

# **REPORT OF INVESTIGATION**

**CASE# OIG-601**

**March 5, 2014**



**Office of Inspector General**

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**U.S. Securities and Exchange Commission**

## REPORT OF INVESTIGATION

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

Case No. OIG-601

#### Unauthorized Disclosure of Nonpublic Information From Executive Session Commission Meeting

#### Introduction and Summary of Results of the Investigation

The Securities and Exchange Commission (SEC or agency) Office of Inspector General (OIG) learned from Chair Mary Jo White's Deputy Chief of Staff, Erica Williams, that Commissioner Michael Piowar had raised concerns to Chair White about the unauthorized disclosure of nonpublic information from a Commission meeting. Specifically, Commissioner Piowar expressed concerns that the results of the Commission's deliberations and voting during a September 12, 2013, Executive Session Commission Meeting about J.P. Morgan had been disclosed, without authorization, to Sarah Lynch, a reporter from Reuters. OIG investigators met with [REDACTED] on September 18, 2013. [REDACTED] told the OIG that [REDACTED] had a telephone conversation with Lynch on September 17, 2013, during which Lynch recited details about the September 12, 2013, Executive Session that were nonpublic. See September 19, 2013, Memorandum of Activity (MOA), Receipt of Complaint. Subsequently, the OIG opened an investigation into the unauthorized disclosure of nonpublic information.

The OIG was unable to conclude which specific individual or individuals had improperly disclosed information from the September 12, 2013, Commission Meeting. However, the OIG determined that a Commissioner and two SEC staff members had separately spoken with Lynch and one SEC staff member had spoken with Reuters reporter Emily Flitter around the time that the information was improperly disclosed. The OIG also found that one of those employees may have confirmed certain information.

The OIG also learned during its investigation that an SEC Commissioner transmitted nonpublic information over nonsecure email. Further, one employee may have improperly conducted Commission business using his personal nonsecure email.

#### Scope of the Investigation

In conducting this investigation, the OIG requested SEC emails and BlackBerry records and interviewed the SEC Commissioners and numerous staff members (collectively referred to as SEC employees) who attended or had information relevant to the September 12, 2013, Executive Session. In all, the OIG reviewed emails and BlackBerry records for 39 SEC employees and interviewed 53 SEC employees. Those interviewed included the SEC Chair and

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the Commissioners; five employees of the Office of the Chair; 18 employees of the Offices of the Commissioners; three employees of the Division of Enforcement (Enforcement); 14 employees of the New York Regional Office (NYRO); five employees of the Office of the Secretary (OS); and three employees of the Office of the General Counsel (OGC).

The OIG requested and obtained the attendance roster for the September 12, 2013, Executive Session, which OS had created and maintained. The OIG learned, however, that this roster did not include (b)(6),(b)(7)(C) who may have attended the meeting. Further, according to OS staff, it is possible that others were in the Closed Commission Meeting room during the Executive Session deliberations and voting. Ultimately, because of the process by which attendance is tracked and verified, the OIG was unable to obtain a complete listing of those in attendance at the September 12, 2013, Executive Session.

To determine whether any SEC employees had contacted Lynch by telephone, OIG investigators, during the interviews, manually reviewed each of the interviewed SEC employees' office telephone records and confirmed whether the employees had deleted any records from their telephones. In addition, the OIG asked all SEC employees interviewed whether they had any communications, such as phone calls, texts, emails, or in-person conversations, about the Executive Session held on September 12, 2013, with anyone inside or outside of the SEC, including any members of the media, generally, and Reuters, specifically. The OIG asked all SEC employees interviewed whether they shared any nonpublic information about the Executive Session or were aware of anyone who may have shared nonpublic information.

The OIG obtained written minutes and an audio recording of the September 12, 2013, Executive Session. *See* October 23, 2013, MOA, Receipt of Executive Session Minutes and Audio Recording. The OIG requested an interview with Lynch, but Lynch declined. *See* November 8, 2013, MOA, Phone Call with Sarah Lynch. The OIG also requested interviews with Reuters reporters Emily Flitter and Michael Goldstein, who, with contributions from Lynch, wrote a September 17, 2013, article that contained nonpublic information from the Executive Session; Flitter and Goldstein each declined. *See* January 3, 2014, and January 6, 2014, MOAs, Telephone Calls to Emily Flitter and Michael Goldstein. In addition, the OIG requested an interview with Aruna Viswanatha, who, with Lynch, wrote a September 26, 2013, article that contained nonpublic information from the Executive Session; Viswanatha declined. *See* February 25, 2014, MOA, Telephone Call to Aruna Viswanatha. The OIG also obtained records of Lynch's, Flitter's, Goldstein's, and Viswanatha's access to the SEC headquarters building in September and October 2013. *See* December 5, 2013, MOA, Receipt of Building Access Records for Sarah Lynch; January 23, 2014, MOA, Request for Building Access Records for Emily Flitter and Michael Goldstein; March 5, 2014, MOA Receipt of Building Access Records for Aruna Viswanatha.

Finally, after discovering, through our review of emails, that a Commissioner and an employee sent information outside the SEC by nonsecure email, the OIG obtained copies of

training slides for the Office of Information Technology's Cybersecurity and Privacy Awareness Training and records of completion of this training. See January 14, 2014, MOA, Receipt of Cybersecurity Training Materials.

### **Relevant Policies, Rules, and Regulations**

#### **Standards of Ethical Conduct for Employees of the Executive Branch, Use of Nonpublic Information**

The U.S. Office of Government Ethics (OGE) Standards of Ethical Conduct for Employees of the Executive Branch state, in relevant part: "An employee shall not . . . allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure." 5 C.F.R. § 2635.703(a). OGE defines nonpublic information as follows:

[N]onpublic information is information that the employee gains by reason of Federal employment and that he knows or reasonably should know has not been made available to the general public. It includes information that he knows or reasonably should know:

- (1) Is routinely exempt from disclosure under 5 U.S.C. 552 or otherwise protected from disclosure by statute, Executive order or regulation;
- (2) Is designated as confidential by an agency; or
- (3) Has not actually been disseminated to the general public and is not authorized to be made available to the public on request.

5 C.F.R. § 2635.703(b).

#### **SEC's Regulation Concerning Conduct of Members and Employees and Former Members and Employees**

The SEC's conduct regulation provides the following:

A member or employee of the Commission shall not . . . [d]ivulge to any unauthorized person or release in advance of authorization for its release any nonpublic Commission document, or any information contained in any such document or any confidential information: (A) In contravention of the rules and regulations of

the Commission promulgated under 5 U.S.C. 552, 552a and 552b; or (B) in circumstances where the Commission has determined to accord such information confidential treatment.

17 C.F.R. § 200.735-3(b)(2)(i).

### **Closed Commission Meetings**

The Government in the Sunshine Act (5 U.S.C. § 552b) requires that Commission meetings be open to the public unless the subject of the meeting falls under a statutory exemption. The SEC's regulation on closed meetings provides, in relevant part, that a Commission meeting will be closed to the public if the meeting is likely to: disclose matters specifically exempted from disclosure by statute; involve consideration of whether to institute, continue, or conclude administrative proceedings or any formal or informal investigation alleging any violation of any provision of the Federal securities laws or the rules and regulations thereunder; disclose investigatory records or information which could interfere with enforcement activities or disclose investigative techniques and procedures; or specifically concern the Commission's consideration of or actual participation in a civil action or proceeding.

17 C.F.R. § 200.402(a)(3), (5), (7), and (10).

### **Press Relations Policies and Procedures**

SEC Administrative Regulation (SECR) 18-2, Press Relations Policies and Procedures (July 31, 2005), provides as follows:

It is a violation of the SEC's conduct regulation, and may be a violation of other SEC rules and of provisions of the securities laws, for any employee to reveal nonpublic information unless specifically authorized to do so by formal SEC action, either directly or through delegated authority. This prohibition includes, but is not limited to, any information regarding an SEC law enforcement investigation, whether formal or informal; and any information regarding internal SEC documents, such as staff memoranda to the SEC. . . . [S]taff members should deem official releases, litigation releases and any other announcements of SEC actions to be nonpublic until release by OPA [Office of Public Affairs].

SECR 18-2, Section B.5 (Nonpublic Information).

SEC Administrative Regulation 18-2 also states:

[S]taff members should be cautious about expressing statements of personal opinions. Such statements may be erroneously perceived as official statements of the SEC, as reflecting SEC policy, or as official interpretations of SEC policy.

SECR 18-2, Section B.8 (Expressions of Personal Opinion).

SEC Administrative Regulation 18-2 further states:

Official announcements of the SEC . . . are released to the press and the public by OPA. Staff members should keep in mind that such announcements, including all official releases of the SEC, are not public until released by OPA.

SECR 18-2, Section B.10 (Announcement of SEC Actions).

### **Disclosure of Confidential Information**

An officer or employee of the United States or of any department or agency thereof is prohibited from publishing, divulging, disclosing, or making known in any matter not authorized by law any information the employee gained in the course of his employment or official duties concerning or relating to trade secrets, processes, operations, or style of work.

18 U.S.C. § 1905.

### **Records Management by Federal Agencies**

The head of each Federal agency shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities. 44 U.S.C. § 3101. Records are defined as:

[A]ll books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures,

operations, or other activities of the Government or because of the informational value of data in them.

44 U.S.C. § 3301.

### **Office of Information Technology Rules of the Road Concerning Use of Email**

All users of SEC computing and network facilities, including Federal employees and contractors, must follow the SEC Rules of the Road, issued March 1, 2004, and updated on June 23, 2010, when using any SEC information technology source, including email. *See* Rules of the Road, available at [http://wapps.sec.gov/oitintranet/oit\\_learn/rules.html](http://wapps.sec.gov/oitintranet/oit_learn/rules.html). The SEC Rules of the Road require SEC users to protect SEC networks and automated system assets and prohibit them from processing nonpublic information on non-SEC workstations unless such workstations are equipped with SEC-approved protection software. *Id.*

Rule No. 3 of the Rules of the Road, “Use E-mail Responsibly and Sensibly,” specifically prohibits users from sending material that is sensitive or that contains personally identifiable information to their personal email accounts. *Id.* Similarly, Rule No. 7, “Don’t Transmit Non-public or Sensitive Information over Non-secure Systems” prohibits the transmission of nonpublic information or sensitive data through the Internet or via email, unless it is encrypted using the SEC’s approved encryption software. *Id.*

### **Results of the Investigation**

#### **I. Results of the Investigation of Unauthorized Disclosure of Nonpublic Information**

##### **A. The Commission Held An Executive Session Commission Meeting on September 12, 2013**

The Commission held a “Closed” Commission Meeting on September 12, 2013. In addition to several regular calendar items, there were three Executive Session calendar items scheduled. *See* the agenda, available at [http://intranet.sec.gov/calendars/commission\\_calendar/september\\_2013/cal09122013.pdf](http://intranet.sec.gov/calendars/commission_calendar/september_2013/cal09122013.pdf). The Executive Sessions began at 2:59 p.m. and concluded at 3:15 p.m. *See* October 23, 2013, MOA, Receipt of Executive Session Minutes and Audio Recording. During one of those Executive Sessions, the Commission considered the NYRO’s memorandum about J.P. Morgan Proprietary Trading Losses (NY-8792). *Id.*

Chair White and Commissioner Gallagher recused themselves from the September 12, 2013, Executive Session about the J.P. Morgan matter; Commissioner Aguilar, as the most senior Commissioner, chaired that Executive Session. *See* October 23, 2013, MOA, Receipt of Executive Session Minutes and Audio Recording. The Commission voted 2-1 to approve the

staff's recommendations on this matter; Commissioners Stein and Aguilar approved the matter, and Commissioner Piwowar disapproved the matter. *Id.*

The Commission issued its public order in the matter on September 19, 2013. *See* Release No. 34-70458, available at <http://www.sec.gov/litigation/admin/2013/34-70458.pdf>. Information about the vote, including which Commissioners voted for and against the action and the recusal of Commissioner Gallagher and Chair White, subsequently became available to the public through the SEC's Public Reference Room after the release of the public order on September 19, 2013. *See* January 29, 2014, MOA, Discussion with Elizabeth Murphy. Specifically, according to the Secretary of the Commission, Elizabeth Murphy, OS received authorization from SEC staff to release the J.P. Morgan order as of 9 a.m. on September 19, 2013. *Id.* According to Murphy, per OS' informal policy, the order, including the vote information, would have been delivered to the Public Reference Room by October 10 or October 15, 2013, but would have been available to the public, upon request, as of September 19, 2013. *Id.*

#### **B. The Closed Commission Meeting Executive Session Policy**

On July 26, 2013, (b)(6),(b)(7)(C) emailed a document entitled "Closed Commission Meeting Executive Session Policy," dated July 25, 2013, to all Commissioners, Commissioners' Counsel, and Division and Office heads. *See* September 19, 2013, MOA, Receipt of Complaint. This policy stated that Executive Session attendance was limited to certain staff members and that exceptions to the policy would be made at the discretion of the Office of the Chair. *Id.* According to Chair White, a leak from a previous Executive Session led to this "tightening" of the policy for attendance at Executive Session Commission meetings. *See* October 24, 2013, MOA, Interview of Chair White. Chair White stated that she did not put the Closed Commission Executive Session Policy up to the Commission for a vote because it was within her authority to institute the policy and the policy is binding. *Id.*

The policy placed limits on which staff are permitted to attend Executive Sessions and limited attendance by Enforcement staff to the members of the Enforcement team who are making the presentation to the Commission. *See* September 19, 2013, MOA, Receipt of Complaint. The policy stated that "[e]ach participating Commissioner could have one counsel or other advisor present." *Id.* However, the policy was amended per an August 8, 2013, email from (b)(6),(b)(7)(C) which stated that the Chair was "amenable to all Commissioners' counsel being present for all Executive Session matters, subject to possible future changes . . ." *Id.*

The policy further stated that "[i]t is expected that normally there will be no one sitting in the audience of the Closed Commission Meeting room during an Executive Session." *Id.* The Executive Session policy also stated that in certain matters designated by the Chair, an "alternate voting procedure" would be employed. *Id.* Specifically, this alternate procedure stated, "Before the vote is taken, the room will be cleared except for the Commissioners, the Enforcement co-

directors for enforcement matters, the General Counsel, and one representative from the Office of the Secretary.” *Id.*

According to staff from OS, the practice is that, prior to the Executive Session meetings, the Chair reads the following disclaimer: “Only staff authorized by the Commission’s Executive Session attendance policy should be in the room or on video.” *See* September 30, 2013, MOA, Contact with the Office of the Secretary.

The OIG learned during interviews with staff from OS that, although OS staff are supposed to clear the room after each Executive Session matter and ensure attendance for each matter is limited to those on the approved roster, at times the Commissioners may begin announcing and/or deliberating the next matter before the room has been cleared from the previous matter. *See* October 29, 2013, MOA, (b)(6),(b)(7)(C) OS staff further informed the OIG that it is possible for people standing outside the Closed Commission Meeting room to hear the discussions and votes through the closed doors. *Id.*

### **C. The Closed Commission Meeting Room Had Not Been Cleared Prior to the Commissioners’ Vote on September 12, 2013**

At the start of the September 12, 2013, Executive Session, Commissioner Aguilar, as acting Chair, announced that the Commission would vote on the three Executive Session matters at the conclusion of the Executive Session calendar. *See* October 23, 2013, MOA, Receipt of Executive Session Minutes and Audio Recording. The OIG’s investigation revealed that the Closed Commission Meeting room was not cleared before the voting. *See* September 19, 2013, MOA, Receipt of Complaint. In their interviews with the OIG, members of Chair White’s staff indicated that they approached Commissioner Aguilar about clearing the room before the Commissioners voted on the J.P. Morgan matter, but Commissioner Aguilar allowed everyone in the Executive Session to stay for the vote. *See* September 25, 2013, MOA, Interview of (b)(6),(b)(7)(C) (b)(6), September 26, 2013, MOA, Interview of (b)(6),(b)(7)(C).

Commissioner Aguilar told the OIG that he was uncertain who was supposed to leave for the vote and sought guidance from OS. *See* October 9, 2013, MOA, Interview of Commissioner Aguilar. He stated that (b)(6),(b)(7)(C) advised him that certain people should leave the room, but staff from OS stated that it was okay for everyone to stay and he relied on the advice that the staff from OS had provided. *Id.* Commissioner Aguilar further stated that he asked (b)(6),(b)(7)(C) who could stay for the vote and (b)(6),(b)(7)(C) had “seen it both ways.” *Id.* (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) confirmed that this conversation took place. *See* September 26, 2013, MOA, Interview of (b)(6),(b)(7)(C) October 23, 2013, MOA, Interview of (b)(6),(b)(7)(C).

During an October 10, 2013, Executive Session, Commission Aguilar stated that, because the Commission did not vote on the Executive Session Attendance Policy, he did not view it as a

Commission policy and therefore did not believe that he or his staff was bound by the Executive Session Policy. *See* October 23, 2013, MOA, Interview (b)(6),(b)(7)(C).

#### **D. Nonpublic Information From the Executive Session was Improperly Disclosed**

On September 17, 2013, at 3:50 p.m., (b)(6),(b)(7)(C) returned a 2:36 p.m. telephone call from Lynch. *See* September 19, 2013, MOA, Receipt of Complaint; September 24, 2013, MOA, (b)(6),(b)(7)(C) that, during this telephone call, Lynch provided information from the September 12, 2013, Executive Session, including information that, according to (b)(6),(b)(7)(C) was “precisely” what Commissioner Piwowar had stated during the Executive Session. *See* September 19, 2013, MOA, Receipt of Complaint (b)(6),(b)(7)(C) stated that there was obviously a leak from the Executive Session because the order announcing the settlement with J.P. Morgan had not yet been issued. *Id.*

On September 17, 2013, Reuters published an article written by reporters Flitter and Goldstein, with additional reporting by Lynch, entitled, “JPM’s Whale troubles may not end with civil settlement.” *See* September 19, 2013, MOA, Receipt of Complaint. This article stated that “a source told Reuters the [SEC] approved its portion of the civil settlement in a split vote.” *Id.* The article further stated:

In a split vote late last week, the SEC approved its portion of the settlement with J.P. Morgan, according to people familiar with the matter. Mary Jo White, the SEC chairman, and Daniel Gallagher, an SEC commissioner, both recused themselves.

*Id.*

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Pursuant to the settlement approved at the September 12, 2013, Executive Session, the Commission issued an “Order Instituting Cease-and-Desist Proceedings” against J.P. Morgan on September 19, 2013. *See* Release No. 34-70458. Therefore, the Commission’s approval of the settlement was nonpublic information at the time of publication of the Reuters article on September 17, 2013. As stated previously, information about the vote subsequently became available to the public through the SEC’s Public Reference Room after the SEC issued the Order on September 19, 2013. *See* December 30, 2013, MOA, Receipt of FOIA File from Public Reference Room; January 29, 2014, MOA, Discussion with Elizabeth Murphy.

On September 26, 2013, Reuters published an article by Lynch and Viswanatha entitled, “SEC chair says big fines key to attacking wrongdoing.” *See* September 27, 2013, MOA, Email from (b)(6),(b)(7)(C) That article stated the following:

In a non-public meeting the week before the settlement was announced, the SEC’s newest commissioner, Michael Piwowar, a

Republican, voiced concerns that the SEC was fining the company, as opposed to considering ways to levy penalties against top-level executives at the bank, according to people familiar with the situation. The commissioners ultimately approved the settlement 2-1, with Piwowar voting against it, the sources said. Democratic Commissioners Kara Stein and Luis Aguilar, who has long pushed for tougher penalties against companies, voted in favor of it.

*Id.*

Commissioner Piwowar's comments made during the September 12, 2013, Executive Session were not included in the Order issued on September 19, 2013, and have not otherwise been made available to the public. *See* Release No. 34-70458; January 31, 2014, MOA, Email from Elizabeth Murphy. Therefore, Commissioner Piwowar's comments were nonpublic at the time of publication of the Reuters article on September 26, 2013.

#### **E. The OIG Did Not Identify the Source of the Unauthorized Disclosure of Nonpublic Information**

The OIG interviewed the SEC Chair, SEC Commissioners, and 48 SEC staff members about the unauthorized disclosure outside the agency of nonpublic information concerning the deliberations and vote from the September 12, 2013, Executive Session. The OIG also obtained and reviewed emails and BlackBerry records of 39 SEC employees who attended or had information relevant to the September 12, 2013, Executive Session.

In addition, to determine whether any of the SEC employees interviewed had contacted Lynch by telephone, the OIG manually reviewed each of the SEC employees' office telephone records. The OIG asked all SEC employees interviewed whether they had communicated with anyone, including the media, about the Executive Session held on September 12, 2013. The OIG also asked all SEC employees interviewed whether they shared any nonpublic information about the Executive Session or were aware of anyone who might have shared nonpublic information.

The OIG requested interviews with Reuters reporters Lynch, Flitter, Goldstein, and Viswanatha, but they declined to be interviewed. The OIG also obtained SEC headquarters building access records for Lynch, Flitter, Goldstein, and Viswanatha for September and October 2013. The OIG found that Lynch accessed the building on September 17, 18, 24, and 27, 2013 and on October 1, 8, 9, 17, 23, and 28, 2013. *See* December 5, 2013, MOA, Receipt of Building Access Records for Sarah Lynch. The records obtained showed that Flitter, Goldstein, and Viswanatha did not access the SEC headquarters building during this time frame. *See* January 23, 2014, MOA, Request for Building Access Records for Emily Flitter and Michael Goldstein; March 5, 2014, MOA, Receipt of Building Access Records for Aruna Viswanatha. An analysis of the records showing Lynch's access to the SEC headquarters building indicated that, on

several occasions, including on September 17, 2013, the date the first Reuters article regarding the September 12, 2013, Closed Commission Meeting was published, Lynch entered the headquarters building for an Open Commission Meeting. *See* February 14, 2014, MOA, Analysis of Sarah Lynch Building Access Records. The records do not indicate with whom Lynch may have visited that day and do not indicate how long Lynch was in the building. *Id.*

The OIG's investigative efforts did not identify who improperly disclosed nonpublic information about the Executive Session to Lynch or any other reporter.

## **F. An SEC Commissioner and Three SEC Employees Spoke to Reuters Reporters**

The OIG determined that, in addition to Lynch's call (b)(6), (b)(7) three of the 53 SEC employees interviewed spoke with Lynch and one SEC employee spoke with Flitter around the time nonpublic information about the September 12, 2013, Executive Session was improperly disclosed.

### **1. Commissioner Luis Aguilar**

A review of Commissioner Aguilar's desk telephone records disclosed four calls placed to one of Lynch's telephone numbers between September 12 and 19, 2013, including one telephone call made approximately 35 minutes after the conclusion of the Executive Session on the J.P. Morgan matter.<sup>1</sup> *See* September 24, 2013, MOA, Review of Commissioner Aguilar's Telephone Call History.

Specifically, we noted outgoing calls to Lynch on September 12, 2013, at 3:50 p.m.; September 13, 2013, at 11:11 a.m.; and September 16, 2013, at 6:06 p.m. *Id.* The OIG's review disclosed that each of these calls showed a duration of zero (0) minutes.<sup>2</sup> *Id.* The OIG noted an additional outgoing call to Lynch on September 19, 2013, at 4:58 p.m., which lasted 26 minutes, 1 second. *Id.* Commissioner Aguilar told the OIG that he could state with "pretty high certainty . . . at least 99.99% sure" that he did not talk to Lynch about the J.P. Morgan deliberations and voting results from the September 12, 2013, Executive Session. *See* October 9, 2013, MOA, Interview of Commissioner Aguilar.

A September 17, 2013, email from Lynch to Commissioner Aguilar, at 1:36 p.m., stated, "Good to see you today, however brief," indicating that he saw Lynch on that day. *See* October 9, 2013, MOA, Email Search. According to building access records, Lynch was in the SEC headquarters building for an Open Meeting on September 17, 2013. *See* December 5, 2013,

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<sup>1</sup> (b)(6), (b)(7)(C) provided two telephone numbers for Lynch. *See* September 19, 2013, MOA, Receipt of Complaint.

<sup>2</sup> The OIG determined that a call shows a duration of zero (0) minutes if a call is placed but not answered by either the call recipient or voicemail.

MOA, Receipt of Building Access Records for Sarah Lynch. However, Commissioner Aguilar informed the OIG that, while he believes he saw Lynch at the SEC's Small Business Administration meeting that day, he does not believe he talked to her that day. See October 9, 2013, MOA, Interview of Commissioner Aguilar.

2. (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) told the OIG (b)(6),(b)(7)(C) spoke with Lynch (b)(6),(b)(7)(C) personal cell phone at 2:30 p.m. on September 17, 2013. See September 24, 2013, MOA, Interview of (b)(6),(b)(7)(C) stated that Lynch asked (b)(6),(b)(7)(C) why Commissioner Piwowar voted against the J.P. Morgan settlement, (b)(6),(b)(7)(C) responded, "I don't know. I don't think it's fair. Go figure it out." *Id.* On November 12, 2013, (b)(6),(b)(7)(C) provided a sworn statement to the OIG about (b)(6),(b)(7)(C) interactions with Lynch. (b)(6),(b)(7)(C) stated that Lynch asked "why Mike [Piwowar] voted against the JPMorgan case," (b)(6),(b)(7)(C) generally recalled responding, "I don't know. It doesn't seem fair. I have to go." See November 11, 2013, MOA, Statement/Affidavit from (b)(6),(b)(7)(C) explained (b)(6),(b)(7)(C) response to Lynch as follows:

At the time, I had the impression that Ms. Lynch knew the vote count and that she was seeking additional information. I did not intend to confirm, nor did I believe I had confirmed, exactly who voted on the case or what their votes were.

*Id.*

(b)(6),(b)(7)(C) further stated that, given the timing of (b)(6),(b)(7)(C) phone conversation with Lynch and the publication of the article, (b)(6),(b)(7)(C) "trying to figure out whether (b)(6),(b)(7)(C) was trapped by her." See October 25, 2013, MOA, Interview of (b)(6),(b)(7)(C) knew Lynch was looking to confirm information, but, at the time, "thought (b)(6),(b)(7)(C) did a good job of not providing information." *Id.* (b)(6),(b)(7)(C) "said something stupid" (b)(6),(b)(7)(C) responded to Lynch's question on September 17, 2013. (b)(6),(b)(7)(C) added that a "not careful reporter" could take what (b)(6),(b)(7)(C) said to Lynch as confirmation of information. *Id.*

3. (b)(5)

(b)(6),(b)(7)(C) told the OIG that (b)(6),(b)(7)(C) communicated with Lynch, using (b)(6),(b)(7)(C) BlackBerry, about a week after the Executive Session. See September 30, 2013, MOA, Interview of (b)(6),(b)(7)(C) A review of BlackBerry call records disclosed three phone calls from (b)(6),(b)(7)(C) on September 19, 2013, at 1:13 p.m. (2 minutes), 1:56 p.m. (2 minutes), and 2 p.m. (30 minutes). See October 29, 2013, MOA, Receipt and Analysis of BlackBerry Call Records for September 2013. (b)(6),(b)(7)(C) stated that Lynch had asked for confirmation of details from the Executive Session, (b)(6),(b)(7)(C) did not provide confirmation of any details, including that the Executive Session resulted in a split vote. See

September 30, 2013, MOA, Interview of (b)(6),(b)(7)(C) said it was clear that Lynch had spoken to someone else, because of the level of detailed information that she had about the Executive Session. *Id.*

(b)(6),(b)(7)(C) confirmed to Lynch that Commissioner Gallagher recused himself from the J.P. Morgan matter, but did not tell her why. (b)(6),(b)(7)(C) said that it “seemed absurd not to confirm” Commissioner Gallagher’s recusal. *Id.* (b)(6),(b)(7)(C) stated that neither Commissioner Gallagher nor anyone else had given (b)(6) approval to disclose Gallagher’s recusal in this matter. *Id.* However, upon requesting to provide additional information to the OIG, (b)(6),(b)(7)(C) subsequently stated that, per an unwritten directive from Commissioner Gallagher issued sometime in (b)(6),(b)(7)(C) had approval to disclose Commissioner Gallagher’s recusal. *See* March 4, 2014, MOA, Interview of (b)(6),(b)(7)(C). In his interview with the OIG, Commissioner Gallagher stated that he did not view the disclosure of his recusal as the disclosure of confidential information. *See* October 23, 2013, MOA, Interview of Commissioner Gallagher. As noted above, the fact that Commissioner Gallagher recused himself was publicly available through the SEC’s Public Reference Room on September 19, 2013, the same day that (b)(6),(b)(7)(C) spoke with Lynch.

4. (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) told the OIG that, on September 19, 2013, (the first day that the J.P. Morgan issue would have been available for public review) (b)(6),(b)(7)(C) received an email from Office of Public Affairs Director John Nester requesting (b)(6),(b)(7)(C) call Reuters journalist Flitter to provide background information about the J.P. Morgan Administrative Proceeding released that day. *See* October 17, 2013, MOA, Interview of (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) spoke with Flitter shortly after receiving Nester’s email and provided a “plain English” background of the allegations in the September 19, 2013, J.P. Morgan Order Instituting Cease-and-Desist Proceedings. *See* January 27, 2014, MOA, Followup with (b)(6),(b)(7)(C) telephone conversation with Flitter was two days after the publication of the September 17, 2013, article that included nonpublic information about the Executive Session. *See* September 19, 2013, MOA, Receipt of Complaint. (b)(6),(b)(7)(C) did not provide any nonpublic information to Reuters about the Executive Session held on September 12, 2013. *See* October 17, 2013, MOA, Interview of (b)(6),(b)(7)(C)

## II. Other Matters

### A. Commissioner Aguilar Emails

During the course of reviewing emails for this investigation, the OIG determined that Commissioner Aguilar sent nonpublic information related to enforcement matters to his personal

email account. *See* October 9, 2013, MOA, Email Search. Specifically, between September 22 and 27, 2013, Commissioner Aguilar sent 11 emails with a total of 13 attachments containing nonpublic information. *Id.* In an interview with the OIG, Commissioner Aguilar stated that he could not print documents at home when connecting to the SEC network through his G-On and, as a result, forwarded emails to his personal email account when he needed to print certain documents. *See* October 9, 2013, MOA, Interview of Commissioner Aguilar.

Commissioner Aguilar stated that he did not view sending nonpublic SEC information to his personal email account as a problem and was not aware that doing so violated the SEC's Rules of the Road. *Id.* However, the OIG determined that Commissioner Aguilar had completed annual Security and Privacy Awareness Training, most recently on September 10, 2013, that discussed the Rules of the Road and, specifically, the prohibition on sending nonpublic information to personal email accounts. *See* January 14, 2014, MOA, Receipt of Cybersecurity Training Materials.

**B. (b)(5) Emails**

(b)(6),(b)(7)(C) interview with the OIG (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) his contacts with the press were through (b) personal cell phone and personal email account. *See* September 24, 2013, MOA, Interview of (b)(6),(b)(7)(C).

Emails that (b)(6),(b)(7)(C) forwarded to the OIG revealed (b)(6),(b)(7)(C) discussed with Lynch information related to Commissioner Stein's comments made at a September 18, 2013, Open Meeting regarding the adoption of the Registration of Municipal Advisors rule. *Id.* *See also* Commissioner Stein's comments from the open meeting, available at <http://www.sec.gov/News/Speech/Detail/Speech/1370539818176>. (b)(6),(b)(7)(C) discussed the following Commission-related information with Lynch via email:

1. September 18, 2013: Lynch emailed (b)(6),(b)(7)(C) personal email address during the Open Meeting asking for information about the author of the comment letter that "swayed the staff." In response, (b)(6),(b)(7)(C) provided the name of the firm that wrote the comment letter.
2. September 19, 2013: Lynch emailed (b)(6),(b)(7)(C) personal email address, stating "I know I have asked several questions on the same subject the past few days but wondering if I can chat on background once more briefly." In response, (b)(6),(b)(7)(C) stated, "As you could see, Commissioner [S]tein loves attestations. Nothing else to share."

*See* September 24, 2013, MOA, Interview of (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) heard about the leak of information from the September 12, 2013, Executive Session (b) forwarded all emails from Lynch and other press contacts from (b) personal email to (b)(6) sec.gov email and informed all of (b)(6) press contacts to contact the SEC's Office of Public Affairs for all future press inquiries. *Id.*

(b)(6),(b)(7)(C) The OIG determined that, on October 10, 2013, (after the above email exchanges), (b)(6),(b)(7)(C) completed annual Security and Privacy Awareness Training that discussed the Rules of the Road. See January 14, 2013, MOA, Receipt of Cybersecurity Training Materials.

### Conclusion

The OIG investigation found that nonpublic information about the J.P. Morgan Executive Session was in a September 17, 2013, article by Flitter, Goldstein, and Lynch, and a September 26, 2013, article by Lynch and Viswanatha. The OIG was unable to conclude which specific individual or individuals improperly disclosed nonpublic information from the Executive Session. Further, we did not identify any emails from SEC staff forwarding information or providing details of the Executive Session to Lynch or any other member of the press.

The OIG determined that (b)(6),(b)(7)(C) and Commissioner Aguilar spoke with Lynch and that (b)(6),(b)(7)(C) spoke with Flitter around the time that nonpublic information was disclosed, and (b)(6),(b)(7)(C) may have confirmed information obtained by Lynch.

The OIG's review of SEC telephone and BlackBerry records identified the following calls to Lynch during the relevant time period: (1) (b)(6),(b)(7)(C) Lynch on September 17, 2013; (2) Commissioner Aguilar to Lynch on September 12, 13, 16, and 19, 2013; and (3) (b)(6),(b)(7)(C) Lynch on September 19, 2013. In addition, (b)(6),(b)(7)(C) made calls to Lynch on September 17, 2013.

The OIG found evidence that Commissioner Aguilar had sent nonpublic information to his personal email account from his SEC email account contrary to the SEC's Rules of the Road. In addition, (b)(6),(b)(7)(C) had used (b)(6),(b)(7)(C) personal email account to communicate with and provide Commission-related information to reporters (b)(6),(b)(7)(C) and subsequently forwarded those emails to (b)(6),(b)(7)(C) SEC email account.

We have concluded our investigation and are referring the report to the Commission for appropriate action.

(b)(6),(b)(7)(C)

Submitted

Date:

3-5-14

Concur:

Date:

3-5-14

Approved:



Carl W. Hoecker

Date:

3/5/14