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REPORT OF INVESTIGATION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION OFFICE OF INSPECTOR GENERAL

Case No. OIG-488

Misuse of Government Resources and Official Time at Headquarters

Introduction and Results of Investigation

The Office of Inspector General (OIG) opened this investigation on April 28, 2008, after receiving information that (b)(7)(C) an SK (b)(7)(C) Information Technology (IT) Specialist in the Office of Information Technology (OIT) (b)(7)(C) Office, was using Securities and Exchange Commission (SEC or Commission) resources and official time in support of a private (b)(7)(C) business.

The OIG investigation uncovered evidence that (b)(7)(C) who has been with the Commission for (b)(7)(C) years, repeatedly used Commission resources and official time in support of his private (b)(7)(C) business. The investigation found that (b)(7)(C) operates a lucrative for-profit (b)(7)(C) business and has been providing (b)(7)(C) (b)(7)(C) services for approximately (b)(7)(C) years. He also identified three other SEC employees, who work with him in his business.

The investigation found substantial evidence that (b)(7)(C) conducted his private business at work during official business hours. In this capacity, (b)(7)(C) used Commission resources for this purpose, including: his work computer for receiving and sending e-mails and reviewing documents; photocopiers; printers; fax machines; and telephones.

Much of this evidence came from (b)(7)(C) own admissions on the record. (b)(7)(C) himself acknowledged that he used his SEC computer to check his private business e-mails, that he also opened up Excel spreadsheets and edited contracts related to his personal business on his work computer, and that he used government photocopiers, printers, telephone and the fax machine as well. He also admitted that he knew it was against SEC policy to use SEC resources and office equipment for commercial purposes, and acknowledged making mistakes and tremendous errors in judgment.

The evidence demonstrates (b)(7)(C) activities violated SEC policies that specifically and strictly prohibit SEC employees from using government equipment to maintain or support a personal private business, including SEC policies and directives regarding the appropriate use of SEC Office Equipment and IT Resources. He has also violated the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of

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Conduct) provisions on use of government property and official time. Accordingly, we are referring this matter to management for disciplinary action.

Scope of Investigation

During our investigation, we obtained and reviewed (b)(7)(C) e-mails for the period of May 2007 through April 2008.¹ We learned that (b)(7)(C) had access to multiple computers in the performance of his duties. We were informed by the Office of Information Technology Security Group that hard drive images could not be captured from (b)(7)(C) Commission computers. We were, however, able to obtain numerous images from the e-mails that we reviewed.

A review of (b)(7)(C) Official Personnel Folder and conduct file revealed no prior disciplinary actions. OIG examination of his time and attendance records for the time period from December 2007 through May 2008 did not reflect any unusual absences from work.

The OIG interviewed (b)(7)(C) supervisor, (b)(7)(C) in the OIT's (b)(7)(C) Office on August 11, 2008. On May 21, 2008, we took sworn, on-the-record testimony of (b)(7)(C)

The General Commission Conduct Provision

The Commission's conduct regulations require that employees maintain unusually high standards of honesty, integrity, impartiality and conduct. 17 C.F.R. § 200.735-2.

Policy on Personal Use of SEC Office Equipment

SECR 24-4.3, Use of SEC Office Equipment (Revised Mar. 8, 2002), III. General Policy, provides that "SEC employees are permitted limited use of government office equipment for personal needs if the use does not interfere with official business and involves minimal additional expense to the government." The limited personal use must take place during the employee's non-work time, and the privilege may be revoked or limited at any time. *Id.*²

SECR 24-4.3, A.5. defines personal use as "activity that is conducted for purposes other than accomplishing official or otherwise authorized activity." This section also provides, as follows:

¹ This date range excludes July 2007, for which e-mail records were not available from OIT.

² Under the Commission's Table of Penalties, Attachment 3 to SECR 6-10, Discipline and Adverse Actions (Nov. 12, 1990), the typical penalty for using government property in duty status for other than official purposes is: oral admonishment to removal for the first offense, reprimand to removal for the second offense, and 5 day suspension to removal for the third offense.

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SEC employees are specifically prohibited from using government office equipment to maintain or support a personal private business. Examples of this prohibition include employees using a government computer and Internet connections to run a travel business or investment service. The ban on using government office equipment to support a personal private business also includes employees using government office equipment to assist relatives, friends or other persons in such activities.

Under SECR 24-4.3, III.G. Sanctions for Misuse, the “[u]nauthorized or improper use of government office equipment could result in loss of use or limitations on use of equipment, disciplinary or adverse actions, criminal penalties, and/or employees being held financially liable for the cost of improper use.” *See also* SECR 5-10, Electronic Mail (May 20, 1996), at 9 (it is unacceptable to use Internet mail for “engaging in ‘for-profit’ activities”).³

Government-wide Standards of Ethical Conduct

5 C.F.R. § 2635.704, Use of Government property, provides that “[a]n employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.” 5 C.F.R. § 2635.705, Use of official time, provides that “[u]nless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties.”⁴

5 C.F.R. § 2635.702, Use of public office for private gain, provides that “[a]n employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise... including... persons with whom the employee has or seeks employment or business relations.”

SEC Rules of the Road

The Commission's “Rules of the Road,” SECR 24-04.A01, are intended to help SEC employees and contractors “use the agency computing and network facilities responsibly, safely, and efficiently, thereby maximizing the availability of these resources to everyone within the Commission. All SEC users (i.e., Federal employees, interns, contractors, and anyone else who is granted access to SEC systems) must follow the

³ (b)(7)(C) certified on June 18, 2006 that he received the Commission's Administrative Regulation SECR 5-10, Electronic Mail, and he would review its content and comply with the regulation as stated.

⁴ (b)(7)(C) certified on September 21, 1993, that he had received a copy of the Employee Ethics Handbook containing a copy of the Standards of Conduct, and he understood he was expected to spend a minimum of one hour of official time acquainting himself with the provisions of those Standards.

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Rules of the Road when using SEC Information Technology (IT) resources, except as described in the "Exceptions and Waivers" section...."⁵

The Commission's Rule of the Road #1, "Don't Conduct Unauthorized Business on SEC Automated Systems or Networks," contains the following prohibited use:

DO NOT use SEC IT resources for commercial purposes, for personal financial gain, or in support of "for-profit" activities (e.g., consulting for pay, sales or administration of business transactions, selling real estate, *operating a private photography business*, or the sale of goods or services). [Emphasis added].

Rule of the Road #1 further warns employees that "Individuals who misuse government resources may be subject to disciplinary action up to and including termination of employment, fines, and imprisonment."

Relevant Case Law

The Merit Systems Protection Board (Board) has upheld the removal of federal employees for using government office equipment to support private commercial businesses, after being warned not to do so. For example, in *Quillen v. Dep't of Treasury*, 96 M.S.P.R. 154 (2004), *aff'd per curiam*, 2005 U.S. App. LEXIS 11842 (Fed Cir. June 8, 2005), the Board affirmed the agency's removal action based on charges that included the appellant's misuse of his government computer in support of his commercial business following an agency directive that he cease and desist his alleged misuse of government property.

Similarly, in *Biniak v. SSA*, 90 M.S.P.R. 682 (2002), the Board concluded that removal was a reasonable penalty for the appellant's use of the agency's computer equipment, telephones, envelopes, and email system to operate his personal business while on official government time. The Board adopted the Administrative Judge's (AJ's) analysis, which found the appellant's misconduct was "repeated and flagrant and continued over an extended period of time." The AJ also found that "despite being given a number of warnings to cease the misconduct, the appellant continued to conduct his personal business on government time on a regular basis." The AJ further found that the appellant's conduct had a "detrimental impact on the agency's ability to perform its mission" and that "[t]he agency cannot condone such behavior."

⁵ SECR 24-04.A01, "SEC Rules of the Road."

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Results of Investigation

Analysis of (b)(7)(C) Computer Records

Our review and analysis of (b)(7)(C) government computer e-mails for the period of May 2007 through April 2008 revealed numerous e-mails and photographs pertaining to (b)(7)(C) private (b)(7)(C) business sent during work hours. The e-mails describe (b)(7)(C) forwarding slide shows of (b)(7)(C) to numerous individuals both inside and outside the agency, as well as (b)(7)(C) discussing his private business and dropping off his personal business card to Commission employees. When presented with these e-mails and photographs during his sworn, on-the-record testimony (b)(7)(C) admitted they were from his SEC computer and pertained to his personal (b)(7)(C) activities.

OIT records indicate that (b)(7)(C) successfully completed Rules of the Road certification and refresher training in May 2007. (b)(7)(C) also successfully completed Rules of the Road, Computer Security Basics, User Responsibilities, and Good Computer Security Practices training in March 2006.

(b)(7)(C) Sworn Testimony

On May 21, 2008, we took (b)(7)(C) sworn, on-the-record testimony. (b)(7)(C) has been a Commission employee for (b)(7)(C) years and works as an IT Specialist in OIT, as the (b)(7)(C) Transcript of testimony of (b)(7)(C) taken on May 21, 2008 (Tr.) (attached hereto as Exhibit A) at 7, 8. (b)(7)(C) duties are to oversee between (b)(7)(C) contractors and he has responsibilities for monitoring the (b)(7)(C) *Id.*

(b)(7)(C) admitted under oath that he currently does (b)(7)(C) work. *Id.* at 19. He stated that he has a private for-profit business (in partnership with (b)(7)(C) called (b)(7)(C) that has been providing (b)(7)(C) services for approximately (b)(7)(C) years. *Id.* He also identified three SEC employees, (b)(7)(C) and (b)(7)(C) who work for him in his (b)(7)(C) business. *Id.* at 20. (b)(7)(C) stated that his personal (b)(7)(C) business has been profitable, noting that he has earned between (b)(7)(C) and (b)(7)(C) a year for each of the past two, or three years. *Id.* at 54.

(b)(7)(C) admitted using his SEC e-mail for his private (b)(7)(C) business, and said he used to check his business e-mail from his SEC computer, although he indicated that he tapered off from checking his business e-mail regularly in late 2005, or 2006. *Id.* at 36, 37.

(b)(7)(C) also admitted that he may have printed out documents or opened up an Excel spreadsheet relating to his private (b)(7)(C) business using SEC equipment. *Id.* at 88. He said he has spent SEC time managing invoices to keep track of getting paid and profit he received while he was at work, and admitted editing contracts for his personal

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(b)(7)(C) business from his work computer. *Id.* at 48, 89. He also admitted using government photocopiers and printers in connection with his personal (b)(7)(C) business. *Id.* at 93-94. He also stated he may have received and sent faxes using the government fax machine for his (b)(7)(C) business. *Id.* at 94-95.

(b)(7)(C) stated that he sent (b)(7)(C) relating to his private business to other SEC employees using his SEC e-mail address. *Id.* at 98. He also said he has sent information back and forth regarding his personal (b)(7)(C) business between his SEC and personal e-mail accounts. *Id.* at 99, 100. He indicated that he has accessed web sites relating to (b)(7)(C) from work "maybe a couple times a week," noting that he is "obsessed with" (b)(7)(C) *Id.* at 107, 108. He also said he has (b)(7)(C) during work hours. *Id.* at 109.

(b)(7)(C) said it was typical for other (b)(7)(C) or employees to bring their work to him for his review, and acknowledged an exchange between himself and SEC employee (b)(7)(C) in which (b)(7)(C) was sharing with him a slide show of (b)(7)(C) while they were both at work. *Id.* at 110-111, 113.

(b)(7)(C) further admitted that he used a software called (b)(7)(C) that was installed on his SEC computer for personal use. *Id.* at 122, 123. He also admitted once advising a fellow SEC employee to call the OIT Help Desk and have them install Adobe Flash in order for this SEC employee to view (b)(7)(C) slide show that contained (b)(7)(C) business-related (b)(7)(C) *Id.* at 127, 128.

(b)(7)(C) also said that he is planning another private (b)(7)(C) business called (b)(7)(C) focusing "more on" (b)(7)(C) *Id.* at 57, 58.

He admitted that he has been approached by an SEC contractor named (b)(7)(C) about working for him in this new business, and acknowledged that he was (b)(7)(C)

(b)(7)(C)

In his defense, (b)(7)(C) stated that he has told people not to send him e-mails for his (b)(7)(C) business at work, but acknowledged these instructions did not seem to work. *Id.* at 105. He also said that in 2005 or 2006, after he began receiving numerous e-mails at work from people asking to see (b)(7)(C) he stopped sending people (b)(7)(C) and links to (b)(7)(C) website from work, stating he felt he was "blurring the lines" between SEC work and his outside business. *Id.* at 21-28. (b)(7)(C) also noted that there were times when he was asked by the Commission to (b)(7)(C) although he said he was not paid for them. *Id.* at 38, 39.

(b)(7)(C) however, admitted that he knew it was against SEC policy to use SEC resources and SEC office equipment for commercial purposes, and stated he "definitely made a mistake" and he expected to "pay for [his] mistakes." *Id.* at 137, 139. He said the OIG Investigators "made it quite clear that [he] made some tremendous errors in

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judgment" and "showed [him] that what [he] was doing is very wrong." *Id.* at 139. He said he did not think his use of government resources for his personal business was "to the level that is being shown," noting that such use is now "abundantly clear." *Id.*

Interview of (b)(7)(C)

On August 11, 2008, the OIG interviewed (b)(7)(C) in the (b)(7)(C) in the OIT. (b)(7)(C) stated that he has supervised (b)(7)(C) for two to three years. Interview Notes of (b)(7)(C) (attached hereto as Exhibit B) at p. 1. (b)(7)(C) stated he was aware that (b)(7)(C) had a personal (b)(7)(C) business, but that he had not witnessed (b)(7)(C) working on his business (b)(7)(C) on his SEC computer. *Id.*

(b)(7)(C) recalled that (b)(7)(C) had been asked by the former Chief Information Officer, Corey Booth, (b)(7)(C) *Id.* (b)(7)(C) stated that he believed that (b)(7)(C) was asked because it was known that (b)(7)(C) was (b)(7)(C). *Id.* (b)(7)(C) said (b)(7)(C) was not paid for (b)(7)(C). *Id.* (b)(7)(C) does not consider (b)(7)(C) to be a collateral duty of (b)(7)(C) rather, he considers the times that (b)(7)(C) was asked to (b)(7)(C) as part of "other duties as assigned." *Id.*

(b)(7)(C) stated that he has not had any problems with (b)(7)(C) performance; nor has he observed any unusual absences from work. *Id.* (b)(7)(C) could not recall any occasion during which (b)(7)(C) took leave in order to (b)(7)(C). *Id.*

Conclusion

The evidence establishes that (b)(7)(C) knowingly and repeatedly violated Commission policies and rules by using SEC resources to support his personal (b)(7)(C) business. The matter is being referred to the Acting Director and Chief Information Officer in the Office of Information Technology, the Associate Executive Director for Human Resources, the Associate General Counsel for Litigation and Administrative Practice, and the Ethics Counsel for disciplinary action.

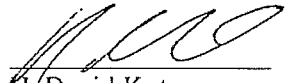
Submitted:

Date: Nov. 7, 2008

Concur:

Date: Nov. 7, 2008

Approved:


H. David Kotz

Date: Nov. 7, 2008