For this entire document all withheld information designated (b)(6) is also exempt under (b)(7)(C).

# REPORT OF INVESTIGATION

## UNITED STATES SECURITIES AND EXCHANGE COMMISSION
## OFFICE OF INSPECTOR GENERAL

## Case No. OIG-512

### Unauthorized Disclosure of Non-Public Information

### Introduction and Summary of Investigation

The Office of the Inspector General ("OIG") initiated this investigation following disclosure in a criminal trial that (b)(6) and (b)(6) two attorneys in the Enforcement Division (b)(6) (b)(6) had communications with (b)(6), a former Federal Bureau of Investigation ("FBI") Special Agent about ongoing SEC Enforcement investigations.[1] The OIG also received a complaint from (b)(6) on January 11, 2008, alleging that (b)(6) a known financial analyst and short-seller, had obtained non-public information about ongoing SEC investigations from employees of the Securities and Exchange Commission ("SEC"). In addition, the OIG received a complaint from (b)(6) on July 27, 2009, alleging that certain SEC employees had released non-public information without authorization to (b)(6) and his associates.

Beginning on (b)(6) former FBI Special Agent (b)(6) and (b)(6) were tried in the U.S. District Court for the (b)(6) for a variety of criminal charges including fraud, theft, racketeering and conspiracy in connection with stock short selling orchestrated by (b)(6) In the course of the criminal trial, both (b)(6) and (b)(6) were called to testify for the government concerning their interactions with (b)(6), (b)(6) and (b)(6) During their testimony, (b)(6) and (b)(6) both stated they had frequent contacts with (b)(6) concerning ongoing enforcement investigations being conducted by the SEC.

The OIG's investigation revealed that both (b)(6) and (b)(6) disclosed non-public information to (b)(6) without an applicable access request. This information was utilized by (b)(6) and (b)(6) in their fraudulent scheme to engage in short selling, for which they were later indicted and convicted. The OIG has not found any evidence that (b)(6) or (b)(6) intentionally provided non-public information to (b)(6) to assist him in his fraudulent scheme, and in fact, there is evidence that (b)(6) and (b)(6) were "duped" by (b)(6) and (b)(6) However, the extensiveness of the information provided

[1] The OIG conducted a preliminary inquiry of this matter in November 2005, but after additional allegations surfaced and circumstances changed, the OIG decided in February 2009 to initiate a formal investigation.

to (b)(6) by (b)(6) and the nature of the information provided to (b)(6) by (b)(6) despite having no access request in place, and despite numerous events that should have raised suspicion on the part of experienced investigators, warrants consideration of disciplinary action.

## Scope of Investigation

In its investigation, the OIG reviewed:

(a) transcripts of testimony provided by (b)(6) and (b)(6) at (b)(6) and (b)(6) trial;

(b) online chat transcripts among (b)(6) and his associates;

(c) transcripts of taped telephone conversations among (b)(6) his associates, and various SEC employees;

(d) telephone logs and notes of conversations among (b)(6) (b)(6) and various SEC employees; and

(e) e-mails between (b)(6) and various SEC employees.

The OIG also conducted sworn, on-the-record testimonies of (b)(6) and (b)(6) on November 18, 2008. In addition, the OIG extensively reviewed the Name Relationship Search Index ("NRSI") search histories of both (b)(6) and (b)(6) for the periods of January 31, 2001 through December 13, 2002, and January 2, 2001 through December 13, 2002, respectively.[2]

## Relevant Laws, Policies and Procedures

The Standards of Conduct for Employees of the Executive Branch, the United States Code, the Securities Exchange Act of 1934, and the Rules of the Commission prohibit the unauthorized use or disclosure of non-public information.[3]

### A. Standards of Conduct for Employees of the Executive Branch: Basic Obligation of Public Service – 5 C.F.R. § 2635.101

Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the

[2] The NRSI system is used by the SEC's Enforcement staff to research whether a person or entity is involved in an open investigation.

[3] These standards and rules were fully incorporated into the SEC's Enforcement Manual in October 2008.

Federal Government, each employee shall respect and adhere to the principles of ethical conduct.

### B. Administrative Procedure: Records Maintained on Individuals – 5 U.S.C. § 552a

Each agency that maintains a system of records shall:

(e)(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

### C. SEC Rules Relating to Investigations: Information Obtained in Investigations and Examinations – 17 C.F.R. § 203.2

Information or documents obtained by the Commission in the course of any investigation or examination, unless made a matter of public record, shall be deemed non-public, but the Commission approves the practice whereby officials of the Divisions of Enforcement, Corporation Finance, Market Regulation and Investment Management and the Office of International Affairs at the level of Assistant Director or higher, and officials in Regional Offices at the level of Assistant Regional Director or higher, may engage in and may authorize members of the Commission's staff to engage in discussions with persons identified in § 240.24c-1(b) of this chapter concerning information obtained in individual investigations or examinations, including formal investigations conducted pursuant to Commission order.

### D. Inspection and Publication of Information Filed under the Securities and Exchange Act of 1934: Access to Non-Public Information – 17 C.F.R. § 240.24c-1

(a) For purposes of this section, the term "nonpublic information" means records, as defined in Section 24(a) of the Act, and other information in the Commission's possession, which are not available for public inspection and copying.

(b) The Commission may, in its discretion and upon a showing that such information is needed, provide nonpublic information in its possession to any of the following persons if the person receiving such nonpublic information provides such assurances of confidentiality as the Commission deems appropriate:

(1) A federal, state, local or foreign government or any political subdivision, authority, agency or instrumentality of such government . . .

### E. Organization and Program Management: Delegation of Authority to Director of Enforcement – 17 C.F.R. § 200.30-4

[T]he Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Director of the Division of Enforcement to be performed by him or under his direction by such other person or persons as may be designated from time to time by the Chairman of the Commission.

(a)(7) To administer the provisions of § 240.24c-1 of this chapter; provided that access to nonpublic information as defined in such section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

## Results of the Investigation

### I. (b)(6) Repeated Exchange of Information With (b)(6) Regarding SEC Investigations

#### A. (b)(6) Initially Provided Information to (b)(6) Under an Access Request Related to an Ongoing SEC Investigation

In early 2000, (b)(6) then a staff attorney (b)(6), began working on the SEC's investigation of (b)(6) (b)(6). Transcript of OIG Testimony of (b)(6) taken on November 18, 2008 ((b)(6) OIG Tr.") at 6, excerpted portions of which are annexed hereto as Exhibit 1; Transcript of Trial Testimony of (b)(6) before the U.S. District Court for the (b)(6) (b)(6) Trial Tr.") at 1, excerpted portions of which are annexed hereto as Exhibit 2. During the investigation of (b)(6) potential securities law violations, an attorney from the U.S. Attorney's Office introduced (b)(6) to (b)(6) an FBI agent who had recently been assigned to the case. (b)(6) Trial Tr. at 1; (b)(6) OIG Tr. at 7. (b)(6) and (b)(6) communicated on a weekly basis during the course of the (b)(6) investigation. (b)(6) OIG Tr. at 7. (b)(6) freely shared information about (b)(6) with (b)(6) because an access request was in place, as required by SEC policy, for communications related to the case. *Id.*

During the course of the (b)(6) investigation, (b)(6) began to contact (b)(6) to try "to get the Commission to investigate" various other companies and individuals based on information that (b)(6) provided to (b)(6) *Id.* at 13. (b)(6) would tell (b)(6) that "he had some information [about alleged securities law violations by public companies] that he wanted to pass along" and would ask "who at the SEC might have an open investigation about the company." *Id.* at 16; (b)(6) Trial Tr. at 16. In reality, the OIG investigation found that (b)(6) was involved in a scheme with (b)(6) for which he was later indicted, to obtain non-public

information about ongoing investigations from (b)(6) and to engage in short selling using this information. Indictment of (b)(6) and (b)(6) ("Indictment") at 2, annexed hereto as Exhibit 3.[4]

In response to (b)(6) requests, (b)(6) acknowledged that he would perform a search in the NRSI database, which he described as "an internal SEC database that shows all the open investigations and closed investigations and filings of different entities," to determine if the SEC currently had an open investigation for the company or individual. (b)(6) OIG Tr. at 16; (b)(6) Trial Tr. at 9. According to (b)(6) because "it was typical to share information with other law enforcement authorities [like (b)(6) " even in the absence of access requests, he "felt free to let (b)(6) know what the results of [his] NRSI searches yielded . . . and whether there was an investigation." (b)(6) Trial Tr. at 8.

In addition to providing this information, according to (b)(6) if there was an existing investigation of the company or individual about which (b)(6) had inquired, (b)(6) would refer (b)(6) to the SEC staff attorney conducting the investigation. (b)(6) OIG Tr. at 45. If the SEC did not currently have an open investigation of the company or individual about which (b)(6) inquired, (b)(6) would take the information from (b)(6) and look into it himself. *Id.*

(b)(6) testified that he was aware of the SEC's policy prohibiting disclosure of non-public information to unauthorized individuals. *Id.* at 8. He defined non-public information as "anything that's not out in the public domain . . . anything that's part of the investigative record, [to unauthorized] individuals." *Id.* at 8–9. Notwithstanding the agency's express provisions prohibiting disclosure of such information in the absence of either an access request or authorization from an Assistant Director, (b)(6) stated that he considered his process of sharing information with (b)(6) to be "consistent with SEC policy." *Id.*; (b)(6) Trial Tr. at 30; 17 C.F.R. §§ 203.2, 200.30-4(a)(7).

### B. (b)(6) Continued Providing Information to (b)(6) Even After (b)(6) Was Removed From the Ongoing SEC Investigation

On September 5, 2000, (b)(6) informed (b)(6) that he had owned (b)(6) stock when he initially became involved with the (b)(6) investigation, but explained to him that he had subsequently sold the stock in order to "continue to investigate" (b)(6) (b)(6) Trial Tr. at 4–5. According to the information (b)(6) received from (b)(6) when the U.S. Attorney's Office discovered that (b)(6) had traded in (b)(6) stock during the course of the investigation, it "disciplined (b)(6) for this

[4] When asked how he verified a request for information from a law officer was legitimate, (b)(6) stated, "if he's referred to me by someone who I do know is a member of the FBI or other law enforcement . . . and they tell me he's a member of the FBI . . . . Then when I meet with him and he gives me a card, which is what happened with (b)(6) he gave me a card and there was an AUSA there present as well. And I assumed he was FBI." (b)(6) OIG Tr. at 9-10.

activity" by removing him from the case. *Id.* at 5. (b)(6) told (b)(6) that he was "dissatisfied" with his job at the FBI because of his removal from the case. *Id.* at 29–30.

Despite learning of this information, (b)(6) stated that he "had no problem discussing other information with (b)(6) " because (b)(6) viewed (b)(6) as "a good source" and a "fellow law enforcement agent." (b)(6) OIG Tr. at 46; (b)(6) Trial Tr. at 6, 20, 38. According to (b)(6) the two men continued to communicate "too many times to count." (b)(6) OIG Tr. at 7. For example, just two days after (b)(6) learned that (b)(6) had been removed from the (b)(6) investigation, (b)(6) contacted (b)(6) with "a ridiculous number of names" about which (b)(6) claimed to have information. *Id.* at 44–45. (b)(6) acknowledged that he searched the NRSI system to determine if the SEC had an open investigation into these companies and individuals. (b)(6) Trial Tr. at 14. For those names which produced a result in NRSI, (b)(6) "at least provided the name and telephone number of the staff and the fact that it was an open investigation." *Id.*

### C. (b)(6) Continued Providing Information to (b)(6) Even After (b)(6) Was Transferred to Another Office

(b)(6) "practice" of responding to (b)(6) frequent inquiries without authorization continued even after (b)(6) learned that (b)(6) had been transferred to New Mexico in November 2000. *Id.* at 10, 33. Although (b)(6) "never indicated . . . that [his securities cases inquiries were] part of his official assignment within the FBI," (b)(6) believed that (b)(6) continued to work on securities cases because he "found them fun and interesting and exciting." *Id.* at 39. During this time, (b)(6) discussed with (b)(6) the "progress of the investigation" of at least one company about which (b)(6) inquired. (b)(6) OIG Tr. at 65; (b)(6) Trial Tr. at 19.

(b)(6) testified that in December 2000, (b)(6) told (b)(6) about (b)(6) a website run by a company named (b)(6) (b)(6) Trial Tr. at 16. The site contained "negative information about different companies . . . usually recommending a sell recommendation" and claimed to have information about ongoing frauds and other securities law violations within various public companies. *Id.* at 16–17. (b)(6) who claimed to be generally skeptical of allegations about companies on the internet, acknowledged that he gave the website more credibility because (b)(6) vouched for the site and the information it contained. *Id.* at 29. (b)(6) proceeded to use the site "numerous times" to determine if it had reports on companies that could interest the SEC or that could assist (b)(6) in any of his ongoing investigations. *Id.* at 55.

In January 2001, (b)(6) informed (b)(6) that his source and the owner of (b)(6) was a man named (b)(6) Trial Tr. at 19. (b)(6) described (b)(6) as a "stock player" and explained that (b)(6) "had been in jail for three months for mail fraud back in 1994," but had "been turning over evidence to

criminal authorities for years [and] . . . could verify anything that was active." *Id.* at 20. (b)(6) encouraged (b)(6) to contact (b)(6) about allegations of fraud at a certain public company. *Id.* at 20; Indictment at 2. (b)(6) acknowledged that he "knew that (b)(6) was a short seller." (b)(6) Trial Tr. at 59.

Although (b)(6) admitted that learning about (b)(6) background "made [him] more skeptical of the information (b)(6) would provide," (b)(6) believed that he could "at least . . . get some helpful or useful information" regarding the allegations that (b)(6) had brought to his attention. (b)(6) Trial Tr. at 26. (b)(6) ultimately called (b)(6) and listened while (b)(6) "spent at lot of time telling [him] about all the cases he had worked on" and the assistance that he had provided to the SEC. *Id.* at 25–26. (b)(6) also informed (b)(6) of the alleged fraud occurring at the public company (b)(6) had mentioned to (b)(6) *Id.* at 27. (b)(6) insisted, however, that he did not "give (b)(6) any information about [the] investigation." *Id.* at 27.

Later in 2001, (b)(6) acknowledged that he became aware of a correlation between the stocks that (b)(6) asked him to investigate and the stocks that (b)(6) discussed on (b)(6) *Id.* at 40. Despite knowing about this correlation and (b)(6) background, (b)(6) insisted that (b)(6) "wasn't just fishing" for information by continuing to bring information to him, particularly as some of this information had resulted in the opening of a few "legitimate investigations." (b)(6) OIG Tr. at 17, 20; (b)(6) Trial Tr. at 40. As a result, (b)(6) "[continued] to accept phone calls from (b)(6) and tell him if "there was another investigation open" for a company. (b)(6) OIG Tr. at 16; (b)(6) Trial Tr. at 40. Around this time, (b)(6) and (b)(6) who had forged a "[friendship] of a sort," met at a bar in New Mexico "just for a drink to talk" while (b)(6) was traveling in the area to take testimony. (b)(6) Trial Tr. at 30.

### D. (b)(6) Sought Information from (b)(6) About a Potential Investigation After (b)(6) Left the FBI

(b)(6) informed (b)(6) in January 2002 that "he was leaving the Bureau to go work for some investigative agency, which . . . was associated [with] (b)(6) (b)(6) OIG Tr. at 19. (b)(6) later learned that (b)(6) had received the job offer from (b)(6) directly and that (b)(6) would be working with (b)(6) the company running (b)(6) Trial Tr. at 26, 30. (b)(6) still continued to contact (b)(6) although "less frequently," with "information that would be relevant to . . . a public company [to determine if (b)(6) was interested in the information." (b)(6) OIG Tr. at 7, 20. However, (b)(6) claimed that he "[changed] his pattern" of responding to (b)(6) information requests at this time in order to remain "consistent with SEC policy." (b)(6) OIG Tr. at 20; (b)(6) Trial Tr. at 30. (b)(6) stated that he "wouldn't tell (b)(6) who had the investigation in New York or L.A." (b)(6) OIG Tr. at 20. Instead, according to (b)(6) after (b)(6) 'left the FBI and went to work for (b)(6) if he brought a company to (b)(6) (b)(6) would still

search it in the NRSI database,[5] but . . . would contact the SEC staffer first and give the staffer (b)(6) name and number and let the staffer decide whether to contact him or not." (b)(6) Trial Tr. at 30.

Despite this "change [in] pattern" and despite the fact that (b)(6) left the FBI altogether, (b)(6) contacted (b)(6) about an alleged false press release that a company had issued in March 2002. (b)(6) OIG Tr. at 20; (b)(6) Trial Tr. at 33. (b)(6) said he needed information about the company "quickly" in order to determine whether the SEC should suspend trading of its stock. (b)(6) Trial Tr. at 42. In an attempt to obtain information, (b)(6) said he "called (b)(6) and asked him if he knew anything" about the company. *Id.* at 33. (b)(6) who said he "had nothing at the time" that (b)(6) had called him, promised to contact (b)(6) if he obtained any information about the company or the alleged false press release. *Id.* "[A]fter a while," (b)(6) and (b)(6) "no longer communicated," but (b)(6) remained convinced that all of his interactions with (b)(6) were "consistent with SEC policy." (b)(6) OIG Tr. at 7; (b)(6) Trial Tr. at 30. (b)(6) insisted that he did not learn that (b)(6) "must have been fishing" for information until the federal prosecutor contacted him regarding the indictment against (b)(6) and (b)(6) for insider trading and market manipulation based on the non-public information that (b)(6) had obtained from (b)(6) (b)(6) OIG Tr. at 20. Both (b)(6) and (b)(6) were convicted and sentenced to prison. Press Release for the U.S. Attorney's Office for (b)(6) (b)(6) annexed hereto as Exhibit 4.

### E. The OIG Investigation Finds that (b)(6) Released Non-Public Information and Violated SEC Policy

The OIG investigation found that (b)(6) released non-public information to (b)(6) and that, in so doing, (b)(6) violated SEC policy. Information obtained relating to investigations is deemed non-public unless the Commission makes the information a matter of public record. 17 C.F.R. § 203.2. In his testimony before the OIG investigator, (b)(6) explained that non-public information included "anything that's not out in the public domain . . . [and] anything that's part of an investigative record." (b)(6) OIG Tr. at 8. Despite (b)(6) general insistence that he only released non-public information to (b)(6) related to the (b)(6) investigation, the OIG found that (b)(6) disclosed non-public information to (b)(6) on multiple other occasions. *See id.* at 16–18, 20. (b)(6) testified that he informed (b)(6) on numerous occasions about the existence of ongoing SEC investigations upon requests from (b)(6) *See id.* In addition, (b)(6) admitted that he "at least provided the name and telephone number of the staff and the fact that it was an open investigation" in response to (b)(6) inquiries. (b)(6) Trial Tr. at 14. In fact, in at least one instance, (b)(6) acknowledged that his discussions with (b)(6) "would have included information about

[5] In all, the OIG investigation found that (b)(6) had performed a total of 1,446 NRSI searches between January 31, 2000 and December 13, 2002, many of them at the request of (b)(6)

the progress of [an] investigation." *Id.* at 19. These investigations, however, had not yet been made public by the Commission. Therefore, by disclosing information to (b)(6) about whether certain companies and individuals were under investigation, (b)(6) released non-public information to (b)(6) (b)(6) would then provide this information to (b)(6) and his associates, and they would sell short the companies' stock in order to earn illegal profits. Indictment at 2, 6.

By releasing non-public information to (b)(6) (b)(6) violated SEC policy. SEC policy requires an access request to be in place or an employee to obtain express authorization from an Assistant Director or above before releasing non-public information to individuals outside the agency, including other law enforcement agents. 17 C.F.R. §§ 203.2, 200.30-4(a)(7). (b)(6) explicitly acknowledged the prohibition against disclosure of non-public information to unauthorized individuals, but nonetheless released non-public information to (b)(6) because (b)(6) was "a good source" and a "fellow law enforcement agent." (b)(6) OIG Tr. at 8, 46; (b)(6) Trial Tr. at 8.

(b)(6) conceded that he repeatedly disclosed information to (b)(6) regarding ongoing investigations while (b)(6) worked for the FBI even though he did not have an access request or authorization from an Assistant Director. (b)(6) Trial Tr. at 8. In addition, (b)(6) admitted contacting (b)(6) after (b)(6) had left the FBI to discuss a potential SEC investigation. *Id.* at 33. By discussing non-public information with (b)(6) without appropriate agency authorization on numerous occasions, the OIG finds that (b)(6) repeatedly violated SEC policy.

### F. The OIG Investigation Also Finds that (b)(6) Should Have Been More Suspicious of (b)(6) Requests

The OIG also found that numerous events and pieces of information should have raised (b)(6) suspicions and indicated that (b)(6) did not merely desire to aid (b)(6) in investigating securities fraud. For example, (b)(6) told (b)(6) that he had traded in (b)(6) stock and that he had not disclosed this information to the FBI or the U.S. Attorney in order to "continue to investigate" (b)(6) *Id.* at 4–5. (b)(6) also learned that (b)(6) worked closely with (b)(6) a known short-seller who had been convicted for mail fraud, and that (b)(6) ran (b)(6) the website that (b)(6) suggested (b)(6) use to find potential future SEC investigations. *Id.* at 16, 19, 59. (b)(6) familiarity with the site should have made him suspicious of (b)(6) recommendation because the site contained negative information about various companies and made short-selling recommendations based upon this negative information. Indictment at 2–3.

In addition, (b)(6) admitted observing a correlation between the stocks recommended as short sales on (b)(6) and those stocks about which (b)(6) requested information from (b)(6) *Id.* at 40. Despite these suspicious events, (b)(6) believed (b)(6) "wasn't just fishing" for information about investigations and

continued to inform (b)(6) if "there was another investigation open" for a stock about which (b)(6) inquired. (b)(6) OIG Tr. at 16–17. By disregarding the suspicious nature of his communications with (b)(6) (b)(6) released non-public information to (b)(6) which (b)(6) and (b)(6) were able to use to generate profits from short-selling.

## II. (b)(6) Provided Information to (b)(6) and (b)(6)

### A. (b)(6) Disclosure of Information to (b)(6) about the (b)(6) Investigation

In 1998, (b)(6) joined the SEC as a staff attorney in the Division of Enforcement.[6] Transcript of OIG Testimony of (b)(6) taken on November 18, 2008 ("(b)(7)(C) OIG Tr.") at 5, excerpted portions of which are annexed hereto as Exhibit 5. (b)(6) stated he received a voicemail from (b)(6) in January 2001 indicating that (b)(6) desired to "pass on information" about potential securities law violations at a public company. *Id.* at 8–9. When (b)(6) returned (b)(6) phone call, (b)(6) identified himself as an FBI agent and explained that "he had been in Oklahoma City for securities fraud cases . . . [but] was no longer doing those cases." *Id.* at 7; Transcript of Trial Testimony of (b)(6) before the U.S. District Court (b)(6) ("(b)(6) Trial Tr.") at 98–99, excerpted portions of which are annexed hereto as Exhibit 6. (b)(6) then proceeded to tell (b)(6) that he had "people who provided him with information" about potential securities law violations and that he would "pass this along" to (b)(6) OIG Tr. at 18; (b)(6) Trial Tr. at 99. (b)(6) took down the information (b)(6) provided, which indicated that a certain public company had "mob ties," but (b)(6) ultimately determined that the allegations were without merit. (b)(6) Trial Tr. at 102, 112–13.

Over the next several months, according to (b)(7)(C) (b)(7)(C) contacted him only "a handful" of times to convey information. (b)(7)(C) OIG Tr. at 10. (b)(7)(C) insisted he "didn't knowingly release any information" about the companies for which (b)(7)(C) provided information because "investigations are non-public." *Id.* at 13, 20. However, he acknowledged that his process of disclosing information to law enforcement officials such as (b)(7)(C) involved "a general discussion upfront [about the case prior to obtaining an access request] . . . then to the extent [substantive information was requested]," only at that point would he "get an access request."[7] *Id.* at 14.

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[6] (b)(7)(C) remained with the Division of Enforcement in the (b)(6) office until (b)(7)(C) when he transferred to (b)(7)(C) OIG Tr. at 6. On (b)(7)(C) left the SEC to join the U.S. Attorney's Office (b)(7)(C) However, on (b)(7)(C) returned to the SEC's (b)(7)(C) office as a branch chief and on (b)(6) he was promoted to the position of Trial Attorney.

[7] (b)(7)(C) described his typical exchange with law enforcement officials as follows: "Obviously, they're calling you, typically saying I'm with the FBI. I understand you've got this case. Yeah. What's it about? It's about this. Can we get access to your files? Sure." (b)(7)(C) OIG Tr. at 14.

During this period, (b)(6) learned that (b)(6) was (b)(6) "source of information." (b)(6) Trial Tr. at 131. According to (b)(6) (b)(6) described (b)(6) as "a straight up guy" who "was a good source" and "recommended that (b)(6) contact (b)(6) which (b)(6) eventually did. *Id.* at 135, 208. In May 2001, after (b)(6) informed (b)(6) that (b)(6) was his source, (b)(6) "had a conversation with [an enforcement attorney] . . . in Washington D.C." who indicated that (b)(6) was "subject to an investigation." (b)(6) OIG Tr. at 38. Upon learning this information, (b)(6) searched (b)(6) name in the NRSI[8] database and found that he was "somehow connected" to an SEC investigation in the Chicago office. *Id.* at 11, 37. (b)(6) admitted that after this fact "came to [his] attention" he informed (b)(6) about the investigation and insisted that (b)(6) "talk to the Chicago office of the SEC." *Id.* at 12; (b)(6) Trial Tr. at 209. When questioned during his OIG testimony, (b)(6) contended that he released this non-public information to (b)(6) even though no access request was in place, because (b)(6) "was a legitimate (b)(6) and (b)(6) was "not somebody that should be trusted."[9] (b)(6) OIG Tr. at 12, 18.

(b)(6) ceased contact with (b)(6) in December 2001 after (b)(6) informed him that "he was leaving the FBI and going to work for some hedge funds." *Id.* at 10, 18. (b)(6) maintained that he did not know that (b)(6) would be working with (b)(6) and that he never suspected (b)(6) of "being a crooked FBI agent." *Id.* at 18; (b)(6) Trial Tr. at 213.

### B. (b)(6) Release of Information to (b)(6) About Ongoing SEC Investigations

Following (b)(6) recommendation, which "enhanced (b)(6) credibility," (b)(6) contacted (b)(6) regarding potential stock fraud in a public company. *See* (b)(6) Trial Tr. at 135–41. (b)(6) claimed that he did not know about (b)(6) prior fraud conviction at this time, although he admitted "[knowing] that (b)(6) had a website called (b)(6) *Id.* at 208. During the initial call with (b)(6) in which one of (b)(6) senior enforcement attorneys participated, (b)(6) told (b)(6) that "he had . . . provided information . . . to the Department of Justice and the SEC in the past" and that he wrote reports and traded. *Id.* at 154. (b)(6) then proceeded to provide (b)(6) with information about an alleged market manipulation scheme in a public company. *Id.* at 154–59. After providing this information, (b)(6) asked (b)(6) "whether he could put other people in touch with (b)(6) who may have information about" this company, and (b)(6) requested that he do so. *Id.* at 163. In addition, (b)(6) requested that (b)(6) send him a copy of the "research" that he had prepared on the company. *Id.* at 141.

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[8] In all the OIG investigation found that (b)(6) had performed a total of 1,307 NRSI searches between January 2, 2001 and December 13, 2002, some of which were at the request of (b)(6) (b)(6) and (b)(6) testimonies indicate that an access request existed only for information related to the (b)(6) investigation. (b)(6) OIG Tr. at 7. The investigation into (b)(6) however, was wholly unrelated to the (b)(6) case. Therefore, the OIG investigation found that this access request did not cover communications relating to (b)(6) communications with (b)(6) about (b)(6)

Despite learning that (b)(6) was "somehow connected" to an SEC investigation in the Chicago office, (b)(6) continued to communicate with (b)(6) in the months that followed.[10] (b)(6) OIG Tr. at 11, 38, 42, 56. (b)(6) maintained that (b)(6) never asked him for information or requested that (b)(6) act upon the information that (b)(6) provided him during these conversations. *Id.* at 24–25. However, although (b)(6) acknowledged the SEC's prohibition against release of non-public information to the public and denied ever sharing such information with (b)(6) in his trial testimony, (b)(6) admitted to prosecutors that he "may have told (b)(6) that the SEC was conducting an inquiry of certain people and a certain company." *Id.* at 12–13; (b)(6) Trial Tr. at 151. In addition, (b)(6) also admitted that he once told (b)(6) after (b)(6) or one of his associates "passed on information" about an investigation in the Denver office, that he had placed a "call . . . to the Denver office to pass that information on to them." (b)(6) OIG Tr. at 25.

### C. The OIG Investigation Finds that (b)(6) Released Non-Public Information and Violated SEC Policy

The OIG investigation also found that (b)(6) released non-public information to both (b)(6) and (b)(6) without an access request, thereby violating SEC policy. First, although (b)(6) recognized that "investigations are non-public," he admitted telling (b)(6) on at least one occasion, "that the SEC was conducting an inquiry of certain people and a certain company." *Id.* at 13; (b)(6) Trial Tr. at 151. Similarly, (b)(6) disclosed non-public information to (b)(6) by informing him that the Chicago office had an investigation to which (b)(6) was "somehow connected." (b)(6) OIG Tr. at 11–12. In fact, although (b)(6) stated he did not recall numerous aspects of his conversations with (b)(6) he conceded that he knew this information was non-public, insisting that he released it to (b)(6) because (b)(6) was "not somebody that should be trusted." *Id.*

(b)(6) released non-public information to (b)(6) and (b)(6) in the absence of an access request and, as a result, he violated SEC policy. In his OIG testimony, (b)(6) acknowledged the SEC policy prohibiting disclosure of non-public information to unauthorized individuals, noting that he would not "go out of [his] way to share non-public information with . . . the public." *Id.* at 12–13; SEC Rule 2. He also explained that he would require an access request before "releasing substantive information to [law enforcement officials]."[11] (b)(6) OIG Tr. at 13. However, despite these statements, Long admitted that he disclosed non-public information to both (b)(6) and (b)(6) without having an access request in place. *See id.* at 11–12; (b)(6) Trial Tr. at 151. In doing so,

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[10] In fact, (b)(6) continued to run searches on (b)(6) name in the NRSI database for several months after he learned of the Chicago office investigation. (b)(6) OIG Tr. at 38, 42, 56.

[11] However, (b)(6) stated that he would engage in "a general discussion upfront" with law enforcement officials about a case before requiring an access request. (b)(6) OIG Tr. at 14. Such a statement directly contradicts the agency's express policy prohibiting the release of *any* non-public information to a law enforcement official without an access request or authorization from an agency employee at the level of Assistant Director or above. SEC Rule 3.2.6.4; SEC Rule 2.

(b)(6) violated the agency's policy prohibiting disclosure of non-public information to unauthorized persons.

In light of the foregoing, these matters are being referred to the Director of Enforcement, (b)(6) the Associate Executive Director for Human Resources, the Associate General Counsel for Litigation and Administrative Practice, and the Ethics Counsel for consideration of disciplinary action against (b)(6) and (b)(6) We also recommend that (b)(6) conduct training of its Enforcement attorneys in the prohibitions of providing non-public information to officials outside of the Commission without an access request.

Submitted: (b)(6) Date: 1/12/10

Concur: Noelle Frangipane Date: 1/12/10

Approved: H. David Kotz Date: 1-12-10