Project On Government Oversight

Revolving Regulators:
SEC Faces Ethics Challenges with Revolving Door

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TABLE OF CONTENTS

EXECUTIVE SUMMARY

The financial meltdown of 2008 brought renewed focus to the integrity and aggressiveness of federal government oversight of the financial system. One of the most important agencies overseeing financial markets and investor protection is the Securities and Exchange Commission (SEC or Commission).

Several critics, including Members of Congress, have said the SEC's integrity has been undermined by the "revolving door"—where former SEC employees go to work for entities overseen by the Commission. The revolving door also operates in the opposite direction, where individuals come from entities regulated by the SEC to work for the Commission. The general concern is that a conflict of interest could bias SEC oversight and undermine public confidence in the SEC's work, as acknowledged by the current SEC Chairman.

The SEC requires that its former employees file post-government employment statements if they plan to represent a client before the Commission within two years of leaving the SEC. The Project On Government Oversight (POGO) filed a Freedom of Information Act (FOIA) request for all post-employment statements filed by former SEC employees between 2006 and 2010 and analyzed these statements and other documents. POGO found that:

- Between 2006 and 2010, 219 former SEC employees filed 789 post-employment statements indicating their intent to represent an outside client before the Commission
- Some former SEC employees filed statements within days of leaving the Commission, with one employee filing within 2 days of leaving
- Some former SEC employees filed numerous statements during this time period, with one former employee filing 20 statements
- There are 131 entities providing legal, accounting, consulting, and other services that were identified as new employers in the statements. Some entities recruited numerous SEC employees during the five-year period.
- In the vast majority of statements, former SEC employees affirm that they did not participate personally or substantially in, or have official responsibility for, the matter on which they now expect to appear before the Commission
- POGO identified instances in which former SEC employees may have been required to file statements during the five-year period but did not
- The SEC Office of Inspector General has identified cases in which the revolving door appeared to be a factor in staving off SEC enforcement actions and other types of SEC oversight, including cases involving Bear Stearns and the Stanford Ponzi scheme
- One recent empirical study uncovered several significant and systematic biases in the SEC's enforcement patterns and found indirect evidence to support the contention that "post-agency

employment at higher salaries may operate as a quid pro quo in return for favorable regulatory treatment"[1]

- Some former SEC employees disclosed that they consulted with ethics officers regarding the work they intended to do on behalf of their clients before the SEC, but in many other statements, it is unclear whether the former employees discussed their post-employment plans with an ethics officer

- Some statements indicate that the former employee did participate in or have responsibility for a related matter while they worked at the SEC, but that they discussed the matter with an ethics officer who advised them they could contact Commission staff on that issue on behalf of their new client

- There were some inconsistencies in the SEC's handling of FOIA exemptions in the statements requested by POGO—for instance, while the vast majority of statements disclosed the names of the former employees, in several cases this information was withheld

POGO recommends that Congress and the SEC:

- Strengthen and simplify post-employment restrictions

- Make post-employment statements publicly available online

- Verify completeness and accuracy of post-employment statements

- Strengthen restrictions for new employees coming from industry

- Publicly disclose SEC recusal database and ethics waivers

- Strengthen and utilize ethics enforcement authority

- Extend post-employment regulations to other financial regulatory agencies

- Review confidential treatment procedures and FOIA exemptions

[1] Stavros Gadinis, *The SEC and the Financial Industry: Evidence from Enforcement Against Broker-Dealers,* August 11, 2009, p. 49. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1333717 (Downloaded May 8, 2011)

INTRODUCTION

The Securities and Exchange Commission (SEC or Commission) is charged with a critical mission that includes protecting the investments of everyday Americans who "turn to the markets to help secure their futures, pay for homes, and send children to college."[2] As the country continues to recover from a severe financial crisis fueled in large part by the reckless practices of companies overseen by the SEC,[3] the SEC's duty to protect investors and ensure the integrity of our financial markets is more important than ever.

At her confirmation hearing in January 2009, SEC Chairman Mary Schapiro stated that "there can be no sacred cows" with respect to the SEC's treatment of regulated entities, and spoke of the need to "go with full force and fervor against anyone who violates investors' trust, large or small, regardless of their standing in the investment community." When asked about former SEC employees who go to work for the SEC's regulated entities after leaving government, Schapiro remarked that the SEC must seek to avoid the conflicts created by these employees "walking out the door and going to a firm and leaving everybody to wonder whether they showed some favor to that firm during their time at the SEC."[4]

However, the SEC has frequently been criticized by Members of Congress,[5] the Commission's Office of Inspector General (OIG),[6] former employees,[7] and market participants[8] for its deference to the industry it oversees, and in particular to the larger Wall Street firms under the SEC's purview. Many commentators have focused their criticism on the "revolving door" at the SEC,[9] through which former employees are quickly hired or retained by the Commission's regulated entities and the various firms and individuals that provide these entities with legal, accounting, consulting, and other services.

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[2] Securities and Exchange Commission, "The Investor's Advocate: How the SEC Protects Investors, Maintains Market Integrity, and Facilitates Capital Formation," February 28, 2011. http://sec.gov/about/whatwedo.shtml (Downloaded May 7, 2011)

[3] National Commission on the Causes of the Financial and Economic Crisis in the United States, *The Financial Crisis Inquiry Report*, January 2011, pp. 150-154. http://pogoarchives.org/m/fo/fcic-final-report-jan2011.pdf

[4] Hearing before the Senate Committee on Banking, Housing, and Urban Affairs, "Nominations of: Mary Schapiro, Christina D. Romer, Austan D. Goolsbee, Cecilia E. Rouse, and Daniel K. Tarullo," January 15, 2009, pp. 15, 28. http://www.gpo.gov/fdsys/pkg/CHRG-111shrg50221/pdf/CHRG-111shrg50221.pdf (Downloaded May 7, 2011)

[5] Senator Charles Grassley, Ranking Member, Senate Committee on Finance, "Grassley: SEC IG Report on Bear Stearns Shows SEC Deference to Wall Street," October 10, 2008. http://finance.senate.gov/newsroom/ranking/release/?id=53c45ec5-d2c4-464b-8dfe-cea11d887c30 (Downloaded May 7, 2011)

[6] Securities and Exchange Commission, Office of Inspector General, *Allegations of Conflict of Interest, Improper Use of Non-Public Information and Failure to Take Sufficient Action Against Fraudulent Company* (Case No. OIG-496), January 8, 2010, pp. 34-35, 46-47. http://pogoarchives.org/m/fo/sec-oig-report-20100108.pdf (hereinafter "OIG Allied Report")

[7] Statement of John P. Freeman, Professor of Law, University of South Carolina Law School, Before the Senate Governmental Affairs Subcommittee on Financial Management, the Budget, and International Security, January 27, 2004, pp. 3-5. http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=77fd5d57-f00d-46c8-8803-acbae1abeafb (Downloaded May 7, 2011)

[8] Michael Lewis and David Einhorn, "The End of the Financial World as We Know It," *The New York Times*, January 3, 2009. http://www.nytimes.com/2009/01/04/opinion/04lewiseinhorn.html?adxnnl=1&pagewanted=3&adxnnlx=1304950130-zQ/UjQVMc7pJb3pzzmN7xg. (Downloaded May 7, 2011) David Einhorn and employees of Greenlight Capital are major contributors to POGO.

[9] Letter from H. David Kotz, Inspector General, Securities and Exchange Commission, to Senator Charles Grassley, Ranking Member, Senate Committee on Finance, regarding problems associated with SEC employees who represent individuals or entities in matters before the SEC after leaving government work, June 15, 2010. http://finance.senate.gov/newsroom/ranking/download/?id=5f610cdf-376f-48ce-81ea-3308307ea039 (Downloaded May 7, 2011) (hereinafter "Kotz Letter")

As part of an effort to shed light on the revolving door at the SEC, and to examine whether the SEC has adequate policies and procedures in place to detect and mitigate conflicts of interest involving former SEC employees, the Project On Government Oversight (POGO) has obtained five years' worth of statements filed by former employees who appeared before the Commission seeking to represent outside clients within two years of leaving the SEC. POGO has also made these post-employment statements publicly available in a searchable online database.[10] This report provides an overview of the information disclosed in these statements, and examines the SEC's oversight of former employees who go through the revolving door.

POST-EMPLOYMENT RESTRICTIONS FOR SEC EMPLOYEES

SEC employees are required to follow government-wide ethics laws and regulations for executive branch employees,[11] including the "Ethics Commitments" for political appointees established under the Obama administration.[12] In addition, SEC regulations require employees to maintain "unusually high standards of honesty, integrity, impartiality and conduct."[13] The SEC's regulations are "aimed at eliminating the appearance of impropriety as well as any actual wrongdoing."[14]

In order to meet the requirements mandated by both government-wide restrictions and the Commission's specific standards, SEC employees are generally limited in the type of work they can perform for companies overseen by the Commission after leaving their position at the SEC. These post-employment restrictions, found in the SEC's "Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission,"[15] are:

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[10] Project On Government Oversight, "SEC Revolving Door Database." http://www.pogo.org/tools-and-data/sec-revolving-door-database. (hereinafter "SEC Revolving Door Database") POGO's database provides the largest publicly available listing of statements filed by former SEC employees who appear before the Commission on behalf of outside clients. The Center for Responsive Politics also has a revolving door database that includes many former SEC employees. Center for Responsive Politics, "Revolving Door, Agency Search: Securities & Exchange Commission." http://www.opensecrets.org/revolving/search_result.php?agency=Securities+%26+Exchange+Commission&id=EISEC (Downloaded May 7, 2011) However, the Center's database is largely based on a comprehensive online directory of lobbyists published by Columbia Books, Inc., at www.lobbyists.info, whereas POGO's database is derived from SEC post-employment statements obtained through a FOIA request.

[11] Office of Government Ethics, *Compilation of Federal Ethics Laws.* http://www.usoge.gov/laws_regs/pdf/comp_fed_ethics_laws.pdf; and Office of Government Ethics, "Regulations Issued by or Affecting OGE and Its Mission." http://www.usoge.gov/laws_regs/regulations/5cfr2635.aspx (All Downloaded May 7, 2011) SEC employees are also required to follow the "Supplemental Standards of Ethical Conduct for Members and Employees of the Securities and Exchange Commission," 5 C.F.R. § 4401. http://www.gpo.gov/fdsys/pkg/CFR-2011-title5-vol3/pdf/CFR-2011-title5-vol3-part4401.pdf (Downloaded May 9, 2011)

[12] The White House, "Ethics Commitments by Executive Branch Personnel," Executive Order 13490, January 21, 2009, *Federal Register*, Vol. 74, No. 15, January 26, 2009. http://www.gpo.gov/fdsys/pkg/FR-2009-01-26/pdf/E9-1719.pdf (Downloaded May 7, 2011) (hereinafter "Ethics Commitments")

[13] "Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission," 17 C.F.R. § 200.735-2(a). http://www.gpo.gov/fdsys/pkg/CFR-2010-title17-vol2/pdf/CFR-2010-title17-vol2-part200-subpartM.pdf (Downloaded May 7, 2011) (hereinafter "SEC Post-Employment Regulation")

[14] "SEC Post-Employment Regulation," 17 C.F.R. § 200.735-3(a)(1). SEC regulations require employees to maintain high ethical standards in light of the Commission's oversight of a "highly significant area of our national economy" and the "effect which Commission action frequently has on the general public....[SEC employees] must be constantly aware of the need to avoid situations which might result either in actual or apparent misconduct or conflicts of interest." "SEC Post-Employment Regulation," 17 C.F.R. § 200.735-2(a)

[15] "SEC Post-Employment Regulation," 17 C.F.R. § 200.735-8(a)

1) Former SEC employees can never appear in a representative capacity before the Commission on a particular matter (defined as a "discrete and isolatable transaction or set of transactions between identifiable parties") if they participated personally and substantially in the matter while working at the Commission.[16]
2) For two years after their employment ends, former employees cannot assist a person appearing before the Commission in a representative capacity on any matter in which the former employees participated personally and substantially while working at the Commission.
3) For two years after their employment ends, former employees cannot appear before the Commission in a representative capacity on any matter that was under their official responsibility at any time within one year prior to the termination of such responsibility.[17]
4) Certain senior former employees cannot appear in a representative capacity before the SEC with the intent to influence the Commission for one year after their employment has ceased.[18]

Furthermore, the SEC requires former employees to file statements when they expect to appear before the agency within two years on behalf of outside parties.[19]

Despite these seemingly strict limitations, most former SEC employees can begin representing clients within days after leaving the Commission if they file the required statement. As detailed below, many former SEC employees whose statements POGO examined wasted little time returning to the Commission to appear on behalf of outside parties.

POST-EMPLOYMENT STATEMENTS DOCUMENT TRIPS THROUGH REVOLVING DOOR

As mentioned above, former employees are required to file post-employment statements with the SEC under certain circumstances prescribed by Commission regulations. Specifically, SEC regulations require former employees to file statements with the SEC's Office of the Secretary within two years of leaving the Commission if they are:

> [e]mployed or retained as the representative of any person outside the Government in any matter in which it is contemplated that he or she will appear before the Commission, or communicate with the Commission or its employees.[20]

The statement must be filed within ten days of the former employee being hired or retained to appear before the SEC on behalf of an outside party,[21] and it must include:

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[16] This restriction can also be found in the government-wide post-employment restrictions, "Restrictions on former officers, employees, and elected officials of the executive and legislative branches," 18 U.S.C. 207(a)(1). http://www.gpo.gov/fdsys/pkg/USCODE-2009-title18/pdf/USCODE-2009-title18-partI-chap11-sec207.pdf (Downloaded May 9, 2011) (hereinafter "Government-Wide Post-Employment Restrictions")

[17] This restriction can also be found in the "Government-Wide Post-Employment Restrictions," 18 U.S.C. 207(a)(2).

[18] This restriction can also be found in the "Government-Wide Post-Employment Restrictions," 18 U.S.C. 207(c). This restriction typically applies to individuals employed at special rates or in special capacities stipulated by U.S. Code, which in the case of the SEC would include Commissioners. http://www.gpo.gov/fdsys/pkg/USCODE-2010-title5/pdf/USCODE-2010-title5-partIII-subpartD-chap53-subchapII.pdf. According to SEC regulations, the Office of Government Ethics (OGE) can also designate certain individuals to be covered under this restriction. "SEC Post-Employment Regulation," 17 C.F.R. § 200.735-8(a)(4). In addition, OGE has the authority to waive this requirement for certain senior SEC officials. "Subpart C—Exceptions, Waivers and Separate Components," 5 C.F.R. § 2641.301(j). http://www.gpo.gov/fdsys/pkg/CFR-2010-title5-vol3/pdf/CFR-2010-title5-vol3-sec2641-301.pdf (All Downloaded May 11, 2011)

[19] "SEC Post-Employment Regulation," 17 C.F.R. § 200.735-8(b)

[20] "SEC Post-Employment Regulation," 17 C.F.R. § 200.735-8(b)(1)

- "a description of the contemplated representation";

- a statement affirming that the former employee did not participate personally and substantially in or have official responsibility for the matter in which they now expect to appear before the Commission;

- the name of the employee's former Division or Office at the SEC.[22]

A single former employee must often file multiple statements to cover all the different issues on which they expect to appear before the Commission representing outside parties. As documented below, in the two years after an employee leaves the SEC, he or she may file a dozen or more statements with the Commission. One former SEC employee in POGO's database filed 20 statements in the two years after he left the Commission.

If a former SEC employee is prohibited from appearing before the Commission on a particular matter in which they participated personally and substantially, the former employee's new partners and associates would also be disqualified. However, SEC regulations permit the partners or associates to request that the SEC's General Counsel grant a waiver permitting them to work on the matter, as long as they take measures to isolate the former SEC employee from participating in the matter and from sharing any related fees.[23]

POGO'S FOIA REQUEST AND ONLINE DATABASE

POGO filed a Freedom of Information Act (FOIA) request for all post-employment statements filed with the Commission between 2006 and 2010.[24] In response, the SEC provided POGO with nearly 800 statements from 219 former employees who went to work for 131 new employers over that five-year period.[25]

The SEC generally disclosed the following information from the post-employment statements: the former employee's name; the name of the SEC Division or Office where they worked; their former title; their date of resignation from the Commission; their new employer; the Division or Office they planned to contact on behalf of an outside client; and, in cases where a former employee consulted with an ethics officer, the date the ethics officer issued an advisory opinion, which usually stated that the former employee could appear before SEC staff without violating the post-employment restrictions.[26] There

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[21] "SEC Post-Employment Regulation," 17 C.F.R. § 200.735-8(b)(1)
[22] "SEC Post-Employment Regulation," 17 C.F.R. § 200.735-8(b)(1)
[23] "SEC Post-Employment Regulation," 17 C.F.R. § 200.735-8(d)
[24] Other FOIA requesters have also obtained and highlighted the information contained in SEC post-employment statements. In April 2010, *The Wall Street Journal* reported on post-employment statements filed over a 21-month period based on documents obtained through a public records request similar to POGO's. The *Journal* found that there were "66 former SEC employees who filed 168 letters with the SEC secretary in 2008 and the first nine months of 2009." Tom McGinty, "SEC Lawyer One Day, Opponent the Next," *The Wall Street Journal*, April 5, 2010. http://online.wsj.com/article/SB10001424052702303450704575160043010579272.html (Downloaded May 7, 2011) (hereinafter "WSJ Investigation")
[25] The SEC's response included a few statements that were filed in 2011, beyond the time frame of POGO's initial FOIA request. These records have also been included in the database. POGO will regularly update the database as additional records become available.
[26] There were a few cases in which it appears the ethics officer advised the former employee to modify his or her post-employment plans in order to avoid violating the restrictions. For instance, Walter G. Ricciardi, a former Deputy Director of the

were also a few statements in which the SEC disclosed the names of the entities that had retained the former SEC employees, and released partial or full descriptions of issues on which the former employees expected to appear before the Commission.

POGO entered the information included in the statements into an online database.[27] As of this writing, POGO's database includes the following information: employee name, former Division or Office, former Regional Office, former title, new employer, represented entity, issue, date of resignation, and date of statement.

POGO has created the database as a public service. We believe it is the most comprehensive public database documenting the revolving door between the SEC and the entities it regulates. POGO obtained and made the underlying data public in order to improve the public's understanding of the Commission's operations and its ongoing relationships with the entities it regulates.

Inclusion in POGO's report and database is not meant to suggest illegality or misdeeds. Instead, this report and the underlying data are intended to illustrate the extent to which former SEC employees have appeared before the Commission or communicated with SEC staff on behalf of outside clients in recent years, and to shed light on the SEC's oversight of former employees who go through the revolving door.

There are several important caveats that should be kept in mind when reviewing the information in POGO's database.

The database does not include every employee who left the SEC or went through the revolving door during the relevant time period. Some former employees who went to work for an entity regulated by the SEC did not represent the entity before the SEC. Some waited until after two years had passed to begin representing an outside client before the SEC. And some employees left the SEC to take jobs elsewhere in the public sector. These cases are beyond the scope of POGO's FOIA request, and are not included in POGO's database. POGO has also documented a handful of instances in which it appears that former SEC employees should have filed statements with the Commission but did not, as described below.

In addition, most of the statements provided to POGO by the SEC were heavily redacted. The SEC typically redacted the name of the entity that had retained the former employee's new employer, and the issue on which the employee was expected to appear before the Commission. The SEC's FOIA response letter states that this information was withheld under: FOIA Exemption 4, "since the release would cause substantial competitive harm to the submitter"; Exemption 7(A), to "[protect] from disclosure records compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement activities"; and Exemption 7(C), since "[r]elease of this information could subject [SEC] employees to harassment from the public in the performance of their official duties." The SEC also usually redacted the names of current Commission staff under FOIA Exemptions 6 and7(C), "since release could reasonably be expected to constitute an unwarranted invasion of personal privacy."[28]

SEC's Enforcement Division, disclosed in one of his statements that a certain "investigation may have been initiated under my official responsibility," an understanding he reached based on a conversation with an ethics officer. Accordingly, it appears he agreed not to appear before the Commission on behalf of an outside client with regards to this investigation for two years after his departure from the SEC. Letter from Walter G. Ricciardi, Paul, Weiss, Rifkind, Wharton & Garrison LLP, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), June 15, 2010. http://pogoarchives.org/tools-and-data/fo/sec/ricciardi-20100615-130-131.pdf

[27] "SEC Revolving Door Database." http://www.pogo.org/tools-and-data/sec-revolving-door-database

[28] Letter from Dave Henshall, FOIA Branch Chief, Securities and Exchange Commission, to Michael Smallberg, Project On Government Oversight, February 10, 2011. http://pogoarchives.org/m/fo/sec-foia-response-20110210.pdf

In a few statements filed by employees who had gone to work for Wilmer Cutler Pickering Hale and Dorr LLP, the SEC also redacted the names and titles of the former employees under Exemption 6.[29] When asked why the Commission chose to redact this information in only a few statements, an SEC spokesperson told POGO that "[s]ome former SEC employees requested confidentiality pursuant to agency procedures. We redacted to protect their names, titles, work telephone numbers and work email addresses. Where all that information was released, confidentiality was not requested. The procedures are laid out in 17 CFR 200.83,"[30] an SEC regulation that provides a "procedure by which persons submitting information in any form to the Commission can request that the information not be disclosed pursuant to a request under the Freedom of Information Act."[31]

This regulation states that when the SEC determines that confidential treatment is warranted, the person requesting the related information under FOIA will be notified of the determination and informed of their right to appeal.[32] However, POGO did not receive any notification after filing its FOIA request conveying the SEC's position that confidential treatment was warranted with respect to the post-employment statements. Furthermore, POGO is concerned that this regulation may give the SEC excessive authority to withhold information from the public.

Finally, there were a few minor inconsistencies in the statements that POGO standardized to the best of its ability in order to create a searchable database.[33]

HIGHLIGHTS FROM POST-EMPLOYMENT STATEMENTS

This section presents some of the key highlights from the SEC post-employment statements based on POGO's review of nearly 800 statements filed between 2006 and 2010.

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[29] For example, see Letter from Former Employee to Elizabeth Murphy, Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), March 26, 2010. http://pogoarchives.org/tools-and-data/fo/sec/20100326-171-173.pdf. It is worth noting that Wilmer Cutler Pickering Hale and Dorr LLP discloses and advertises the names and titles of former SEC employees who work for the firm. Wilmer Cutler Pickering Hale and Dorr LLP, "Government Service of Our Professionals," p. 5. http://www.wilmerhale.com/files/upload/GovernmentService.pdf (Downloaded May 7, 2011)

[30] Email from John Nester, Securities and Exchange Commission, to Michael Smallberg, Project On Government Oversight, May 3, 2011 (hereinafter "May 3 Nester Email")

[31] "Confidential treatment procedures under the Freedom of Information Act," 17 C.F.R. § 200.83. http://www.gpo.gov/fdsys/pkg/CFR-2010-title17-vol2/pdf/CFR-2010-title17-vol2-sec200-83.pdf (Downloaded May 11, 2011) (hereinafter "Confidential Treatment Procedures") It is worth noting many other statements also included a request for confidential treatment, yet in nearly every case the SEC still released the names and former titles of the employees.

[32] "Confidential Treatment Procedures," 17 C.F.R. § 200.83

[33] In cases where employees had worked in several Divisions or Offices at the SEC, POGO tried to select the Division or Office where they were most recently employed. In cases where employees provided a month but not a date of resignation, POGO chose the first day of the month. In one case where a former employee listed multiple resignation dates, POGO chose the earliest date provided. In one case where a former employee listed different former titles, POGO chose the title most commonly provided in the employee's statements. In cases where information was redacted, the specific FOIA exemption is indicated in the database. In cases where no information was provided, these records are marked with "N/A." In cases where there were non-official markings that obscured the information, POGO either determined what was behind the markings by reviewing similar records, or marked the information as "Illegible" in the database. Finally, POGO standardized the spelling and names of employees, firms, titles, and SEC Offices and Divisions wherever possible in order to facilitate data sorting. For instance, POGO received statements filed by both "Norman Reed" and "Norman M. Reed" with the same former title, former Division/Office, and new employer listed on both statements. This former employee is listed only as "Norman M. Reed" in POGO's database. Similarly, some former employees identified their former position as "attorney-adviser," while others spelled it "attorney-advisor." This former position is consistently spelled "attorney-advisor" in POGO's database.

Most Active Former Employees

One simple way to measure how active former SEC employees have been in representing outside clients before the Commission is to count the number of statements filed by each employee during this five year period.

Table 1: Top 10 Most Active Former Employees Ranked by Number of Statements Filed, 2006 – 2010

Name	Former Division/Office	Former Title	New Employer	Statements Filed
Walter G. Ricciardi	Enforcement	Deputy Director	Paul, Weiss, Rifkind, Wharton & Garrison LLP	20
Daniel A. Goldfried	Enforcement	Senior Counsel	Merrill Lynch	17
Nicolas Morgan	Enforcement	Senior Trial Counsel	DLA Piper	17
Alison M. Fuller	Investment Management	Assistant Chief Counsel	Stradley Ronon Stevens & Young LLP	15
Joshua E. Levine	Enforcement	Senior Attorney	Citigroup Global Markets, Inc.	14
Amy J. Greer	Philadelphia Regional Office	Regional Trial Counsel	Reed Smith, LLP	13
Peter H. Bresnan	Enforcement	Deputy Director	Simpson Thacher & Bartlett LLP	12
Robert L.D. Colby	Trading and Markets	Deputy Director	Davis Polk & Wardwell LLP	12
Alan Reifenberg	Enforcement	Branch Chief	Credit Suisse	12
Kevin M. Loftus	Enforcement	Branch Chief	Paul, Weiss, Rifkind, Wharton & Garrison LLP	11

These ten employees stated that they expected to appear before the SEC on issues such as:

- The SEC's enforcement action against a Kuwaiti resident and three foreign firms that were charged with making millions of dollars in profits from "trading around hoax offers to acquire U.S. companies."[34]
- "[I]ssues arising under Section 18 of the Investment Company Act of 1940 and its application to [a client's] use of derivatives and other instruments that may create leverage."[35]
- An SEC complaint filed against an "Atlanta-based promoter and investment advisors controlled by him" for raising as much as $185 million from up to 500 investors through a fraudulent investment scheme.[36]

[34] Letter from Walter G. Ricciardi, Paul, Weiss, Rifkind, Wharton & Garrison LLP, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), September 3, 2009. http://pogoarchives.org/tools-and-data/fo/sec/ricciardi-20090903-1-2.pdf; and Securities and Exchange Commission, "SEC Obtains Temporary Restraining Order and Freeze of Over Five Millions [sic] Dollars Against Foreign Trader and Entities for Scheme Involving Trading Around Hoax Bids for U.S. Companies," *Securities and Exchange Commission v. Hazem Khalid Al-Braikan*, Civil Action No. 09 civ 6533 (JGK) (S.D.N.Y.), Litigation Release No. 21152, July 23, 2009. http://www.sec.gov/litigation/litreleases/2009/lr21152.htm (Downloaded May 8, 2011)

[35] Letter from Alison M. Fuller, Stradley Ronon Stevens & Young LLP, to Nancy M. Morris, Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), June 1, 2007. http://pogoarchives.org/tools-and-data/fo/sec/fuller-20070601-66-67.pdf

[36] Letter from Alan Reifenberg, Credit Suisse, to Nancy M. Morris, Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), July 5, 2006. http://pogoarchives.org/tools-and-data/fo/sec/reifenberg-20060705-337.pdf; and Securities and Exchange Commission, *SEC v. Kirk S. Wright, International Management Associates, LLC; International Management Associates Advisory Group, LLC; International Management Associates Platinum Group, LLC; International Management Associates Emerald Fund, LLC; International Management Associates Taurus Fund, LLC; International Management Associates Growth & Income Fund, LLC; International Management Associates Sunset Fund, LLC; Platinum II Fund, LP; and Emerald II Fund, LP*, Civil Action No. 1:06-CV-0438, Litigation Release No. 19581, February 28, 2006. http://www.sec.gov/litigation/litreleases/lr19581.htm (Downloaded May 12, 2011)

Fastest Revolvers

Some former SEC employees hit the ground running as soon as they officially left the SEC, filing post-employment statements with the Commission within days or weeks of leaving.

Table 2: Top 10 Former Employees with Shortest Time Between Date of Resignation and Earliest Statement Filed, 2006 – 2010

Name	Former Division/Office	Former Title	New Employer	Days After Resignation Statement was Filed
Matthew A. Beller[37]	Los Angeles Regional Office	Examiner	GPS Partners, LLC	2
John C. Ivascu[38]	Enforcement	Staff Attorney	Vinson & Elkins L.L.P.	3
Christopher T. Stidvent[39]	Enforcement	Staff Attorney	Dell Inc.	4
Daniel A. Goldfried[40]	Enforcement	Senior Counsel	Merrill Lynch	5
Steven E. Richards[41]	Enforcement	Assistant Chief Accountant	FTI Consulting, Inc.	5
Alan Reifenberg[42]	Enforcement	Branch Chief	Credit Suisse	6
Norman M. Reed[43]	Market Regulation	Staff Attorney	Omgeo LCC and Depository Trust and Clearing Corporation	9
Michael K. Lowman[44]	Enforcement	Assistant Chief Litigation Counsel	Jenner & Block LLP	10
William F. Wiggins[45]	Office of the Executive Director	Chief Management Analyst	Public Company Accounting Oversight Board	10
Andrew J. Dunbar[46]	Enforcement	Staff Attorney	Sidley Austin LLP	11

[37] Letter from Matthew A. Beller, GPS Partners LLC, to Nancy M. Morris, Secretary, Securities and Exchange Commission, regarding statement of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), March 3, 2008. http://pogoarchives.org/tools-and-data/fo/sec/beller-20080303-153-154.pdf (hereinafter "Beller Letter")

[38] Letter from John C. Ivascu, Vinson & Elkins L.L.P., to Nancy Morris, Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), January 5, 2006. http://pogoarchives.org/tools-and-data/fo/sec/ivascu-20060105-108-109.pdf

[39] Letter from Christopher T. Stidvent, Dell Inc., to Nancy M. Morris, Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), September 5, 2006. http://pogoarchives.org/tools-and-data/fo/sec/stidvent-20060905-312.pdf

[40] Letter from Daniel A. Goldfried, Merrill Lynch, to Nancy Morris, Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), March 7, 2007. http://pogoarchives.org/tools-and-data/fo/sec/goldfried-20070307-82-83.pdf

[41] Letter from Steven E. Richards, FTI Consulting, Inc., to Florence Harmon, Acting Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), July 16, 2008. http://pogoarchives.org/tools-and-data/fo/sec/richards-20080716-71.pdf

[42] There were two statements filed by Reifenberg six days after he left the SEC. Letters from Alan Reifenberg, Credit Suisse, to Nancy M. Morris, Secretary, Securities and Exchange Commission, regarding notices of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), June 15, 2006. http://pogoarchives.org/tools-and-data/fo/sec/reifenberg-20060615-325.pdf and http://pogoarchives.org/tools-and-data/fo/sec/reifenberg-20060615-326.pdf

[43] Letter from Norman M. Reed to Nancy M. Morris, Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), March 8, 2007. http://pogoarchives.org/tools-and-data/fo/sec/reed-20070308-289-290.pdf

[44] Letter from Michael K. Lowman, Jenner & Block LLP, to Nancy M. Morris, Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), August 21, 2006. http://pogoarchives.org/tools-and-data/fo/sec/lowman-20060821-280-281.pdf

[45] Letter from William F. Wiggins, Budget Officer, Public Company Accounting Oversight Board, to Nancy M. Morris, Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), May 22, 2006. http://pogoarchives.org/tools-and-data/fo/sec/wiggins-20060522-207.pdf

There are no laws or regulations that would generally prevent a former SEC employee from going to work for a regulated entity immediately after leaving the Commission. However, when a former employee appears before the SEC on behalf of an outside client just days after leaving the Commission, it raises questions about whether they might have shown favorable treatment to their new employer during their time at the SEC.

Top Recruiters of Former Employees

There are 131 new employers listed on the statements filed by former SEC employees between 2006 and 2010. It appears that some firms were particularly effective at recruiting former employees to appear before the Commission.

Table 3: Top 11 New Employers
Ranked by Number of Former SEC Employees Recruited, 2006 – 2010

Firm	Former SEC Employees Listing Firm as New Employer
ACA Compliance Group[47]	10
Deloitte & Touche LLP[48]	9
Ernst & Young	8
O'Melveny & Myers LLP	6
Wilmer Cutler Pickering Hale and Dorr LLP[49]	6
DLA Piper[50]	5
KPMG LLP	5
Morrison & Foerster LLP	5
FTI Consulting, Inc.	4
Kirkpatrick & Lockhart Preston Gates Ellis LLP[51]	4
Sidley Austin LLP	4

[46] Letter from Andrew J. Dunbar, Sidley Austin LLP, to Florence E. Harmon, Acting Secretary, Securities and Exchange Commission, regarding statement of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), August 26, 2008. http://pogoarchives.org/tools-and-data/fo/sec/dunbar-20080826-145-146.pdf

[47] Includes Adviser Compliance Associates, LLP (ACA)

[48] Includes Deloitte Financial Advisory Services

[49] There were nine statements filed in this five-year period identifying Wilmer Cutler Pickering Hale and Dorr LLP as the new employer in which the SEC redacted the names and titles of the former employees. Based on other information that was disclosed in these statements, such as the date of resignation and the employee's former Division or Office, POGO believes there are two unique employees covered by these statements. POGO included these two employees when counting the number of former employees who went to work for Wilmer Cutler Pickering Hale and Dorr LLP.

[50] Includes DLA Piper Rudnick Gray Cary US LLP

[51] Includes Kirkpatrick & Lockhart Nicholson Graham LLP and Preston, Gate & Ellis LLP, which merged to become Kirkpatrick & Lockhart Preston Gates Ellis LLP

Table 4: Top 11 New Employers Ranked by Number of Mentions in Post-Employment Statements, 2006 – 2010	
Firm	**Statements Listing Firm as New Employer**
DLA Piper[52]	40
Deloitte & Touche LLP	34
Paul, Weiss, Rifkind, Wharton & Garrison LLP	32
O'Melveny & Myers LLP	30
Merrill Lynch	28
Wilmer Cutler Pickering Hale and Dorr LLP	28
Ernst & Young	27
Davis Polk & Wardwell LLP	21
Reed Smith, LLP	19
Sidley Austin LLP	19
Stradley Ronon Stevens & Young LLP	19

In many cases, a single employee had to file multiple statements in order to disclose new clients and/or new issues on which they expected to appear before the Commission. For instance, only five former SEC employees account for the 40 statements mentioning DLA Piper as a new employer.

Where Former Employees Used to Work

POGO's database includes post-employment statements filed by former employees who worked at a wide range of Divisions and Offices throughout the SEC.

Table 5: All Divisions and Offices of Former Employees Who Filed Statements, 2006 – 2010	
Former Division/Office	**Statements Filed**
Enforcement	403
Corporation Finance	91
Chief Accountant	89
Regional Official[53]	81
Investment Management	49
Trading and Markets	19
Compliance Inspections and Examinations	14
General Counsel	13
Market Regulation	12
Office of Chairman Christopher Cox	9
Office of Commissioner Roel C. Campos	5
Economic Analysis	2
Executive Director	2
Total	**789**

[52] Includes DLA Piper Rudnick Gray Cary US LLP

[53] Employees at SEC regional offices typically report to either the Division of Enforcement or the Office of Compliance Inspections and Examinations. Securities and Exchange Commission, "Organizational Chart." http://sec.gov/about/orgtext.htm (Downloaded May 8, 2011) If there was no indication as to whether they were affiliated with either Division or Office, their former Division/Office is listed as "Regional Office" in the database.

In over half of the statements filed, the former employee indicated that he or she previously worked in the Commission's Division of Enforcement.[54]

Yearly Breakdown
The number of former employees who filed statements and the number of statements filed each year have generally declined between 2006 and 2010.[55]

Table 6: Yearly Breakdown of Statements Filed by Former SEC Employees, 2006 – 2010

Year	2006	2007	2008	2009	2010	Total
Former Employees	96	76	55	36	34	**219**[56]
Statements Filed	254	197	108	100	130	**789**

However, it is difficult to draw conclusions from these figures alone. While it may appear that the revolving door has slowed over the past five years, more information would be required to support such a conclusion. These top-level figures simply represent the number of former employees who filed statements and the number of statements filed over a five-year period. It is unknown, for instance, whether former SEC employees have increasingly found ways to avoid filing these statements in the two years after they leave the Commission.

FORMER EMPLOYEES RETAINED TO WORK ON A WIDE RANGE OF ISSUES

Although the SEC usually redacted some or all of the descriptions of the matters on which former employees sought to appear before the Commission, the information that was released suggests that the SEC's regulated entities relied on former employees to appear before the Commission on a sweeping range of issues.

Not surprisingly, many companies turned to former SEC employees for assistance in SEC litigation. For instance, Jill Slansky, a former senior attorney in the SEC's New York Regional Office, resigned in December 2009. In June 2010, she filed a statement advising the Commission that she had been "retained to represent [Redacted (b)(7)(C)] in *Securities and Exchange Commission v. Galleon*

[54] The Enforcement Division is the largest Division or Office at the SEC. In FY 2010, there were 1,173 full-time equivalents (FTEs) working in the Enforcement Division, compared with 854 FTEs in the Office of Compliance Inspections and Examinations, 470 FTEs in the Division of Corporation Finance, 191 FTEs in the Division of Trading and Markets, 157 FTEs in the Division of Investment Management, 139 FTEs in the Office of General Counsel, and 47 FTEs in the Office of Risk, Strategy and Financial Innovation. Securities and Exchange Commission, *In Brief: FY 2012 Congressional Justification*, February 2011, p. 9. http://sec.gov/about/secfy12congbudgjust.pdf (Downloaded May 12, 2011)
[55] Since former employees are required to file these statements for two years after leaving the SEC, POGO received some statements from employees who had resigned as early as January 2004—two years before the time frame indicated in POGO's FOIA request. However, since POGO's database is built around data derived from forms filed between 2006 and 2010, we confined our analysis to this time period. Any attempt to analyze the number of employees who left in 2004 or 2005 would be largely incomplete without additional statements filed in those years.
[56] This figure represents the total number of unique former employees who filed statements over the entire five year period. The total sum of former employees who filed statements each year is greater than the total listed above because some employees filed statements across multiple years. For instance, an employee who left the Commission in 2006 may have filed statements in both 2007 and 2008, but POGO only counted that person once towards the total figure.

Management LP, et al., 09-CV-8811(S.D.N.Y.) (JSR),"[57] a high-profile SEC complaint that charged billionaire Raj Rajaratnam and his hedge fund advisory firm Galleon Management LP along with many others in a "massive insider trading scheme."[58]

Peter H. Bresnan, a former Deputy Director in the SEC's Division of Enforcement, resigned in December 2007 and joined Simpson Thacher & Bartlett LLP.[59] In November 2009, he filed a statement advising the SEC that he had been "retained to represent [Redacted (b)(7)(C)] in connection with *SEC v. Bank of America Corp.* (09-Civ-6892 (JSR)) (S.D.N.Y.),"[60] which charged Bank of America with "misleading investors about billions of dollars in bonuses that were being paid to Merrill Lynch & Co. executives at the time of its $50 billion acquisition of the firm."[61] Two months earlier, the case made headlines[62] when a federal district judge refused to approve the SEC's proposed $33 million settlement with Bank of America, finding that the settlement "does not comport with the most elementary notions of justice and morality," and remarking that he had been left with the "distinct impression that the proposed Consent Judgment was a contrivance designed to provide the S.E.C. with the facade of enforcement and the management of the Bank with a quick resolution of an embarrassing inquiry—all at the expense of the sole alleged victims, the shareholders."[63]

In some cases, former employees helped firms to prepare the documents that all publicly-held companies are required to file with the SEC, including registration statements for new securities, annual and quarterly filings, and proxy materials sent to shareholders.[64] Donald A. Walker, Jr., who formerly served as a Senior Assistant Chief Accountant in the SEC's Division of Corporation Finance, left the Commission in May 2008 and went to work for FTI Consulting, Inc. In October 2008, he filed a statement with the SEC indicating he would be representing a client regarding "Division of Corporation Finance and Office of the Chief Accountant pre-filing matters regarding Form 10-Q for the quarter [ending] September 30, 2008."[65]

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[57] Letter from Jill Slansky to Elizabeth Murphy, Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), June 23, 2010. http://pogoarchives.org/tools-and-data/fo/sec/slansky-20100623-143.pdf

[58] Securities and Exchange Commission, "SEC Charges Billionaire Hedge Fund Manager Raj Rajaratnam with Insider Trading," *SEC v. Galleon Management, LP, Raj Rajaratnam, Rajiv Goel, Anil Kumar, Danielle Chiesi, Mark Kurland, Robert Moffat and New Castle LLC* Civil Action No. 09-CV-8811 (SDNY) (JSR), Litigation Release No. 21255, October 16, 2009. http://www.sec.gov/litigation/litreleases/2009/lr21255.htm (Downloaded May 8, 2011)

[59] The firm's brochure for its Washington, DC, office advertises that "[w]ith the addition of Peter H. Bresnan, former Deputy Director of the SEC's Division of Enforcement, the Washington, DC, office is well-positioned to handle securities-related government investigations for financial institutions, corporations, directors, and officers and high-ranking executives." Simpson Thacher & Bartlett LLP, "Washington, D.C. Office." http://www.stblaw.com/pdf/washingtondc.pdf (Downloaded May 8, 2011)

[60] Letter from Peter H. Bresnan, Simpson Thacher & Bartlett LLP, to Elizabeth Murphy, Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), November 16, 2009. http://pogoarchives.org/tools-and-data/fo/sec/bresnan-20091116-180-181.pdf

[61] Securities and Exchange Commission, "SEC Charges Bank of America for Failing to Disclose Merrill Lynch Bonus Payments," *SEC v. Bank of America Corp.*, Case No. 09 civ 6829 (S.D.N.Y.), August 3, 2009. http://www.sec.gov/litigation/litreleases/2009/lr21164.htm (Downloaded May 8, 2011)

[62] Zachery Kouwe, "Judge Rejects Settlement Over Merrill Bonuses," *The New York Times*, September 14, 2009. http://www.nytimes.com/2009/09/15/business/15bank.html (Downloaded May 8, 2011)

[63] Judge Jed S. Rakoff, United States District Court, Southern District of New York, "Memorandum Order," *SEC v. Bank of America Corp.*, Case No. 09 civ 6829 (S.D.N.Y.), September 14, 2009, pp 4, 8. http://www.archive.org/download/gov.uscourts.nysd.350160/gov.uscourts.nysd.350160.22.0.pdf (Downloaded May 8, 2011)

[64] Securities and Exchange Commission, "Division of Corporation Finance," February 17, 2010. http://sec.gov/about/whatwedo.shtml#corpfin (Downloaded May 8, 2011)

[65] Letter from Donald A. Walker, Jr., FTI Consulting, Inc., to Florence E. Harmon, Acting Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), October 31, 2008. http://pogoarchives.org/tools-and-data/fo/sec/walker-20081031-3.pdf

In other cases, former employees sought to contact the Commission on behalf of outside clients regarding proposed SEC rules. Giovanni Prezioso, a former SEC General Counsel, left the commission in February 2006 and went to work for Cleary Gottlieb Steen & Hamilton LLP. In May 2007, he filed a statement with the SEC seeking to represent a "trade association" on "[i]ssues relating to proposed rules relating to pooled investment vehicles and investors in those vehicles (Commission File No. S7-25-06)."[66]

Many former employees assisted outside clients in requesting no-action letters, which are submitted by "[a]n individual or entity who is not certain whether a particular product, service, or action would constitute a violation of the federal securities law."[67] If the Commission grants the request, the no-action letter will indicate that "SEC staff would not recommend that the Commission take enforcement action against the requester based on the facts and representations described in the individual's or entity's original letter."[68] Eric S. Purple, a former Senior Counsel in the SEC's Division of Investment Management, left the Commission in July 2007 and went to work for Bell, Boyd & Lloyd LLP. Two months later, he filed a statement with the SEC regarding his:

> [e]fforts to seek no-action assurances from the staff of the Division of Investment Management; specifically, [Redacted (b)(4)] wishes to obtain the staff's views regarding the potential integration issues raised by a hedge fund structure in which an existing domestic 3(c)(1) excepted investment pool will convert into a "feeder fund" of a yet-to-be formed offshore "master" investment company, and which will be operated side-by-side with two yet-to-be formed 3(c)(7) feeder funds, one domestic and one off-shore, each of which will also invest in the master.[69]

Many companies turned to former SEC employees to represent them before Commission staff during inspections, examinations, and investigations. For instance, Matthew A. Beller, a former examiner in the SEC's Los Angeles Regional Office, left the SEC in March 2008 and went to work for GPS Partners, LLC, an "employee owned hedge fund sponsor."[70] Just two days after he left the Commission, Beller filed a statement advising the SEC that he had been "asked by GPS to assist in an existing examination of GPS by the staff of the Los Angeles Regional Office."[71]

Finally, some former employees listed a wide range of issues within a single post-employment statement. For instance, Margaret E. ("Mitzi") Moore, a former Senior Counsel in the SEC's Office of Compliance Inspections and Examinations, left the Commission in January 2006 and joined the Financial Services Roundtable, which "represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American

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[66] Letter from Giovanni Prezioso, Cleary Gottlieb Steen & Hamilton LLP, to Nancy Morris, Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), May 3, 2007. http://pogoarchives.org/tools-and-data/fo/sec/prezioso-20070503-263-264.pdf

[67] Securities and Exchange Commission, "No Action Letters," March 5, 2005. http://www.sec.gov/answers/noaction.htm (Downloaded May 8, 2011) (hereinafter "No Action Letters")

[68] "No Action Letters"

[69] Letter from Eric S. Purple, Bell, Boyd & Lloyd LLP, to Nancy M. Morris, Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), September 27, 2007. http://pogoarchives.org/tools-and-data/fo/sec/purple-20070927-106-107.pdf

[70] "GPS Partners LLC," *Bloomberg/BusinessWeek*. http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=29780953 (Downloaded May 8, 2011)

[71] "Beller Letter"

consumer."[72] Two months after she left the SEC, she filed a statement advising the Commission that she and other Roundtable staff members were scheduled to meet with then-Chairman Christopher Cox and expected to discuss a wide range of issues including:

1. Good Start/Positive Mood Change at SEC
    - New Penalty Guidelines are helpful
    - Good staff appointments
        - [Redacted (b)(6)]
        - [Redacted (b)(6)]
    - Staff to clear subpoenas to press with Commissioners
    - Market above 11,000 for first time since 9/11

2. SEC Compliance and Reform Act
    - **OCIE** back into Market Regulation and Investment Management
        - Sweep exams to require pre-approval from Commission
        - Cannot require production of information not required by rules or regulations
    - **Enforcement**
        - Provide notice of ongoing inquiry or investigation
        - Notice of closure of inquiry or investigation
    - **Ombudsman**
        - Allow registered entities to present questions or statements
            - Maintain confidentiality
            - Permit self-reporting with due credit

3. Executive Compensation
    - Great proposed rule, support increased disclosure
    - PROBLEM: requirement to list salaries of "three 'other'" highly compensated employees is anti-competitive, etc.[73] (Emphasis in original)

In many cases, it is difficult to assess the influence that former employees had on the SEC based solely on their description of the issues on which they expected to appear before the Commission. Nonetheless, the information that is available suggests that current SEC employees need to remain vigilant in order to avoid real or apparent conflicts of interest stemming from their interactions with former employees.

SEC'S OVERSIGHT OF POST-EMPLOYMENT REQUIREMENTS

When asked about the rationale for collecting post-employment statements, an SEC spokesperson told POGO that the "goal is to assist former employees in complying with the post-employment restrictions under 18 USC 207,"[74] the government-wide post-employment conflict-of-interest statute. The SEC even

[72] Letter from Margaret E. ("Mitzi") Moore, Research Director and Senior Regulatory Counsel, the Financial Services Roundtable, to Nancy M. Morris, Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), March 13, 2006. http://pogoarchives.org/tools-and-data/fo/sec/moore-20060313-236-238.pdf (hereinafter "Moore Letter")
[73] "Moore Letter"
[74] "May 3 Nester Email"

provides a sample template for former employees and their new associates to follow in drafting the post-employment and waiver request letters.[75]

However, it is difficult to tell from the statements alone whether the SEC is doing a consistent or adequate job of examining all potential conflicts of interest involving former employees. In addition, POGO is concerned that the SEC may not be doing enough to verify that all employees who are required to file statements actually do so.

Potential Conflicts of Interest

In the vast majority of statements, former SEC employees affirm that they did not participate personally or substantially in, or have official responsibility for, the matter on which they now expect to appear before the Commission, in keeping with the requirements of 18 U.S.C. 207 and SEC regulations.

Occasionally, however, former employees disclosed in their statements that they had some involvement with a related matter during their time at the Commission. In some cases, the former employee discussed the matter with an ethics officer and received an advisory opinion indicating they could contact Commission staff without violating the post-employment restrictions.

For instance, Andrew D. Bailey, Jr., a former Deputy Chief Accountant in the Office of the Chief Accountant, resigned in December 2005 and became a Senior Policy Advisor at Grant Thornton LLP. He was seeking to communicate with SEC staff regarding financial interest independence issues related to Grant Thornton audits of hedge funds. His statement describes his prior work on a related issue when he worked at the SEC:

> While an employee of the Commission, I was responsible for independence issues and their resolution. To the best of my recollection, the specific issue of Hedge Funds was not a matter that I dealt with directly during my employment at the Commission. However, I was involved with policy discussions on related issues involving Private Equity Investment and Mutual funds. These discussions were of a policy nature and did not relate to any particular fund or their auditor.

The statement indicates that Bailey spoke about the matter with an ethics officer who "believes that I can meet the Commission staff on this matter within the meaning of the Commissions [sic] Conduct Regulation."[76]

In another example, Peter Simonyi, a former Economist in the Office of Economic Analysis, resigned in April 2005 to accept employment with Goldman Sachs and Co. His post-employment statement shows that he expected to appear before the Commission regarding a "[National Association of Securities Dealers] Mark-Up Policy Proposal (SR NASD-2003-141), and describes his prior work on a related matter in which he was only "marginally" involved:

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[75] Securities and Exchange Commission, "Sample 8(b) Letter and Sample 8(d) Letter." http://www.sec.gov/about/offices/ethics/post-emp-sample-ltrs.pdf (Downloaded May 7, 2011)

[76] Letter from Andrew D. Bailey, Jr., Senior Policy Advisor, Grant Thornton LLP, to Nancy Morris, Secretary, Securities and Exchange Commission, regarding statement by a former employee pursuant to Rule 8(b) of the Commission's Conduct Regulation, March 6, 2007. http://pogoarchives.org/tools-and-data/fo/sec/bailey-20070306-155-156.pdf (Downloaded May 8, 2011)

> While an employee of the Commission, I was marginally involved with the NASD Mark-UP Policy Proposal (SR NASD-2003-141). Specifically, I provided website links with sample language that the Office of Market Regulation may have relied on while assisting the NASD draft certain economic aspects of the Mark-Up Policy.

According to the statement, the SEC's Ethics Office advised him in October 2005 that he could communicate with SEC staff without violating the post-employment restrictions.[77]

In other cases, former employees disclosed their involvement with a related matter during their time at the Commission, but there is no indication as to whether they discussed the issue with an ethics officer.

For instance, Arthur S. Gabinet, a former District Administrator of the SEC's Philadelphia District Office,[78] left the SEC in October 2005. About a year later, he advised the Commission of his intent to appear before the SEC on behalf of Vanguard Group with respect to a:

> broad spectrum of regulatory matters of concern to Vanguard, including, but not limited to, pending and future applications for exemptive relief, if any; pending and future requests for no-action relief, if any; pending and prospective rulemaking or interpretive guidance; and enforcement and inspection matters affecting Vanguard, if any should arise.

He also disclosed that there were several matters involving Vanguard under his official responsibility during his time at the SEC, but assured the Commission that none of the matters were under his responsibility in the one year prior to his departure:

> To the best of my knowledge there were only two matters involving Vanguard which were under my official responsibility during my tenure at the Commission (neither of which is ongoing), and none during the one year prior to my separation. None of the matters with respect to which I intend to represent Vanguard before the Commission or its staff is, or will be, a matter in which I participated personally and substantially, or which was under my official responsibility during the one year prior to my separation.[79]

His assurances notwithstanding, there is no indication as to whether Gabinet discussed these issues with an SEC ethics officer.

In another example, Fran Pollack-Matz, a former attorney-advisor in the SEC's Division of Investment Management, resigned in February 2009 to accept employment with T. Rowe Price. In August 2009, she filed a statement advising the Commission of her intent to file a comment letter in response to a proposed rule on money market fund reform (File No. S7-11-09). Her statement also indicates that during her time at the SEC, she did some "work on money market related issues, which are the subject

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[77] Letter from Peter Simonyi, Goldman Sachs & Co., to Nancy M. Morris, Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), February 16, 2006. http://pogoarchives.org/tools-and-data/fo/sec/simonyi-20060216-223.pdf

[78] As a District Administrator, Gabinet was "responsible for managing the enforcement and inspection programs within the Philadelphia office's jurisdiction." Securities and Exchange Commission, "Chairman Harvey L. Pitt Announces Selection of Arthur Gabinet to Head the SEC's Philadelphia District Office," December 4, 2002. http://www.sec.gov/news/press/2002-174.htm (Downloaded May 9, 2011)

[79] Letter from Arthur S. Gabinet, Vanguard Group, Inc., to Nancy Morris, Secretary, Securities and Exchange Commission, regarding notice of intent to appear pursuant to 17 C.F.R. § 200.735-8, October 19, 2006. http://pogoarchives.org/tools-and-data/fo/sec/gabinet-20061019-157.pdf

of the Proposal."[80] Again, there is no indication as to whether she discussed this matter with an SEC ethics officer.

It is difficult to obtain aggregate data on how often former SEC employees received ethics opinions or not due to inconsistencies in the reporting of this information in the post-employment statements. While many statements do indicate that the former employee received or believed they received an advisory opinion from an ethics officer giving them clearance to contact Commission staff, many do not.

When asked if the SEC has policies or procedures in place to verify the former employees' declarations that they did not have official responsibility for, or participate personally or substantially in, the matter on which they expect to appear before the Commission, an SEC spokesperson told POGO that the "Ethics Office verifies the information through consultations with the appropriate Divisions and Offices."[81] However, the SEC said it could not discuss specific statements and employees, including statements in which it is unclear whether an ethics officer signed off on the former employee's declaration regarding potential conflicts of interest.[82]

Possible Missing Statements

POGO identified several former employees who left the SEC and began appearing before the Commission or communicating with staff on behalf of outside clients within the time period covered by POGO's FOIA request, but whose statements were not included in the SEC's response.[83] It is unclear whether these former employees obtained a waiver that exempted them from filing the post-employment statements, or whether they simply did not make a submission. It is also possible that they filed a statement as required, but that the SEC did not provide it in response to POGO's FOIA request.

1) Spencer Barasch

Barasch, a former Assistant Director of Enforcement in the SEC's Fort Worth Regional Office, left the Commission in April 2005 and joined Andrews Kurth, LLP later that month. According to the OIG, while Barasch was still at the SEC, he played a big part in delaying and limiting the Commission's investigation of the $8 billion Ponzi scheme orchestrated by R. Allen Stanford.[84] After leaving the SEC, Barasch repeatedly attempted to represent Stanford in connection with the Commission's investigation, even though he was told by the Ethics Office that his previous involvement with the Stanford investigation prohibited him from doing so.[85] Nonetheless, the OIG reported that in September 2006—

[80] Letter from Fran Pollack-Matz, Vice President, T. Rowe Price, to Elizabeth Murphy, Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), August 25, 2009. http://pogoarchives.org/tools-and-data/fo/sec/pollack-matz-20090825-21.pdf

[81] "May 3 Nester Email"

[82] Email from John Nester, Securities and Exchange Commission, to Michael Smallberg, Project On Government Oversight, May 4, 2011 (hereinafter "May 4 Nester Email")

[83] POGO did not conduct a comprehensive analysis to determine the universe of former SEC employees that may have needed to file these statements.

[84] The OIG also found that Harold Degenhardt, then-District Administrator of the Fort Worth Regional Office, declined to support enforcement action against Stanford despite mounting evidence of his Ponzi scheme. Securities and Exchange Commission, Office of Inspector General, *Investigation of the SEC's Response to Concerns Regarding Robert Allen Stanford's Alleged Ponzi Scheme* (Case No. OIG-526), March 31, 2010, pp. 78-79. http://www.sec.gov/news/studies/2010/oig-526.pdf (Downloaded May 8, 2011) (hereinafter "OIG Stanford Report") POGO's database includes seven statements filed by Degenhardt after he left the SEC in September 2005 and joined Fulbright & Jaworski L.L.P.

[85] Barasch told the OIG that "[e]very lawyer in Texas and beyond is going to get rich over this case. Okay? And I hated being on the sidelines." "OIG Stanford Report," p. 146

well within two years of his departure—Stanford ended up retaining Barasch to "represent it in connection with the SEC's investigation of Stanford."[86]

2) Justin Daly

Daly, a former legal and policy advisor to SEC Commissioner Kathleen Casey, left the Commission in February 2010 to join Ogilvy Government Relations.[87] According to reports filed under the Lobbying Disclosure Act, it appears that he lobbied the SEC on behalf of CME Group, Inc.,[88] Blackstone Group,[89] and MBIA Group,[90] all within the 2010 filing year. In addition, he met with Commission staff on September 22, 2010, to discuss SEC rulemaking under the Dodd-Frank Wall Street Reform and Consumer Protection Act related to credit rating agencies, and even proposed the meeting agenda, according to SEC records.[91]

3) Matthew Shimkus

As recently as 2008, Shimkus was listed as serving as a legislative affairs specialist in the Office of then-SEC Chairman Christopher Cox.[92] After leaving the SEC later that year, he made contact with the Commission on behalf of FINRA, and has made repeated appearances on behalf of FINRA ever since, according to reports filed under the Lobbying Disclosure Act.[93]

When asked whether the Commission has policies or procedures in place to ensure that all former employees who are required to file statements actually do so, an SEC spokesperson told POGO that:

> [f]ormer employees are responsible for their own compliance as they are no longer employees or members of the Commission. We have programs and procedures in place to help them meet their obligations. For example, The SEC Ethics Office briefs all departing employees on their post-employment obligations.[94]

The SEC declined to comment on the absence of statements for the former employees mentioned above, and said through the spokesperson that the Commission cannot comment on individual statements.[95]

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[86] "OIG Stanford Report," pp. 1, 79-80, 137

[87] Ogilvy Government Relations, "John O'Neill & Justin Daly Join Ogilvy Government Relations," February 1, 2010. http://www.ogilvy.com/News/Press-Releases/February-2010-Two-New-Hires-at-Ogilvy-Government-Relations.aspx; and Eric Lichtblau, "Ex-Regulators Get Set to Lobby on New Financial Rules," *The New York Times*, July 27, 2010. http://www.nytimes.com/2010/07/28/business/28lobby.html (Downloaded May 8, 2011)

[88] Lobbying Report, Justin Daly, Ogilvy Government Relations, retained by CME Group, Inc., Third Quarter 2010. http://pogoarchives.org/m/fo/daly-cme-2010q3.pdf

[89] Lobbying Report, Justin Daly, Ogilvy Government Relations, retained by The Blackstone Group, Third Quarter 2010. http://pogoarchives.org/m/fo/daly-blackstone-2010q3.pdf

[90] Lobbying Report, Justin Daly, Ogilvy Government Relations, retained by MBIA Inc., Fourth Quarter 2010. http://pogoarchives.org/m/fo/daly-mbia-2010q4.pdf

[91] Memorandum from Tim Fox, Securities and Exchange Commission, regarding status and direction of NRSRO rulemaking, September 22, 2010. http://www.sec.gov/comments/df-title-ix/credit-rating-agencies/creditratingagencies-9.pdf (Downloaded May 8, 2011)

[92] Senate Committee on Homeland Security and Governmental Affairs, *Policy and Supporting Positions*, November 12, 2008, p. 180. www.gpoaccess.gov/plumbook/2008/2008_plum_book.pdf (Downloaded May 8, 2011)

[93] Lobbying Report, Matthew Shimkus, Financial Industry Regulatory Authority, Third Quarter 2008. http://pogoarchives.org/m/fo/shimkus-finra-2008q3.pdf

[94] "May 3 Nester Email"

[95] "May 4 Nester Email"

The SEC spokesperson also told POGO that the Commission can refer potential violations of the government-wide post-employment restrictions in 18 U.S.C. 207 to criminal authorities.[96] Civil and criminal violations of this statute are punishable under penalties and injunctions outlined in 18 U.S.C. 216.[97] According to POGO's review of Department of Justice (DOJ) data made available by the Transactional Records Access Clearinghouse (TRAC), the SEC only made one referral in which 18 U.S.C. 207 was the lead charge code between fiscal years 1986 and 2010. This referral was made in October 2000, and was immediately declined for prosecution by an Assistant U.S. Attorney.[98] The SEC spokesperson declined to comment on this referral, and could not comment on whether there were other referrals made during this time period.[99]

In the case of the October 2000 referral from the SEC, an Assistant U.S. Attorney declined to prosecute because there were "civil, admin or other disciplinary alternatives," according to the Executive Office of U.S. Attorneys data maintained by TRAC. However, the SEC declined to comment on whether it ever takes civil or administrative actions to enforce post-employment requirements, including the regulations governing the post-employment statements.[100]

There may have been other cases in which former SEC employees were prosecuted for an 18 U.S.C. 207 referral made by an agency other than the SEC, or in which the 18 U.S.C. 207 violation was not designated as the lead charge, but it would be difficult to locate these cases given the structure of the available data. Additional searches by POGO uncovered only one case in which a former SEC employee was prosecuted for an 18 U.S.C. 207 violation. In that case, charges were filed against a former attorney in the SEC's Denver Regional Office who was "responsible for investigating stock promoters regarding their promotion of Integrated Resources Technologies, Inc. later known as Comprehensive Environmental Systems, Inc. (CESI/IRTI)," after it was revealed that he left the SEC and was subsequently "hired by the stock promoters to perform legal work for companies owned by them, including CESI/IRTI."[101] That former SEC employee, James W. Nearen, pled guilty in 1997 to the 18 U.S.C. 207 conflict of interest violation, as well as money laundering and securities fraud. He was sentenced in 1998 to 18 months in jail.[102]

DOES THE REVOLVING DOOR UNDERMINE SEC ENFORCEMENT AND REGULATORY ACTIONS?

Former SEC employees can be immensely valuable for companies that have business before the Commission. For instance, Diane L. Dallianis, a former attorney-advisor in the SEC's Midwest Regional Office, filed a statement in April 2007 indicating she would be assisting a firm during an SEC

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[96] "May 3 Nester Email"
[97] "Penalties and injunctions," 18 U.S.C. 216. http://www.gpo.gov/fdsys/pkg/USCODE-2009-title18/pdf/USCODE-2009-title18-partI-chap11-sec216.pdf (Downloaded May 9, 2011)
[98] Transactional Records Access Clearinghouse, "Criminal Enforcement." http://tracfed.syr.edu/index/index.php?layer=cri (Downloaded May 8, 2011)
[99] "May 4 Nester Email"
[100] "May 4 Nester Email"
[101] Department of Defense, Standards of Conduct Office, "Summary of Selected Prosecutions and Administrative Actions Involving Standards of Conduct," May 1, 1999. http://www.dod.gov/dodgc/defense_ethics/resource_library/ethicsdec.htm; and Floyd Norris, "Six Charged With Fraud in 2 Stocks," *The New York Times*, October 5, 1996. http://www.nytimes.com/1996/10/05/business/six-charged-with-fraud-in-2-stocks.html?pagewanted=all&src=pm (All Downloaded May 8, 2011)
[102] "Former S.E.C. Lawyer Gets Jail Term," *The New York Times*, January 27, 1998. http://www.nytimes.com/1998/01/27/business/former-sec-lawyer-gets-jail-term.html (Downloaded May 11, 2011)

examination "as they have never been examined before and want to ensure a smooth process with SEC staff."[103] Many firms advertise their roster of attorneys with former SEC experience.[104]

The high concentration of former SEC employees at certain firms does not necessarily mean that these firms and their clients are exerting undue influence on the Commission.[105] However, there have been several recent reports and studies that point to instances in which former SEC employees appear to have exerted undue influence on current Commission staff, or in which the temptations of traveling through the revolving door appear to have weakened SEC regulatory and enforcement actions.

In 2007, the Senate Finance and Judiciary Committees released a report on the SEC's botched investigation of insider trading at Pequot Capital Management, and the improper termination of former Enforcement attorney Gary Aguirre. The report found that Aguirre faced retaliation after he raised concerns about a warning made by his direct supervisor, then-Enforcement Branch Chief Robert Hanson, suggesting it would be difficult to subpoena Wall Street executive John Mack in connection to Pequot's insider trading due to his "very powerful political connections."[106]

The report also found that, around the same time, the law firm Debevoise & Plimpton LLP had been retained by Morgan Stanley's board to determine whether Mack, a prospective CEO of the company, had any exposure related to the SEC's Pequot investigation. The Senate report describes how a former U.S. Attorney who worked for Debevoise & Plimpton LLP contacted several senior Enforcement officials to ask about the Pequot investigation, including Paul Berger, then-Associate Director of the Enforcement Division. Senate investigators also determined that Berger may have begun inquiring into a possible job at Debevoise & Plimpton LLP while the Pequot investigation was still ongoing. The report concluded that Berger "failed to recuse himself from the Pequot investigation in a timely manner."[107] POGO's database includes five statements filed by Berger after he left the SEC in 2006 and joined Debevoise & Plimpton LLP.

There have also been several SEC OIG reports in recent years that have highlighted the ethical challenges posed by former employees going through the revolving door. As described above, one report

[103] Letter from Diane L. Dallianis to Nancy M. Morris, Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), April 11, 2007. http://pogoarchives.org/tools-and-data/fo/sec/dallianis-20070411-201.pdf

[104] For instance, Wilmer Cutler Pickering Hale and Dorr LLP allows potential clients to search on their website for attorneys with both securities expertise and former government experience. Wilmer Cutler Pickering Hale and Dorr LLP, "Search Criteria: Securities and Government Experience." http://www.wilmerhale.com/biographies/biographies/whAttorneyList.aspx?Practice=44b6f546-0751-4444-a552-a9cbb43a58bf&GovernmentExperienceYes=on (Downloaded May 8, 2011). Wilmer Cutler Pickering Hale and Dorr LLP also advertises on its website that the attorneys in its securities practice include a "former SEC Director of Enforcement, a former Regional Director of the Pacific Regional Office of the SEC, a former SEC Deputy General Counsel and a former Deputy Director of the Division of Trading and Markets." Wilmer Cutler Pickering Hale and Dorr LLP, "Securities." http://www.wilmerhale.com/securities (Downloaded May 8, 2011)

[105] Peter J. Henning, "SEC's Revolving Door Draws More Scrutiny," *DealBook*, June 18, 2010. http://dealbook.nytimes.com/2010/06/18/s-e-c-s-revolving-door-draws-more-scrutiny/ (Downloaded May 10, 2011)

[106] Minority staff of the Senate Committee on Finance and the Senate Committee on the Judiciary Committee, *The Firing of an SEC Attorney and the Investigation of Pequot Capital Management*, August 2007, pp. 6, 10, 28, 80. http://pogoarchives.org/m/er/senate-pequot-report-august2007.pdf (Downloaded May 8, 2011) (hereinafter "Senate Pequot Report")

[107] "Senate Pequot Report," pp. 5-6, 82-87

found that a former SEC official who had delayed and limited the Fort Worth Regional Office's Stanford investigation tried to represent Stanford on several occasions after leaving the Commission.[108]

In another report, the OIG investigated the SEC's handling of a feud between Greenlight Capital President David Einhorn and Allied Capital, which began in 2002 when Einhorn alleged that Allied was overvaluing its assets.[109] Two former employees in the SEC's Enforcement Division—whose names were redacted in the OIG report but were later identified by *The Wall Street Journal* as Joan Sweeney and William McLucas[110]—were representing Allied in its meetings with the SEC. According to the OIG, an Associate Director in the SEC's compliance office who knew Sweeney declined to refer the case to Enforcement, stating he would give the benefit of the doubt to any former SEC employees: "If you've known somebody or even if they didn't really know them but you know they worked here…Well, they should hopefully be doing the right thing."[111] The OIG's investigation also revealed that a former SEC Enforcement attorney who had led an investigation into Einhorn subsequently left the Commission and became a registered lobbyist for Allied. He was later caught in an illegal act of identity theft attempting to access Einhorn's phone records.[112]

A third OIG report looked into allegations that then-Enforcement Director Linda Thomsen gave information to Stephen Cutler—the Executive Vice President and General Counsel of JPMorgan Chase & Co. and also a former SEC Enforcement Director—regarding the SEC's investigation into Bear Stearns during the weekend before JPMorgan acquired the firm. The OIG found that Thomsen provided Cutler with some assurances regarding ongoing and potential investigations, without consulting any other Enforcement staff. The OIG also uncovered a "perception within the SEC that certain members of the legal defense bar have influence within Enforcement and, specifically, a belief that the special relationship between Ms. Thomsen and Mr. Cutler facilitated what occurred over the weekend in question."[113] POGO's database includes a total of 13 post-employment statements filed by Cutler and Thomsen between 2006 and 2010.

And in yet another report, the OIG examined an Enforcement investigation conducted by the SEC's Miami Regional Office into Bear Stearns and a related entity, W. Holding Company, Inc., regarding allegedly false and misleading securities forms and fraud committed by senior Bear Stearns executives. The OIG found that a former SEC Enforcement attorney, with whom the Regional Director of the Miami office, David Nelson, had an ongoing personal relationship, represented Bear Stearns in settlement discussions with the Commission. Nelson abruptly closed the case just as the Commission staff was making final settlement arrangements. He then contacted the former Enforcement attorney who represented Bear Stearns and told him, "Christmas is coming early this year" and that Bear Stearns "can keep their money."[114] POGO's database includes seven post-employment statements filed by Nelson after he left the SEC.

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[108] "OIG Stanford Investigation"
[109] David Einhorn and employees of Greenlight Capital are major contributors to POGO.
[110] "WSJ Investigation"
[111] "OIG Allied Report, p. 47
[112] "OIG Allied Report," p. 36; and Gretchen Morgenson, "Following Clues the S.E.C. Didn't," *The New York Times*, January 31, 2009. http://www.nytimes.com/2009/02/01/business/01gret.html (Downloaded May 9, 2011)
[113] "Kotz Letter"; and Securities and Exchange Commission, Office of Inspector General, *Allegations of Improper Disclosures and Assurances Given* (Case No. OIG-502), September 30, 2009. http://www.sec.gov/news/studies/2009/oig-502.pdf (Downloaded May 8, 2011)
[114] "Kotz Letter"; and Securities and Exchange Commission, Office of Inspector General, *Failure to Vigorously Enforce Action Against W. Holding and Bear Stearns at the Miami Regional Office* (Case No. OIG-483), September 30, 2008, pp. 25-29. http://pogoarchives.org/m/fo/sec-oig-report-20080930-2.pdf (Downloaded May 8, 2011)

Members of Congress have also weighed in on the SEC's revolving door. In June 2010, Senator Charles Grassley (R-IA) wrote a letter to SEC Inspector General David Kotz raising concerns about the revolving door at the Commission.[115] For instance, Senator Grassley pointed out that Elizabeth King, former Associate Director of the SEC's Trading and Markets Division, had recently left the Commission to go work for Getco, LLC, a high-frequency trading firm. He raised questions about her involvement with the Commission's "flash crash" investigation in light of her move through revolving door.[116]

In a letter responding to Senator Grassley, Inspector General David Kotz announced that his office had opened another investigation into different "allegations very recently brought to our attention that a prominent law firm's significant ties with the SEC, specifically, the prevalence of SEC attorneys leaving the agency to join this particular firm, led to the SEC's failure to take appropriate actions in a matter involving the law firm."[117]

These investigations by the OIG and congressional offices have provided numerous examples of enforcement and regulatory actions that may have been undermined by former employees' trips through the revolving door and the ongoing relationships between current Commission staff and SEC alumni working on behalf of outside clients. Much of this revolving door activity is documented in the SEC post-employment statements.

In recent years, various other studies have also attempted to analyze the effects of the revolving door on SEC enforcement. A 2004 article in the *Villanova Law Review* found that "typical SEC enforcement staffers are young attorneys who spend only a few years at the SEC before pursuing more lucrative careers in private practice, often at large prestigious law firms….[A]ttorneys may, quite frankly, be leery of bringing disciplinary proceedings against lawyers from the kind of firms that they hope to join in the future." On the other hand, these young attorneys may wish to pursue aggressive disciplinary proceedings in order to impress their potential future employers, but the article notes that "when a lawyer's own future earnings potential is on the line, the attorney may be risk averse."[118]

In another study released a few years ago, University of California-Berkeley Law School Professor Stavros Gadinis conducted an empirical analysis of SEC enforcement actions against investment banks and broker-dealers in 1998, 2005, 2006, and the first four months of 2007. He uncovered several significant and systematic biases in the SEC's enforcement patterns. For instance, in 40 percent of SEC actions against big broker-dealers, the Commission only brought charges against the firm, not against any of its executives or employees. In comparison, the SEC only brought a few firm-only charges against small broker-dealers during this same time period. Big firms were also less likely to face charges

[115] Letter from Senator Charles Grassley, Ranking Member, Senate Finance Committee, to David Kotz, Inspector General, Securities and Exchange Commission, regarding recent reports that have highlighted problems associated with the revolving door between working at the SEC and working in the securities industry, June 14, 2010. http://finance.senate.gov/newsroom/ranking/download/?id=e037124f-b089-40a1-9a77-3dc773c3cbe2 (Downloaded May 8, 2011) (hereinafter "Grassley Letter")

[116] "Grassley Letter"

[117] "Kotz Letter," pp. 2-3; and Ben Hallman, "SEC watchdog investigates 'revolving door' policy," *Center for Public Integrity*, June 18, 2010. http://www.iwatchnews.org/2010/06/18/2642/sec-watchdog-investigates-%E2%80%9Crevolving-door%E2%80%9D-policy (Downloaded May 8, 2011)

[118] Michael A. Perino, "SEC Enforcement of Attorney Up-the-Ladder Reporting Rules: An Analysis of Institutional Constraints, Norms and Biases," *Villanova Law Review*, 2004, 49 Vill. L. Rev. 851. https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=49+Vill.+L.+Rev.+851&srctype=smi&srcid=3B15&key=cff904707d3e2c2bd8f823d477db1033 (Downloaded May 12, 2011)

in civil court where they might face the consequences of a harsh court-issued injunction; instead, these cases were often brought in SEC administrative proceedings. Among the defendants assigned to administrative proceedings, large firms were less likely than small firms to receive an industry ban.[119]

In attempting to explain these enforcement biases, Gadinis took a look at the career incentives of SEC officials, and found that "[c]oncerns that 'revolving doors' between industry and government may hurt regulators' independence have strong theoretical foundations." According to one model described by Gadinis, "post-agency employment at higher salaries may operate as a quid pro quo in return for favorable regulatory treatment." Even officials who have no interest in industry employment "will prefer a conciliatory outcome in investigations where the persons representing the defendants may soon occupy a position within the agency, either as their colleagues or, more likely, as their superiors." Another model mentioned in his study predicts that the revolving will door will affect regulatory performance because regulators with an industry background have become "'socialized' into that industry's concerns and aspirations."[120]

Gadinis applied an indirect test which found "lower [SEC] sanctions for big firms headquartered in financial centers compared to big firms headquartered elsewhere," possibly suggesting a bias toward big firms in cities with high levels of financial activity where SEC employees may hope to be employed one day.[121]

In 2004, POGO issued a report that examined the revolving door between the federal government and large private contractors. POGO identified six critical problems created by the revolving door:

> 1) It provides a vehicle for public servants to use their office for personal or private gain at the expense of the American taxpayer;
>
> 2) It creates an opportunity for government officials to be lenient toward or to favor prospective future employers;
>
> 3) It creates an opportunity for government officials to be lenient toward or to favor former private sector employers, which the government official now regulates or oversees;
>
> 4) It sometimes provides the contractor with an unfair advantage over its competitors due to insider knowledge that can be used to the benefit of the contractor but to the detriment of the public;
>
> 5) It has resulted in a highly complex framework of ethics and conflict of interest regulations. Enforcing these regulations has become a virtual industry within the government, costing significant resources, but rarely resulting in sanctions or convictions of those accused of violating the rules;
>
> 6) The appearance of impropriety has two significant negative implications. First, it exacerbates public distrust in government, ultimately resulting in a decline in civic participation. Second, the

[119] Stavros Gadinis, *The SEC and the Financial Industry: Evidence from Enforcement Against Broker-Dealers*, August 11, 2009, pp. 6, 7, 26, 38. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1333717 (Downloaded May 8, 2011) (hereinafter "Gadinis Study")
[120] "Gadinis Study," pp. 49-50
[121] "Gadinis Study," pp. 6, 38-39, 51-52, 64-65

> vast majority of career civil servants do not use their government jobs as stepping stones to high paying jobs with government contractors, and it demoralizes them to see their supervisors and co-workers do so.[122]

Although the 2004 report was about the government's oversight of federal contractors, POGO's concerns about the revolving door remain the same. For instance, POGO has concerns about employees who come directly to the SEC from entities overseen by the Commission. One such employee is Eileen Rominger, the new head of the SEC's Division of Investment Management, who came to the Commission after an 11-year stint at Goldman Sachs[123] not long after the SEC entered into a major settlement with the firm in connection with charges that it misled investors regarding a subprime mortgage product.[124]

Pending Studies Could Provide Additional Insights on SEC Revolving Door Issues

In its most recent semiannual report to Congress, the SEC OIG announced that it has opened an investigation into "allegations that a former federal employee violated federal post-employment restrictions or SEC ethics rules when the employee left the SEC and began working at an entity regulated by the SEC, as well as broader concerns with respect to the revolving door between the SEC and outside industry." As part of its review, the OIG reviewed more than two years' worth of post-employment statements, along with former employees' personnel folders, comment letters submitted by new employers, and thousands of related emails.[125]

Meanwhile, the Dodd-Frank Wall Street Reform and Consumer Protection Act requires the Government Accountability Office (GAO) to conduct its own study of the revolving door at the SEC. The GAO's study is expected to be released in July 2011.[126] An SEC spokesperson told POGO that the Commission is "assisting in that review and [looks] forward to any recommendations the GAO may make."[127]

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[122] The Project On Government Oversight, *The Politics of Contracting*, June 29, 2004. http://www.pogo.org/pogo-files/reports/government-corruption/the-politics-of-contracting/gc-rd-20040629.html (hereinafter "The Politics of Contracting")

[123] Jessica Toonkel, "New SEC executive's background could bode well for fund industry," *Investment News*, January 23, 2011. http://www.investmentnews.com/article/20110123/REG/301239978 (Downloaded May 11, 2011)

[124] Securities and Exchange Commission, "Goldman Sachs to Pay Record $550 Million to Settle SEC Charges Related to Subprime Mortgage CDO," July 15, 2010. http://sec.gov/news/press/2010/2010-123.htm (Downloaded May 11, 2011)

[125] Securities and Exchange Commission, Office of Inspector General, *Semiannual Report to Congress: April 1, 2010 – September 30, 2010*, p. 80. http://www.sec-oig.gov/Reports/Semiannual/2010/semifall10.pdf (Downloaded May 8, 2011)

[126] As part of this study, the GAO is required to: "1) Review the number of employees who leave the Securities and Exchange Commission to work for financial institutions regulated by such Commission; 2) Determine how many employees who leave the Securities and Exchange Commission worked on cases that involved financial institutions regulated by such Commission; 3) Review the length of time employees work for the Securities and Exchange Commission before leaving to be employed by financial institutions regulated by such Commission; 4) Review existing internal controls and make recommendations on strengthening such controls to ensure that employees of the Securities and Exchange Commission who are later employed by financial institutions did not assist such institutions in violating any rules or regulations of the Commission during the course of their employment with such Commission; 5) Determine if greater post-employment restrictions are necessary to prevent employees of the Securities and Exchange Commission from being employed by financial institutions after employment with such Commission; 6) Determine if the volume of employees of the Securities and Exchange Commission who are later employed by financial institutions has led to inefficiencies in enforcement; 7) Determine if employees of the Securities and Exchange Commission who are later employed by financial institutions assisted such institutions in circumventing Federal rules and regulations while employed by such Commission; 8) Review any information that may address the volume of employees of the Securities and Exchange Commission who are later employed by financial institutions, and make recommendations to Congress; and 9) Review other additional issues as may be raised during the course of the study conducted under this subsection." "Dodd-Frank Wall Street Reform and Consumer Protection Act," Pub. L. No. 111-203, § 968. http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf (Downloaded May 8, 2011)

[127] "May 3 Nester Email"

RECOMMENDATIONS

In anticipation of the upcoming studies by the SEC OIG and the GAO, POGO would like to offer its own recommendations for exposing and slowing the revolving door at the SEC based on its review of five years' worth of post-employment statements filed with the Commission and other relevant information.

Strengthen and Simplify Post-Employment Restrictions

The SEC should impose a two-year cooling-off period for all former Commission employees, during which they would be prohibited from representing any entity on any matter before the SEC. A similar reform was proposed in an amendment to the Dodd-Frank Act introduced last year by Senator Grassley, but was not adopted.[128]

There should also be a one-year cooling-off period for all former SEC employees, during which they would be prohibited from accepting compensation as an employee, officer, director, or consultant from a financial institution or its holding company if the former employee participated personally and substantially in, or had official responsibility for, any regulation of or enforcement against the financial institution or its holding company within one year prior to their departure from the SEC. A similar reform was proposed in an amendment to the Dodd-Frank Act introduced last year by Senator Carl Levin (D-MI), but was not adopted.[129]

The revolving door restrictions introduced by President Obama[130] should be made permanent in statute and extended to all federal employees, not just political appointees.

Make Post-Employment Statements Publicly Available Online

The SEC should make post-employment statements publicly available online in a searchable database, as POGO has done, making any necessary redactions under the standard FOIA exemptions. In addition, former employees should have to file a statement within two years of leaving the SEC whenever they are employed or retained by a client with business before the Commission, regardless of whether they intend to appear before the SEC on the client's behalf.

As proposed in Senator Grassley's Dodd-Frank amendment, these statements should include the name of the employee; their previous job title; the name of the individual, corporation, or entity they seek to represent; a comprehensive list of all matters in which the employee participated personally and substantially while during their time at the SEC; and, where applicable, a description of the proposed representation, a comprehensive list of all matters that the representation will include, and a description of any restrictions on the representation of the individual, corporation, or entity.

Along these lines, POGO's 2004 report on the revolving door recommended that former government officials be required to enter into a binding revolving door exit plan that sets forth the programs and projects on which the former employee is banned from working.[131] The SEC should consider requiring former employees to enter into a binding exit plan, which would benefit employees who are unaware or

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[128] 111th Congress, Senate Amendment No. 3966, introduced by Senator Charles Grassley. http://pogoarchives.org/m/fo/sa3966.pdf

[129] 111th Congress, Senate Amendment No. 3977, introduced by Senator Carl Levin. http://pogoarchives.org/m/fo/sa3977.pdf

[130] "Ethics Commitments"

[131] "The Politics of Contracting"

confused by the post-employment restrictions, ensure that relevant information is more consistently disclosed in the post-employment statements, and enhance the public's trust in government.

Verify Completeness and Accuracy of Post-Employment Statements
POGO's investigation suggests that not all former SEC employees are consistently filing statements and obtaining ethics opinions when needed. An audit should be conducted to examine the completeness and accuracy of the statements filed with the SEC, and regular checks should be made to ensure full compliance with post-employment regulations. In addition, the SEC should consider providing clearer guidance to former employees on the proper procedures for filing post-employment statements and consulting with ethics officers, and should update its statement template accordingly.

Strengthen Restrictions for New Employees Coming from Industry
Since the revolving door swings both ways, SEC employees should be prohibited from participating in matters related to their former private-sector employer and the clients they represented. New employees who previously worked for or were retained by an entity regulated by the SEC should have to disclose all potential conflicts of interest, similar to the recently introduced ethics policy for offshore workers at the Bureau of Ocean Energy Management, Regulation and Enforcement.[132]

Publicly Disclose SEC Recusal Database and Ethics Waivers
According to the Office of Government Ethics (OGE), the SEC's Ethics Office "maintains a searchable record of recusals by both members of the Commission and certain senior staff, noting the reasons for the recusals, which facilitates future review" of potential conflicts.[133] This database and the underlying recusals, in addition to any ethics waivers provided by the SEC or OGE, should be made public.

Strengthen and Utilize Enforcement Authority
It is unclear whether the SEC is utilizing its authority to impose penalties on former employees who violate their post-employment restrictions. The SEC should make rules to restrict former employees who violate the post-employment regulations from any further participation in prohibited matters for a period of up to five years, as proposed in Senator Levin's Dodd-Frank amendment. In general, former SEC employees who violate the post-employment restrictions should expect to face a gradient of criminal, civil, or administrative disciplinary penalties corresponding to their violation.

In addition, Congress should give OGE the authority to compel SEC officials to investigate potential violations of ethics laws and regulations. The OGE also should have the authority to officially refer cases to the SEC OIG or the DOJ.

Extend Regulations to Other Financial Regulatory Agencies
Any new legislation or rulemaking that strengthens the SEC's post-employment restrictions should also be applied to other financial regulatory agencies. In addition, there should be rules in place to restrict the post-employment activities of officials who work for the Financial Industry Regulatory Authority (FINRA) and other self-regulatory organizations (SROs) that have the authority to take disciplinary and enforcement actions against financial institutions regulated by the federal government. In April 2011, FINRA's Board of Governors authorized the staff to file a proposed rule that would prohibit FINRA

[132] Memorandum from Michael R. Bromwich, Director, Bureau of Ocean Energy Management, Regulation and Enforcement, to ALL BOEMRE District Employees, on policy regarding interference with the performance of official duties and potential conflicts of interest, August 2010. http://pogoarchives.org/m/nr/boemre-recusal-memo-20100830.pdf
[133] Office of Government Ethics, *Ethics Program Review: Securities and Exchange Commission*, July 2008, p. 9. http://www.usoge.gov/about/foia/sec_prog_rev2008.pdf (Downloaded May 8, 2011)

officers from "making a communication, appearing, or testifying as an expert witness on behalf of any respondent in a FINRA disciplinary proceeding or similar action" for one year after leaving the organization.[134] Although this is a step in the right direction, FINRA's rule needs to be significantly strengthened and expanded in order to match the post-employment restrictions facing government employees.

Any financial regulatory agencies or SROs that do not currently collect post-employment statements should require the filing and online posting of these statements for all former employees as described above.

Review Confidential Treatment Procedures and FOIA Exemptions

The SEC OIG should review the Commission's authority and practices for handling confidential treatment requests made by former employees and others, including the requirements for notifying a FOIA requester when the Commission makes a determination that confidential treatment is warranted. In particular, the OIG should examine whether the SEC's confidential treatment procedures and practices run afoul of the public's right to know and the Obama Administration's FOIA directive calling for a "presumption of disclosure."[135] The OIG should also examine the SEC's handling of FOIA exemptions in the post-employment statements, and in particular the exemptions used to withhold the names of represented entities and the issues on which former employees expect to appear before the Commission.

[134] Financial Industry Regulatory Authority, "Update: FINRA Board of Governors Meeting," April 18, 2011. http://www.finra.org/Industry/Regulation/Guidance/CommunicationstoFirms/P123516 (Downloaded May 9, 2011)

[135] "Memorandum of January 21, 2009 - Freedom of Information Act," *Federal Register*, Vol. 74, No. 15, January 26, 2009. http://edocket.access.gpo.gov/2009/pdf/E9-1773.pdf (Downloaded May 11, 2011)