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## REPORT OF INVESTIGATION

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

Case No. OIG-504

#### Misuse of Government Computer Resources and Violation of the Standards of Ethical Conduct for Employees

##### Introduction and Summary of Results

On November 4, 2008, the Office of Inspector General ("OIG") opened an investigation as a result of information received from (b)(7)(C) Special Investigator with the Securities Division of the Arizona Corporation Commission ("ACC"). The ACC advised the OIG that then Securities and Exchange Commission ("SEC or Commission") (b)(7)(C) in the Office of Real Property and Facilities Support, (b)(7)(C) had been allegedly assisting with the operation of a Ponzi scheme orchestrated by Jerome Carter and his companies, Good Only Done Productions LLC and the Greatest Only Divine Productions LLC.<sup>1</sup>

On May 11, 2009, Carter consented to the ACC's entry of an Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same by Respondents ("ACC Order"). In the ACC Order, Carter admitted to violating the Arizona securities laws. According to (b)(7)(C) one of the investors who had cooperated with the ACC's investigation of Carter provided the ACC with e-mails that (b)(7)(C) sent from her SEC computer regarding sending funds on behalf of Carter. (b)(7)(C) also informed the OIG that several other witnesses in the ACC investigation had identified (b)(7)(C) as the person who handled money for Carter and his companies.

The ACC did not take any action against (b)(7)(C) and she is not mentioned in the ACC Order. However, the OIG did find that (b)(7)(C) violated Commission rules and policies on the use of SEC office equipment as well as the Standards of Ethical Conduct for Employees of the Executive Branch by using the SEC's e-mail system, her SEC computer, and other SEC resources to assist Carter operate his companies. Because of the seriousness of (b)(7)(C) actions, the OIG also referred this matter to the SEC's Division of Enforcement for investigation. The Division of Enforcement indicated that it would likely investigate this matter after the OIG issued this report. The OIG also referred the matter to the U.S. Department of Justice, Criminal Division ("DOJ") for

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<sup>1</sup> Good Only Done Productions LLC and the Greatest Only Divine Productions LLC are referred to collectively in this report as "Carter's companies."

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possible criminal prosecution. On June 22, 2009, the DOJ declined prosecution of the matter.

(b)(7)(C) retired from the SEC effective (b)(7)(C), pursuant to the SEC's Voluntary Early Retirement Authority ("VERA") and Voluntary Separation Incentive Payment ("VSIP") authority. As a result, (b)(7)(C) received full retirement benefits and a \$25,000 buyout. Had she not retired shortly after the OIG investigation began, the OIG would have recommended serious disciplinary action including termination against (b)(7)(C). Consequently, the OIG recommends that the SEC pursue revocation and collection of the VERA and VSIP benefits (b)(7)(C) received, including the \$25,000 payment.

### Scope of Investigation

The OIG obtained (b)(7)(C) SEC e-mails from the Office of Information Technology ("OIT") for the period of January 1, 2008 through September 30, 2008. An initial review of those e-mails revealed that (b)(7)(C) had sent or received approximately 2,300 e-mails related to Carter and his companies during that time period. The OIG reviewed those e-mails to determine the nature of (b)(7)(C) involvement with Carter and his companies. On February 17, 2009, we provided the ACC with (b)(7)(C) e-mails that were related to Carter and his companies.

The OIG also requested that OIT examine (b)(7)(C) computer hard drive and logs for any indication that she used SEC resources other than her e-mail account to support the activities of Carter and his companies. Additionally, the OIG contacted the Ethics Office to determine whether (b)(7)(C) had sought ethics advice in connection with the matter under investigation. Finally, on September 22, 2009, the OIG took the sworn testimony of (b)(7)(C) who was a Facilities Branch Chief and (b)(7)(C) supervisor during the relevant period.

### The Commission's Policy on 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 by appropriate federal agency or SEC officials."<sup>2</sup>

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:

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<sup>2</sup> This policy was updated on April 28, 2009, after the conduct described in this report.

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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 others persons in such activities.

In addition, SEC 24-4.3, C. Inappropriate Personal Uses, provided that the "[m]isuse or inappropriate personal use of government office equipment includes the creation, download, viewing, storage, copying, or transmission of materials related to gambling, weapons, terrorists activities, and any other illegal activities or activities otherwise prohibited, etc." 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").

In a memorandum for SEC employees and contractors dated June 30, 2008, subject: Use of Government Resources and Official Time, the SEC Executive Director reminded them that they "may not use government resources to support a private business." The memorandum also explained, "Even if you make no money or are officially a non-profit operation, you still cannot use government time or property." One sample of an inappropriate use of government resources and official time provided in the memorandum was, "Sending or receiving e-mail messages related to a part-time real estate, photography, computer, or other business venture."

### **The Commission's Rules of the Road**

The Commission's "Rules of the Road" are intended to help employees and contractors "use the SEC's computing and network facilities responsibly, safely, and efficiently, thereby maximizing the availability of these resources to all employees. All SEC employees and contractors must follow the Rules of the Road when using SEC Information Technology (IT) resources, except as described in the "Exceptions" section...."<sup>3</sup>

Rule #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

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<sup>3</sup> SECR 24-04.A01, "SEC Rules of the Road."

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pay, sales or administration of business transactions and sale of goods or services).

Rule #1 further warns employees that “[m]issuse of government property may be subject to disciplinary action including suspension or termination.”<sup>4</sup>

Finally, Rule of the Road #2 puts SEC employees on notice that “in order to monitor policy compliance, assesses system performance, or conduct troubleshooting, access logs are reviewed on a periodic basis. Access logs capture the date, time, and address of sites visited by any workstation using the SEC network. Because Internet and Intranet access is for authorized users only, individuals using the system without authority or in excess of their authority may be subject to disciplinary action.”

### Results of the Investigation

Carter presented himself as “an international numerologist and spiritual financial adviser who could predict the future utilizing numerology.” ACC Order at ¶ 11. Carter, through his companies, purportedly provided services as “a life coach” to individuals who paid to join his “VIP coaching program.” *Id.* at ¶ 12. Carter told the members of this program that “they could, through the use of numerology concepts, improve their financial well-being by investing in futures and commodities and/or enhance their spiritual awareness.” *Id.*

Eventually, Carter began soliciting members of his life-coaching program for funds that he claimed would be invested on their behalf in copper futures using numerology principles to time the futures market. *Id.* at ¶¶ 14-20. Carter promised investors returns as high as \$30,000 for a \$2,000 investment. *Id.* at ¶ 23. In fact, none of the investors' funds were ever invested, but instead were deposited in the checking accounts of Carter's companies and used for his own personal benefit. *Id.* at ¶¶ 22, 31-32. Carter did make some payments to investors, but those payments were simply made with the funds he raised from his investors. *Id.* at ¶ 8. Carter's scheme raised approximately \$430,000 from 65 investors. *Id.* at ¶ 7.

The OIG investigation discovered that during the period in question, (b)(7)(C) used her SEC e-mail account to conduct business on behalf of Carter and his companies on virtually a daily basis. From January 1, 2008 to September 30, 2008, (b)(7)(C) sent or received 2,293 e-mails that related to Carter and his companies. A review of those e-mails revealed that (b)(7)(C) was extensively involved in handling the payments to and from Carter's victims, and used her SEC e-mail account to communicate directly with those victims.

<sup>4</sup> (b)(7)(C) completed the SEC's Certification of Receipt of Administrative Regulation on the Use of Electronic Mail on July, 3, 1996. See Exhibit 1.

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In an e-mail dated September 21, 2008, (b)(7)(C) explained her role with respect to Carter's companies as follows:

I do process the checks, but it's based on when Jerome gives the go-ahead. I was not on last week, but contact (b)(7)(C) I'm sure she can fill you in.

(b)(7)(C)

## Exhibit 2.

In another example, (b)(7)(C) received a May 30, 2008 e-mail from one of Carter's associates stating, "Please verify payment on (b)(7)(C) dated 5-25-08. Email address (b)(7)(C) Exhibit 3. In a September 8, 2008 e-mail, (b)(7)(C) discussed sending payments to several investors as follows:

Please verify the following names; I will send out test checks today. I'll also send an email to the investors indicating that an e-check is on the way and that the number on the upper right hand corner of the check linked to their account with GODP, LLC.

Thanks,

(b)(7)(C)

[LIST OF INVESTORS:]

(b)(7)(C)

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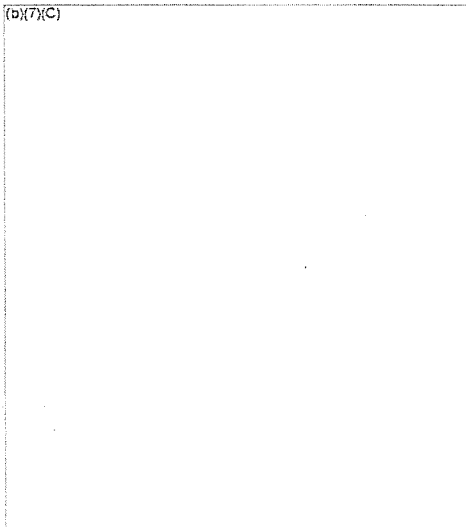


Exhibit 4.

We also found that <sup>(b)(7)(C)</sup> [redacted] who was determined to be Carter's partner in the scheme, e-mailed <sup>(b)(7)(C)</sup> [redacted] a script to use in discussions with the investors regarding payments on September 11, 2008 as follows:

Script that I use.

Hello <sup>(b)(7)(C)</sup> [redacted] My name is <sup>(b)(7)(C)</sup> [redacted] and I am with Mr. Jerome Carter's office. Mr. Carter has informed me that you will be joining the Coaching Program. I see that Mr. Carter has offered you a great program price of 50% discount off the \$1,999.00 price, congratulation's. Next step is to get you setup so you can immediately receive all your benefits. How would you like to make payment, I can make payment on the credit card already on file or you can give me additional information. Let me know what is best for you, (at this point they will inform you whether they can pay all at once or need to make payments) Then we try and get \$200.00 or preferably \$300.00 down and the rest in payments. After that is established then I Congratulate them and Welcome them aboard. If they need further assistance give me a call and I give them a contact number. They will soon learn, especially since you are always on the conference line that you are head of the VIP's. You can just adjust the general conversation to your own style, you will be better at it than I am.

<sup>(b)(7)(C)</sup> [redacted] replied "This really helps; thanks." Exhibit 5. Notably, <sup>(b)(7)(C)</sup> [redacted] used her SEC signature block that identified herself by her SEC title and included her SEC phone number when dealing with investors on Carter's behalf. *See, e.g.,* Exhibit 6.

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In addition to arranging payments for Carter, (b)(7)(C) used her SEC e-mail account to schedule meetings between Carter and potential investors (*see, e.g.*, Exhibit 7) and provide investors with contracts for investments in Carter's companies (*see, e.g.*, Exhibit 8). The search of (b)(7)(C) computer hard drive revealed contractual agreements used to enlist investors for Carter's companies. *See* Exhibit 9. A review of (b)(7)(C) computer access log also revealed that she frequently visited Carter's companies' websites. Exhibit 10.

(b)(7)(C) also provided information and advice to Carter based upon her experience in working at the SEC and resources available to her as a result of her SEC employment. For example, in an e-mail dated June 5, 2008, (b)(7)(C) discussed conducting investment research for Carter as follows:

There are so many different ways to go when investing. I listed a few areas and looking up company info. Once I have it down, I'll shoot it to you/ (b)(7)(C) The Public Reference Desk is closing now, so they are kicking me out. Love you.

Exhibit 11. (b)(7)(C) also sent Carter a March 10, 2008 e-mail with the subject line "Forming a Hedge Fund!" Exhibit 12. In that e-mail, (b)(7)(C) stated, "I'm going to get you information the SEC provides to investors." *Id.*

As discussed above, the OIG found evidence indicating that (b)(7)(C) spent a substantial amount of time during her work-day supporting Carter's activities. However, (b)(7)(C) supervisors never took any action to address her inappropriate actions or raised any concerns about her productivity level. (b)(7)(C) her immediate supervisor, testified that she had not known about Carter's devotion of time and resources to support Carter's activities. Testimony Transcript of (b)(7)(C) Transcript") at 27. (b)(7)(C) supervisors and co-workers were aware that she had some type of relationship with Carter. *Id.* at 16. (b)(7)(C) had introduced Carter as her boyfriend on two occasions when Carter visited (b)(7)(C) at the SEC. *Id.*

In a May 15, 2008 e-mail from (b)(7)(C) to (b)(7)(C) (b)(7)(C) suggested that her supervisors attend one of Carter's seminars as follows:

Jerome does a show every Thursday at Axis/Radius, 7340 E. Indian Plaza, Scottsdale, if you and (b)(7)(C) are looking for something to do. And, you don't have to drink. "I've Got Your Number" - Happy Hour Show 5-7pm; Late Show 9-10:30pm.

5 (b)(7)(C) reference to (b)(7)(C) was a reference to (b)(7)(C) who was (b)(7)(C) in the Office of Administrative Services at that time. (b)(7)(C) is no longer employed at the SEC. (b)(7)(C) Transcript at 22.

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Exhibit 13. (b)(7)(C) testified that she and (b)(7)(C) did not attend Carter's seminar. (b)(7)(C) Tr. at 21-22. (b)(7)(C) emphasized that she had no idea that Carter was engaged in any unlawful activity or that (b)(7)(C) was working to support his activity. *Id.* at 27-29, 31.

(b)(7)(C) retired effective (b)(7)(C), as part of an offer from the SEC pursuant to its Voluntary Early Retirement Authority ("VERA") and Voluntary Separation Incentive Payment ("VSIP") authority. Exhibit 14. Pursuant to VERA, the SEC offered (b)(7)(C) an "earlyout" that allowed her to receive full retirement benefits, including health insurance, that she was otherwise not eligible for. *Id.* at 1. Pursuant to VSIP, (b)(7)(C) received a \$25,000 "buyout." *Id.* at 2. (b)(7)(C) applications for an "earlyout" and a "buyout" were received and approved on January 5, 2009. Exhibit 15.

A federal employee is not eligible for an "earlyout" if they have "received a final removal decision based upon misconduct, or unacceptable performance." 5 U.S.C. §§ 8336(d)(2)(E) and 8414(b)(1)(B)(v). Similarly, a federal employee is ineligible for a "buyout" if they are "in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance." 5 U.S.C. § 3521(2)(B)(iii).

### Conclusion

The evidence established that (b)(7)(C) used the SEC's e-mail system, her SEC computer, and other SEC resources to assist Carter operate his companies and raise money from investors. Accordingly, the OIG investigation determined that (b)(7)(C) violated Commission rules and policies on the use of SEC office equipment as well as the Standards of Ethical Conduct for Employees of the Executive Branch. Her actions could have discredited the SEC and, had she not retired shortly after the OIG investigation began, would have led to a recommendation for serious disciplinary action including termination. Consequently, the OIG recommends that the SEC pursue revocation of (b)(7)(C) \$25,000 in "earlyout" and "buyout" benefits and collection of the funds.

Accordingly, this matter is being referred to the SEC's Executive Director, Associate Executive Director for Human Resources, Associate Executive Director for Administrative Services, Associate Executive Director for Financial Management, Associate General Counsel for Litigation and Administrative Practice, and Ethics Counsel for informational purposes and to pursue collection of the benefits (b)(7)(C) received.<sup>6</sup>

<sup>6</sup> The OIG also discovered e-mails regarding Carter's companies sent to (b)(7)(C) by a General Services Administration ("GSA") employee from that employee's GSA government e-mail account. Consequently, the OIG also referred that GSA employee to the GSA Office of the Inspector General. The GSA Office of Inspector General is conducting an investigation of that employee.



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(b)(7)(C)

Submitted:

Date: 9/30/09

Concur:

Date: 9/30/09

Approved:

  
\_\_\_\_\_  
H. David Kotz

Date: 9.30.09