The requirement of inducement is satisfied if the defendant *uses* "the victim's

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[7] 18 U.S.C. § 872.

[8] Courts have defined "property" to be "any valuable right considered as a source of wealth." *United States v. Tropiano*, 418 F.2d 1069, 1075 (2d Cir. 1969) (the right to solicit garbage collection customers). *United States v. Zemek*, 634 F.3d 1159, 1174 (9th Cir. 1980) (the right to make business decisions and to solicit business free from wrongful coercion) and cited cases). *See*, *United States v. Debs*, 949 F.2d 199, 201 (6th Cir. 1991) (the right to support candidates for union office); *United States v. Teamsters Local 560*, 550 F. Supp. 511, 513-14 (D.N.J. 1982), aff'd, 780 F.2d 267 (3rd Cir. 1985) (rights guaranteed union members by the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 411).

[9] *See Evans v. United States*, 504 U.S. 255, 265, 112 S.Ct. 1181, 1188 (1992).

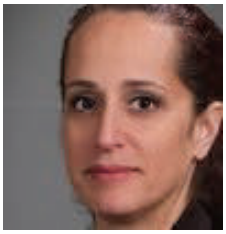
[10] *See, United States v. Duhon*, 565 F.2d 345, 349, and 351 (5th Cir. 1978) (offer by employer to pay union official for labor peace held to be "simply planning for inevitable demand for money" by the union official under the circumstances); *United States v. Gigante*, 39 F.3d 42, 49 (2d Cir. 1994), *vacated on other grounds and superseded in part on denial of reh'g*, 94 F.3d 53 (2d Cir. 1996) (causing some businesses to

reasonable fear of . . . economic harm in order to induce the victim's consent to give up property."[11] The Commerce clause effect need only be de minimis.[12]

12. This program of extortion is extremely harmful, economically and emotionally, for employees. As the U.S. Supreme Court has observed, "To be deprived not only of present government employment, but of future opportunity for it, certainly is no small injury..."[13]

13. Continued government employment and reputational integrity are property rights subject to due process protections.[14] "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential."[15]

14. Apparently, the chief extortionist is Iris Rossiter ("Rossiter"), formerly employed in the military Judge Advocate General's Corps, and now classified as an attorney-advisor in OGC's "Employment Law" group.


Rossiter

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refuse operations with the victim sufficiently induced the victim's consent to give up property, consisting of a right to contract freely with other businesses, as long as there were other businesses beyond defendants' control with whom the victim could do business).

[11] *See United States v. Agnes*, 581 F.Supp. 462 (E.D. Pa. 1984), *aff'd*, 753 F.2d 293, 297-300 (3d Cir. 1985) (rejecting claim of right defense to defendant's use of violence to withdraw property from a business partnership).

[12] *United States v. Bolton*, 68 F.3d 396, 399 (10th Cir. 1995) (Hobbs Act convictions upheld for robberies whose proceeds the defendant would have used to purchase products in interstate commerce), *quoting, United States v. Lopez*, --- U.S. ---, 115 S.Ct. 1624, 1630 (1995).

[13] Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1951) (Jackson, J., concurring).

[14] See Board of Regents of State Colleges v. Roth, 408 US 564 (1972).

[15] *Wisconsin v. Constantineau*, 400 U.S. 433 (1971).

15. OGC's and Rossiter's algorithm of elimination, well-known to Senior Officers ("SOs") who seek to surreptitiously remove an employee, is as follows:

a. SOs and their mid-level managers decide, for whatever reason, to eliminate an SEC employee (the "Targeted Employee");

b. *After* the fiscal year ends and the "performance evaluation" process is purportedly underway, the manager of the Targeted Employee informs the Targeted Employee that his or her "performance" for the rating period was "unacceptable". Specifics are not necessary, and the employee's evaluation has likely not even yet been prepared.[16]

c. The Targeted Employee's manager instructs the Targeted Employee to go and talk to Rossiter in person. The Targeted Employee's manager does not "waste time" with the Targeted Employee, nor provide substantiation for the surprise bad news about the employee's rating.

d. Rossiter demands that the employee voluntarily resign, retire, or accept a demotion; and threatens that if they do not, they will receive a Performance Improvement Plan ("PIP") that they could (certainly) fail and then leave the Agency with a record of bad

[16] In my case, Rossiter wrote up my "performance evaluation" well after the year had ended and evaluations were past-due. It was, of course, backdated.

performance, reflected on the employee's Form SF-50.[17] This SF-50 would insure no federal employment elsewhere, and it would also make private employment difficult given that one's last place of employment was the SEC. She may also bring up the potential loss of someone's federal retirement and health insurance benefits if they "risk" going on a PIP.

e. If the employee "voluntarily" resigns (or retires), relinquishes his or her property right to continued federal employment, and waives unidentified rights, he or she will avoid the PIP, receive a "clean" SF-50, and enjoy good references for possible future employment.[18]

f. Rossiter relates how "difficult" it will be for a Targeted Employee to "pass" the PIP. She does not and need not mention, of course, that "failing a PIP" is often a pre-determined outcome, not necessarily related or related in any way to performance during the fiscal year rating period or during the abbreviated period of the PIP.

g. Rossiter warns that the Targeted Employee's discussions with other Agency officers, including the division Director, deputy Director, or the Chair, will only enhance the Targeted Employee's difficulties.

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[17] The SF-50 an official government form entitled "Notification of Personnel Action" that is used to report employment information useful to the applicant or if applying for another federal job.

[18] Given the very threatening and adversarial character of this elimination procedure, in which an employee does not discuss his or her "performance issues" with any supervisor but instead is directed to speak to a hitherto unknown government attorney, the employee understands quickly the likely adverse outcome of the PIP.

h. Targeted Employees have no recourse, because OGC is making use of the termination provisions of the performance management system as a weapon to eliminate employees, and bypassing the provisions which, if the performance management system is being used authentically, provide employees at least some due process.[19]

16. Some employees, such as me, who may not be as "fungible" or "disposable" as other SEC employees, may be given a third option: a demotion. This can, for instance, free up the needed extra slot numbers (SK-16 to SK-14) that, as in my case, assists an SO to construct another front office position.

17. Rossiter's demand and threats are made orally in personal meetings and transmitted in writing only through the stewards of the SEC's Union, Chapter 293 of the National Treasury Employees Union ("NTEU" or Union"). The Union steward effectively "cuts and pastes" Rossiter's written threats directly into his or her own email, acting as a purported "representative" of the targeted, bargaining-unit employee. The Union representative is simply Rossiter's sub-agent in the SEC's extortion conspiracy.[20] Rossiter's timidity in making her statements in writing directly to Targeted Employees suggests her awareness of the illegality of her conduct.

18. The general federal conspiracy statute provides that "If two or more persons

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[19] The Agency broadcasts its "impressive upward progress" to the #5 Best Places to Work Agency Rankings (mid-size agency) for 2017. Eliminated employees, of course, no longer have input to Federal Employee Viewpoint Survey on which the Rankings are based.

[20] The process is as simple as it is nefarious. In effect, the SEC management and its tool, Rossiter, and her sub-agents, Union representatives, have been using the so-called "performance management" system as a weapon. If the targeted employee chooses not to give up the demanded property rights, it will be fired and will almost certainly kill or maim the targeted employee economically.

conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both."[21] Punishment can be quite severe for the conspirators.[22]

19. A conspiracy requires two or more individuals who agree to violate federal law and undertake an "overt act" in furtherance of that violation. As applied to specific instances of extorting federal employees, particularly systematically, the conspiracy to commit extortion likely extends from the manager seeking to eliminate an employee up through his or her supervisors in any given Division or Office, over and through, perhaps, the Office of Human Resources (OHR), back down through the Office of the General Counsel (OGC), and to its agents.

EXTORTION AND CONSPIRACY EXAMPLE

20. Rossiter made the following demands and threats to another SEC employee between 50-55 years of age in a different SEC division; albeit through a Union steward (excerpted):

[21] 18 U.S.C. § 371.

[22] If charged and convicted of the felony, maximum punishment is not more than five (5) years and a maximum fine of $250,000.00 for a felony offense. If charged and convicted of a misdemeanor, the punishment is no greater than that for the substantive offense.

Apparently based on your call to the Chair's Office, Iris made a new offer today. Under the new offer, you would stop working here in about 10 days, get an immediate Notice of Proposed Removal based on performance that you would have to waive your right to reply to or challenge and, about ten days later, you would get a Decision of Removal based on Performance that you would waive your right to appeal and a termination SF 50. In return, you would get 90 days of pay and a waiver on the ~$5k SLRP payment benefit that you would normally have to pay back for leaving within three years of receiving it. Iris noted that the Notice and Decision of Removal would detail the unacceptable performance that occurred sometime from October 1, 2017 till now that prompted the threat of the PIP. The value in this offer is two-fold. First, the agency would be removing you for performance as opposed to misconduct. If you were removed for misconduct, which the agency has said an unwillingness to perform/loafing could be characterized as, you would be ineligible for a Discontinued Service Retirement ("DSR"). Second, you'd get a waiver of the ~$5k SLRP benefit repayment.

Iris indicated that, if you turn down this offer and do the PIP and exhibit an unwillingness to perform during the PIP, then your failure of that PI P and the resulting Notice of Proposed Removal and Decision of Removal could be predicated not on performance but on misconduct and you would be ineligible to apply for a DSR. Iris acknowledged that it might not be easy for the agency to determine whether unacceptable performance during the PIP was associated with an unwillingness to perform versus an inability to perform. However, Iris noted that, if you clearly did not make an effort during the PIP, it could be concluded that you had been unwilling to perform and your removal could be predicated on misconduct rather than performance and you would be ineligible for a DSR.

MOTIVATIONS FOR EXTORTION OF EMPLOYEES

21. Extortion provides significant bureaucratic "benefits" for SEC Senior Officers: it is effective, indeed efficient, and invisible. Employees appear to leave employment "voluntarily" for their own personal and professional reasons, without disturbance or noise.[23] The departures seem to be the result of normal employee attrition. The extortion, when successful to expeditiously force an employee out of his or her position, stealthily subverts and manipulates the SEC performance management system, and evidences a ***material weakness in internal controls*** of the Agency. It would likely not be detectable by the GAO's mandated reviews of the SEC's performance management system.

22. Documentation creates work for both the senior officer and OGC, and the

[23] Employees feel shame for the mere accusation of inadequate performance. Employees are embarrassed to speak about the accusations, which assists OGC's objective to keep these activities clandestine.

more documentation the more likely questions arise about demonstrably false statements about the employee, management's original hiring decisions, and more importantly, about their justifiably dubious managing abilities, communicative skills, motivations, and work ethic.

23. An additional benefit for the senior officers and mid-level managers is avoidance of the administrative work in "evaluating" the targeted employee. If the employee chooses not to voluntarily resign, retire, or accept a demotion, Rossiter prepares the evaluation and the PIP and, like a prosecutor who is forced to try a defendant, is not pleased to have to do the additional "documentation" required in the execution process.

24. Given that the extortion is illegal, it only follows that the SEC need not be concerned about compliance with mere civil laws such as merit systems and anti-discrimination laws of Title 5 of the United States Code. Ironically, the public pays SEC managers and their agents to violate and enable violations laws they theoretically are charged with enforcing.

25. My research and discussions with a number of employees in the Agency suggest that a spectrum of SEC employees, both management and non-management, are systematically using extortion against SEC employees, particularly those over the age of forty and considered — correctly and incorrectly — eligible for retirement. While illegal itself, it also constitutes systematic illegal age discrimination and fully enables other forms of illegal discrimination.

26. The SEC's serious and longstanding personnel management problems are not secret. The 2016 GAO Report noted lack of any official having authority and oversight

over the daily operations of the entire agency.[24]

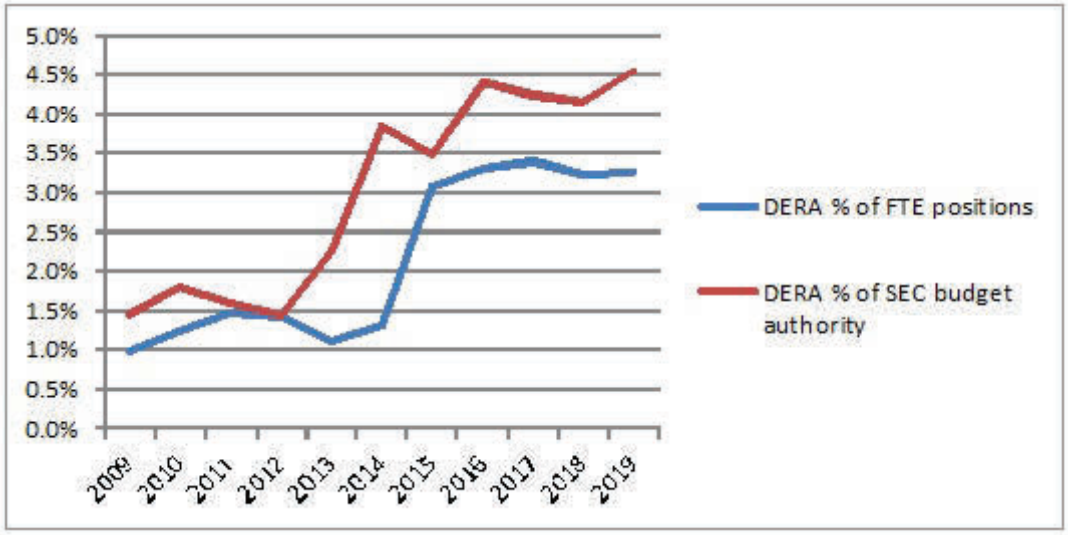
27. A 2011 organizational study of the SEC by the Boston Consulting Group noted that "most of the division directors ...created (or are in the process of creating) COO [Chief Operating Officer]-like positions called "managing executives" within the major operating units...charged with responsibility for project management and workflow for various infrastructure and operational aspects of the Division". The study noted that the managing executives do not have reporting lines to the COO (and thus no direct oversight by the Commission). In my opinion, this permits the employee extortion and other dysfunction to flourish, particularly where SOs, the Managing Executives and others may have corrupt or opportunistic intentions.[25]

[24] GAO Report, p. 53.

[25] In addition, these "COO-like" positions are a prime example of bureaucratic bloat. They are graded as Senior Officer positions, and classified in Program Management series 0340 by OPM. The stated duties are business, operational, administrative, and support programs and activities. The SEC's twenty-six employees in this position are classified in the highest pay grade at the Agency, commensurate with operational Division Directors. According to the internet site federalpay.org, which tracks federal employee salary data, the SEC has the highest pay of any federal agency for the Program Management series 0340 job classification, exceeding the average salary for this job by nearly $100,000 per annum.

DISCRIMINATION, CRONYISM, RETALIATION AND HARASSMENT IN DERA

28. The Division of Economic Risk Analysis was born after the 2008 Financial Crisis as the newest Division in the SEC. It is not statutorily mandated as are the core divisions of Corporation Finance, Investment Management, Trading and Markets and Enforcement. Most importantly, it has generated and is generating few results given its increasing expense and expenditures. These now involve tens of millions of dollars per year and, as shown, below are consuming an ever-increasing percentage of the SEC's budget.[26]



[26] From 2012, when I joined DERA, its budgeted staffing increased from 56 to over 150 employees. During my tenure, DERA added 5 Senior Officers, and 10 new front-office supervisory Assistant Director, Senior Staff and Branch Chief positions. As discussed below, Bauguess is undertaking to create another Senior Officer (Associate Director) position for his friend, Mike Willis. Unfortunately, DERA has not had the budget to accomplish this promotion, and has resorted to using OGC to extort other employees out of their positions in order to effect Willis' ascension.

29. DERA deputy Director Scott W. Bauguess ("Bauguess"),[27] a Caucasian male, effectively controls DERA. He is the only front office employee to have been with the Division from its inception and is, with little doubt, the key decision-maker in DERA. He has seen three Division directors come and go, and has been the acting Division Director following the departures of the last two Directors. This carousel of directors has enabled Bauguess to take effective control of the Division.


Bauguess

30. DERA's Managing Executive, Kim Coronel ("Coronel"), a Caucasian female, has bragged about her manipulative abilities as a child, and has apparently mastered the misuse of the Performance Management system to assist her fellow managers in DERA to construct new front-office positions for themselves. They have rewarded her, as evidenced by her accelerated ascent. Coronel came to the SEC in 2012 under Jeff Heslop in the Office of the Chief Operating Officer and joined DERA in January 2013. From 2014 to 2016, Coronel received performance bonuses totaling $11,000, the third highest amount of any DERA employee for that period. Bauguess promoted her three times in four years: first from an SK-16 to SK-17, then from an SK-17 to a Senior Officer-01, and in 2017 from a Senior Officer-01 to a Senior Officer-02, the highest level at the Agency.

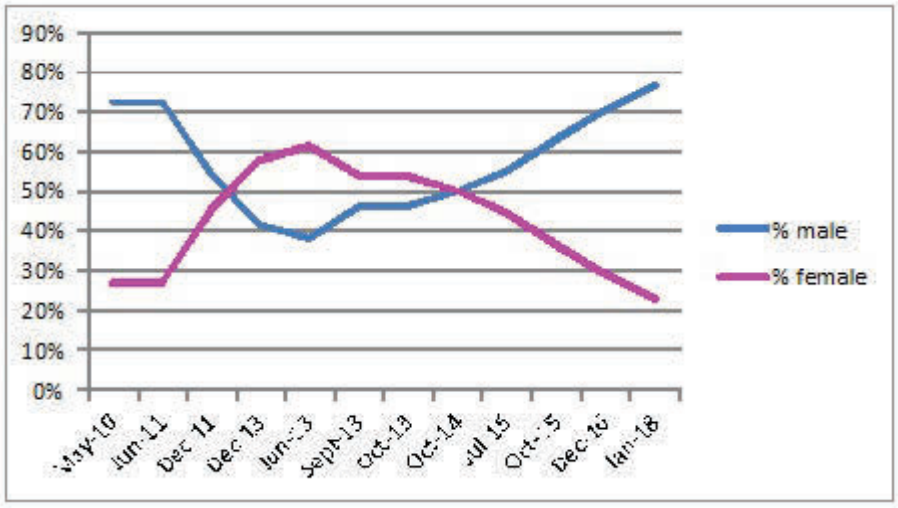

Coronel

[27] According to SEC press releases, in 2007, Bauguess came to the SEC's Office of Economic Analysis (OEA) as a visiting scholar. After OEA was folded into DERA in September 2009, Bauguess became a senior financial economist in DERA. In 2011, Craig Lewis, Director of DERA at that time, promoted Bauguess to Assistant Director of DERA's Office of Corporate Finance (OCF). In early October 2013, Lewis again promoted Bauguess, this time to co-deputy Director and co-deputy Chief Economist.

31. Robert Michael Willis ("Willis"), a Caucasian male, came to DERA from PricewaterhouseCoopers ("PWC"), where he was a partner for over 31 years. Bauguess had known Willis previously, and after having created an open Assistant Director (SK-17) position in June 2014,[28] waited for a year to hire Willis into the position, as Willis disentangled himself from PWC. Willis arrived in June 2015 as Assistant Director of DERA's Office of Structured Disclosure ("OSD").


Willis

32. Since Bauguess effectively took control of DERA in September 2013 as its deputy Director, when a female supervisory employee vacated a position at SK-15 and above, Bauguess filled the vacant position with a male. He has recently hired only males into new supervisory positions. The result, as shown in the chart below, is that DERA supervisors under Bauguess have gone from about a split ratio of male to female, to over three males for every female supervisor. Also, of the twenty-six supervisory employees represented in this chart, only three are non-Caucasian.



[28] The vacated position had been occupied by a woman approximately 55-60 years of age, Virginia Meany.

33. Ironically, SEC's Office of Minority and Women Inclusion is located next to DERA's offices.

RECENT EXAMPLES

34. In December 2017, a female attorney-advisor in DERA (SK-16) and long-time SEC employee, "got a new job outside of the Commission." Word was that "she had landed on her feet," suggesting that she had been coerced to leave. Within two months, her position was filled by a male attorney-advisor.

35. In early 2018, the DERA's new Director and Chief Economist, Jeff Harris, hired his own (male) chief counsel, which had never been done before. DERA has also recently brought on a new (male) Senior Officer, a new (male) deputy Chief Economist, and a (male) attorney advisor to the (male) deputy Director, Bauguess.[29]

WILLIS' CRONYISM

36. Willis, like Bauguess, apparently prefers working with Caucasian males over females. I am one of four SK-16 employees in DERA's OSD, and the only female; the other three are Caucasian males who are Willis' cronies through working with him at his previous employer or by participation with him in XBRL industry leadership activities: Hamscher, Hankin and Slavin. Willis is openly preferential to these "friends" and uses different standards of performance evaluation for them, as discussed below.

[29] I am aware of DERA Senior Officer witnessed harassing upon another DERA employee to whom he or she was attracted. The Senior Officer promoted the target from an SK-13 to SK-17 within five years, and the object of attention received $13,000 in salary bonuses, the highest in DERA. The harassment continued until the employee resigned from the SEC, two months after having been promoted to SK-17, and moved to another state.

37. HAMSCHER: Walter Hamscher is an SK-16 Information Technology Manager in OSD. Hamscher worked with Willis at their mutual previous employer for approximately 10 years in the 1990's and maintained contact with him as both remained in the XBRL industry/community.


Hamscher

38. During early 2017, I was subjected to a series of harassing emails by Hamscher. Hamscher did not perform his assignment to update technical information for the public related to an EDGAR Release. When OSD was made aware of this by a public inquiry, Brian Hankin, another SK-16 in OSD, was assigned to investigate and make the update. For 13 days, Hankin did not investigate and provide the update. When OSD received another public inquiry, I contacted both Hamscher and Hankin to let them know, and ask Hankin to make the update on the public website. Hamscher, upon being reminded of his neglect to perform the assignment, sent a series of emails that morning with comments impugning my competency, threatening to "write up" unspecified allegations and report them to Willis, and suggesting that I seek a detail. Willis responded finally, to ask Hamscher to discontinue the harassment in email, but did not state to discontinue the harassment itself.

39. I am also aware of and have witnessed multiple instances of harassment by Walter Hamscher to other employees, including women/minority employees and contractors (orally and via email). Willis allows Hamscher to act aggressively and with hostility without consequence, in violation of the SEC's Policy on Preventing Harassment.

40. Despite multiple reports to Willis of Hamscher's harassment of other staff,

Hamscher received $4,200 in performance bonuses under Willis' supervision at the SEC, double what he received immediately preceding Willis' tenure at the Agency.

41. HANKIN: In spring 2016, Willis plotted to get rid of an OSD employee to create a position for his friend, Brian Hankin,[30] with whom Willis had worked for over 5 years at another employer. Another manager informed the Targeted Employee, who resigned before being terminated. Willis got authority to post an SK-14 position and encouraged Hankin to apply for it.


Hankin

42. Willis selected Hankin for the position but Hankin lobbied for a higher position classification at the SK-16 level. Willis obliged and re-posted the job to permit Hankin higher starting salary and salary potential. Hankin, of course, was selected and joined OSD as an SK-16 Information Technology Manager in November 2016.

43. SLAVIN: Matthew Slavin is the third male SK-16 in OSD. His occupational title is Information Technology Management. Slavin came to the SEC in 2012. Since joining the SEC, Slavin has worked almost exclusively on DERA's data analytics products such as AQM and CIRA, building customer interfaces and conducting user outreach to other Divisions.


Matthew Slavin

44. Slavin was previously employed at a public accounting firm in their XBRL support function and has worked since 2001 in the XBRL industry where he was

[30] Willis targeted B.C., the only employee in OSD other than me to practice Judaism. Willis also sought to retaliate against B.C. for divulging a cover-up, as explained later in this document.

acquainted with Willis by participation in XBRL industry committees and events.


Wong

45. WONG: On May 3, 2016, Willis announced that a woman, Hermine Wong, an attorney and an SK-14, between 35-45 years of age or younger, was a new detailee in his AD group and assigned into the new Office of Rulemaking Support. Wong had previously worked in DERA's Office of Chief Counsel ("OCC").

46. In June 2016, shortly after Wong joined Willis' group, Willis invited her to travel with him, at government expense, to London to attend a semi-annual, one day, advisory meeting, which Wong accepted. This travel was unusual insofar as international travel was rare, given budgetary concerns, and the meeting organizer of the semi-annual advisory meeting provides a video and teleconference feed for remote attendance of the meeting, by which Willis' other staff members are required to attend this meeting.[31]

47. As discussed later in this report, Bauguess and Willis now seek to promote Wong into an Assistant Director position in DERA's Office of Structured Disclosure.

48. Willis has taken approximately ten taxpayer funded international trips during his two-and-one-half year tenure at the SEC. These include trips to Denmark, Singapore, London (multiple trips), Russia, and even Saudi Arabia. At the same time, Willis denies his staff training, conference attendance, and completion of professional certifications.

[31] Travel of two individuals together had not occurred before or since to my knowledge. However, Willis is secretive about his international trips and does not present trip reports or brief OSD staff after the trips.

DERA'S HARASSMENT AND RETALIATION AGAINST ITS EMPLOYEES

49. Although Willis favors certain employees, Willis, Bauguess, Coronel and Hamscher have collectively and individually systematically bullied over fifty percent of OSD employees. One former OSD employee described to me how Willis and Coronel bullied him for two years. The following employees have tried to leave or have left OSD, either by securing detail opportunities elsewhere in the Agency, or by finding new employment outside of the Agency:

(1) M. M. (Middle Eastern);

(2) B. C. (Jewish);

(3) G. A. (Asian);

(4) J. T. (Asian);

(5) S. S. (Asian);

(6) R. L. (Asian) (female);

(7) V. M. (Muslim);

(8) J. B. (over 40).

EXAMPLES OF RETALIATION

50. One employee was likely targeted for elimination in part because he had not lied to go along with Willis' cover-up of a material blunder concerning DERA's guidance for credit rating agencies.

51. B. C. was an IT Specialist in OSD. In 2015, Willis instructed him not to discuss but simply to confirm Willis' cover story about why DERA had to

"update" its guidance for credit ratings data. DERA issued this guidance with incorrect instructions and the consequence was that for several years only one of ten credit ratings agencies had submitted valid credit ratings data required by the SEC regulation.

52. An employee in the SEC's Office of Credit Ratings (OCR) questioned the cover story and asked B.C. about their suspicions about the real reason DERA was changing the guidance. B.C. confirmed when asked directly about the cover-up. Willis discovered this revelation and was angry that B.C. had not lied to the other office; shortly thereafter, B.C. was no longer working at the SEC. It took over a year after DERA corrected the guidance before valid data started coming in. OCR distrusts DERA and employs its own quantitative analysts to aggregate and analyze credit ratings data.

53. Another employee was given a low performance rating and later forced into a demotion, likely because the employee submitted a suggestion to the SEC Office of Inspector General about improving OIT's contract oversight and coordination with DERA. Bauguess found out about the suggestion and questioned DERA employees to identify who had submitted it. Bauguess narrowed it down to a few likely employees and confronted the employee. The employee believes that Willis gave him a low performance rating as a result and sought to leave DERA. Willis and Coronel required that the employee take a demotion as a condition of being allowed to take a detail out of DERA.

54. Bauguess extinguished the government career of a woman who

questioned his data methodologies and contract spending. In early 2012, Maris Jensen was employed in DERA's Office of Corporate Finance under the supervision of (then) Assistant Director Bauguess. According to an interview of Jensen in a 2014 news article, "In March last year, I told my boss at the Securities and Exchange Commission that our website was terrible and we needed to do something about it." "The economists in my division who were supposed to be working with SEC filings were floundering," "These guys have PhDs in quantitative fields and years of programming experience; they still couldn't figure out how to pull data from their own database. But that's not a slight against them, because the data is a mess. Incidentally, they're now outsourcing this work -- they're literally paying others millions and millions to write programs I offered to them for free." Jensen states she was fired from her position for displaying "a lack of respect for senior management." Her next step was to create a (still-active) website[32] that gathers data from EDGAR, indexes it, and returns it in formats meant to help investors research, investigate and discover companies on their own. Noting that "the academics in the division responsible for the SEC's interactive data initiatives write papers about information asymmetry, using EDGAR data they repurchase in usable form for millions each year, but do nothing to fix it. Companies are chastised for insufficient and inefficient disclosure, while the SEC fails to help retail investors navigate corporate disclosures at all", and bemoans "Why did I have to build this?"

[32] http://rankandfiled.com/.

55. In addition, I believe at least eight additional now-former DERA employees, primarily women and minorities, have left DERA during my tenure, as likely victims of harassment, retaliation, and/or DERA's use of OGC's extortion services.

56. My observations are not peculiar to me. An Internet economists' forum refers to DERA senior management as a "crime family" that advances their "careers at the expense of our colleagues, DERA, and the public good." I found three allegations of instances of discriminatory and retaliatory terminations of DERA economists on the site.

57. A Union representative stated to me that Bauguess "targets employees for termination … a few per year. There's no basis necessarily; he just doesn't like them." The methodology for this process described by the Union representative is that DERA threatens a PIP and the employee has always chosen to resign before the PIP is issued.

58. Bauguess, Coronel, Willis and Rossiter have arguably little or no regard for the merit principles of federal employment or equal employment laws. As of today, they have no reason to be concerned about these principles. Public announcements within the SEC, which give at least rhetorical support to such principles, are little more than white noise.[33]

59. In July 2013, just before Bauguess' became DERA's deputy

[33] Email from Chairman Jay Clayton to SEC staff, "*Our Shared Commitment*" with Equal Employment Opportunity Policy and Policy on Preventing Harassment attached, November 29, 2017.

director, the Government Accountability Office had noted that the "SEC's organizational culture was not constructive and could hinder its ability to effectively fulfill its mission."[34] GAO also noted that although its "survey results suggest that morale has improved, many SEC employees we spoke with cited concerns related to favoritism and a lack of workplace diversity and promotion opportunities that resulted in low morale among some employees."[35]

[34] GAO Report, p. 14.

[35] GAO Report, p. 16. The GAO Report (p. 29, n.44) also refers to an equal-employment study of the SEC conducted during the 2015 fiscal year (October 1, 2014, to September 30, 2015) that "found that females received fewer time-off awards and lower amounts of cash awards than employees," and "noted that some minority groups received lower cash awards compared to other demographic groups.".

OSD'S "REALIGNMENT" AND OPERATION OF EXTORTION AND CONSPIRACY AGAINST KIMBERLY EARLE

60. In August 2012, I moved to the Division of Economic and Risk Analysis in a promotion to the Associate Chief Accountant in the Office of Structured Disclosure, at the SK-16 level.

61. On June 28, 2016, DERA awarded me its highest award, the Director's Award. My direct supervisor since June 2015, the Assistant Director of OSD, Robert Mike Willis, nominated me for this award.

62. By January 2017, after the fiscal 2016 year ended (on September 30, 2016) and some nineteen months after Willis joined OSD, Bauguess decided to create a new Senior Officer position (SO-1), an Associate Director position in the Office of Structured Disclosure. His purpose was obvious: to promote his friend, Willis, into that new position.[36]

63. On January 23, 2017, President Donald Trump instituted a federal hiring freeze. Although DERA has had significant bureaucratic growth since its creation in 2009, funding for Willis' new promotion, however, likely would not be forthcoming. This would require reorganizing DERA, particularly that portion of the ever-growing division in which Willis was located: OSD.

[36] On January 24, 2018, while giving a briefing about her new AD group in the OSD's bi-weekly staff meeting, a new AD in OSD referred to Willis as "the *de facto* Associate Director."

64. A week later, on or about February 1, 2017, Bauguess, with DERA's Managing Executive, Kim Coronel, announced a planned "realignment" of OSD ("Realignment"). The Realignment would split OSD into two offices with a newly created Associate Director over them: the first new OSD group would be called the Office of Rulemaking Support ("ORS"), and the second would be called the Office of Disclosure Technology ("ODT").[37] The ORS is redundant, and contrary to DERA's own rules, as it would place an attorney in the new Assistant Director position.[38]

65. Others in OSD and I were well aware that the ORS was created to justify Willis' promotion of his close friend and attorney, Hermine Wong (SK-14), to the "New""repurposed" Assistant Director (SK-17) position in ORS, when Willis was elevated to the Associate Director position.[39], [40]

66. When Bauguess and Coronel announced the planned Realignment, OSD had no attorneys on its staff. Three months later, however, Wong came to

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[37] In mid-December 2017, OSD filled a third Assistant Director slot, without using budget resources, by transferring a detailed employee from another SEC division.

[38] This transition disregards guidance that DERA's "rulemaking support" be managed by an economist at the assistant director level, in one of three designated Rulemaking Offices. (March 16, 2012 memorandum *Current Guidance on Economic Analysis in SEC Rulemakings*.) OSD is not a designated Rulemaking Office, and given that plenty of attorneys are already involved in rule-making, another supervisory attorney and a staff attorney supporting the "economic" issues in rule-making is redundant.

[39] The Realignment also created a new Staff Attorney (SK-13) slot. It likely was not intended to be filled, instead it would be used as a building block for the two supervisory positions or to increase the number of staff-level positions needed to support creation of new supervisory positions. Three Operations Research Analysts were transferred into OSD at the same time, likely to support the creation of the new supervisory positions.

[40] Another staff member confirmed for me what I and others suspected by reporting to me that Bauguess confirmed Willis' to-be-vacated Assistant Director slot was "reserved for Hermine Wong."

OSD as a detailee.

67. Coronel provided a spreadsheet for the Realignment detailing the new offices and employee assignments, which appears below:

OSD/ORDS Crosswalk

OFFICE OF STRUCTURED DISCLOSURE					
Org Code	**Title**	**PP**	**Series**	**Grade**	**Staff Name**
35090000	SENIOR OFFICER*	SO	0301	01	New*
Office 1: RULEMAKING SUPPORT					
35090100	ATTORNEY-ADVISER*	SK	0905	17	New*
35090100	IT SPECIALIST	SK	2210	16	W. Hamscher
35090100	STAFF ACCOUNTANT	SK	0510	16	K. Earle
35090100	IT SPECIALIST	SK	2210	16	B. Hankin
35090100	ATTORNEY-ADVISER*	SK	0905	13	New*
35090100	FINANCIAL ANALYST	SK	1160	14	J. Marlowe
35090100	FINANCIAL ANALYST	SK	1160	14	J. Caust-Ellenbogen
Office 2: DISCLOSURE TECHNOLOGY					
35090200	SUPV MGMT AND PROG ANALYST	SK	0343	17	M. Willis
35090200	IT PROJECT MANAGER	SK	2210	16	M. Slavin
Application Development Branch					
35090201	SUPVY IT SPECIALIST	SK	2210	15	J. Bishop
35090201	IT SPECIALIST	SK	2210	14	Rey Er Lee
35090201	IT SPECIALIST	SK	2210	14	S. Buddhavaraapu
35090201	~~FINANCIAL ANALYST~~ Realigned to ORDS	~~SK~~	~~1160~~	~~14~~	M. Andriamananjara
35090201	IT SPECIALIST	SK	2210	13	G. Alemthott
35090201	IT SPECIALIST	SK	2210	13	S. Singh
35090201	IT SPECIALIST	SK	2210	13	J. Tao
35090201	IT SPECIALIST	SK	2210	13	H. Zheng
Information Delivery Branch					
35090202	SUPV OPS RESEARCH ANALYST *	SK	1515	15	New*
35090202	OPERATIONS RESEARCH ANALYST (realigned from ORDS)	SK	1515	14	M. Parker
35090202	OPERATIONS RESEARCH ANALYST (realigned from ORDS)	SK	1515	13	Xiliang (Peter) Wu
35090202	OPERATIONS RESEARCH ANALYST (realigned from ORDS)	SK	1515	13	L. Knight
35090202	IT SPECIALIST	SK	2210	13	V. Malik

** New positions: repurposed DERA vacancies*

68. The key feature of the Realignment chart is highlighted by an asterisk for the "New" positions. The Senior Officer (Associate Director) position (for Willis) and the Assistant Director (Attorney-Advisor) position in ORS (for Wong) would be created by "repurposed DERA vacancies." The obvious question that arose was: whose jobs would be used for the vacancies to repurpose for the

upcoming promotions? I would learn the answers to this question on November 8, 2017, some five weeks after the close of the 2017 fiscal year and as the performance evaluations were being constructed and disclosed across the Agency.[41]

69. By early 2017, Willis had more than doubled my responsibilities and work assignments, by virtue of my participation on the successful adoption by the Commission of the International Financial Reporting Standards taxonomy and the creation of its first new taxonomy in eight years, the SEC Reporting taxonomy, among numerous other projects.

70. In March 2017, Willis nominated me and my team members for two SEC Honorary awards, this time as a member of the International Financial Reporting Standards (IFRS) Taxonomy Team: The Andrew Barr Award[42] and the International Award.[43] We did not receive either award due to competition with other SEC nominees.

71. On March 9, 2017, Bauguess sent an email to DERA employees with the subject "Internal DERA Detail Opportunities." He encouraged employees to consider seeking details, noting:

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[41] As the Realignment chart shows, I am one of four individuals in OSD with a grade SK-16. The other three individuals in the SK-16 slots are the Caucasian male cronies of Willis described in earlier paragraphs of this document.

[42] This award "recognizes an accountant or team who displays the qualities of outstanding accounting ability, analysis, critical judgement and creativity in addressing challenges, along with dedication to public service and the agency."

[43] This award "honors an individual or team who has demonstrated dedication, professional competence and ingenuity in their work to advance international regulatory, supervisory or enforcement cooperation; promoted the sharing or best practices among market regulators; or facilitated the convergence of international regulatory standards."

As many of you are aware, particularly those of you who are in an office that has been through a realignment of one sort or another, DERA's rapid expansion has altered our scope of responsibilities in ways that we haven't always anticipated…please be on the lookout for a companion email to this one, which will open up a couple of external detail opportunities to other Divisions.

72. Willis' mid-year evaluation of me, which I received on May 13, 2017, gave no indication that anything with my performance was any less than it had been during my entire tenure at the SEC: fully successful.

Kimberly Earle
Primary projects and accomplishments for mid-year 2017 PWP (10-1-16 to 3-31-17)

Major projects and accomplishments during the mid-year review period included:

- Culmination of the multi-year IFRS taxonomy acceptance project
- 2017 US GAAP taxonomy update; liaison with OCA
- Participation on 2 public webcasts with the FASB
- Lead on OSD communications and website updates
- NRSRO data quality and data collection; liaison with OCR
- Ask-OSD: Subject Matter Expert and staff coordinator
- New project proposed: IFRS-FPI data project with CF
- Risk Return taxonomy project: coordinate IM review and acceptance
- Identified required update for INVEST taxonomy as part of N-Port project
- EDGAR Requirements Subcommittees and Filer Support Group observer
- Intern selection, oversight and mentoring
- Continuing professional education: Securities Regulation Certificate program – Financial Holding Companies class completed

73. At an OSD staff meeting in Summer 2017, Willis gave an update on the Realignment proposal, indicating that the DERA had requested but not yet received approval of funding for the Realignment from the "10th floor" (the Commission).

74. By fall 2017, unable to legitimately access DERA vacancies to implement the Realignment, Bauguess, Coronel, and Willis apparently sought an alternative approach to create the "repurposed DERA vacancies" in the Realignment plan. The Performance Management cycle offered an opportunity to use the previously described employee extortion procedures to create the vacancies and repurpose them to realize their objective.

75. Choosing the removed employee was easy: An SK-16 slot in the OSD group would provide a sufficiently high slot to be "repurposed" to construct Willis' promotion to Senior Officer. Bauguess, Coronel and Willis selected me to be the targeted employee as I was the only female of the 4 SK-16s, and Bauguess has been practicing systematic elimination of females from their positions since he became deputy Director in 2013. I practice Judaism, which is also a disfavored employee category for Bauguess' senior employees. In addition, as evidenced in a later email crafted by the Union on behalf of OGC, both Bauguess and Coronel believed that I was eligible for retirement so that pretext might be easy to effect.[44] Likely OGC (Rossiter) had advised them that targeting employees near retirement had worked for previous extortion victims, by threats of losing their federal employment, along with health insurance coverage, and retirement benefits they worked toward during long government careers.

76. I believe that I was also chosen for removal as reprisal for having

[44] I have not reached the Minimum Retirement Age and years of Creditable Service in order to retire under the Federal Employees Retirement System.

witnessed actions of harassment, retaliation, and discrimination against employees in DERA. Because of my tenure since 2012, I have historical knowledge of employees who were suddenly and inexplicably "no longer working" in DERA, as well as the stories of those who have confided to me about how DERA management has treated them. Since Willis came to DERA, he has sanctioned Hamscher's harassment, and I am aware that Willis has retaliated against two OSD employees. Other OSD employees have described their poor treatment by Willis and Hamscher to me, some of which is detailed in this document.

77. Thus, I was targeted to become the needed vacancy to be "repurposed" under the Realignment to effect the promotions of Willis and Wong.

78. On November 8, 2017, some five and one-half weeks after the close of the Agency's 2017 fiscal year, at the end of a weekly update meeting with Willis, he began yelling at me that I had failed to perform for the year, specifying that I had failed to provide him with a list of "policy initiatives" for DERA.[45] This was the first time he had "discussed" any "performance issue" with me.[46]

79. He then informed me that I would "receive a PIP, whatever that

[45] I was unsure how I could come up with policy initiatives when I was not a manager nor privy to front-office objectives, but I now suspect that Willis was going to use these to justify the creation of his new Associate Director position.

[46] According to the Office of Personnel Management ("OPM") managers' roles in "employee performance management" include: (1) planning work and setting expectations; (2) continually monitoring performance; (3) developing the capacity to perform; (4) periodically rating performance in a summary fashion, and (5) rewarding good performance. Willis performed none of the "employee engagement" tasks, at least with respect to me, that he was being paid to perform in doing "employee management performance."

means."[47] It was apparent to me that he had not drafted my performance narrative, although it had been due on October 31, 2017, and had certainly not drafted any performance improvement plan or "PIP." I learned that the performance narrative and the PIP, both of which Willis was being paid to create, would be the work product of someone whom I did not even know.[48]

80. During the rating period and prior to the November 8, 2017 outburst, Willis never communicated any performance concerns to me and there were multiple instances where Willis praised my work products.

81. On November 9, 2017, I informed the SEC Union about my unexpected and unpleasant experience. Little did I know that more such experiences were awaiting.

82. Also on November 9, 2017, Willis sent me an email that instructed me to talk to an attorney, Iris Rossiter, in the Office of the General Counsel ("OGC") about "my PIP." I had and have no idea what OGC would know about my job or job performance. I understood that Willis had transferred his management responsibilities to Rossiter, a woman whom I did not know and did not know or ever supervise me. I later learned that without informing me, the Union communicated with Rossiter and DERA management about my

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[47] PIP is the acronym for Performance Improvement Plan. In the PIP that Rossiter prepared and I received on January 18, 2018, she characterized Willis' outburst on November 8, 2017, as my "performance evaluation."

[48] By October 31, 2017, Willis, a rating official in the SEC's performance management system, was supposed to have finalized his narratives about employee performance. Apparently, he did not do this with my performance.

employment future.

83. According to the performance evaluation cycle, employee "ratings and justifications" for 2017 were due in SEC's software, which is called "LEAP" by as of December 1, 2017. The"final day" for rating officials to conduct individual meetings with employees and close out the FY 2017 PWP [Performance Work Plan] in LEAP" would be January 10, 2018. These deadlines were irrelevant in my case. By January 10, 2018, I had heard nothing more about my 2017 performance from anyone: I had received neither received my performance evaluation nor had I met with Willis for a performance review.

84. On January 17, 2018, the final day for rating officials to conduct individual meetings with employees for fiscal year 2017, the Union — not Willis — sent me an email stating that I had two options: (1) accept a demotion to SK-14 and continue doing the same work [purportedly unacceptable at any level] under Willis; or (2) receive a PIP. I was shocked and dismayed that the Union had apparently held a number of discussions and negotiations about my employment future with OGC and DERA management without consulting me.

85. The email stated the that the Office of General Counsel (OGC) had not provided substantiation for the threatened "unacceptable" performance rating but "has offered not to issue the PIP if you agree to take a voluntary demotion to Grade 14 and waive any claims you have against the agency." These "claims" were not specified nor was the reason why I had to waive them. If I agreed to the demotion, I would "receive a new position description with at least slightly

different duties than you have now" and "have to stay in the same group [I am] now in."[49]

86. The demotion option, according to the email, "might not have been offered if it had not been for Pat Copeland's conversations with Scott Bauguess and Kim Coronel, **who previously thought that you were eligible to retire now without a reduction in benefits.**" (Bold added.)

87. In order to show that OGC meant business, the Union's email to me contained a litany of purported performance failures, many of which were based on the failure to act "proactively", all of which were news to me, and all of which are refutable based on project and email documentation. Apparently, the drafter of the original email, the attorney in OGC named Iris Rossiter, had provided *the purported evaluation* she had created for me to the Union without my permission.[50]

88. Below is an excerpt from the email I received from the Union representative on January 17, 2018, notifying me of the"options" that Rossiter had given me:

[49] I am assigned to OSD's Office of Rulemaking Support ("ORS"). My demotion would support the promotion of Hermine Wong to the Assistant Director of the ORS, and she would thereby become my supervisor.

[50] The Union email contained the canned language, almost verbatim, contained in the performance evaluation that Rossiter drafted for Willis. It is unclear why taxpayers are paying another individual, in this case Rossiter, to do work that is fundamental to Willis' job and for which he is being nicely paid.

As you may know, we have been meeting with DERA Management in an attempt to get them to back away from putting you on a PIP. After that effort failed, we have been pressing OGC to provide substantiation for the "unacceptable" FY 2017 performance rating we've been told that you are going to receive. OGC reports that, if we don't reach a settlement, you are about to be given a PIP that will include the passage set forth below or words to that effect. OGC has offered to not issue the PIP if you agree to take a voluntary demotion to Grade 14 (the top pay for which is $208,584) and waive any claims you may have against the agency. If you take this demotion, you will receive a new position description and receive at least slightly different duties than you have now. You will, however, have to stay in the same group that you are in now. I believe that the demotion option might not have been offered if it had not been for Pat Copeland's conversations with Scott Bauguess and Kim Coronel, who previously thought that you were eligible to retire now without a reduction in benefits, and that you would have already received the PIP.

89. The "passage set forth below" in the above snip referred to a list of alleged performance issues that neither Willis nor anyone else had raised during the performance period. The "issues" are factually baseless.[51]

90. I opted for the PIP, and my understanding is that I am the first extorted employee in DERA to "risk" the adverse SF-50. As I am experiencing, the use of the performance management system and the process of my "evaluation" and "performance improvement" is not bona fide; the outcome was planned on November 8, 2017.

91. On January 31, 2018, Rossiter informed my legal counsel by telephone that the "likely outcome of a PIP at the SEC is termination," implying that if a PIP were issued to me the foregone conclusion would be failure resulting in termination of my employment. This statement appears to confirm Rossiter's inside knowledge of subversion of the SEC's Performance Management processes as it contradicts findings the last GAO report on the SEC's Performance Management processes, which admits one termination as

[51] After I choose neither to resign nor to accept a "demotion" to do the same job for less pay in this hostile work environment, Rossiter prepared a PIP, discussed below, that essentially tracked verbatim the performance "issues" that the Union steward had cut-and-pasted from his apparently direct communications with Rossiter.

a result of 16 documented PIPs in fiscal years 2013 through 2015.[52]

92. Rossiter's misstatement may have been, and likely was, the standard threat given to those whom she dissuades from "risking" the PIP and the ensuing "likely outcome" of an adverse SF-50.

93. In February 2018, the OSD Branch Chief (grade SK-15) obtained an SEC detail outside DERA. On February 15, 2018, Coronel and Willis informed the individual that he would only be permitted to take the detail upon accepting a demotion to SK-14 by characterizing the detail as a "temporary reassignment." Coronel and Willis knew that the Branch Chief was unhappy with Willis giving him a poor 2017 performance rating, likely in retaliation for the Branch Chief's having submitted a suggestion to the OIG. The Branch Chief had made very clear in several recent heated discussions that he believed the rating was unsupported, and Willis and Coronel were aware that the Branch Chief did not intend to return to OSD.

94. Having successfully freed up the differential between the pay of an SK-15 and SK-14, which would help effect the Realignment plan, on that same afternoon of February 15, 2018, Willis sent a meeting request to me with the subject "Performance Discussion", scheduled with Willis and Coronel in Coronel's office for the following Tuesday, February 20, 2018.

95. At the meeting on February 20, 2018, Willis and Coronel presented me with my long-overdue but recently constructed 2017 Final Performance Appraisal, and a PIP. That same day, I asked Willis by email to substantiate the assertions made in the

[52] GAO Report, p. 31.

Appraisal.

96. Willis did not and likely will not respond to this request; the inference is obvious: he cannot substantiate these assertions, and given that he is not required to be accountable to anyone outside of his co-conspirators, he need not respond. My documentation, including emails and contemporaneous meeting notes during the 2017 rating period, however, refute the Appraisal's assertions.[53]

97. The GAO, in its 2016 report on the SEC's Personnel Management Challenges,[54] reiterated that OPM guidance and federal regulations require SEC supervisors "to gather relevant information, such as examples of work products that do not meet performance standards and any relevant e-mails discussing the individual's performance." DERA and the SEC treat this requirement as optional.

98. The 2017 Final Performance Appraisal I received on February 20, 2018 includes false statements, deliberate misrepresentations of material facts, and falsifications[55] about my work products. These false statements are an obvious pretext to remove me from my federal employment.

99. Willis, the "Rating Official," Bauguess, the "Reviewing Official," and Coronel, the "Reviewing Official-Co-Planner," all signed the back-dated performance evaluation that Rossiter fabricated on their collective behalf. Because neither Willis,

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[53] An "unacceptable" rating, according to my Performance Work Plan, reflects performance that "generally does not," "often fails," "usually does not," "consistently fails" "typically fails" or "does not accept responsibility." Given my unique subject matter expertise, anyone else would certainly have created significant program failures during 2017. The Appraisal does not describe failures in these terms.

[54] GAO Report, p. 31.

[55] The federal criminal provision, 18 U.S.C. Section 1001, arguably applies.

Bauguess, nor Coronel are required to substantiate their assertions concerning my performance, I will be providing evidence to contradict their outcome-oriented falsifications as my EEO case proceeds. I will refute the specifics of the contrived performance review as I pursue my "administrative remedies" and "due process" through the Office of Equal Employment Opportunity (OEEO) for my right-to-sue letter.

MY "PERFORMANCE IMPROVEMENT" PLAN

100. As the first employee in DERA to risk a PIP, Bauguess, Coronel, and Willis are doing their best to make an example of me for other employees who might think of standing up to them. My PIP must be painful, public and ultimately unsuccessful.

101. The introductory paragraphs of my PIP contain misstatements: "during the performance rating period [Willis] provided [me] with verbal [oral] and written feedback about [my] performance and met with [me] weekly to assist in developing [my] project priorities and focus on pending deliverables."

102. When I requested that Willis send me the "written feedback" to which the above statement refers, he sent me a single email.[56] The "weekly" meetings were done by mutual agreement after Willis became an SEC employee in mid-2015, for the sole purpose of updating each other because we seldom had other occasions on which to discuss matters. We did not have these meetings because Willis was assisting me "in developing [my] project priorities" or helping me "focus on pending deliverables." My meeting notes, which I kept for all of our meetings, contain no references to any feedback on performance. The only meetings in which my performance was discussed were the

[56] I have multiple emails during the rating period in which Willis approved of and thanked me for my work.

required annual and mid-term performance meetings, at which Willis gave me no negative feedback.

103. The PIP references a meeting on June 28, 2017 where Willis allegedly "reviewed examples of [my] unacceptable performance" with me. My notes, which I take faithfully and fully, evidence no such discussion.

104. The PIP lists "Examples of Unacceptable Performance." One project in particular, the "IFRS Sample Inline XBRL financial statement report" is listed several times as a "failure". This project was actually assigned to Walter Hamscher, one of three male Caucasian SK-16s in OSD. Hamscher worked on this project from approximately June 2017 to October 2017, and failed to produce a viable project deliverable. If that deliverable was a failure, it reflects Hamscher's work performance, not mine.

105. Other "Examples" listed cannot be substantiated. For example, the PIP states that I purportedly failed "to proactively engage other office staff (e.g. Office of Chief Accountant (OCA), Corporation Finance (CF) on taxonomy review process steps and plans in a specific, well-documented manner."

106. However, in 2017 I designed and implemented a SharePoint site specifically for collaboration with OCA on taxonomy reviews, and wrote and presented a training session in collaboration with Financial Accounting Standards Board (FASB) for OCA on taxonomy review. I collaborated very closely with CF on both the IFRS taxonomy adoption and an entire new reporting taxonomy for which I was the subject matter expert. Our liaison with CF wrote me several emails recently praising me about our collaboration on this and other ongoing projects.

107. The "IFRS Sample Inline XBRL financial statement report" listed in my 2017 performance evaluation as evidence of unacceptable performance although actually assigned to another SK-16 employee in OSD, reappears in the PIP, with a due date six days after the start of the PIP. Willis is well aware that Hamscher took 4 months on the project last year and did not produce a viable work product.

108. The administration of the PIP is as inauthentic as the its origins and content. Rossiter, as agent for Willis, Bauguess, and Coronel, designed the PIP to ensure failure. As administered, Willis has become hostile and now bombards me with critical emails that contain false assertions about "mistakes" and "non-compliance" with the PIP requirements. These hostile and misleading emails are intended to create a bogus paper record to justify the pre-determined outcome that never had and still has nothing to do with performance.

109. One PIP deliverable was to send an email to OSD's email news list, which was due by Saturday, March 31, 2018. I received the link from the service used to create the email after close of business on Friday, March 30, 2018. I sent the email on the following business day, Monday April 2. Willis claimed that this constituted a PIP "failure," although I was not required to work on Saturday, March 31, 2018.

110. While I was "late" on this deliverable, another SK-16 in OSD, Brian Hankin, *was over a month late on a deliverable to the public for the March 2018 EDGAR Release*. To my knowledge, Willis was not concerned about Hankin's performance.[57]

[57] Another PIP deliverable was to "draft and publish updates to the IFRS FAQs page as dictated by 'Ask-Structured data' questions prior to March 31, 2018." As part of Willis' accusations that I did not complete this assignment to satisfaction, he emailed me a list of nine 'Ask-Structured data' questions that I should have" considered. One question was submitted after March 31, 2018 so I could not have considered it in my

111. Finally, the PIP includes a provision that my employment attorney, in twelve years of practice, has never seen. This is a clause that limits PIP failures to "no more than 2 instances where [I] fail to timely complete the assigned tasks."

112. Willis' emails, which contain false and distorted assertions of failures, are obvious attempts to make sure at least three of his complaints "stick", to justify his objective of removing me from DERA and the SEC. He is impatient: it has been over a year since the Realignment was proposed, and he is anxious to receive his long-promised and awaited promotion.

WHY SEC PERFORMANCE IS IRRELEVANT

113. My position at the SEC as accounting subject matter expert in financial reporting taxonomies is unique. Removing me from SEC employment, despite the impact it would have on OSD's work, reveals managerial indifference to the SEC's mission, and DERA's irrelevance to that mission. This indifference, however, is offset by a significant me-first attitude of opportunism at public expense.

114. Unfortunately, the SEC's disregard of merit principles for promotions and performance standards in removals reflects the Agency's loss of purpose that enables unchecked bureaucratic opportunism. This loss of purpose is inevitable after the largest financial fraud in the fraud-laden financial history of the United States failed to trigger any investigation of any important Wall Street bankers. If important Wall Street bankers are

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update. For another question, the tracking ticket notes that CF "made multiple attempts to follow up with the person asking the question but the person did not respond so we've written off the question." The remainder of the questions cited were filer-specific questions requiring rules interpretations from CF, so would not be considered "frequently asked", and it would be CF's discretion to provide interpretive advice on them through its website, which it has not done.

off limits in SEC investigations (as they are, too, in Department of Justice matters), then the Agency is left only with policing small financial companies, such as community banks, and non-financial companies of any size.

WALL STREET'S CARROT-AND-STICK FOR SEC DECISION-MAKERS

115. In my experience, organizational fraud and abuse are not unlike a cancer. The cancer knows no boundaries as it eats through an organization and consumes its organs. The body feeds upon itself as it loses its ability to function.

116. The cause of the cancer at the SEC is the personal opportunism of certain SEC employees, and the power of rewards and punishments that Wall Street banks and their professional servants offer decision-making SEC employees. Employees placed into high decision-making positions and those who move by "promotion" into higher decision-making positions[58] are very aware of Wall Street's carrot and stick. The carrot is higher pay in "white shoe" laws firms upon departure from the SEC.

117. Reports of "revolving doors" at regulatory agencies are common; however at the SEC it has devolved into a loss of mission, and worse, corruption instead of the mission.

[58] The SEC promotion system is based on being liked and loyal to the career objectives of one's supervisor two levels up. It is unfettered by common notions of merit.

118. Why are SEC decision-makers concerned about Wall Street banks? We can use the answer attributed to Willie Sutton about why he robbed banks: "Because that's where the money is."

119. SEC decision-makers obtain Wall Street's favor by insuring passage of only rules that are favorable to Wall Street profits, not disfavorable.[59] Even more importantly, these decision-makers must ensure that no Enforcement investigations are allowed to begin or percolate up through the layers of the Agency's Enforcement hierarchy and subject important Wall Street bank executives to the humiliating investigative process that awaits less important Americans, including even less important bankers.[60]

120. Prevention of percolation can be, and is, accomplished by ensuring that promotions into decision-making levels in Enforcement exclude employees too successful in prosecuting frauds or "too aggressive" toward Wall Street.[61] This is accomplished by gifting promotions to younger, less experienced employees, making them loyal to their

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[59] While in the Division of Trading and Markets, I performed financial and operational data analysis for the Risk Assessment program, alongside the Consolidated Supervised Entity (CSE) program. There I witnessed CSE's programmatic failure to carry out the Commission's mission in its oversight of Bear Sterns, and the bankruptcy of Lehman Brothers, which the Commission also regulated under the CSE program. I witnessed the calamitous impact of these programmatic failures on my colleagues and the Agency.

[60] The most public instance of decision-makers in Enforcement terminating any investigation into an important Wall Street bank executive involved the case of former investigative attorney Gary Aguirre. Linda Thompson, then Director of Enforcement, and Paul Berger, fired Aguirre for pushing to take the investigative testimony of important Wall Street banker John Mack for insider trading. Aguirre said that he came to the SEC to protect the public from Wall Street, but discovered that the SEC protects Wall Street from the public.

[61] I am aware of an Assistant Director in Enforcement, who was very successful in bringing not only civil fraud actions but assisting in the bringing of parallel criminal fraud actions, seeking a promotion to Associate Director. The then-Director of Enforcement told him that he would not be promoted because he was "too aggressive."

benefactors and, ultimately, to the benefactors' future benefactors. The decision-makers must absolutely insure that the Commission avoids facing the awkward dilemma of having to decide whether it should authorize a legal action in fraud against one or more important Wall Street bank executives.

121. SEC decision-makers can enhance their own market value to the important Wall Street bankers and their servicing law firms by building internal leverage in the SEC. The easiest way to do this is by rewarding lower-tiered decision-makers (managers) with taxpayer-financed benefits, such as promotions, increased salaries, bonuses, and other employment benefits.[62]

122. The stick is having Wall Street and its ilk black-balling Decision-makers who do not stop percolation of actions toward Wall Street.

123. Discussions of the revolving door at the SEC, particularly in the Division of Enforcement, treat all SEC Enforcement attorneys as if they are homogenous. This assumption is superficial: many, if not most, of the SEC attorneys are investigative attorneys, in effect, financial detectives. As one moves up the vertical "food chain" or organizational chart, however, SEC attorneys become much more political and administrative; they are not or not necessarily investigators. An attorney's investigative ability or past success is neither a sufficient nor even a necessary condition for

[62] This has occurred twice in the past ten years. The newly placed Director of the SEC's Division of Enforcement, Robert Khuzami, promoted most of the Enforcement managers under the guise of "flattening" the management structure and created another whole realm of promotions in his "specialty units." More recently, Chair Mary Jo White succeeded in insuring that managers in all divisions and offices—and only managers—receive higher pay and more employment benefits. She made sure, of course, that these managers were aware of her concern about their increased compensation. The public paid for the managerial positions and promotions inside the SEC, but Khuzami and White received the inventory of "return favors" inside Enforcement and the entire SEC, respectively.

appointments at the top or for promotions toward the top of that organization.

124. Enforcement matters investigated are akin to products on an assembly line. They begin—if authorized—at one end of the line as raw materials. The investigative attorney builds the matter into an almost-finished good. If the front office—the top three administrative layers[63]—allows the good to reach the Commission, the Commission can approve it and it becomes a public good: a lawsuit.

125. Although journalists love the expression "top cop" when referring to any appointed Director of Enforcement, this is misleading. The Director of Enforcement does not investigate matters and seldom initiates investigations. In fact, a Director need not have done any investigations. The power in this position is the *power of the veto*.

126. Important Wall Street bankers, whose retinue understand better than the public the operational structure of Enforcement and the percolation of investigations from raw material to finished goods, are not impressed by any given Enforcement attorney's "legal abilities"; attorneys are a "dime a dozen" and, rightly or wrongly, viewed as fungible. The important Wall Street bankers do, however, reward SEC attorneys who, by virtue of being appointed at the highest levels or having "earned" their way to the top of the organization, have dutifully ensured that no matters against them have the opportunity to percolate.

127. "Percolation suppression" is the name of the game. This means that matters that get too close to implicating important Wall Street bankers must be killed before they create any paper trail or attention. Suppression, however, can take various forms.

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[63] These layers include, from the bottom up, the Associate Director, the deputy Director, and the Director.

128. As noted, under former Chair Mary L. Shapiro and Director of Enforcement Robert Khuzami, TCRs from victims of SPE fraud were channeled to the specialty unit called Structured and New Products. That unit did not bring an action, and likely never even approached for testimony, a single important Wall Street banker. Given the losses investors endured, one can only assume that the numbers of TCRs from SPE investors were enormous. These TCRs, however, were siloed and likely vaporized.

129. Khuzami's "reorganization," which was essentially a game of bureaucratic musical chairs, ensured that Enforcement's investigative attorneys could do no work.

NON-INVESTIGATION OF WALL STREET BANKS IN THE FINANCIAL CRISIS


Shapiro

130. Former Chair Mary Shapiro and the individual she appointed to be her Director of Enforcement, Robert Khuzami, created a three pronged "response" to the monumental fraud that manifested as the Financial Crisis of 2008 and to the consequential exposure of the Madoff[64] and Stanford Ponzi[65] schemes. The consequence was the avoidance of the Enforcement "percolation problem" against important Wall Street bankers who controlled the banks that created monumental damage to unimportant Americans and foreign investors.

131. Typically, after a financial fraud becomes publicly or known only to the

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[64] See, U.S. Securities and Exchange Commission, Office of Inspector General, *Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme*, August 31, 2009, Report No. OIG-509.

[65] See, U.S. Securities and Exchange Commission, Office of Inspector General, *Investigation of the SEC's Response to Concerns Regarding Robert Allen Stanford's Alleged Ponzi Scheme*, March 31, 2010, Report No. OIG-526.

SEC, Enforcement begins investigating the likely orchestrators and structure of the fraudulent scheme. This is what one might call the **retrospective investigative approach** for **past fraud schemes** in protecting investors. Its purpose is to identify and publicize the violators, the fraudulent scheme, and impose some disgorgement of ill-gotten gains and penalties as punishment. The reputational consequences to the violator and the ability of the public to detect the symptoms of the fraud scheme are the benefits of this approach. It discourages copycatting. It is the traditional and standard Enforcement response to financial frauds.

132. Because Wall Street banks were at the epicenter of this catastrophe, however, Shapiro employed a new and imaginative model for "protecting investors:" to use *only* a **prospective intelligence approach** to detect, and implicitly, to prevent **future fraud schemes** that might melt down the economy. This would bypass any need to trouble Wall Street with investigations and thereby impair the marketability of SEC decision-makers. It would shelve the traditional investigative model, and its protective value of focusing on enforcing federal securities laws, while generating investor confidence for the future. After all, the Financial Crisis was already realized. It worked: the SEC did not investigate any important Wall Street bankers.[66] No SEC decision-makers had to risk their future Wall Street employment or create public fingerprints for having suppressed a percolating investigation against an important Wall Street banker.

133. This prospective intelligent approach would enhance investor confidence, but not based on investor protection as it was (and again is) undertaken, but by promises of

[66] SEC Enforcement Actions: Addressing Misconduct that Led to or Arose from the Financial Crisis: https://www.sec.gov/spotlight/enf-actions-fc.shtml.

future “intelligent” detection. It was as if the SEC had said: “We won’t let it happen again.”

134. The prospective intelligent approach involved a lot of new, bureaucratic construction mostly in two parts: (1) the creation of the new SEC division of Risk, Strategy and Financial Innovation (later renamed the Division of Economic and Risk Analysis), which would have economists searching for future systemic fraud schemes[67] and (2) the reorganization of the Division of Enforcement,[68] the division that uses the retrospective investigative approach, which was an implicit statement that the entire investigative staff Division of Enforcement — not its chief decision-makers — had failed in “preventing” the Financial Crisis. This reorganization, perhaps by design, created tremendous discombobulation and disturbance making it almost impossible to investigate the causes of the Financial Crisis. Neither had anything to do with the causes of the Financial Crisis or even Madoff’s or Stanford’s Ponzi schemes or with preventing identical schemes from recurring.

135. The reorganization of Enforcement had four components: (1) the creation of a new Office of Market Intelligence (“OMI”) which took in TCRs; (2) the creation of so-called specialty units, which created promotion opportunities for many and included a

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[67] On September 16, 2009, Shapiro announced the creation of a new SEC division called the Division of Risk, Strategy and Financial Innovation. She noted that “[t]his new division will enhance our capabilities and help identify developing risks and trends in the financial markets,” and that, "[b]y combining economic, financial, and legal analysis in a single group, this new unit will foster a fresh approach to exchanging ideas and upgrading agency expertise.” Of course, the non-existence of DERA did not cause or contribute to the Financial Crisis and its existence would not have prevented it and will not prevent the next systemic fraud, as discussed below.

[68] Speech by SEC Staff: Robert S. Khuzami, Remarks at News Conference Announcing Enforcement Cooperation Initiative and New Senior Leaders, January 13, 2010.

speciality unit called “Structured and New Products,” which ostensibly was tasked with questions concerning the Financial Crisis; (3) the “firing” of all managers and then the rehiring of the almost all of the same individuals at their same or higher levels, giving promotions to many of the “fired” managers; (4) the transfer of all investigative attorneys to the “newly” hired managers or newly constructed specialty units, with the consequence that few if any of the existing units (organized as Assistant-Director groups) would open new matters to investigate or conduct existing investigations because the lines of investigative authority were broken; and (5) the construction of a bureaucratic “office of business management,” a soon-to-be bloated office for Enforcement’s Managing Executive that replaced one employee, Charles Staigert.

136. The Enforcement reorganization systematically prevented Enforcement’s ability to conduct its **retrospective investigative approach** for **past fraud schemes** as they would have concerned the important Wall Street bankers who orchestrated the biggest scam in the history of the United States in two ways: (1) funneling all TCRs through a controlled pipeline so that all TCRs concerning Wall Street Banks would be knowable to the highest decision-makers and able to be redirected or killed; and (2) creating a special unit, the Structured and New Products unit in Enforcement to which all bank-related matters would be directed; and (3) creating such discombobulation in Enforcement that the entire division was incapable of functioning for over a year.

137. Before Shapiro and Khuzami created OMI, tips, complaints, and reports (“TCRs”) from defrauded investors could come directly to any SEC investigative attorney. An attorney received a TCR from the purchaser of worthless Wall Street structured

investment products might seek to open an investigation and thereby cause management fingerprints to appear in the necessary still birth or subsequent closure of such a disfavored inquiry.[69] TCRs from victims of Wall Street fraud were funneled into OMI where they could be "lost" or funneled to a safe place where percolation would not be a problem. This prevented the average Joe or Sally SEC investigator from "stumbling" onto an investor complaint and running with it.

138. Shapiro justified the creation of OMI by claiming that former Information Technology group in Enforcement had mismanaged TCRs and prevented investigations of Bernard Madoff's investment companies. This was patently false as the Madoff investigations were closed without action. She unfairly terminated a number of quality SEC employees who had nothing to do with the SEC's Madoff failure.

139. The Madoff debacle, in fact, was a consequence of either high-level managerial incompetence, corruption, or both.

140. The managers who had the Madoff investigations closed may have failed to understand the very basics of the stock transfer system and the centrality of Depository Trust Company ("DTC") in that system. These basics are not complex. DTC is akin to a bank, but instead of holding dollars it holds shares of stock. A five-minute inquiry would have found that Madoff, whose investment companies purportedly self-cleared their securities was not a participant (depositor) with DTC.[70] This means his companies could

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[69] SEC investigative attorneys need permission from the front office before opening any matter.

[70] According to the SEC OIG's own report "This was perhaps the most egregious failure in the Enforcement investigation of Madoff; that they never verified Madoff's purported trading with any independent third parties". See U.S. Securities and Exchange Commission, Office of Investigations, *"Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme",* August 31, 2009, Report No. OIG-509.

not have held any securities in the United States. It is no different from checking someone's bank account for its balance. If Mr. X claims to have $50 billion in a bank account, you can contact the bank (DTC) and ask if Mr. X has a bank account, and if so, the balance of that account. Madoff did not have a DTC account, so its balance was necessarily zero securities.

141. The managers who oversaw the Madoff investigations may have had it closed because they were concerned about being black-balled for exposing an important Wall Street banker, regardless of the harm caused. The harm of one managing attorney being black-balled from Wall Street is, to him or her, more significant than preventing the continuing harm to investors. Open investigations into Madoff were closed, just before the SEC investigators were to ask DTC if Madoff had a DTC account.[71]

142. With OMI in place, TCRs about Wall Street banks and bankers could be channeled and perhaps quietly killed either at the input OMI level or by the newly created Structured and New Products unit. The discombobulation in Enforcement and the direction of "bank-related complaints", would and did prevent any investigative "percolation" any Enforcement.

143. The Structured and New Products specialty unit Enforcement was purportedly created to address frauds involving structured financial products. These are

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[71] Enforcement's system of closing ongoing inquiries and investigations insures that the *real* record of *the reasons* for the closure and the *real decision maker* may not be revealed, if ever looked into. The Associate Director often decides to close a matter for reasons that may or may not be articulated; the investigative attorney must construct the closing memorandum that identifies the "reasons" for closure, and then "offer" the memorandum to the managers as if it were the investigative attorney who proposed the closure. The managers will then sign off as if "accepting" the investigative attorney's proposal. No audit trail of the closing memorandum is created as only the *final manager approved version* is pasted into the program that records the history of the matter.

securities that investment banks construct by taking other securities, typically promissory notes on which the makers pay installments, putting the notes into a pot (a special purpose entity or SPE), and selling ownership of the notes and their cash flows to a group of investors.

144. The Structured and New Products specialty unit, headed by Kenneth Lench, did not investigate or prosecute a single, important Wall Street banker. It is quite likely that any investor complaints relating to the Financial Crisis were either buried by OMI or the Structured and New Products unit. Instead of investigating, this unit spent considerable time teaching other SEC employees about SPE tranch-structures.


Lench

145. On July 23, 2013, the ABA Journal reported that Khuzami had joined the law firm of Kirkland & Ellis to be "paid more than $5 million per year, with a two year guarantee."[72] The article also noted that Khuzami "will be joined at Kirkland, where he expects to start work around Labor Day, by one of his lieutenants at the SEC, Kenneth R. Lench," who "formerly headed the structured and new products unit at the SEC in his final post during a 23-year career there."


Khuzami

146. Beginning in 2013, succeeding chair Mary Jo White, brought into Enforcement the "broken windows" theory of law enforcement. That theory holds that preventing small crimes results in big crimes disappearing. Metaphorically, bringing SEC actions against


White

[72] http://www.abajournal.com/news/article/ex-sec_enforcement_chief_joins_kirkland_will_reportedly_be_paid_over_5_y/.

vandals on Main Street, who were throwing rocks at windows on Wall Street, would prompt important Wall Street bankers from engaging in any illegal conduct. No important Wall Street banker would ever again sell an SPE made with a portfolio of worthless paper and bet that the value of that portfolio was less the price at which they sold it.

147. White's approach suggested that the SEC had adopted a zero-tolerance policy on fraud, scouring every nook and cranny to find it. This was not the case: it was a program that effectively diverted Enforcement resources from matters that could involve important Wall Street bankers to the vandalism on Main Street.

148. To the extent that any Wall Street banks were held accountable for one or more SPEs, the SEC only named the paper corporations.[73] Important Wall Street bankers were not named, perhaps because they really were not truly executives overseeing operations or perhaps they did not understand what their underlings were doing to advance their bosses' wealth. Or perhaps there is another reason.

SIMPLE STRUCTURE OF THE FINANCIAL CRISIS FRAUD

149. The SEC has never identified, internally or publicly, the fraud structure or players that caused the Financial Crisis. The public has been denied, in my opinion, the information needed to understand how and why the Financial Crisis occurred, a monumental event that damaged and ruined the financial lives of many American homeowners and investors throughout the world.

150. Financial intermediaries, so called financial institutions, caused the Financial Crisis. Two realities enabled it: (1) Citicorp's disregard in 1999, and then

[73] https://www.sec.gov/spotlight/enf-actions-fc.shtml.

Congress' repeal in 2000, of certain provisions of the Glass Steagall Act of 1934, which had kept commercial bank and investment bank activities separated, and (2) the "phantom transactions" between investment banks and so-called special purpose entities (SPEs), needed to construct the SPEs. The repeal of parts of Glass Steagall enabled banks to construct and run the SPE-production line that spit out new, structured securities. The phantom transactions enabled investment banks to sell what might as well have been candy wrappers (low quality mortgage loans) to SPEs for the whatever dollar value had been written on those candy wrappers.

151. An SPE is an legal and accounting fiction to which an investment banks "sell" paper assets, such as mortgage loans with monthly installment payments.[74] The investment bank, in turn, sells the installment payments owed on the mortgage loans to investors in the securities markets. The investors effectively pay the investment bank for SPE's portfolio.

152. The "transaction" between the investment bank and its own Frankenstein SPE were not and are not arm's length buy-sell transactions as documents might suggest. The SPE is simply a robot that the investment bank programs to buy its paper; and is incapable of doing any "due diligence" or questioning about the value of the paper that "it" buys from the investment bank. The investment bank sells the paper at its par or stated value or perhaps at some slight discount to that purported paper value. Par value is simply a set of numerals on paper: whether paper is worth the numerals on the paper requires inquiry into who signed that paper: who had promised to pay back the loan, what history

[74] This securities interest an investor would buy from an investment bank would be called a "mortgage-backed asset."

does the borrower have in honoring loans, and, most importantly, what ability does the borrower have to pay the loan back.

153. After constructing an SPE, the investment bank sells the interests in the installment payments (which can included principal and interest payments, interest- only payments, or principal-only payments) to investors in the securities markets. The SPE and the investors' interests to the portfolio of paper that the investment bank "sold" to it are "financial products."

154. Beginning in the 2000s, following the dot.com bubble,[75] Wall Street banks erected the SPE-production line. It began with mortgage loans, the raw material inventory for SPE construction, and ended with the sale of the interests in the SPE, the finished goods, to investors. The investors unwittingly and mistakenly assumed integrity in the SPE-production line.

155. The sales of SPE interests was profitable, so investments banks' demand for mortgage loans increased. Mortgage loans needed paper-signers, those interested in purchasing residential properties. The investment banks' demand for mortgage loans prompted commercial loans to originate or buy already originated mortgage loans from those whose credit was marginal or who were put into unnecessarily unfavorable loans.[76] Those with marginal credit often received amounts exceeding their ability to pay. The loan originators did not care as they knew that they would not hold the mortgage loans.

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[75] The accounting frauds that Enron perpetrated on investors relied heavily on the use of SPEs. Although the Financial Accounting Standards Board (FASB) arguably addressed these mis-uses, Wall Street found a different and more insidious way to use SPEs.

[76] New home builders would require new-home buyers to use their financing arms or "lose" part of the house being purchased.

Similarly, the commercial banks knew that this paper would move into an SPE to be sold to an unwitting investor.[77]

156. The investment banks' cyclical need for more raw materials—mortgage loans—to create more SPEs enabled too many otherwise unqualified homebuyers to bid on a limited supply of homes. This caused house prices to swell artificially: the housing bubble.

157. On the other end of the SPE- production line were the investors who bought interests in what became increasingly worthless paper. Metaphorically, they were buying homes with beautiful walls, not knowing that the wallboard was attached to sticks.

158. The Wall Street banks made a fortune in fees. The investment banks that lacked commercial bank components failed. Aware of the low quality of paper in the SPE portfolios, Wall Street banks could "bet against" their value and make even more money, a classic instance of insider trading. This was accomplished through the use of so-called credit default swaps. Wall Street had succeeded in having Congress and the President exempt "derivatives," paper that has a value linked to something other than the original issuer, from federal and state regulation.

159. The credit default swaps were essentially insurance-type, financial guarantees dressed up to be regulation free. American Insurance Group (AIG) issued these for immediate revenue taking on enormous risk without having the financial ability to honor their guarantees.

160. The American public did not receive any of the revenues that Wall Street

[77] PBS investigated the "due diligence" process that commercial banks conducted when purchasing already originated mortgage loans. Employees who identified problems with loan quality were typically terminated.

banks and AIG took in, only the consequences. The Financial Crisis was a consequence of unbridled greed and confirmed that Wall Street is among a group of organizations that controls the United States government to enable its insatiable greed. Profits were privatized and losses socialized.

161. The Financial Crisis Inquiry Commission Report states:

> Despite the expressed view of many on Wall Street and in Washington that the crisis could not have been foreseen or avoided, there were warning signs. The tragedy was that they were ignored or discounted. There was an explosion in risky subprime lending and securitization, an unsustainable rise in housing prices, widespread reports of egregious and predatory lending practices, dramatic increases in household mortgage debt, and exponential growth in financial firms' trading activities, unregulated derivatives, and short-term "repo" lending markets, among many other red flags. Yet there was pervasive permissiveness; little meaningful action was taken to quell the threats in a timely manner.
> The prime example is the Federal Reserve's pivotal failure to stem the flow of toxic mortgages, which it could have done by setting prudent mortgage-lending standards. The Federal Reserve was the one entity empowered to do so and it did not. The record of our examination is replete with evidence of other failures: financial institutions made, bought, and sold mortgage securities they never examined, did not care to examine, or knew to be defective; firms depended on tens of billions of dollars of borrowing that had to be renewed each and every night, secured by subprime mortgage securities; and major firms and investors blindly relied on credit rating agencies as their arbiters of risk. What else could one expect on a highway where there were neither speed limits nor neatly painted lines?[78]

162. The Enforcement Reorganization was part two of this story. The Financial Crisis was neither prevented nor investigated. To my knowledge, the SEC's Division of Enforcement did not investigate any Wall Street bankers who oversaw the SPE-production line. In fact, the SEC had an internal news blackout about Financial Crisis.

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[78] p. *xvii*.