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POGO letter to SEC Chairman Mary Schapiro regarding the SEC's failure to act on hundreds of Inspector General recommendations

December 16, 2009

The Honorable Mary Schapiro
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairman Schapiro:

The Project On Government Oversight (POGO) is writing to raise concerns that the Securities and Exchange Commission (SEC) is sluggish in acting on a wide range of recommendations issued by the SEC Office of Inspector General (OIG) since David Koza's report in December 2007.¹

POGO is an independent nonprofit that investigates corruption and other misconduct in order to achieve a more effective, accountable, and ethical federal government. As such, POGO has a keen interest in ensuring that the SEC fully implements the OIG's recommendations, especially in light of the SEC's recent failure to detect Bernard Madoff's Ponzi scheme.

The SEC's investigative and enforcement practices have come under tremendous scrutiny in recent months, thanks to a series of Congressional hearings and OIG reports on the agency's failure to detect the Madoff Ponzi scheme. In response to recommendations made by Congress, the OIG and others, the SEC has begun to institute key reforms aimed at preventing similar frauds from going undetected in the future. According to the SEC's website, these reforms include revitalizing the Enforcement Division, revamping the handling of insider complaints and tips, and recruiting staff with specialized experience.

We applaud the SEC for its public statements acknowledging the urgent need for reform at the agency. However, documents obtained through a Freedom Of Information Act (FOIA) request show that the SEC's inaction speaks louder than its words.

Enclosed are two documents listing all recommendations made in the OIG's audits and reports of investigations since David Koza's report in December 2007, along with an update on any actions the SEC has taken in response to these recommendations. The documents make clear, the SEC has either ignored or failed to act in a timely fashion on a majority of the OIG's recommendations, which cover a wide range of issues that ought to have received immediate attention from the agency.

The first document lists 52 recommendations made in the OIG's reports of investigation since December 2007. According to the document, the SEC has taken "no action" on 27 of these recommendations. Here are just a few of the OIG's investigative findings and recommendations that have been ignored by the SEC:

OIG Finding	OIG Recommendation	Action Taken
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Conflict of interest; Improper solicitation and receipt of gifts from a prohibited source and other misconduct	Disciplinary action, up to and including dismissal	No action
Lack of business integrity in connection with SEC contracts	Institution of suspension or debarment proceedings or other appropriate action	No action
Failures in management of former attorney; Allowed inappropriate reasons to factor into decision to terminate former attorney; Abusive management style	Disciplinary and/or performance-based action, including removal of supervisory responsibilities	No action
Failure to vigorously enforce action	Disciplinary and/or performance-based action	No action
Suspicious of insider trading and appearances of impropriety in securities transactions; Violations of financial reporting requirements	Disciplinary action	No action
Inappropriate connections between complaints and personnel actions taken against complainants	Disciplinary action	No action
Failure to uncover Ponzi scheme	Review report and share with OCIE and Enforcement management the portions that relate to performance failures by employees who still work at the SEC, so appropriate action (which may include performance-based action) is taken, on an employee-by-employee basis, to ensure future examinations and investigations are conducted in a more appropriate manner and the mistakes and failures outlined in the report are not repeated	No action
Misuse of government computer resources to assist Ponzi scheme and violations of standards of ethical conduct	Pursue collection of benefits of \$25,000 received by employee through "early out"	No action
Disclosure of non-public information	Disciplinary action, up to and including dismissal	No action

The second document lists 312 recommendations made in the OIG's audits since December 2007. According to the document 197 of these recommendations is still listed as "Pending." Here are just a few of the OIG's audit recommendations that the failed to fully implement:

OIG Recommendation	Status
Enforcement should require tips and complaints to be reviewed by at least two individuals experienced in the subject matter prior to deciding not to take further action	Pending
Enforcement should put in place procedures to ensure that investigations are assigned to teams where at least one individual on the team has specific and sufficient knowledge of	Pending

the subject matter (e.g. Ponzi schemes) and the team has access to at least one additional individual who also has such expertise or knowledge.	
Enforcement should put in place policies and procedures or training mechanisms to ensure staff have an understanding of what types of information should be validated during investigations with independent parties such as the Financial Industry Regulatory Authority, Depository Trust Company, and Chicago Board Options Exchange.	Pending
The Chairman's Office shall direct the Chief Freedom of Information Act (FOIA) Officer and the Office of Freedom of Information Act/Privacy Act Operations to collaborate with the Office of the Secretary, the Division of Enforcement, and the Office of Information Technology to produce a strategy that addresses information management obstacles hindering timely and comprehensive FOIA responses. This strategy should contain concrete recommendations, specific timelines, and cost estimates and should be presented to the Commission for action.	Pending
The Office of Compliance Inspections and Examinations should perform examination work to determine whether the quality of credit ratings is being adversely affected by Nationally Recognized Statistical Rating Organizations (NRSROs) performing consulting and advisory services for issuers, underwriters or obligors that have paid the NRSROs for credit ratings.	Pending

It is simply unacceptable for a federal agency to ignore so many of the findings and recommendations made by its OIG. Bas SEC's poor track record as revealed in these documents, the public has every reason to question the agency's commitment implementing the sorely needed post-Madoff reforms. We urge you to make the OIG's recommendations a top priority for the moving forward.

Thank you in advance for your leadership on this important matter. If you have any questions or need additional information, contact me at (202) 347-1122.

Sincerely,

Danielle Brian
Executive Director

Attachments:

- 1) [Recommendations made in SEC OIG reports of investigation since December 2007](#)
- 2) [Recommendations made in SEC OIG audits since December 2007](#)

CC: House Committee on Financial Services
House Committee on Oversight and Government Reform
Senate Committee on Banking, Housing, & Urban Affairs
Senate Committee on Finance

1 POGO believes it is important to go back to December 2007 because there has been a considerable increase in audit and work since that time, according to the OIG's Semiannual Reports to Congress.

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