

**United States Senate**  
COMMITTEE ON FINANCE  
WASHINGTON, DC 20510-6200

April 27, 2010

**Via Electronic Transmission**

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

Dear Chairman Schapiro:

I am writing today to inquire about the steps that the Securities and Exchange Commission (SEC) has taken to discipline employees who engaged in inappropriate use of SEC computer systems to view pornography. I was pleased to learn that you sent an agency-wide email on Friday underscoring the importance of adhering to the SEC's policy on the use of government time and resources.

Specifically, you wrote: "To remove any possible ambiguity be advised that any person who violates our clear rules against this inappropriate use of the internet faces termination of employment." Your indication that the SEC will punish future violations with termination sends exactly the right message, and I applaud you for moving swiftly to communicate that message in no uncertain terms. As you noted, the harm to the agency's reputation from such behavior certainly undermines its ability to credibly enforce the securities laws, and thus, termination is the appropriate remedy.

According to a reply from the Inspector General to my inquiry, however, the SEC did not actually terminate any of the SEC employees who engaged in this sort of misconduct. Although the SEC allowed eight employees to resign prior to termination and removed five contractors, it dispensed much lesser discipline to 17 of the 33 employees who engaged in this behavior. Six were suspended, five received formal reprimands, and six received informal counseling or warning letters. These statistics raise questions about why different employees were treated differently and why none of these 17 employees was terminated.

Moreover, my office received a copy of a communication to you purporting to be from an SEC employee who fears retaliation and is seeking whistleblower protections for the disclosure. The anonymous whistleblower complaint is attached. It alleges that one of these 17 employees was a supervisor who received no more than a slap-on-the-wrist. According to the complaint, the lack of discipline resulted in abnormally low morale and excessive staff turnover in that office.

The complaint also claims other types of misconduct more directly connected to the SEC's mission. Specifically, it alleges that this same supervisor "bullied" examiners in an attempt to prevent them from pursuing "certain red-flags" in an examination that uncovered a "massive fraud." The allegation asserts that the supervisor's "apparent motive for doing this seemed to be that he either performed, or was materially involved in directing, the most recent prior exam at the firm" — which had failed to uncover the fraud. Thus, this complaint appears to allege a direct tie between a regulatory failure at the SEC and a supervisor who the SEC did not adequately discipline for viewing pornography on government computers and on government time.

Accordingly, in order to better understand these issues, please respond to the following:

- 1) Please describe the pay rate and level of supervisory responsibility for each of the eight employees who were allowed to resign prior to termination.
- 2) Please describe the pay rate and level of supervisory responsibility for each of the 17 employees who received lesser forms of discipline.
- 3) Please explain why six of the employees received only informal counseling or warning letters.
- 4) Your email to staff mentioned that you had streamlined disciplinary processes since many of these cases were adjudicated. Please describe in more detail the ways in which the disciplinary process has changed.
- 5) What discipline did the supervisor mentioned in the whistleblower complaint face for his misuse of SEC computer systems?
- 6) If the SEC did not seek to terminate him, then please explain what mitigating factors differentiated his case from the eight employees who were allowed to resign prior to termination and why the SEC did not seek to terminate his employment?
- 7) What are the basic facts and circumstances surrounding the alleged fraud that the whistleblower complaint claims the supervisor failed to uncover?
- 8) What is the status of the inquiry referred to in the complaint? Did the SEC ever obtain a settlement or bring an action in the case? If so, what are the estimated size of the alleged fraud and the size of any recovery? If there was no settlement or action brought in the matter, please explain why not.

Thank you for your prompt attention to these important issues. Please provide your response in electronic format to [Brian\\_Downey@finance-rep.senate.gov](mailto:Brian_Downey@finance-rep.senate.gov) by May 5, 2010.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is fluid and cursive, with the first name "Chuck" and last name "Grassley" clearly legible.

Charles E. Grassley  
Ranking Member

cc: The Honorable H. David Kotz  
Inspector General  
U.S. Securities and Exchange Commission

Attachment

Mary L. Shapiro, Chairman  
U.S. SEC  
100 F Street NE  
Washington, D.C. 20549

March 6, 2010

RE: LARO's Porn-Surfing Manager

Dear Chairman Shapiro:

This is being submitted based upon the ethics principles applicable to employees of the federal government.<sup>1</sup> The disclosures are about **Zzzzz Zzz**, an assistant regional director in the IA exam program in the Los Angeles Regional Office (LARO). **Zzz** appears to have been the LARO SK-17 manager that made some 1,800 attempts to access pornographic web sites from his SEC computer who was investigated by the OIG (excerpt enclosed).<sup>2</sup>

The disclosures involve possible serious violations of standards of ethical conduct, merit system principals and prohibited personnel practices, as well as misstatements, omissions or lack of candor with OIG investigators. **Zzz's** continuing presence at the LARO, unpunished (after receiving a mere reprimand) and arrogant in his lack of contrition, creates an inherently hostile work environment for the entire LARO examination staff. Staff morale has never been so low, and turnover in the IA exam staff, which has been a growing problem going all the way back to when **Zzz** was made a branch chief, is through the roof. It all underscores what is arguably an egregious failure to supervise by the LARO's regional director, Rrr Rrrrr.

Because it is believed that these instances involve possible violations of the laws, rules or regulations, (or at least mismanagement, waste or abuse of authority), claim is hereby made of coverage under the Whistleblowers Protection Act and/or any other applicable protections (e.g., No FEAR Act, etc.).

#### **Standards of Ethical Conduct**

**Zzz** allegedly instructed (and even bullied) examiners to not pursue certain red flags in an examination where the LARO exam staff uncovered a massive fraud. **Zzz's** apparent motive for doing this seemed to be that he either performed, or was materially involved in directing, the most recent prior exam at the firm. The prior exam did not uncover this giant fraud, although it may have existed at the time. The exam was at WWW Wwwwwww Wwwwwww/Wwwwwwwwww Wwwwwww Wwwwwwwwww. (The examiners were Ttt Tttttttt and Aaaaaa Aaaa.)

**Zzz** should have recused himself from supervising this exam. He should never have tried to thwart the efforts of the examiners who were under his direction and control. This is outrageous on its face, and only surpassed by **Zzz** thinking he could get away with this. But his bullying has employees too afraid to tell anyone for fear of retaliation.

#### **Possible Violations of Merit System Principles, Prohibited Personnel Practices, Hostile Work Environment**

**Zzz** arguably has issues with females judging from some of the websites he was visiting: ladyboyx.com, ladyboyjuice.com, ladyboys-xxx.com, etc. (See enclosure for more sites). The way these apparent issues have manifested themselves with respect to recent personnel actions by **Zzz** points to possible violations of merit system principles and/or prohibited personnel practices and a hostile work environment for LARO employees.

After **Zzz** got a free pass from LARO management for porn surfing, he must have felt bulletproof. In separate incidents, he put two female examiners on notice that they were going to be fired. (Nnnnnn Nnnnnnnn and Mmmm Mmm – they both resigned instead.) This was a stunning development to people who had worked with them because both were viewed as doing a fine job. Mmmm had five years experience at FINRA and was well qualified to perform SEC exams. Nnnnnn had served as a summer intern in the BD exam program at the LARO and had received excellent reviews from the exam staff. Both were intelligent and conscientious and were more than capable of doing the work. The rumor was that **Zzz** asked for feedback from more senior examiners and twisted those favorable reports into "unacceptable performance" ratings to suit his goal. While it is true that both women were in their one year probation periods, it was reasonable for them to assume that they would receive fair and equitable treatment in all

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<sup>1</sup> Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

<sup>2</sup> The review of the FOIA "pdf" document that was available via a link in a March 2, 2010 article at Dealbreaker.com provided enough identifiers (e.g., time period of promotion, location of office and its furniture layout) to indicate that subject of the OIG's porn-surfing investigation was **Zzzzz Zzz**.

aspects of their personnel management and be protected against arbitrary action or discrimination on the basis of sex. Lllll Llllllllll and Aaaaaa Aaaa may be able to provide more information about this matter.

#### **Possible Misstatements, Omissions or Lack of Candor in Interview with OIG Investigator**

In his interview with the OIG investigator, though heavily redacted in the FOIA copy, Zzz appears to have made possible misstatements, omissions or lacked candor in at least two instances. Though these may not seem to be particularly serious on their face, the seriousness is enhanced when taken in context of all of this other information.

During his interview, Zzz was asked (at Testimony Transcript, page 30 at 19-21) if anyone else at the SEC was aware that he had been accessing porn sites from his SEC computer. The rumor around the office is that a few years ago a former colleague (and now a California lawyer) named Hhhhhhh Hhhhhh (BFF with current employee Yyyyy Yyyyyyyy) once caught him looking at porn in his office and he supposedly laughed it off. Zzz's purported viewing of porn on the job apparently was widely known among the IA examiners. Current employee Jjjj Jjjjjjjj ( ) apparently had knowledge of Zzz's activities.

Zzz was also asked (at Testimony Transcript, page 35 at 1-9), if he had been the subject of disciplinary action or a PIP. When he asked to go off the record, hopefully he explained to the investigator that Sssssss Sss had him being mentored by Yyyyy because he had such poor people skills, otherwise he withheld important information. The rumor was that Yyyyy finally got disgusted with him because he would not improve and she quit doing it. This was widely known among the IA examiners.

#### **Failure to Supervise**

From a supervision standpoint, this porn-surfing matter has been handled very badly and has resulted in massive embarrassment to the agency. (The ongoing battering the SEC has been getting in the press is particularly difficult to bear, and most of us don't want to admit to people where we work. Do a Google search for "SEC porn" and see how many hits you get. It's even worse than when the Madoff story broke. Last night, even the Rachel Maddow show took a shot at us, which was the straw that triggered this letter.) People "out there" think that the Madoff fraud was missed because SEC examiners were too busy looking at internet porn. Case law exists that would have supported Zzz's dismissal consistent with the agency's right to take adverse action for such cause as will promote the efficiency of the service. The fact that he was merely reprimanded exacerbates that perception. Examiner morale at the LARO is at an all-time low. Turnover in the IA program is abnormally high and ongoing. As the LARO's regional director, Rrr Rrrrr must accept "command responsibility" for the utter mess in the press and in the mind's eye of the public that has followed.

This isn't the first time that the LARO had to deal with a porn-surfing manager while Rrrrr was at the helm. In an earlier incident, Rrr Rrrrr was the acting regional director when an Enforcement manager appears to have been downloading child porn onto his SEC computer. (See the second half of footnote 93 from the Finance Committee's 2007 report on Pequot Capital, excerpt enclosed.) The rumor around the office was that he had an icon on his computer's desktop that double-clicked to a picture of two very young naked girls on a teeter-totter. It was more than a little troubling that the manager continued to supervise employees for several months before he was permitted to resign (rather than being dismissed). Even more troubling was that the manager was believed to be one of a number of people helping-out in a "Reading by Nine" program at a local elementary school. (Possibly 3<sup>rd</sup> Street Elementary School, a short distance from the LARO. It is doubtful that the school's administrators were ever contacted about the matter to ensure the safety of the children.) Rrrrr's handling of these and other matters creates the appearance that she, and by extension all of the SEC's top management, has the same questionable values that were exhibited by leaders of the church when they merely shuffled-around pedophile priests. This agency can ill afford to be perceived in that light.

When one considers the matters discussed in this letter, it's no secret why employees don't come forward to report these things. The climate here in the Los Angeles Regional Office revolves around the notion that being a manager is a sinecure. Employees who stand-up for the right thing know they will be retaliated against. This office pays lip service to the Whistleblower's Protection Act and other such protections like the No FEAR Act.<sup>3</sup> At a minimum, LARO managers have and will hassle an employee so much that he/she finally quits. Given this climate, I am not providing my name or other contact information.

Concerned Wary Whistleblower

P.S. Sorry about the copies to Congress, etc., but the agency clearly needs oversight in this matter.

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<sup>3</sup> Note that the No FEAR Act was adopted 2002, but the SEC didn't provide training about it until 2007.