

former Securities Compliance Examiner

1

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of: )

4 ) File No. OIG-509

5 OIG-509 )

6 SUBJECT: Telephone Conversations with

7 former Securities Compliance Examiner ) and John Ehinger

8 PAGES: 1 through 79

9 DATE: Tuesday, March 17, 2009

10

11 TAPE TRANSCRIPTION

12

13

14

15

16

17

18

19

20

21

22

23

24 Diversified Reporting Services, Inc.

25 (202) 467-9200

□

former Securities Compliance  
Examiner

2

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C O N T E N T S

Interview of	former Securities Compliance Examiner	, 3/17/09	3
Interview of	John Ehinger,	3/17/09	58

□

3

1  
2

P R O C E E D I N G S

MS. STEIBER: This is the interview of

former Securities  
Compliance Examiner

former Securities  
Compliance Examiner

3 [REDACTED]. It is March 17, 2009, at 1:00 p.m.

4 Anyway, could you start off by giving me your name?

5 Do you spell the last name [REDACTED] former Securities Compliance Examiner

6 former Securities Compliance Examiner  
[REDACTED]

7  
8 MS. STEIBER: And could you describe your current  
9 employment?

10 Personal Privacy  
[REDACTED]

11

12

13

14

15 MS. STEIBER: And at some point, did you work for  
16 the SEC?

17 former Securities Compliance  
Examiner [REDACTED]

: Yes, Personal Privacy [REDACTED]

18 Personal Privacy [REDACTED]

19 I worked  
20 at the Chicago -- we called it the Midwest Regional Office at  
21 that point, I think they're calling it the Chicago Regional  
22 office now -- for that whole time, in the examination  
23 programs, investment company and investment advisor cause  
24 exams.

25 MS. STEIBER: What positions did you hold?

former Securities Compliance  
Examiner [REDACTED]

It was just securities compliance

□

4

1 examiner, was the official title the whole time I was there.

2 MS. STEIBER: And were you always in OC?

3 former Securities Compliance  
Examiner [REDACTED]

4 : I was not in OC. I guess -- they have  
5 a goofy breakdown of how their hierarchy works. I think  
6 technically the only people who work for OC are the people

former Securities Compliance  
Examiner

6 who are at headquarters, and everyone in the field is just  
7 under the regional direction, and I don't know, I think they  
8 might consider it all under enforcement.

9 But it was the examination program that is run by  
10 OC, so I was in the investment advisor and -- I guess they  
11 just call it investment management examination. But yeah,  
12 all our directives came from -- from OC.

13 MS. STEIBER: Okay. That's interesting. Could you  
14 describe -- oh, sorry. Who did you report to, do you recall?

15 former Securities Compliance Examiner: Yes. I reported for -- to a lot of  
16 people. Let me see, I had -- I first started with -- do you  
17 want to just know my last reporting structure, or --

18 MS. STEIBER: That sounds -- that's fine.

19 former Securities Compliance Examiner: -- what -- okay, yeah. My last branch  
20 chief was Personal Privacy

21 (phonetic) -- I want to say -- her name was Personal Privacy at one  
22 point, but it might have changed, because she got married.

23 So I'm not sure if it's Personal Privacy right now, but I think  
24 it is Personal Privacy. She was my branch chief, and then she  
25 reported up to Personal Privacy -- God, I can't remember his name now.

1 I'm drawing a blank, but it was -- it was Personal Privacy something.

2 MS. STEIBER: No problem. Now at some point when  
3 you were working at OC, did you become disenchanted with the  
4 program?

5 former Securities Compliance Examiner: Well, yeah, in general. I mean, I  
6 kind of got frustrated to some extent, that I wasn't  
7 getting -- doing -- like the focus was kind of lost off of  
8 the initial, I guess, what as I saw as the mission, which was

9 protecting investors and watching out for money, and that  
10 sort of stuff.

11 And it became more of checking the box and it was  
12 just writing reports, and more administrative aspects of it,  
13 as opposed to, you know, the field work aspect in really  
14 protecting the investors.

15 And so there was a lot of -- it just become old,  
16 too bureaucratic for me, I guess, and I just -- I sort of  
17 thought like I -- I felt like I could do more good for people  
18 if I went out on my own than if I stayed there, supposedly  
19 working with the regulatory agency.

20 MS. STEIBER: Do you have any specific experiences  
21 that led to your disenchantment?

22 former Securities Compliance Examiner : well, I guess it's the culmination of  
23 a lot of -- a wearing down of years of various things, but  
24 there was no, I guess, no one particular event that kind of  
25 pushed me over.

6

1 I mean, there was one -- I had an  
2 enforcement -- and a -- I had a case that I was put on, a  
3 cause exam, though I'm not sure how much you guys know about  
4 the program, so I don't know what -- let me know, I guess, if  
5 you don't understand --

6 MS. STEIBER: Okay.

7 former Securities Compliance Examiner - (inaudible) I'm talking about you  
8 know. They put me on a cause exam that I did at Personal Privacy  
9 which is a pretty big place. And we were there for several  
10 months, and we referred it to enforcement, and the New York  
11 attorney general got involved, too, and we had all these

former Securities Compliance Examiner

18 would have been okay.

19 I guess you could say there was a -- you would  
20 still get the underlying, kind of, wink and a nod, I mean,  
21 [Personal Privacy] -- that if  
22 [Personal Privacy] wanted to do more business with [Privacy] and get more  
23 referrals, they would include the [Personal Privacy], but there was  
24 nothing to indicate that.

25 But what happened was, there was communication

9

1 between [Personal Privacy] about which funds to include into  
2 those plans, where, you know, [Personal Privacy] would make their  
3 list. "Okay, these are the funds you should include in your  
4 401(k) plan."

5 And then [Personal Privacy] would come back with an e-mail after  
6 they saw the list and said, "we really think you should take  
7 another look at this particular fund." And lo and  
8 behold -- they added no real -- more information than that,  
9 and then lo and behold, on the second list it did show up as  
10 a recommendation for that particular fund.

11 And so we had some e-mails between [Personal Privacy] and  
12 [Personal Privacy] and there were a couple other -- not just [Personal Privacy] there  
13 were a couple other (inaudible), and it just seemed like it  
14 was -- you couldn't find much more of a smoking gun to me  
15 than that. And it -- and once I got -- learned more about  
16 the Department of Labor laws and ERISA, I felt more like  
17 maybe this was actually more of an ERISA.

18 MS. STEIBER: Mm-hmm.

19 [former Securities Compliance Examiner] : Not that it wasn't a violation,  
20 because they were fiduciaries. [Personal Privacy] was a fiduciary

21 of the company, but it seems like Department of Labor is even  
22 a little more hardcore, in to what fiduciary means, and what  
23 you do with a 401(k), and who can provide advice, and who can  
24 pay for it.

25 But Department of Labor -- I really don't know what

10

1 came of it from the Department of Labor point of view. I  
2 know we had -- our enforcement staff had communication with  
3 Department of Labor, but I have no idea if the Department of  
4 Labor took it up. I never read anything in the papers. I  
5 never heard anything, other than that the SEC dropped their  
6 case.

7 MS. STEIBER: So you had what you felt was a strong  
8 case, and then you brought it to enforcement, or your  
9 leadership, like your branch chief --

10 former Securities Compliance Examiner : Right.

11 MS. STEIBER: -- maybe brought it to enforcement,  
12 and then what happened, from your point of view?

13 former Securities Compliance Examiner : From -- the truth is, I think  
14 enforcement, the lady I was working with in enforcement,  
15 she -- we kind of had to bring her up to speed  
16 with -- with -- which was kind of difficult with -- when we  
17 dealt with enforcement.

18 MS. STEIBER: Mm-hmm.

19 former Securities Compliance Examiner A big problem with enforcement -- I  
20 guess they know the procedures of law and how it works,  
21 motions and all that sort of stuff, but each topic it seems  
22 like they have to get trained on what each particular case is  
23 about --

former Securities Compliance Examiner

24

MS. STEIBER: Mm-hmm.

25

former Securities Compliance Examiner

: -- because they're not investment

11

1 people. They don't -- they're not chartered financial  
2 analysts. They're not -- you know, that's not their thing.  
3 So you have to try to bring them up to speed in order to get  
4 them to understand what the investments are, what the story  
5 is, and then they'll do more research about the laws that are  
6 being impacted.

7 But she was basically swamped, and the way that  
8 enforcement works is they basically subpoena or a  
9 request -- maybe it was a voluntary request, I don't know.  
10 Attorney general subpoenaed, and I don't know if -- I think  
11 we did a subpoena, too, and you know they get a room full of  
12 boxes.

13 MS. STEIBER: Mm-hmm.

14 former Securities Compliance Examiner : And then they spend God knows how much  
15 time trying to review this paperwork. Well, this wasn't her  
16 only case either. And so she was trying to review that. And  
17 what I found ended up happening was not a lot of the work got  
18 done unless I was doing it, or --

19 MS. STEIBER: Mm-hmm.

20 former Securities Compliance Examiner : -- or the other people on my  
21 examination team were doing it. So I ended up doing a lot of  
22 work looking -- doing -- kind of running reports, and doing  
23 some statistical analysis as to which funds were included in  
24 the 401(k) plan, which weren't, what the fees were on those,  
25 you know, looking to see if there was a link between how much



1 money Personal Privacy made on each plan, verse -- depending on what was  
2 recommended.

3 But overall, I felt like enforcement was kind of  
4 swamped, didn't really understand fully the topic that we  
5 were dealing with, and they just had -- it felt like they had  
6 too much on their plate, and didn't have enough assistance  
7 from people who did really understand, you know, the case,  
8 and the investment side of it, if you will.

9 MS. STEIBER: So do you think --

10 former Securities Compliance Examiner : I felt like --

11 MS. STEIBER: Do you think --

12 former Securities Compliance Examiner -- they relied on me a lot to do it..

13 MS. STEIBER: Right. And did you feel that they  
14 called on you too much, is that what you're saying, or that  
15 they didn't call on your expertise enough?

16 former Securities Compliance Examiner : well, in relation to what I had to do  
17 also -- I still had to do exams --

18 MS. STEIBER: Mm-hmm.

19 former Securities Compliance Examiner : -- of other entities, so when that  
20 exam was over, the field portion of it, I got like a month to  
21 write up the report and write up the enforcement referral,  
22 and do that sort of stuff, and gave it to them. And then  
23 they rescheduled me -- the examination staff in the  
24 management, you know, rescheduled me for another exam for the  
25 next month, totally separate.

1 It had nothing to do with the Personal Privacy deal, but  
Page 11

former Securities Compliance Examiner

2 the <sup>Personal Privacy</sup> stuff was still going on. And so there  
3 was -- there was work to still be done on the <sup>Personal Privacy</sup>  
4 stuff that enforcement really wasn't doing that much of --

5 MS. STEIBER: Mm-hmm.

6 <sup>former Securities Compliance Examiner</sup> : -- and so then I -- it became  
7 where -- well, I'm trying to do my current exam, and I'm  
8 still trying to help out on the <sup>Personal Privacy</sup> stuff. There was  
9 never -- other than the enforcement attorney, there was no  
10 one really dedicated to doing the -- I guess, crunching the  
11 numbers or analyzing the data --

12 MS. STEIBER: Did you --

13 <sup>former Securities Compliance Examiner</sup> : -- other than that one enforcement  
14 attorney, who also was juggling other cases.

15 MS. STEIBER: Did you consider sending any of that  
16 analysis work to OEA, the Office of Economic Analysis, or is  
17 that something your office didn't do?

18 <sup>former Securities Compliance Examiner</sup> : I think -- you know, it's been a  
19 while, but I want to say it's -- I remember somebody talking  
20 about OEA, but I can't positively remember if it was -- I  
21 almost want to say that we may have sent the e-mail stuff  
22 there, the -- because we got this huge data dump  
23 electronically.

24 I don't know if they were pdfs or some form of all  
25 these e-mails. And I think they had some sort of software.

□

14

1 That might have been the office you were just talking about,  
2 that had the software, then we were going to send it to them.  
3 They were going to process it, run all sorts of, what do you  
4 call it, like searches for key words.

former Securities  
Compliance Examiner

5 MS. STEIBER: Mm-hmm.

6 former Securities  
Compliance Examiner And then do it. But I think they may  
7 have looked into that, as a source to do at least some of the  
8 electronic scrubbing of that information.

9 MS. STEIBER: But is it fair to say that you felt  
10 like the attorneys in enforcement weren't well versed enough  
11 in investment advisor issues or --

12 former Securities  
Compliance Examiner : I would say that -- that's my feeling  
13 in general. In that particular case, it wasn't so much -- I  
14 mean, each case is specific, and that case was not really  
15 about what types of investments, or that sort of thing.

16 It was more about, you know, a conflict of  
17 interest, which I would say, in general, enforcement  
18 is -- has a better grasp, a little bit better grasp of that,  
19 of -- of -- you know, just -- you say one thing, and then you  
20 do the other. I -- whatever reason they didn't pick up this  
21 case, and I thought the evidence was pretty good on that  
22 front.

23 But there were a lot of parties involved with this  
24 one, though. The New York attorney general and Department of  
25 Labor, and lot of interested parties, so I don't what

15

1 politicking went on at the top level --

2 MS. STEIBER: Mm-hmm.

3 former Securities  
Compliance Examiner : -- if that had anything to do with it.  
4 But in general I would say that they do not really grasp  
5 investment -- investment theories, and how -- basically, how  
6 the investment system works. I mean, most of them are pretty  
7 new out of college, and I think they have --

Page 13

former Securities Compliance Examiner

8 MS. STEIBER: They're what? I'm sorry. "They're  
9 new"?

10 former Securities Compliance Examiner : Pretty new out of college.

11 MS. STEIBER: Okay.

12 former Securities Compliance Examiner : I'd say most of the people I worked  
13 with were -- were under 30, I think. Well, maybe the one I  
14 was working with there was over 30, but most of them don't  
15 have a ton of industry experience in -- I guess my general  
16 consensus is that people come -- and especially on the  
17 enforcement side, on the attorney side -- they come to the  
18 SEC first to get -- to go somewhere else, as a stepping  
19 stone, you know, kind of the career builder, which is  
20 also -- I felt was a problem with the enforcement side, was  
21 that they would take cases -- it seemed like they took cases  
22 sometimes as much to build a name, get their name out there.

23 If there was a case tied to a well known company or  
24 whatever -- which Personal Privacy would have been one -- you  
25 know, they'll take that case. But if there's a smaller fraud

16

1 going on where I think -- where maybe it's more offensive,  
2 somebody got money stolen, then it's kind of like, well,  
3 whatever. You know, that -- it sits -- they open the case.  
4 It sits there for two years, they close it,  
5 nothing -- nothing happens.

6 MS. STEIBER: Do you have any -- do you recall any  
7 specific times when somebody made the comment that they  
8 didn't want to pursue Ponzi schemes because they weren't  
9 career builders?

10 former Securities Compliance Examiner : No there's nothing -- it was more of a  
Page 14

12 two years there. We had a guy, his name was  
13 he's retired now. He pretty much was the guy to go to when  
14 there was a cause exam, we thought there was a fraud going  
15 out. They would always send him out there, and he did an  
16 outstanding job.

17 And he would occasionally put on a training  
18 session, usually just for the newer people, and it would be  
19 about temporary restraining orders, like how do you go in  
20 there and get the information you need when you find  
21 something that's wrong.

22 And so he did -- we had that -- he did it -- once  
23 every couple years, maybe, he would have that. But that  
24 wasn't -- it wasn't formal. If that was part of the deal  
25 like within the first three months of getting hired there,

28

1 then you went through the -- his lecture, and his little, you  
2 know, hour or two hour long presentation, that would have  
3 been a move in the right direction.

4 But it was kind of just random, like he'd  
5 occasionally do one, and I just -- I guess in general, I  
6 think it needed to be -- the training needed to be formalized  
7 with a goal of what the real mission was, which was  
8 protecting investors and protecting money, not necessarily,  
9 you know, here's your audit plan, you know, this is what you  
10 ask, this is what your question is.

11 And I didn't -- they mentioned you guys, that in  
12 terms of the competency level of the examiners, they all got  
13 trained and they kind of, especially in the mutual fund, the  
14 investment company side, they're kind of like robots. Like

15 you had a script of questions that you would ask, you know,  
16 like an opening interview, kind of like the questions you  
17 wrote down to ask me today. You know, they have these  
18 questions that they ask.

19 But very few people could venture from these  
20 prepared questions, that they probably never came up with  
21 themselves.

22 MS. STEIBER: You said they couldn't because they  
23 didn't know how, or because they weren't allowed?

24 former Securities Compliance  
Examiner: Right. No, they were allowed. We  
25 were for the most part allowed. Some people were a little

29

1 more afraid to venture off, because I guess maybe they  
2 thought that -- I don't know -- that that's not what  
3 management wanted or whatever, but for the most part you were  
4 allowed -- we were allowed to venture off of that.

5 My issue was I don't think they had the competency  
6 level, the education, and the knowledge to follow up on a  
7 question. Like if you asked them, I don't know what the  
8 question was, something about the guy's investment strategy,  
9 and he answered the question, I felt like half the people  
10 didn't really understand what his answer to the question was,  
11 and they couldn't really follow up that question because they  
12 didn't really understand what he was saying.

13 And so you couldn't -- they -- you couldn't take  
14 the examination questioning, you know, in the directions and  
15 follow it down toward maybe where there was an issue, because  
16 all they really -- I believe what a lot of people -- all they  
17 understood was what was written on that pre-made list of

18 questions.

19 MS. STEIBER: So did you feel like they would miss  
20 the forest for the trees --

21 former Securities Compliance Examiner : Yeah. That would happen --

22 MS. STEIBER: -- because they were so focused on  
23 the checklist?

24 former Securities Compliance Examiner : That would happen on a lot of a -- I  
25 mean, I guess that was my feeling of programs in general,

30

1 was -- because I mean the truth of the matter is you go out  
2 and you do a lot of exams, and you virtually never see any  
3 fraud.

4 Ninety-plus percent of the people are clean, which  
5 is what I think drives the examination staff and the  
6 management in particular to focus on things other than  
7 detecting fraud, because it is rare to see it. You know, you  
8 rarely come across when you just do a routine exam and you  
9 find out that somebody was stealing money, assuming you could  
10 figure it out.

11 I mean, some people couldn't -- wouldn't be able to  
12 figure anything out. But you know -- that -- it was -- most  
13 of the exams were routine. You did only find minor  
14 violations, and so it came down to what was important -- it  
15 seemed what was important from the management's point of  
16 view, as an examiner, you were concerned more about, okay,  
17 one, did I find some deficiency on the ins and outs, because  
18 you can't go back empty handed.

19 Two, did we check every box on this list that we  
20 were supposed to review? Not so much how deep did we go, but