




OFFICE OF
INSPECTOR GENERAL

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

MEMORANDUM

November 30, 2012

TO: Mary L. Schapiro, Chairman
Elisse Walter, Commissioner
Luis A. Aguilar, Commissioner
Troy A. Paredes, Commissioner
Daniel M. Gallagher, Commissioner

FROM: Jon T. Rymer, Interim Inspector General 

SUBJECT: U.S. Postal Service Office of Inspector General Investigation's Impact on Madoff, Restacking and Stanford Receiver Reports

On May 30, 2012, I requested that the U.S. Postal Service Office of Inspector General (USPS OIG) conduct an independent investigation into allegations of misconduct involving current and former Securities and Exchange Commission Office of Inspector General (SEC OIG) management officials. Of particular concern to me were allegations that the independence of three SEC OIG investigative or review efforts was compromised by the former Inspector General's relationships with lawyers and/or witnesses involved in those efforts.

The two investigation and one review reports in question were Report No. OIG-509, *Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme*, August 31, 2009 (Madoff Report); Report No. OIG-461, *Review of the Commission's Restacking Project*, March 31, 2009 (Restacking Report); and Investigation No. OIG-565 commenced July 25, 2011 into complaints regarding the selection and supervision of the Stanford Receiver.

In response to my request, the USPS OIG produced a Report of Investigation (ROI), entitled *Securities and Exchange Commission Office of Inspector General, Washington, DC, 20549—Executive Misconduct*, dated September 17, 2012.

Based upon my examination of the ROI, I have concluded that the independence of the Madoff Report has not been compromised. The Madoff investigation was initiated at the specific request of the former SEC Chairman. While the USPS OIG investigation reveals that the former Inspector General had or developed a friendly relationship with a witness and his attorney, this witness was only one of the 122 witnesses who either testified or were interviewed during the course of the investigation. No evidence exists to suggest

that the former Inspector General's relationship with the witness or his attorney inappropriately affected the course of the investigation or findings in the Madoff Report.

Similarly, I have concluded that the independence of the Restacking Report has not been compromised. It is clear from the evidence in the USPS OIG ROI that the former Inspector General had a friendly relationship with a space planner employed by the SEC restacking contractor. While the former Inspector General did not formally disclose the existence of this relationship to his staff and/or recuse himself from any role in directing the restacking review, it is equally clear that he made no special effort to conceal the relationship and that the relationship was known to others in the OIG.

Moreover, the objectives of the restacking review were to assess whether the restacking project was conducted in accordance with applicable SEC and/or Federal policies and procedures and whether an appropriate analysis or study was conducted to determine if the restacking project was cost effective and beneficial to the agency. The concerns of a space planner are limited to the configuration and furnishings of the offices of individual SEC employees. While the USPS OIG ROI notes potential ethical-appearance problems with respect to this relationship, there is no evidence that this relationship in any way affected the initiation, conduct, or report of the restacking review. Thus, I believe that the independence of the review was not compromised.

Finally, I have concluded that the independence of the work conducted by the OIG into complaints regarding the Stanford Receiver is open to some question. First, questions have arisen as to whether the SEC OIG may have exceeded its statutory authority in looking at the Receiver's action after the latter's appointment by the court. Second, I believe, based on the investigative record that (1) the appearance of a conflict of interest on the part of the former Inspector General existed in connection with this matter; (2) the appearance of such a conflict of interest is a personal impairment under federal investigative standards and principles; and (3) the former Inspector General should have, but did not, take steps to avoid the impairment (for example, he could have delegated decision-making authorities to an appropriate member of his staff or could have contracted for an independent assessment of whether reasonable grounds existed for conducting an investigation into the Stanford Receiver-related complaints).

Accordingly, given that the independence of the investigation into those complaints is subject to question, I have directed, pursuant to my responsibilities under the Inspector General Act, all work on this project to cease and have determined that an existing preliminary draft report will not be finalized, issued, or published, and the investigation is closed. Under these circumstances, I do not believe it is necessary to resolve the statutory authority question raised above.

I am, of course, available to answer any questions that you might have.

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