

DANGEROUS LIAISONS

Revolving Door at SEC Creates Risk of Regulatory Capture



**A report by the Project On Government Oversight
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1100 G Street, NW, Suite 500
Washington, DC 20005

Phone: (202) 347-1122
Fax: (202) 347-1116
Email: pogo@pogo.org
www.pogo.org

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View the web package of this report at
<http://www.pogo.org/our-work/reports/sec-revolving-door.html>

The appendices of this report are available at:

Appendix A: <http://www.pogo.org/our-work/reports/2013/dangerous-liaisons/sec-appendix-a.html>

Appendix B: <http://www.pogo.org/our-work/reports/2013/dangerous-liaisons/sec-appendix-b.html>

Overview

A revolving door blurs the lines between one of the nation's most important regulatory agencies and the interests it regulates.

Former employees of the Securities and Exchange Commission (SEC) routinely help corporations try to influence SEC rulemaking, counter the agency's investigations of suspected wrongdoing, soften the blow of SEC enforcement actions, block shareholder proposals, and win exemptions from federal law.

The revolving door was on display in 2012 when the investment industry opposed one of the top priorities of the SEC chairman, a plan to tighten regulation of money market funds. Former SEC employees lobbied to block the plan, and an SEC Commissioner who previously worked for an investment firm played a pivotal role in derailing it.

The movement of people to and from the financial industry is a key feature of the SEC, and it has the potential to influence the agency's culture and values. It matters because the SEC has the power to affect investors, financial markets, and the economy.

Yet, the SEC has exempted certain senior employees from a "cooling off period" that would have restricted their ability to leave the SEC and then represent clients before the agency. In addition, the SEC has shielded some former employees from public scrutiny by blacking out their names in documents they must file when they go through the revolving door.

The SEC is a microcosm of the federal government, where widespread revolving expands the opportunities for private interests to sway public policy.

One academic study suggested that concerns about the SEC's revolving door are misguided. But the academics looked at only a sliver of the SEC's work. They did not examine, for instance, how the revolving door affects the SEC's regulation of Wall Street, its granting of relief to specific companies, its handling of cases related to the financial crisis, or its decisions to drop investigations without bringing charges. The study sought to quantify any influence the revolving door might have on SEC enforcement actions, but the subtleties involved do not

lend themselves to such simple measurement.

This report, the Project On Government Oversight's (POGO) second on the SEC, is based in part on interviews with current and former SEC officials and thousands of federal records obtained through the Freedom of Information Act.

POGO found that, from 2001 through 2010, more than 400 SEC alumni filed almost 2,000 disclosure forms saying they planned to represent an employer or client before the agency. Those disclosures are just the tip of the iceberg, because former SEC employees are required to file them only during the first two years after they leave the agency.

POGO's report examines many manifestations of the revolving door, analyzes how the revolving door has influenced the SEC, and explores how to mitigate the most harmful effects.



Money Market Meltdown: A Case Study

When the then-chairman of the Securities and Exchange Commission (SEC) was asked in early 2012 what kept her up at night, she pointed to money market funds, the supposedly safe investment vehicles that played a role in the financial crisis of 2008 and today manage \$2.7 trillion for investors.¹

As Mary L. Schapiro tells it, money market funds remain so vulnerable to sudden waves of withdrawals that they “pose a significant destabilizing risk to the financial system.”² At the height of the 2008 crisis, Schapiro has testified, a \$300 billion run on money market funds ended only when the federal government put taxpayer money on the line to backstop the industry. Since then, the kind of federal guarantee used to stop the run has been outlawed, making any future meltdown harder to contain, she said.³

Investors in money market funds “have been given a false sense of security,” Schapiro said in a [February 2012 speech](#). “Today, the money-market fund industry...is working without a net,” she added, comparing the situation to “living on borrowed time.”⁴

Schapiro was not alone in sounding the alarm.⁵ A council of federal regulators headed by outgoing Treasury Secretary Timothy F. Geithner unanimously called for additional reforms, noting that money market funds are still susceptible to the kinds of runs that made the financial crisis more severe.⁶ Former regulatory leaders, including Sheila C. Bair and Paul Volcker, have echoed the call for reforms.⁷

But when Schapiro tried to tighten regulation of money market funds, she encountered powerful resistance. In August 2012, without even bringing her proposal to a vote, she acknowledged that she was blocked. There was no point in calling a vote, she said, because three of the SEC’s five commissioners had stated their opposition.⁸

Many of the people who lobbied the SEC on this issue on behalf of the investment industry had traveled a familiar path: they once worked at the SEC but had gone through the revolving door to join the industry.

There was Justin Daly, formerly a counsel to an SEC Commissioner.⁹ He became a registered lobbyist and represented the Investment Company Institute, an industry association that fervently opposed the regulatory proposals.¹⁰ Daly met with Congress and the

SEC to discuss “[i]ssues relating to investment companies, particularly money market funds,” according to a [federal lobbying disclosure](#) filed in July 2012.¹¹

There was Karrie McMillan, a former official in the SEC’s Division of Investment Management, which oversees money market funds.¹² She became general counsel at the Investment Company Institute, represented the group in [meetings with Schapiro](#) and [other senior SEC officials](#), and [sent several letters](#) to the agency objecting to the proposals.¹³



Former SEC commissioner Laura Unger became a special adviser at consulting firm Promontory Financial Group. She now “provides clients with strategic advice about matters relating to the SEC...” according to her bio on Promontory’s website.

There was Susan Ferris Wyderko, who once held the top job in the SEC’s Division of Investment Management.¹⁴ She became president and CEO of an industry group called the Mutual Fund Directors Forum, which [argued](#) that the SEC could “harm the markets and the economy more broadly” by making money market funds—a type of mutual fund—less attractive to investors.¹⁵ Wyderko and another former SEC employee, David B. Smith, Jr., expressed the group’s views [in letters to the SEC](#), and they had [a meeting on the subject](#) with an SEC Commissioner in March 2012.¹⁶

There was Fran Pollack-Matz, a former Investment Management attorney who “did work on money market related issues” before leaving the SEC in 2009, [according to agency records](#).¹⁷ She became a vice president at T. Rowe Price Associates, Inc., which, as of December 2012, managed approximately \$32 billion in money market fund assets.¹⁸ Her name appeared on [a January 2011 letter from the firm](#) arguing that one of the regulatory proposals would “substantially reduce the attractiveness of money funds to investors, and potentially cause serious disruption in the short-term credit markets.”¹⁹

And, among others, there was Laura Unger, who had served as an SEC Commissioner and as acting chairman of the agency. She became a special adviser at the consulting firm Promontory Financial Group.²⁰ In a February 2012 visit to the SEC, she accompanied a delegation from Fidelity Investments, a giant of the industry that opposed Schapiro’s regulatory effort.²¹ An [SEC memo](#) about the visit doesn’t explain what

Unger might have said or done at the meeting.²² But [her bio](#) on Promontory’s website says she “provides clients with strategic advice about matters relating to the SEC, regulatory and legislative process.”²³ Unger is also featured in a Promontory [brochure](#) highlighting the “[s]enior regulatory experience” of the firm’s professionals. The brochure states that Promontory has advised a “leading industry trade association” on how to “best influence government agencies and regulators.”²⁴

POGO made attempts to contact Unger, as well as other SEC alumni and businesses discussed in the body of this report and in Appendix B. We have included comments of those who responded.

It’s hard to know how much any of these alumni contributed to the at least temporary derailment of Schapiro’s money market fund initiative. “I imagine you could find alumni on all sides of this issue, but... matters are decided on their merits,” SEC spokesman John Nester told POGO.²⁵

In the end, the balance was tipped not by a former official, but by a current one: Luis A. Aguilar, one of the five SEC commissioners. Aguilar, a Democrat, has often been the toughest of the commissioners when it comes to regulation, and has frequently chastised the agency for not doing enough to protect investors. But, at a pivotal juncture on the money market fund issue, he [sided](#) with the two Republican commissioners and the investment industry.²⁶

As it happens, Aguilar previously worked in that industry. He had been executive vice president of Invesco, a money management firm, and worked as a corporate attorney at law firms where his practice involved, among other things, mutual funds.²⁷

In March 2012, Invesco sent a team to meet with Aguilar at the SEC and tell him why tightening rules for money market funds was a bad idea.²⁸ In its [presentation](#), Invesco called the regulatory plan “extreme” and “not warranted.”²⁹ One of the Invesco



SEC commissioner Luis A. Aguilar previously served as executive vice president of Invesco, a money management firm. In 2012, he sided with the investment industry on Schapiro’s initiative to regulate money markets.

team members also participated in a larger meeting with representatives from other companies and officials from various SEC offices, according to a memo posted on the SEC’s website.³⁰ But Aguilar was the only commissioner with whom the Invesco team had an exclusive meeting, according to the SEC’s website.³¹

Explaining his opposition to Schapiro’s initiative, Aguilar [issued a statement that closely tracked arguments made by industry](#)—including arguments advanced by Invesco and SEC alumni. The statement shows how much convergence there was between his thinking and that of the industry in which he once worked.³²

Before writing new rules, Aguilar argued, the SEC should determine whether rules adopted in 2010 had solved the problem. “A critical analysis of the efficacy of the 2010 Amendments would be a necessity to analyze what, if any, additional steps are required,” he said.³³

Members of industry made a similar point. “Prior to proposing fundamental changes to money market funds, the SEC must first fully analyze the effects of the 2010 amendments,” the Mutual Fund Directors Forum said in a [letter to the SEC](#).³⁴ “Reforms from 2010 are working,” Invesco said in its March 2012 presentation.³⁵

Further, Aguilar argued, the proposed changes could make matters worse by prompting investors to move assets from money market funds to other investment vehicles that regulators are unable to track or oversee.³⁶ “I remain concerned that the Chairman’s proposal will be a catalyst for investors moving significant dollars from the regulated, transparent money market fund market into the dark, opaque, unregulated market,” he said.³⁷

Here again, a similar view was expressed by Aguilar’s former employer and by SEC alumni representing the industry. For example, [in a letter to the SEC](#), Invesco warned: “Large investors, in particular, may be prone to transfer funds currently invested in...money market funds to other less regulated vehicles.”³⁸

Aguilar also expressed concern that the proposed changes “could be needlessly harmful” given the “fragile state of the economy.”³⁹ Likewise, in its presentation, Invesco warned that “unnecessary regulation” could “damage a fragile economic

recovery.”⁴⁰

Did Aguilar’s past relationship with the mutual fund industry make him more receptive or sympathetic to its point of view?

In a November 2012 interview with POGO, Aguilar said the answer was no. “It gives me a level of knowledge,” he explained. “I think my background gives me the ability to understand and put into context both the...pros and cons of their arguments.”⁴¹

Did Aguilar’s past relationship with the mutual fund industry make him more receptive or sympathetic to its point of view?

Aguilar told POGO that he follows the public interest as he sees it. “I don’t think I’m anybody’s puppet,” he said.⁴² He pointed out that he opposed the mutual fund industry on an earlier, unrelated SEC initiative, and that the leadership of Invesco has changed since he left the company a decade ago.⁴³

A spokesman for one mutual fund company argued that the revolving door actually helps investors. “We strongly believe that having people with industry experience work for a regulator and having people with a regulatory background work in the industry benefits both sides as well as investors,” T. Rowe Price spokesman Brian Lewbart said in an email to POGO.⁴⁴ Before signing the January 2011 letter on behalf of T. Rowe Price, former SEC official Fran Pollack-Matz consulted with the agency’s ethics office, Lewbart added.⁴⁵

Treasury Secretary Geithner and other regulators haven’t given up on tightening the regulation of money market funds,⁴⁶ but they could be hard-pressed to do so without the SEC’s support. Indeed, they turned up the pressure on the agency.⁴⁷

In December 2012, the SEC released a [staff report](#) taking a closer look at the issue.⁴⁸ In a December 5 [statement](#) on the report, Aguilar reiterated his view that the “outflow of money fund assets to an unregulated market is a significant systemic risk concern,” and added that he welcomed the “serious consideration” the issue was receiving.⁴⁹

The SEC could revisit the issue this year, and news reports

suggest that the backing that eluded Schapiro may yet coalesce around at least part of her initiative. According to those reports, Aguilar and another commissioner have been warming to the possibility of certain regulatory changes.⁵⁰ (As of this writing, President Obama’s new nominee for SEC chairman has not publicly taken a position on the issue.)

Whether the 2012 regulatory stalemate—which former SEC Chairman Arthur Levitt called a “national disgrace”⁵¹—was a defeat or merely a delay for Schapiro’s money market fund initiative, the episode illustrates a conspicuous feature of the SEC: the pervasiveness of the revolving door. The constant spinning blurs the lines between the regulatory agency and the world it regulates.

The phenomenon is so familiar that economists and political scientists have a name for the most extreme cases: “regulatory capture,” when an agency is effectively taken over—culturally, if not literally—by the industry it regulates.

This blurring is hardly unique to the SEC. The phenomenon is so familiar that economists and political scientists have a name for the most extreme cases: “regulatory capture,” when an agency is effectively taken over—culturally, if not literally—by the industry it regulates.⁵²

The potential stakes of regulatory capture are particularly far-reaching at the SEC because the agency is responsible for regulating a vast swath of American business, including the investment and brokerage industries, stock markets, accounting firms that audit public companies, and information that publicly traded corporations disclose to investors. It’s the agency’s job to protect investors.⁵³

Currently, the SEC is bogged down in the biggest overhaul of the nation’s financial markets since the 1930s: a long-delayed and heavily lobbied effort to write rules implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which Congress passed and President Obama signed in 2010 to reduce the risk of future crises.⁵⁴

The SEC also continues to investigate whether additional individuals or corporations should be charged with law-breaking for contributing to the last crisis. The agency [points to a long list of enforcement actions](#) it has taken so far; federal judges and other observers have criticized some of the biggest settlements as too weak to make a difference.⁵⁵

Meanwhile, the revolving door keeps turning.

In September 2012, the Alternative Investment Management Association—a global hedge fund group—announced a new chairman: former SEC Commissioner Kathleen Casey, who left the agency in 2011. She is expected to enhance the dialogue between the association and industry regulators, the group’s chief executive said in a [press release](#).⁵⁶

In December 2012, Deloitte—one of the “Big Four” global accounting firms that cater to big corporations—announced that it had hired James L. Kroeker, a former SEC chief accountant who left the agency in July. He will be reporting directly to Deloitte’s CEO, who, in a [press release](#), praised Kroeker’s “unique perspective” and “experience as a regulator.”⁵⁷ The move completed a round-trip for Kroeker; he had been a partner at Deloitte before joining the SEC in 2007.⁵⁸

And in January 2013, President Obama [nominated](#) Mary Jo White—a partner at the law firm of Debevoise & Plimpton—to serve as the next SEC chairman. “You don’t want to mess with Mary Jo,” President Obama remarked, referring to her work from 1993 to 2002 as the U.S. Attorney for the Southern District of New York,⁵⁹ where she “built a career the Hardy Boys could only dream of” prosecuting white-collar criminals.⁶⁰

At Debevoise & Plimpton, however—where White has worked since 2002—she has routinely defended clients before the SEC.⁶¹ For instance, she defended JPMorgan when the SEC charged the company with misleading mortgage investors, according to [The Washington Post](#).⁶² In a separate matter, Morgan Stanley’s board hired White to explore if a prospective CEO was in danger of being charged in an SEC insider trading probe. After reviewing how the SEC handled White’s inquiries, Senate investigators criticized the agency for “providing prominent individuals selective access to senior SEC officials.”⁶³

This report—POGO’s second in-depth study of the SEC’s revolving door—examines many manifestations of the phenomenon. It also explores the question: Are concerns about the revolving door much ado about nothing?

The close linkage between the regulators and the regulated can influence the culture, the values, and the mindset of the agency—not to mention its regulatory and enforcement policies—both from the bottom up and from the top down.

A widely noted [study by several academics](#) dismissed the notion that the revolving door weakens SEC regulation.⁶⁴ Robert Khuzami, the head of the SEC’s Enforcement Division from 2009 until early 2013, [cited the study](#) as evidence that the agency has been unfairly maligned.⁶⁵

But, as this POGO report explains, the academic study does not settle the issue. For a more detailed analysis of that study, see Part V.

The revolving door is deeply embedded at the SEC and throughout the federal government. The problem transcends the thoughts and actions of individual government employees; it is both subtler and more powerful. The close linkage between the regulators and the regulated can influence the culture, the values, and the mindset of the agency—not to mention its regulatory and enforcement policies—both from the bottom up and from the top down. To be sure, many employees may be immune to its influence and may explicitly reject it. But when so much of a regulatory agency’s world view can be shaped by the industry it oversees, consciously or otherwise, the public has reason to be concerned.

As matters now stand, the public has only limited ability to see through the revolving door. With this report, POGO attempts to shed additional light.



Scores of SEC Alumni Go to Bat for SEC-Regulated Companies

From 2001 through 2010, 419 former SEC employees filed at least 1,949 disclosure statements saying they planned to represent clients or new employers in matters pending at the SEC.⁶⁶ One former official filed 46 of them.⁶⁷ (See Appendix A)

POGO obtained the statements, which were previously unavailable online, through the Freedom of Information Act (FOIA). An [earlier POGO report](#) focused on disclosure statements filed between 2006 and 2010⁶⁸; the new data go back an additional five years and are searchable online through POGO's [SEC Revolving Door Database](#).⁶⁹

The 1,949 statements are just the tip of the iceberg, because former employees are only required to file them during the two-year period immediately after they leave the agency.⁷⁰

POGO found that many former SEC employees have helped businesses get a break from the agency.

SEC alumni have helped companies charged with wrongdoing soften the blow of SEC enforcement actions.

Many big, established companies enjoy a special privilege: they can issue and sell new securities—say, additional shares of stock—to investors without going through a fresh review by the agency. The privilege—known as “well-known seasoned issuer” or WKSI status—can save companies time and money. Conversely, losing the privilege could make it harder for companies to raise capital and could put them at a competitive disadvantage.⁷¹

Companies that are found to have committed securities fraud—and, under certain circumstances, companies that agree to settle fraud charges—automatically lose their special status. The theory is that their financial disclosures are less trustworthy.⁷²

However, they can request a waiver allowing them to retain the privilege,⁷³ and many do. A [New York Times investigation](#) found 350 instances since 2001 in which the SEC gave financial firms WKSI waivers and other forms of relief that softened the blow of enforcement actions. The *Times* reported that “[c]lose to half of the waivers went to repeat offenders—Wall Street firms that had settled previous fraud

charges by agreeing never again to violate the very laws that the S.E.C. was now saying that they had broken.”⁷⁴

In many instances, POGO found, the companies were championed by former SEC officials.

In 2008, for example, the SEC alleged that UBS Securities LLC and UBS Financial Services Inc.—subsidiaries of UBS AG, the big Swiss bank—had “misled tens of thousands of...customers” about the risks of investing in products known as auction rate securities. As a result, “over forty thousand UBS customer accounts holding more than \$35 billion in auction rate securities had their investments rendered virtually illiquid overnight,” according to the [SEC’s complaint](#).⁷⁵

The agency charged the UBS subsidiaries with violating an anti-fraud provision of the federal securities laws, and it ordered them not to violate the same provision in the future. The [UBS subsidiaries settled the charges](#) without admitting or denying any wrongdoing.⁷⁶

Meanwhile, Kenneth J. Berman—an attorney at the law firm of Debevoise & Plimpton LLP, and a former associate director of the SEC’s Investment Management Division—[requested and obtained a waiver](#) allowing UBS AG, the parent company, to retain its WKSJ privilege. He argued, among other things, that UBS AG and its subsidiaries had “strong records of compliance with the securities laws.”⁷⁷

In 2011, the SEC [charged one of the same UBS subsidiaries](#)—UBS Financial Services Inc.—with “fraudulently rigging at least 100 municipal bond reinvestment transactions in 36 states and generating millions of dollars in ill-gotten gains.” The subsidiary was charged with violating the same anti-fraud provision that it had promised not to violate in the auction rate securities case. This time, the firm paid \$160 million to settle charges brought by the SEC and other authorities—without admitting or denying the SEC’s allegations—and agreed once again to stop violating the anti-fraud provision.⁷⁸

Once again, Berman [requested and received a waiver](#) on behalf of UBS AG, arguing that “UBS AG and its affiliates have strong records of compliance with the securities laws.”⁷⁹

In 2012, another UBS subsidiary was charged with violating the anti-fraud provision.

This time it was UBS Financial Services Inc. of Puerto Rico,

which was [charged](#) in May 2012 with “making misleading statements to investors” and “concealing a liquidity crisis,” among other things. The firm paid \$26.6 million to settle the case, without admitting or denying the SEC’s allegations.⁸⁰

In this case, Colleen P. Mahoney—a partner at the law firm of Skadden, Arps, Slate, Meagher & Flom LLP and a former SEC deputy enforcement director who left the agency in 1998 after 15 years of service—requested a waiver on behalf of UBS AG. The SEC [granted the waiver shortly after filing its charges](#).⁸¹

The earliest WKSJ waiver posted on the SEC’s website was granted in 2006. Of the [64 posted WKSJ waivers granted from 2006 through 2012](#), more than half—at least 35 of them—were requested by SEC alumni.⁸²

The numbers show that SEC alumni aren’t the only lawyers seeking waivers, and that you don’t have to be an alumnus to win one.

But the mere fact that so many waiver requests involve former officials could influence the way people at the agency think about regulatory relief, regardless of who asks for it. If an SEC official used to represent companies seeking waivers or envisions himself doing so in the future, it’s hard to see how he could remain completely neutral in evaluating such requests from others. He could identify with corporations seeking relief, and he could have a stake in the agency’s willingness to grant it. In that sense, the revolving door could shape the environment in which all SEC employees work and the institution’s mindset, to the benefit of companies accused of wrongdoing.

If an SEC official used to represent companies seeking waivers or envisions himself doing so in the future, it’s hard to see how he could remain completely neutral in evaluating such requests from others.

SEC alumni have helped companies secure other accommodations that took some of the sting out of enforcement actions.

Additional rules—variants on the WKSI theme—allow the SEC to issue waivers to companies facing the loss of a shortcut for small securities offerings.

When a business wants to raise funds by selling stock to the general public, it typically has to register the stock offering with the SEC. Some businesses, however, are allowed to raise a limited amount of capital by selling stock without having to register.⁸³

Since 2003, the SEC had granted exemptions to JPMorgan and its subsidiaries when they were charged with alleged misconduct relating to mortgage securities products, transactions with Enron, initial product offerings, and research analyst conflicts of interest...

the housing market was starting to plummet.”⁸⁶ Responding to the charges, Herbert F. Janick III—an attorney at the law firm of Bingham McCutchen LLP and a former senior SEC enforcement staffer—[requested a waiver](#) for the JPMorgan subsidiary.⁸⁷

Among other things, Janick argued that “issuers may wish to retain J.P. Morgan Securities to participate in offerings of securities” that rely on the shortcut, and that the disqualification of the firm “could adversely affect J.P. Morgan Securities’ business operations.”⁸⁸

The agency granted the waiver one week after charging the JPMorgan subsidiary, according to agency records.⁸⁹

This shortcut is off-limits to businesses and underwriters⁸⁴ that are the subject of certain SEC enforcement actions.⁸⁵ But companies can avoid the ban by obtaining a waiver. For example, in 2011, the agency [charged](#) that a subsidiary of JPMorgan had “misled investors in a complex mortgage securities transaction just as

The earliest version of this waiver that’s posted on the SEC’s website was granted in 2003. The SEC [issued at least 100 of these waivers from 2003 through 2012](#) to firms that faced a similar kind of disqualification. Of the 100 posted waivers, 40 were requested by SEC alumni.⁹⁰

Still other rules allow the SEC to give a break to companies that are in danger of being disqualified from providing bread-and-butter services such as underwriting to mutual funds because the companies or their affiliates are the subject of certain SEC enforcement actions.⁹¹

For example, in July 2011, the SEC [charged](#) a JPMorgan subsidiary with “rigging at least 93 municipal bond reinvestment transactions in 31 states, generating millions of dollars in ill-gotten gains.” The firm had entered into secret arrangements to get an “illegal ‘last look’ at competitors’ bids,” according to the SEC’s charges.⁹²

After consenting to an injunction and other penalties—without admitting or denying the SEC’s allegations—JPMorgan and affiliated firms [applied for an exemption](#) that would allow them to continue offering key services to mutual funds.⁹³

It wasn’t the first time something like this happened. Since 2003, the SEC had granted exemptions to JPMorgan and its subsidiaries when they were charged with alleged misconduct relating to mortgage securities products, transactions with Enron, initial product offerings, and research analyst conflicts of interest, according to the application.⁹⁴

There were several contacts listed on the new application, including Stephanie Avakian, James E. Anderson, and John M. Faust—attorneys from the law firm of Wilmer Cutler Pickering Hale and Dorr LLP (WilmerHale). Avakian used to be a counsel to then-SEC Commissioner Paul R. Carey, while Anderson and Faust used to be attorneys in the SEC’s Investment Management Division, according to bios posted on the law firm’s website.⁹⁵

The SEC [granted an exemption](#) to JPMorgan and its subsidiaries the following month.⁹⁶

The SEC’s website features similar exemptions that have been granted since 2007, but POGO was only able to identify the requestors for exemptions granted since 2009. Of the [23 exemptions on the SEC’s website granted from 2009 through 2012](#) to firms facing a similar

predicament, at least 16 were requested by legal teams that included SEC alumni.⁹⁷

The SEC's willingness to spare big companies the potential consequences of enforcement actions—even when those companies are cited as repeat offenders—has fueled concern in some quarters that the agency is too sympathetic to powerful firms.⁹⁸ The agency has said its waivers and the like are not meant to pull punches on any punishment but rather are intended to serve the public interest—for example, by avoiding collateral damage to customers of mutual funds that are advised by the firms.⁹⁹ But perceptions of what is in the public interest are unavoidably subjective.

SEC alumni have helped clients win exemptions from federal law.

The SEC is responsible for enforcing the federal securities laws, but it also has the power to exempt businesses from provisions of law on a case-by-case basis. Financial firms frequently argue they should be permitted to operate in ways that would otherwise be considered illegal.¹⁰⁰

For instance, the SEC can excuse a company from any provision of the Investment Company Act if the exemption is “necessary or appropriate in the public interest” and “consistent with the protection of investors.”¹⁰¹

SEC alumni have represented businesses in the successful pursuit of such exceptions.

In 2012, for example, Federated Investment Management Company sought the SEC's permission to market an exchange-traded fund (ETF), a financial product that is similar to a mutual fund but trades like a stock.¹⁰²

In order to provide this product, Federated [asked to be exempted](#) from several provisions of the Investment Company Act, including provisions that were designed to “prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds” and to “prevent one investment company from buying control of another investment company.”¹⁰³

The point of contact listed on Federated's application was Stacy L. Fuller, a former branch chief in the SEC's Investment Management Division who, during her career at the agency, “oversaw the review of multiple exemptive applications for ETFs,” according to a bio posted on the website of the law firm where she currently works.¹⁰⁴

In June, the SEC [agreed to provide the exemptive relief](#) requested by Fuller on Federated's behalf.¹⁰⁵

The SEC has stated that these rule exemptions are often necessary to “avoid the unintended consequences that could arise with the innovation of new financial products and services—such as those that may not have been envisioned when the securities law was passed.”¹⁰⁶

POGO examined all of these exemptions on the SEC website issued under the Investment Company Act in 2011 and 2012. Of the [158 issued during those two years](#), 58 of them were requested by legal teams that included SEC alumni.¹⁰⁷



Former chief counsel of the SEC's Enforcement Division Joan McKown helped PNC Bank obtain no-action relief from an SEC regulation under Dodd-Frank.

SEC alumni have helped companies obtain letters from the agency giving them a green light to venture into regulatory gray zones without fear of getting in trouble.

The SEC often issues advisory opinions known as “no-action letters” which assure companies that the SEC will not punish them if they take a particular course of action. The SEC sometimes describes no-action letters as a form of regulatory “relief.”¹⁰⁸

Former SEC officials have helped companies secure such letters.

Joan McKown worked at the SEC for 24 years, serving most recently as chief counsel in the Enforcement Division. She left the agency in 2010 and is now a partner at Jones Day.¹⁰⁹

In early 2012, she [helped PNC Bank obtain no-action relief](#) from an SEC regulation issued under Dodd-Frank. The regulation required more disclosure to help investors identify underwriting

deficiencies in asset-backed securities—financial products backed by loans (such as residential mortgage, commercial, and student loans) that are bundled together and sold to investors. The no-action letter sets a precedent for PNC and other companies to avoid disclosing information about mortgage-backed securities guaranteed by Ginnie Mae, a government corporation that promotes home ownership.¹¹⁰

On its website, [Jones Day says](#) that, as of February 2012, this was the “only no-action letter specifically interpreting an SEC regulation under Dodd-Frank that the SEC staff has issued and published so far.”¹¹¹

SEC alumni have helped companies thwart shareholder proposals.

Shareholders often try to use their voting power to influence a company’s policy on issues such as executive compensation. But companies can stop these proposals from even making it onto the ballot.¹¹² Before blocking such proposals from coming to a vote, companies often seek the blessing of the SEC’s Division of Corporation Finance.¹¹³ SEC alumni have represented companies in the successful pursuit of such blessings, issued in the form of no-action letters.

Shareholders often try to use their voting power to influence a company’s policy on issues such as executive compensation. But companies can stop these proposals from even making it onto the ballot.

Martin Dunn left the SEC in 2007 after 20 years of service, including stints as acting and deputy director of the Division of Corporation Finance, and became a partner at the law firm of O’Melveny & Myers LLP.¹¹⁴

Less than two years later, Dunn [wrote to the division](#) on behalf of Alaska Air Group, Inc., the holding company for Alaska Airlines and Horizon Air. He asked for the division’s assurances that it would not recommend

enforcement action if Alaska Air Group excluded several proposals, including one that would give shareholders more of a say on executive pay.¹¹⁵

The division staff agreed that Alaska Air Group could exclude the proposals without running afoul of the law.¹¹⁶

More recently, Dunn obtained favorable SEC responses to multiple requests for JPMorgan to exclude shareholder proposals. Those proposals would have required JPMorgan to disclose more information about the bank’s political contributions and lobbying expenditures; replace the bank’s independent auditor on a regular basis¹¹⁷; assess the impact of mountaintop removal coal mining by the bank’s clients; take steps to prevent “illicit financial flows” such as tax evasion and money laundering; review the bank’s handling of foreclosures and loan modifications; and review the risks associated with “high levels of senior executive compensation.”¹¹⁸

Dunn has also requested and received no-action letters on behalf of UnitedHealth Group, Inc. and Yahoo! Inc.¹¹⁹

In a [disclosure statement](#) filed shortly after he left the SEC, Dunn said he was certain that matters on which he would be appearing before the agency did not relate to any matters he worked on during his SEC service.¹²⁰

However, in the same disclosure statement, Dunn showed how much his work as a lawyer for corporations had in common with his earlier work as a member of the SEC staff.¹²¹

“I have been retained to represent [name of company withheld by SEC] in connection with the filing of a no-action request with regard to shareholder proposals received by that company,” he wrote. “During my tenure on the staff, I worked on a number of matters relating to shareholder proposals, including shareholder proposals submitted to [name of company withheld by SEC]. However, all shareholder proposal matters on which I worked while on the staff were resolved during that time and there were no such matters pending upon my departure,” he added.¹²²

Dunn wrote that he was so sure that none of this posed an ethical impediment that he was notifying the SEC of his plans “before receiving verbal clearance from the Ethics Office.” The disclosure

statement does not say whether the Ethics Office ended up giving Dunn the green light.¹²³

The SEC receives [hundreds of requests each year](#) from companies that are seeking to exclude shareholder proposals. POGO found that many of these requests were submitted by legal teams that included SEC alumni.

The money market industry frequently deployed SEC alumni to request accommodations from the agency during a period of market turmoil beginning in 2007.

In many cases, these accommodations gave the companies that manage money market funds a green light to prop up funds. To extend such support, the companies sought regulatory relief from the SEC's Investment Management Division, which provided it through no-action letters.

In September 2008, at the height of the financial crisis, Jack W. Murphy—a former associate director in the SEC's Division of Investment Management—requested the division's approval on behalf of the Bank of New York Mellon Corporation and its affiliated money market funds. The division staff responded the following month to approve the proposed arrangement.¹²⁴

One [section of the SEC's website](#) features 69 no-action letters granted during a period of market turmoil from 2007 through 2009 that provided the green light for corporate sponsors to prop up money market funds. Of these 69 letters, 28 were requested by SEC alumni.¹²⁵

Allowing the corporate parents to provide financial support for individual money market funds could have masked the degree of risk associated with those funds, giving investors an inflated sense of security. It also could have posed financial risks for the corporate parents and the shareholders of those companies, though a [study by the Federal Reserve Bank of Boston](#) said the companies might have been trying to protect their reputations in the marketplace—in other words, their brand names.¹²⁶

3

Revolving Door Rules Apply Unevenly

There is a complex set of ethics rules governing what SEC employees can and can't do when they go through the revolving door, but the rules have gaps and apply unevenly.

SEC “middle managers” excused from cooling off period.

At the SEC's request, certain senior employees at the agency have been exempted from a “cooling off period” that would have restricted their ability to represent clients before the SEC shortly after leaving the agency.

The cooling off period, which is supposed to limit influence-peddling and avoid troubling appearances, prohibits highly placed employees from contacting the agency on behalf of a client within one year of leaving. Explaining this restriction in 2007, an [internal SEC newsletter](#) said that, where ethics are involved, “appearances do matter.”¹²⁷

“Think of how it would look for a Division Director to leave office on Friday and contact his or her former staff on Monday on behalf of a private client,” the SEC wrote.¹²⁸

Nonetheless, the newsletter explained, some alumni have been excused from the cooling off requirement.

In 1991, the SEC wanted to exempt several positions from this restriction. The agency asked the Office of Government Ethics (OGE) to [waive the rule for senior agency litigators](#), including the Enforcement Division's chief litigation counsel.¹²⁹

The SEC's ethics official at the time argued that OGE should grant the waiver because SEC litigators do not make policy and are unlikely to exert undue influence on the agency after leaving. He also argued that the exemption was necessary for the SEC to recruit talented lawyers. Unless they were given an exemption, senior litigators “would have difficulty conducting a securities law litigation practice” after leaving the SEC because “Commission litigation is a major component of such a practice,” he said.¹³⁰

OGE [agreed to exempt the positions](#), allowing the SEC's former senior litigators to interact with the agency shortly after leaving.¹³¹

For example, David L. Kornblau was a chief litigation counsel in the Enforcement Division—one of the exempted positions. Kornblau resigned from the agency in August 2005 and became an in-house counsel at Merrill Lynch. Several months later, he [disclosed](#) that he would be representing the bank in connection with 17 separate matters pending before the SEC, at least some of which involved enforcement cases in which other parties were charged, according to agency records.¹³²

At the SEC’s request, certain senior employees at the agency have been exempted from a “cooling off period” that would have restricted their ability to represent clients before the SEC shortly after leaving the agency.

In 2003, the SEC [wanted to exempt other positions](#) from the cooling off requirement. The agency had obtained the authority to pay some employees on a new pay scale (known as the SEC “K” or “SK” scale) in order to compete more effectively with

employers in the financial industry. (An SEC supervisor who was paid as a GS-15 employee on the federal pay scale, for instance, became an SK-17 employee under the SEC’s new system, and was eligible for pay increases beyond what a typical GS-15 employee could receive.)¹³³

In a letter to OGE, an SEC ethics official pointed out that the one-year cooling off rule applied to any executive branch employee who was paid at least \$134,000 at the time. This meant that some SK employees would be covered by the ban as a result of a pay increase to a level of \$134,000 or greater, even if their responsibilities did not change.¹³⁴

The SEC ethics official asked OGE to exempt all SK employees from the cooling off rule. She observed that SK employees include “supervisory accountants, attorneys, economists, and various analysts and administrative specialists.” These employees, she said, are “quintessential government middle managers” who do not “make policy decisions affecting the Commission’s overall operations” and are “not

situated to influence overall Commission policy...once they leave.” She also warned that the cooling off ban would make it “exceptionally more difficult for [SK] employees to seek work outside the Commission.”¹³⁵

For these reasons, she argued, SK employees should not be covered by a cooling off rule that’s targeted at other senior policymakers in the federal government. OGE agreed to [provide a blanket exemption](#) for all SEC employees paid on the agency’s SK scale.¹³⁶

The SEC’s Inspector General [criticized the SK exemption](#) in a January 2011 report about a former SEC official in the Trading and Markets Division who had gone on to work for a high-frequency trading firm. The exemption has “enabled some SEC employees who are highly compensated and who hold prominent positions to evade the ban, despite [the fact] that they are the very type of employees the ban was intended to cover,” the report says.¹³⁷

For instance, a “counsel to a Commissioner who has a salary in excess of \$200,000, has been privy to a wealth of confidential SEC information, and has high-level contacts at the SEC due to his position is currently able to leave the Commission and immediately represent industry interests to the Commission,” the Inspector General observed.¹³⁸

The Inspector General also noted that “Justin Daly, who had served as counsel to Commissioner Kathleen Casey before leaving the Commission in February 2010 to become a lobbyist at Ogilvy Government Regulations, would not be subject to [*sic*] cooling-off ban and could immediately lobby the SEC,” as described in a [July 2010 New York Times article](#).¹³⁹

Indeed, POGO found that Daly started lobbying the SEC within months of leaving, representing clients such as [CME Group](#) and [The Blackstone Group](#) to discuss proposed agency regulations, according to federal lobbying disclosures.¹⁴⁰

The Inspector General concluded that the SK “blanket exemption...opens the door to potential abuse,” and urged the agency to work with OGE to limit the exemption.¹⁴¹

SEC spokesman John Nester told POGO the exemptions were “no longer deemed necessary.”¹⁴² But, as of February 2013, more than

two years after the Inspector General called for their curtailment, they were still in place. In October 2012, Nester said the SEC was “in the process of working with OGE” to remove them.¹⁴³ In a February 2013 email to POGO, Nester said the issue was still “pending with OGE.”¹⁴⁴

Uneven cooling off periods for other SEC alumni.

The government-wide cooling off bans can last for one year, two years, or a lifetime, depending on what the alumni did at the agency and what they are seeking to do on behalf of a private-sector employer or client.¹⁴⁵ A different set of rules apply to President Obama’s political appointees. For instance, an appointee who leaves the government and becomes a federally registered lobbyist cannot lobby any senior executive branch official for the remainder of Obama’s administration.¹⁴⁶

“Every one of those commissioners should have the two-year ban.”

-Professor of Law Richard Painter

a former Treasury Secretary has to wait at least two years before he can represent anyone before any executive branch employee. But this mandatory two-year cooling off period for “very senior personnel” does not cover the SEC chairman and commissioners.¹⁴⁷

“Every one of those commissioners should have the two-year ban,” said Richard Painter, a professor at the University of Minnesota Law School, according to a [2012 Bloomberg article](#).¹⁴⁸

In addition to being uneven, these timeout periods—which only restrict SEC alumni from personally appearing before the agency on certain issues—do not cover all the ways in which former employees can take advantage of their inside knowledge and connections.

For instance, the timeout periods do not prevent SEC alumni from providing “behind the scenes” assistance to their new private-sector colleagues. Even if a former SEC employee does not personally appear before the agency, she can still provide invaluable assistance to

Not only are there different rules for various SEC alumni, there are also different rules for former senior officials at other federal agencies. For instance,

her new employers or clients, such as telling them who to contact or which arguments to use in appealing to the agency.

“[A]s long as you’re not going to talk to us you can do anything,” a former SEC ethics official told the agency’s Inspector General, according to its 2011 report.¹⁴⁹ The former ethics official noted that some state bar associations have issued rules that would prevent former SEC attorneys from switching sides on an enforcement matter, but said they wouldn’t necessarily prevent those alumni from lobbying the agency on industry-wide regulations. The Inspector General observed that “employees who leave the Commission may have unlimited social contacts with their former SEC colleagues.”¹⁵⁰

Loose rules for industry-to-SEC revolving door.

The cooling off rules for industry veterans who join the SEC and other agencies may not go far in restricting federal employees from handling agency work that could affect their former employers or clients.

Daniel M. Gallagher, Jr., an SEC Commissioner, took office in November 2011 after working at WilmerHale. (He actually passed several times through the SEC-WilmerHale revolving door before ending up in his current position.¹⁵¹)

Gallagher’s former clients include powerhouse financial firms such as Bank of America, Deutsche Bank AG, and GE Capital Corp., according to his [financial disclosure statement](#).¹⁵²

Now, as an SEC Commissioner, Gallagher may be in a position to make critical decisions about SEC regulations and enforcement actions affecting the public’s interest—and, in some cases, the interests of his former clients.¹⁵³

Some of these former clients have come under SEC scrutiny. For instance, three former Deutsche Bank employees have



SEC commissioner Daniel M. Gallagher, Jr. previously worked for WilmerHale and had some of the world’s largest financial firms as clients.

independently alleged that the bank hid up to \$12 billion in paper losses during the financial crisis, according to *Financial Times*. They made their complaints—which Deutsche Bank called “wholly unfounded”—to the SEC and other regulators. By allegedly hiding the losses, Deutsche Bank was “able to maintain its carefully crafted image that it was weathering the crisis better than its competitors,” Jordan Thomas, a former SEC enforcement attorney who is representing one of the whistleblowers, told *Financial Times*.¹⁵⁴

Other former Gallagher clients have a stake in the SEC’s implementation of the Dodd-Frank Act.

Bank of America, for instance, wrote to the SEC in February 2012 to oppose the proposed Volcker Rule, which would restrict the bets that federally insured banks place in the financial markets. Congress required the SEC and other federal regulators to implement the rule as part of the Dodd-Frank Act.¹⁵⁵

SEC spokesman John Nester told POGO the agency is equipped to handle potential conflicts of interest that arise when an employee is in a situation to oversee a former employer or client. “SEC employees and Commissioners recuse themselves on a case by case basis in accordance with government wide ethics law and regulation,” Nester said. “Agency staff and Commissioners are required to undergo training concerning their recusal obligations, and the Ethics Office frequently consults with staff members and Commissioners individually about their recusal obligations.”¹⁵⁶

When asked if the SEC’s work is ever affected by the need for senior officials to recuse themselves, Nester said the agency “is blessed with a deep pool of talented experts on just about any issue that comes up, so it really hasn’t been an issue.”¹⁵⁷

However, it is not always clear how the SEC handles specific situations in which potential conflicts of interest arise. POGO filed a FOIA request for records showing how the SEC has implemented an ethics agreement signed by Commissioner Gallagher, but the agency provided only 10 pages in part, and withheld approximately 1,500 pages in their entirety.¹⁵⁸ The sheer volume of the material suggests that sorting out Gallagher’s potential ethical conflicts takes an extensive effort.



Former SEC Chairman Mary Schapiro. (Image by Flickr user BizJournalism)

Richard Painter, a professor at the University of Minnesota Law School, wrote in a 2009 book that the existing rules are “too lenient.”¹⁵⁹

The rules state, for instance, that a new agency employee may not be able to work on a “particular matter involving specific parties”—e.g., “contracts, grants, licenses, product approval applications, investigations, [or] litigation”—if it is likely to affect a former employer or client. However, the definition of “particular matter involving specific parties” does not cover “rulemaking, legislation, or policy-making of general applicability.”¹⁶⁰

“A person entering government service from a bank... must wait a year before participating in a government bailout of that same bank, but may, without waiting a year, immediately draft regulations affecting banks in general,” Painter wrote in 2009. Likewise, “[s]omeone who has been paid to urge the SEC to write a particular rule a certain way” could then “go into the SEC and shortly thereafter help write the same rule.”¹⁶¹

Some current and former SEC officials told POGO that

concerns about the industry-to-government revolving door are overblown. On the positive side, they said, it has enabled the agency to recruit talented financial industry veterans.

The SEC has “made a special effort to hire into the [Enforcement] Division highly-talented persons with a wide range of expertise; not just lawyers, but also traders and risk managers and persons skilled in the debt and derivatives markets,” said agency spokesman John Nester. “This makes us better able to detect wrongdoing and detect it early.”¹⁶²

Former SEC Chairman Mary Schapiro has echoed this point, stating that “[p]eople from the private sector know where the bodies are buried, where the private sector has taken short cuts or engaged in conduct that is less than exemplary,” according to [*The Washington Post*](#). “Armed with that knowledge,” Schapiro added, “they tend to be vigorous defenders of the public interest.”¹⁶³

David B.H. Martin, a former head of the SEC’s Corporation Finance Division, told POGO that “the revolving door brings the agency talent” and provides a “healthy amount of ventilation.”¹⁶⁴

Nonetheless, the preponderance of SEC employees who come from financial industry backgrounds may contribute to a pro-industry bias throughout the agency, and could cast doubt on the agency’s decision-making. It may also lead to specific situations in which SEC employees have to either work on issues that could affect a former employer or client, or recuse themselves from important agency business.

4

Revolving in the Dark

For an agency that seeks to ensure a “transparent capital market,”¹⁶⁵ the SEC is not always transparent about its revolving door.

Granted, the SEC deserves credit for being one of the few agencies that require their former employees to file disclosure statements when they go through the revolving door. These statements enabled POGO to identify hundreds of SEC alumni who went on to represent companies overseen by the agency. In addition, anyone who visits the SEC’s website can find records such as waiver requests and meeting memos that offer a glimpse at the interactions between the agency and industry representatives—including many SEC alumni.

But those who want more detailed information about the work that SEC employees do before, during, or after their time at the agency are likely to encounter significant hurdles.

Redacted disclosure statements.

Although the SEC provided POGO with thousands of disclosure statements in response to a FOIA request, the agency does not post the statements online. (POGO has made those statements available online in its [SEC Revolving Door Database](#).¹⁶⁶) And many of the statements given to POGO were heavily redacted, making it hard to tell which employer or clients the SEC alumni were representing or what they hoped to achieve by contacting the agency.

In some cases, the SEC blacked out the names of the former employees who filed post-employment disclosure statements, shielding them from public scrutiny.¹⁶⁷

“Release of the staff names could subject the employees to harassment from the public in the performance of their official duties,” SEC FOIA branch chief David Henshall [wrote in April 2012 in response to POGO’s FOIA request](#).¹⁶⁸

Why did some SEC alumni get this special treatment, while others did not?

SEC spokesman John Nester told POGO in 2011 that some former employees requested confidentiality.¹⁶⁹

Vague or incomplete records of SEC-industry interactions.

Another potential way to monitor the SEC revolving door is to examine the interactions between the SEC and industry representatives, many of whom used to work at the agency.

At times, however, presentations made by SEC employees to industry groups are inaccessible to the public.

In March 2012, several SEC officials spoke at a [conference in Miami](#) hosted by a securities industry lobbying group. The full remarks of then-Chairman Mary Schapiro can be [found on the SEC's website](#), but the same is not true of comments made by other SEC officials, who spoke on panels filled with agency alumni about “handling a regulatory investigation.”¹⁷⁰

These conferences have occasionally been the subject of controversy. In 2011, Senator Charles Grassley (R-IA) [raised concerns](#) about comments made by then-SEC enforcement chief Robert Khuzami to a group of securities defense lawyers. Khuzami appeared to be contradicting the SEC's enforcement manual, Senator Grassley said, by indicating that the agency would start letting defense attorneys know if an SEC investigation into their client is being accompanied by a Department of Justice investigation. The comments “sound the alarm for anyone concerned about the SEC being overly cozy with those it should be investigating,” Senator Grassley remarked.¹⁷¹

Even when the SEC does disclose records of regulatory meetings between the agency and industry representatives, it is not always clear what transpires in those meetings.

To her credit, then-Chairman Mary Schapiro announced in 2010 that the SEC would disclose more information about meetings with outside parties to discuss the implementation of Dodd-Frank. Under this policy, the agency asks meeting participants to provide an agenda of proposed discussion topics to be made part of the public record.¹⁷² The SEC has also been disclosing its meetings with outside parties to discuss another law, the Jumpstart Our Business Startups (JOBS) Act, according to agency spokesman John Nester.¹⁷³

Still, these records are often vague about the arguments



Senator Charles Grassley (R-IA) expressed concern in 2011 after SEC enforcement chief Robert Khuzami said that the agency would start letting defense attorneys know if an SEC investigation into their client would be accompanied by a Department of Justice investigation. (Image by Flickr user jbtaylor)

advanced by industry representatives at the meetings. The records are certainly no substitute for the kind of real-time access that could be provided through a live webcast of the meetings.

Finally, when the SEC litigates a case in federal court or imposes a penalty that must be approved by a federal judge, the public can typically review the case documents and identify the members of the litigation team—including attorneys who end up going through the revolving door. Unfortunately, the same level of transparency is not provided in SEC enforcement actions that are brought before an administrative law judge.

These administrative proceedings are relatively opaque, even when the SEC charges a defendant with a violation that could have serious consequences for investors and other stakeholders.

Secret ethics advice.

The SEC routinely advises former employees about potential conflicts of interest arising from their representation of private-sector

employers or clients.¹⁷⁴ In addition, the agency urges current staffers to recuse themselves from working on agency matters if there's even an appearance of a conflict of interest related to a past employer or client.¹⁷⁵

Unfortunately, information about ethics advice, recusal agreements, and conflict-of-interest waivers is typically not revealed to the public.

One problem is that the SEC has not consistently recorded this information. In 2011, the SEC Inspector General reported that the agency's "haphazard record-keeping...makes it needlessly difficult to ascertain whether an employee has adhered to the conflict-of-interest restrictions."¹⁷⁶

But even when the SEC does keep organized ethics records, the agency typically does not share this information with the public. As described above, the agency withheld approximately 1,500 pages of ethics records related to SEC Commissioner Daniel M. Gallagher, Jr., in response to POGO's FOIA request.¹⁷⁷

5

Much Ado about Nothing?

In July 2012, four scholars [issued a report](#)—*Does the Revolving Door Affect the SEC’s Enforcement Outcomes?*—suggesting that concerns about the SEC’s revolving door are unfounded, at least with respect to the agency’s efforts to enforce the law.¹⁷⁸

The widely noted study by academics at four business schools looked at the outcomes in certain enforcement cases and reached a stark conclusion: “Our evidence...alleviates widely expressed concerns about the detrimental effect of revolving doors.”¹⁷⁹

However, a close look at the study leads to the conclusion that it hardly settles the issue.

The authors were rebutting sentiments like those articulated by Senator Grassley, ranking member of the Judiciary Committee, who [remarked in 2011](#) that the “revolving door between [SEC] staff and the investment firms and banks they oversee has led to concerns of coziness and the soft-pedaling of potential criminal cases.”¹⁸⁰

Others, including academics, whistleblowers, and the SEC’s Inspector General, have suggested that the constant movement of employees between the SEC and powerhouse firms has biased the agency’s enforcement efforts.¹⁸¹

The “revolving door problem” may help explain why the SEC has gone after “individuals in small-bore cases,” but has not brought many charges against the “people in the financial crisis of 2008 who went over the line and should have been held accountable,” a former federal prosecutor told POGO.¹⁸²

As the former prosecutor explained it, taking aggressive action against companies represented by powerhouse law firms can hurt the future job prospects of SEC attorneys: “Rocking the boat is just not... an optimal way to segue into a major white-shoe law firm role.”¹⁸³

But the authors of the July 2012 study came to a very different conclusion: if anything, they said, the revolving door has actually strengthened the SEC’s enforcement efforts.

Quantifying the effects of the revolving door.

The authors described two ways in which the revolving door could bias the SEC. On one hand, agency lawyers might “follow aggressive enforcement practices to signal their competence to their

prospective employers.” On the other hand, an SEC attorney might “under-emphasize or even compromise enforcement outcomes to curry favor with prospective employers.”¹⁸⁴

In order to test these theories, the authors tracked the records of 336 SEC lawyers who worked on SEC enforcement actions between 1990 and 2007. The academic study divided those lawyers into two groups: “revolvers,” who ended up leaving the agency to join a law firm, and “non-revolvers,” who went to work for another kind of firm or organization, or were still at the SEC by the end of 2010.¹⁸⁵

The authors also looked at four variables in the enforcement actions handled by the SEC lawyers: 1) the size of damages collected by the agency, 2) whether or not there were criminal charges brought in conjunction with the SEC’s action, 3) whether or not the agency named a CEO as a defendant, and 4) whether the SEC settled the charges or won a contested case.¹⁸⁶

Using this approach, the authors found “no significant differences in the enforcement outcomes” of revolvers and non-revolvers.¹⁸⁷

However, the results changed when the authors looked at revolvers who joined law firms that frequently defended clients in SEC enforcement cases—described in the study as “SEC specialist firms”—during the study period (1990 to 2007). The authors found that revolvers who joined SEC specialist firms tended to work on enforcement cases that resulted in “higher damages collected,” “a higher likelihood of criminal proceedings,” and “a higher likelihood of naming the CEO as a defendant.” (The revolvers were also more likely to settle than to win an enforcement case. But the authors noted that a vast majority of SEC cases are settled, potentially skewing the results, and they questioned whether “settling a case is a result of lax or aggressive enforcement.”)¹⁸⁸

Furthermore, the authors found “no evidence that SEC alumni in defense firms practicing before the SEC are able to exercise influence over ongoing enforcement efforts.”¹⁸⁹

According to the authors, these results show that “SEC regulatory efforts are not, on average, compromised as a result of lawyers leaving the Commission.”¹⁹⁰ “If anything,” they wrote, “future

job prospects make SEC lawyers increase their enforcement efforts while they are at the SEC.”¹⁹¹

These findings should mollify concerns about the SEC revolving door, the authors argued.¹⁹² But POGO found that the academic study does not address a wide range of concerns.

No mention of regulations or exemptions.

First and fundamentally, the study does not examine the effects of the revolving door on one of the SEC’s basic functions: writing rules. It focuses solely on the enforcement of rules that are already on the books.¹⁹³

Did the revolving door contribute to the stalemate on money market fund regulation? Has it influenced the SEC’s long-running, overdue effort to write rules implementing the contentious Dodd-Frank Act? Has it affected the agency’s rulemaking—or lack thereof—in response to allegations that structural problems in the stock markets favor high-frequency traders such as hedge funds over ordinary investors?

The study also did not look at whether the revolving door influenced the way agency officials think about waivers, exemptions, and other forms of regulatory relief.

It would be difficult to address these questions in a purely statistical analysis. But if the revolving door influences the SEC’s work at all, there is no reason to think it would only influence SEC enforcement cases. The revolving door is also on display whenever an SEC employee writes a rule affecting an industry where she used to work, or when a former employee requests regulatory relief for a client after he leaves the agency.

The study does not examine the effects of the revolving door on one of the SEC’s basic functions: writing rules. It focuses solely on the enforcement of rules that are already on the books.

A narrow look at SEC enforcement.

As for the SEC’s enforcement work, the former head of the SEC’s Enforcement Division, Robert Khuzami, [cited the study](#) as evidence that the revolving door does not make a difference in the SEC’s policing. “In the face of overwhelming proof to the contrary, and armed with nothing but cynical assumptions and speculation, commentators perpetuating this revolving door myth do a disservice to the hard-working and dedicated enforcement staff,” Khuzami wrote in an opinion piece for Reuters.¹⁹⁴

But, even with respect to enforcement, the academics looked only at a subset of SEC lawyers and cases that could be affected by the revolving door.

Arbitrary distinction between revolvers and non-revolvers

Some lawyers stay with the SEC for a long time before going through the revolving door, making it hard to tell which non-revolvers are simply revolvers in waiting.

The academic study is premised on the idea that SEC enforcement lawyers can be divided into two categories: “revolvers” and “non-revolvers.”¹⁹⁵

But some lawyers who were counted as non-revolvers do not fit

neatly into that category.

For instance, what if lawyers who were still at the SEC—and counted as non-revolvers in the academic study—just hadn’t gotten around to leaving yet? The authors told POGO they picked the end of 2010 as a cutoff to see if SEC lawyers were still at the agency (around 58 percent of the 336 lawyers in the authors’ dataset were still at the agency by then). All lawyers who were still at the SEC were counted as non-revolvers¹⁹⁶—even though some of them may have been influenced by the revolving door and ended up going through it sometime after 2010.

Some lawyers stay with the SEC for a long time before going through the revolving door, making it hard to tell which non-revolvers are simply revolvers in waiting. In POGO’s [SEC Revolving Door Database](#), the alumnus who filed the most disclosure statements between 2001 and 2010—a former associate director of enforcement—spent 15 years at the SEC before leaving, [according to a bio posted on the website of the law firm where he currently works](#).

(See Appendix A) In fiscal year 2010, the average tenure of departing employees who worked on investigations and examinations was 13.5 years, according to a 2011 [report by the Government Accountability Office](#) (GAO).¹⁹⁷

Until the moment they left the SEC, these employees would have been counted as non-revolvers, according to the model used in the academic study.

The authors’ way of dividing the SEC staff poses another question: Why should an SEC lawyer who took a job at a Wall Street investment firm or a publicly traded corporation be considered any less of a revolver than an SEC lawyer who took a job at a law firm that represents those businesses? If they both end up defending the same businesses from the SEC, what difference would it make if one became in-house counsel and the other became outside counsel?

Of the 336 lawyers covered in the academic study, 37 left the SEC for employers other than law firms. Further, the authors explained

Why should an SEC lawyer who took a job at a Wall Street investment firm or a publicly traded corporation be considered any less of a revolver than an SEC lawyer who took a job at a law firm that represents those businesses? If they both end up defending the same business from the SEC, what difference would it make if one became in-house counsel and the other became outside counsel?

to POGO, these “other” employers included government agencies, academic institutions, and private-sector firms that have nothing to do with the SEC.¹⁹⁸

But some former SEC enforcement attorneys have gone to work in-house at firms that operate squarely within the agency’s jurisdiction. (See Appendix B) They, too, would have been counted as non-revolvers in the academic study.

The SEC alumnus in POGO’s database who filed the second most statements—a former assistant chief litigation counsel who represented the Enforcement Division in numerous SEC cases during the study period, according to federal court records¹⁹⁹—became an in-house lawyer at Bank of America. According to [his disclosure statements](#), he represented Bank of America in several SEC enforcement matters.²⁰⁰ (See Appendix A)

To sum up, the study purports to compare two distinct populations—revolvers and non-revolvers. But this may largely be a distinction without a difference. If the study is comparing oranges to oranges, the fact that both yield orange juice should come as no surprise. As it turns out, revolvers and non-revolvers alike are often involved in weak enforcement outcomes. On average, in the enforcement cases involving both revolvers and non-revolvers that the academics reviewed, the SEC recovered 0.4 percent of the estimated loss to shareholders. In 30 percent of the cases, the SEC recouped no monetary damages at all, the study found.²⁰¹

High-profile and crisis-related cases excluded

In addition to omitting some former SEC lawyers who did in fact go through the revolving door, the academic study leaves out several kinds of SEC enforcement cases.

The study relied on a database prepared by other academics—known as the Karpoff Lee Martin (KLM) database—that tracks cases in which the SEC and other agencies charge defendants with alleged accounting violations.²⁰² POGO reviewed the KLM database and found that it does not include many of the big, systemic offenses allegedly perpetrated by Wall Street firms during the study period (1990 to 2007).

For instance, it does not include prominent cases in which the SEC charged financial firms with such offenses as exerting undue influence over investment research analysts, engaging in manipulative mutual fund trading, misleading investors about the safety of auction rate securities, and rigging bids for municipal bonds, because these cases did not include charges of accounting violations.²⁰³

Furthermore, the academic study looked only at enforcement cases through 2007, based on an earlier version of the KLM database.²⁰⁴ So the study could not say whether the revolving door affected the SEC’s response to the 2008 financial crisis.

In other words, the study did not take us behind the headlines of the past few years to see how, if at all, the revolving door influenced some of the SEC’s high-profile enforcement efforts.

Informal and non-public investigations left out

The study looked only at enforcement cases in which the SEC actually brought charges. But, as the authors acknowledged, the revolving door can come into play at other stages in an SEC probe.

Some law firms defend clients from the SEC during “informal investigations and inquiries that are not publicly disclosed,” the authors wrote.²⁰⁵

Indeed, many alumni filed disclosure statements indicating they intended to represent clients during the informal or preliminary stages of an SEC probe. For instance, Andrew J. Dunbar—a former enforcement attorney in the SEC’s Los Angeles office who left the agency in August 2008—[filed three statements](#) from 2008 to 2009 saying he planned to represent clients that had received an “informal request for information” from the Los Angeles office.²⁰⁶

The study did not take us behind the headlines of the past few years to see how, if at all, the revolving door influenced some of the SEC’s high-profile enforcement efforts.

The study did not look at this kind of informal inquiry, nor did it examine cases in which the SEC did not file any charges. It did not explore, for instance, the SEC’s probe into alleged accounting violations at Lehman Brothers, which in 2008 filed the largest bankruptcy in U.S. history. A court-appointed examiner reported in 2010 that Lehman had used an “accounting gimmick” (in the words of a former Lehman employee) to temporarily remove billions of dollars in assets from its balance sheet,²⁰⁷ but the SEC has not brought charges against Lehman, its former executives, or its former auditor, Ernst & Young.²⁰⁸ (A state regulator, the New York Attorney General, did bring charges against Ernst & Young for allegedly aiding a fraud at Lehman.²⁰⁹ Ernst & Young has said there is “no factual or legal basis” for the Attorney General’s charges.²¹⁰)

It would be difficult to study preliminary SEC inquiries and cases closed with no charges, because those matters are typically kept confidential. But if the revolving door has any influence on the outcome of SEC enforcement actions in which charges are filed, it could easily affect the other stages of an SEC probe.

Administrative enforcement cases left out

The academic study also leaves out cases the SEC chose to file in an administrative forum instead of a federal court. The agency can bring charges in either venue, but the study focuses only on cases brought before a court because “administrative cases do not have case dockets which identify the lawyers involved.”²¹¹

Stavros Gadinis, an assistant professor at UC Berkeley Law School, has found that large firms often receive favorable treatment in SEC administrative cases.²¹² But the academic study could not explore whether revolvers were more or less likely to have worked on those cases.

No analysis of industry-to-SEC revolving door.

The authors of the study acknowledged another major blind spot: Due to data limitations, they were unable to study “the reverse

revolving door phenomenon,” which they define as “the impact of SEC hiring from industry on its enforcement efforts.” They noted, for example, that the “reverse revolving door” was on display when Robert Khuzami became the SEC’s enforcement chief after working as a general counsel at Deutsche Bank.²¹³

Were the SEC’s enforcement priorities influenced by the fact that Khuzami was formerly a senior Deutsche Bank executive? For example, was the SEC’s approach to cases related to the financial crisis influenced, however subtly, by the fact that he was part of the financial industry while the crisis built?²¹⁴ The academic study could not answer such questions.

To be sure, an empirical analysis might uncover evidence that the industry-to-SEC revolving door actually helps investors. SEC officials, academic researchers, and industry representatives have argued that “[a]ttracting specialized market experts, as well as those with the expertise that SEC traditionally has sought (including lawyers, accountants, and compliance personnel) helps the agency fulfill its mission of investor protection,” according to the GAO’s 2011 report.²¹⁵

But there can also be conflicts of interest whenever an SEC official is in a position to oversee a former employer, client, or industry. The academic study did not explore whether those conflicts ever led to weaker regulatory outcomes. (See Appendix B)

Giving revolvers credit for going after small fish.

The academic study did find that SEC lawyers who ended up joining SEC specialist firms were more likely to have worked on cases in which a chief executive was charged.

But the cases in question did not generally involve the CEOs of powerhouse Wall Street firms. Rather, they involved the likes of James R. Powell, who headed Daisytek International Corporation, an Allen, Texas-based office product and computer supply distributor.²¹⁶

It’s possible that revolvers were picking easier targets in order to



SEC enforcement chief Robert Khuzami was formerly a general counsel at Deutsche Bank.

put more notches in their belts, and to avoid losing to more formidable legal adversaries—including, perhaps, SEC alumni who went on to represent big companies. (This might help explain the study’s finding that revolvers were more likely to have worked on enforcement actions against smaller firms.²¹⁷) Furthermore, suing the chief executive of a small firm would probably carry less career downside for an SEC lawyer than suing the chief executive of a too-big-to-fail financial institution.

“Actions against high-ranking senior executives of financial institutions remain conspicuous by their absence.”

-Professor of Law John C. Coffee, Jr.

Law School—[wrote in January 2013](#) that SEC “actions against high-ranking senior executives of financial institutions remain conspicuous by their absence.” The SEC still has not charged a senior executive at “Lehman, Bear Stearns, AIG or the other major players in the 2008 financial collapse,” Coffee added.²¹⁹

Dismissing evidence that the revolving door undermines SEC enforcement efforts.

The study found that revolvers who join SEC specialist firms were “more likely to settle rather than win” the cases they handled at the SEC.²²⁰

The greater propensity to settle “could be interpreted as *prima facie* evidence of lenient enforcement,” the authors wrote, but they discounted that interpretation. Settling may have yielded stronger and more efficient outcomes for the SEC than taking the cases to trial, they pointed out.²²¹

Yet, some commentators have questioned whether SEC settlements are strong enough to deter future misconduct, especially

if the agency does not simultaneously charge senior executives. In reviewing the SEC’s enforcement record, Coffee [concluded](#) that the agency is “settling cheaply with entities and ignoring individuals—a policy of ‘parking tickets’ for securities fraud.”²²²

It’s clear that enforcement lawyers can make a name for themselves by being associated with high-profile cases. But it may matter less whether those cases achieve real justice or meaningful deterrence. Judging from the boasts SEC alumni make in their biographical profiles, it appears that big-dollar settlements can confer sufficient bragging rights.²²³

Furthermore, many SEC settlements include a provision—controversial among the agency’s critics—that [permits defendants to say they admit no wrongdoing](#).²²⁴ In December 2011, when Judge Jed Rakoff threw out a proposed settlement between the SEC and Citigroup, he [wrote](#) that a “judgment that does not involve any admissions and that results in only very modest penalties is...viewed, particularly in the business community, as a cost of doing business imposed by having to maintain a working relationship with a regulatory agency, rather than as any indication of where the real truth lies.”²²⁵

An “allegation that is neither admitted nor denied is simply that, an allegation,” he added.²²⁶

In other words, no-admit settlements—the favored tool of the SEC—could be an indication of compromised enforcement efforts at the agency. But the study’s authors dismiss this possibility in their analysis.

The academic study’s findings indicate that revolvers also tend to pull their punches when they are preparing to switch sides.

“Revolvers in their last year at the SEC: (i) collect significantly lower damages; (ii) have a lower probability of charging a CEO; and (iii) are associated with a lower likelihood of winning,” the study found.²²⁷

One of the authors offered a benign explanation to POGO: some SEC lawyers may simply “slack off” during their last year at the agency, having already established their reputation as tough enforcers, he said.²²⁸ But another plausible explanation is that some lawyers are soft-pedaling cases during their final months at the agency because they

think that’s the best way to curry favor with a potential employer.

Calculating the incalculable.

In his [opinion piece for Reuters](#), even as he touted the academic study’s conclusions, Khuzami torpedoed its underlying logic, noting that individual SEC staff members do not determine the outcomes of cases.²²⁹

“[T]he reality is that enforcement case recommendations are made by teams of attorneys, with multiple levels of review and scrutiny throughout the agency—all of which means that it is virtually impossible for any one person to make decisions on a case based on anything other than the facts, the evidence, and the law,” Khuzami wrote.²³⁰

The authors acknowledged in the study that “a skeptic can question whether an SEC lawyer has significant discretion over the penalty structure imposed on the culpable firm.”²³¹

“However, if one were to argue that SEC lawyers have little or no influence over enforcement outcomes,” they wrote, “then the debate over revolving doors compromising regulatory efforts is moot.”²³²

It is perfectly understandable that the authors chose to focus on individuals who go through the revolving door. In fact, individuals *can* make a big difference at the SEC. As described in Part I, the actions of an individual SEC Commissioner tipped the balance in derailing one of the top priorities of the previous SEC chairman.

The real shortcoming of the study is its assumption that the revolving door and regulatory capture can be neatly quantified and measured. By zooming in so closely on a narrow subset of SEC lawyers and cases, the authors may have missed the forest for the trees.

If there is any evidence of regulatory capture at the SEC, it is likely to be found in the broader assumptions and norms that underlie the work of revolvers and non-revolvers alike.

For instance, employees throughout the SEC appear to take pride in no-admit settlements that serve the interests of accused companies. When the SEC entered into a no-admit settlement with Goldman Sachs in 2010, the agency celebrated it as the “largest-ever penalty paid by a Wall Street firm,”²³³ while Goldman Sachs

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[described it](#) as “the right outcome for our firm, our shareholders and our clients.”²³⁴ Although the SEC did bring charges against an individual Goldman Sachs employee, it did not go after any senior executives at the company.²³⁵ Paul Atkins, a former SEC Commissioner, remarked that the agency’s enforcement action was “basically playing for headlines with very little substance,” according to the [New York Observer](#).²³⁶

The revolving door may help shape the culture and ethos of employees throughout the SEC—and the institution’s prevailing way of doing business.

[testimony](#).²³⁷ In many cases, he argued, requiring defendants to admit wrongdoing “would likely result in longer delays before victims are compensated, dilution of the deterrent impact of sanctions imposed because of the passage of time, and the expenditure of significant SEC resources that could instead be spent stopping the next fraud.”²³⁸

But when it comes to deterring wrongdoing or holding wrongdoers accountable, no-admit settlements may not do much to advance the public’s interest, especially if the SEC does not charge individual executives at powerhouse firms, as Judge Rakoff and other critics have pointed out.²³⁹

A similarly accommodating outlook can be seen in the SEC’s willingness to provide waivers and other forms of regulatory relief to companies, including those accused of being repeat offenders, as described in Part II. If SEC officials considering these accommodations envision themselves sitting on the other side of the table one day, they could have a vested interest in seeing that the agency grants such requests.

In this sense, the revolving door may help shape the culture and ethos of employees throughout the SEC—and the institution’s

prevailing way of doing business. This kind of influence is hard to measure, but it can still be beneficial to the companies and individuals regulated by the SEC.

Khuzami has said that no-admit settlements “serve the critical enforcement goals of accountability, deterrence, investor protection, and compensation to harmed investors,” according to [2012 congressional](#)

6 Looking Beyond the Numbers

Some people who represent clients before the SEC seem to think that the experience of agency alumni makes a difference.

The law firm of Morgan, Lewis & Bockius LLP [boasts on its website](#) that “[m]ore than 30 lawyers at Morgan Lewis have worked at the SEC, including a former Chief Trial Counsel for the SEC’s Division of Enforcement and a former General Counsel to the SEC’s Chief Accountant.”²⁴⁰

SEC experience can help alumni and their clients in a number of ways, former officials say.

David B.H. Martin, a former head of the SEC’s Corporation Finance Division, told POGO that SEC alumni “do have views about what types of arguments are likely to be effective.”²⁴¹

“The value you can bring to a client,” he said, “is understanding the arguments and language that resonate better with the SEC.” Although some of the most successful securities defense attorneys have never worked at the agency, he added, those with agency experience “may understand differently how your message will be received.”²⁴²

Another former SEC staffer, Roger D. Blanc, told POGO there are “contexts in which having worked at the SEC can give you insight as to the thought process of the Commission and can help you understand where they’re coming from.”²⁴³

Adam Pritchard, a former SEC senior counsel, said that “it’s a real advantage” for a company to hire an agency alumnus. “If I’m a client, I’m very pleased. I’m willing to pay top dollar for that,” he [told Bloomberg](#).²⁴⁴

Others say SEC alumni do not get any special treatment because the agency decides matters objectively.

Stephen Crimmins, a former SEC litigator, told POGO he gets “no special deal over there, and neither does anyone else.”²⁴⁵

Some former officials presented arguments on both sides.

“It would be disingenuous to say that an alumnus, during his first years away from the Commission, when he knows various department heads, isn’t going to have some greater comfort level,” former SEC Chairman Arthur Levitt told POGO. “But I don’t think the substance of the relationship is significantly different than if he had not been a Commission alumnus. I’d say there’s a greater comfort level

initially, but it doesn't go beyond that."²⁴⁶

Alan L. Dye, who worked in the SEC's Division of Corporation Finance and in the office of a former chairman, told POGO that his SEC experience has helped him in two respects: "One, I know some of the people over there... which I hope gives me some credibility when I have a matter before them. Two, having worked there, I probably have a somewhat better understanding of the processes at the agency than someone who didn't work there."²⁴⁷ But, Dye said, the SEC "staff would never take a position or provide a particular interpretation as a favor to someone, and I would never ask."²⁴⁸

"While their [SEC] service has undoubtedly made them more knowledgeable about the rules and regulations that govern the securities industry," SEC spokesman John Nester told POGO, "we decide issues on their merits regardless of anyone's background or experience."²⁴⁹

Firms that make self-serving claims about hiring SEC alumni may not have any noticeable advantage when they interact with the SEC. As POGO's research shows, you don't have to be a former SEC lawyer to win relief from the agency—a waiver, an exemption, or a no-action letter.

But that does not mean the revolving door is irrelevant to SEC decision-making.

The fact that so many SEC officials, including people at the top, came from industry and/or are on a path to industry, might help shape the environment in which all of them work.

Cultural Capture.

Several academics have explored the idea that the revolving door can lead to the "cultural capture" of a regulatory agency.

Stavros Gadinis, an assistant professor at UC Berkeley Law School, has [observed](#) that regulators with industry origins can become "'socialized' toward that industry's concerns and aspirations, carrying that perspective into their regulatory tasks."²⁵⁰

James Kwak, an associate professor at the University of Connecticut Law School, [has written](#) that financial regulators "are likely to share more social networks with financial institutions and their lawyers and lobbyists than with competing interest groups such as

consumers."²⁵¹

"The revolving door between government and industry, by creating social connections between people on opposite sides of the door, therefore has an influence even on people who are personally impervious to its attractions," he wrote.²⁵²

"[T]he problem may be this kind of excessive identification of the regulators with the companies they're regulating," Kwak told POGO.²⁵³

Lawrence G. Baxter, a visiting professor at Duke University Law School, has [argued](#) that revolving doors can create "the unseemly appearance, if not reality, of an incestuous relationship between regulators and industry that must surely risk fostering an improper influence of industry over the regulators."²⁵⁴

Emails between SEC officials and former Commissioner Annette Nazareth, [obtained by Bloomberg](#) through FOIA, illustrate how agency alumni can at least help get a foot in the door.

In one email exchange from November 2009, then-general counsel David Becker told Nazareth that he would connect her with Robert Cook—who had just been named as the head of the agency's Trading and Markets Division, and was Becker's former private-sector colleague—to discuss a draft of the Dodd-Frank bill. "I'm going to encourage Robert Cook to call you for the scoop," he wrote.²⁵⁵

At one point, Nazareth emailed Becker from the SEC lobby to request an unscheduled meeting. Becker responded five minutes later agreeing to meet.²⁵⁶

When Nazareth sent Becker and the five SEC commissioners her law firm's summary of the Dodd-Frank bill, Becker remarked that it "should go into extensive detail about the inanity of the Investor Advocate," a new SEC office created under the bill.²⁵⁷

Nazareth replied that she had asked the Securities Industry and



Former SEC commissioner Annette Nazareth remained cozy with SEC officials while working for outside firms.

Financial Markets Association, a securities industry lobbying group, to “trash” it.²⁵⁸

These emails illustrate the cozy ties between Nazareth and her former agency, and show how the revolving door can blur the line between a regulator and the industry it oversees.

On any given day, SEC staffers are confronted with critical decisions about regulations and enforcement actions affecting the public’s interest. Even when an employee complies with government ethics rules and makes every effort to remain independent and neutral, his outlook can be shaped by his industry experience, his ongoing ties with industry representatives, or his plans to work for the industry after leaving the agency.

It’s hard to show on a case-by-case basis that the revolving door is a direct cause of weak SEC action, whether that be the agency’s response to the financial crisis or the terms on which the agency settles with law-breaking companies and executives. But if the revolving door affects the mindset of SEC regulators in any way, it may at least help to explain why the agency does not take a tougher stand against the businesses it oversees.

If nothing else, the cultural capture of an agency such as the SEC can undermine the public’s trust in our nation’s federal regulatory system. In a [2012 survey](#), only 39 percent of investors said they trusted government regulators to protect their interests.²⁵⁹ The revolving door engenders distrust in government by creating the perception, and possibly the reality, of a cozy relationship between government and industry.



7 Looking Outside the SEC

The SEC revolving door does not exist in a vacuum. It is part of a larger set of interrelated challenges that confront regulatory agencies throughout the federal government.

If the revolving door has weakened the SEC in any way, its harmful effects may be exacerbated by players outside the agency who have been unwilling or unable to do their part in policing the financial markets and holding wrongdoers accountable.

Congress limits resources.

With regards to budgetary resources set by Congress, the SEC is perennially outmatched by the companies and industries it oversees.²⁶⁰ At times, these limited resources may force the SEC to settle cases on weak terms, or to rely heavily on the advice of SEC alumni who are representing large financial interests.

If the revolving door has weakened the SEC in any way, its harmful effects may be exacerbated by players outside the agency who have been unwilling or unable to do their part in policing the financial markets and holding wrongdoers accountable.

Federal judges rubber stamp weak settlements.

Federal judges can deny proposed SEC settlements if the agency does not provide enough information about the alleged misconduct, but judges often permit the SEC to settle with defendants on weak or vague terms.²⁶¹ There are some notable exceptions to this practice. As described in Part V, U.S. District Court Judge Jed Rakoff refused to approve a proposed settlement between the SEC and Citigroup because he said the court and the public “need some knowledge of what the underlying facts are: for otherwise, the court becomes a mere handmaiden to a settlement privately negotiated on the basis of unknown facts, while the public is deprived of ever knowing the truth

in a matter of obvious public importance.”²⁶²

In most settlements, however, the public gets only a limited glimpse of the alleged misconduct. This is not a new problem at the SEC. In 2001, for instance, the agency alleged that the accounting firm of Arthur Andersen had helped a company called Waste Management commit “one of the most egregious accounting frauds” the agency had ever seen. The SEC claimed that Arthur Andersen’s practice director, managing partner, and regional audit division head had been made aware of some of the problems. But these individuals were not charged or identified by name, leaving the public in the dark about their involvement in the alleged misconduct. Arthur Andersen later imploded amid accounting scandals at other companies it audited, such as Enron and WorldCom.²⁶³

Private litigants face significant hurdles.

Secondary actors often play a crucial role in facilitating corporate fraud, such as when they help a company conceal its true financial condition. As a result of the Court’s ruling, however, they cannot be held liable to shareholders and other private litigants when they aid and abet financial fraudsters.

Private litigation is no substitute for public governmental enforcement, but it can supplement the enforcement efforts of the SEC and other regulatory agencies.

Unfortunately, several laws and court decisions have created significant hurdles for private litigants.

In 1994, the Supreme Court held that secondary financial actors known as “gatekeepers”—including lawyers, accountants, investment bankers, brokers, credit rating agencies, underwriters, and securities analysts—could not be sued by private litigants for “aiding and abetting” securities fraud. These secondary actors often play a crucial role in facilitating corporate fraud, such as when they help a company conceal its true financial condition. As a result of the Court’s ruling, however,

they cannot be held liable to shareholders and other private litigants when they aid and abet financial fraudsters.²⁶⁴

In one case, a federal appellate court ruled that an outside lawyer could not be held liable to private litigants for facilitating a \$2.4 billion fraud at Refco, a former giant of the futures trading industry. The lawyer has since been found guilty of several criminal charges brought by the government—“telling blatant lies, falsifying important documents, and concealing others,” according to the U.S. Attorney for the Southern District of New York.²⁶⁵

In [2010 testimony](#) about the Supreme Court decision and related cases, Damon Silvers, a counsel for the AFL-CIO, told Congress of a “legal landscape where a person may be sued for aiding and abetting a hold up of a gas station but not for aiding and abetting a multi-billion [dollar] fraud like Enron that cost thousands of people their jobs and retirement savings.”²⁶⁶ James D. Cox, a professor at Duke University Law School, [told Congress](#) that “executives and their counselors who cook the books and defraud investors avoid personal responsibility so long as the product of their chicanery does not bear their name (even though it bears their footprints).”²⁶⁷

In 1995, the Private Securities Litigation Reform Act added other burdens. Among other things, it required private litigants to prove that defendants were not just negligent, but had acted knowingly or recklessly in committing fraud.

While the law was intended to limit frivolous lawsuits, it has led to a Catch-22 for private plaintiffs who want to use the courts to obtain evidence to build a case (a process known as discovery): “You can’t get discovery unless you have strong evidence of fraud, and you can’t get strong evidence of fraud without discovery,” said Coffee, the Columbia University law professor, according to [The Wall Street Journal](#).²⁶⁸

Other agencies can become captured or complacent.

Other authorities that have a role to play in policing financial markets and holding wrongdoers accountable include regulators that enforce securities laws at the state level, as well as the Justice Department, which has the authority to bring criminal charges.

Some state regulators are widely regarded as tough enforcers.

For instance, the New York State Attorney General’s office—whose former occupant, Eliot Spitzer, was known as the “Sheriff of Wall Street”²⁶⁹—has special powers under the Martin Act to investigate and prosecute financial fraud.

Still, the Justice Department and other authorities have come under scrutiny for not bringing more charges against the companies and individuals who helped fuel the financial crisis.²⁷⁰ These offices are also susceptible to regulatory capture and conflicts of interest arising from the revolving door.²⁷¹



Conclusion

POGO's report shows that the revolving door is constantly spinning at the SEC. Between 2001 and 2010, more than 400 SEC alumni filed nearly 2,000 disclosure statements saying they planned to represent employers or clients before the agency. These alumni have represented companies during SEC investigations, lobbied the agency on proposed regulations, obtained waivers to soften the blow of enforcement actions, and helped clients win exemptions from federal law. On the other side of the revolving door, when industry veterans join the SEC, they may be in a position to oversee their former employers or clients, or may be forced to recuse themselves from working on crucial agency issues.

SEC spokesman John Nester dismissed concerns about the revolving door.

“We are proud of our efforts to avoid even the appearance of partiality in our work, and the results speak for themselves,” he told POGO.²⁷²

“[T]he Enforcement staff are skilled and dedicated attorneys who have chosen public service because they believe deeply in our mission to protect investors,” Nester told POGO. “The notion that they would repudiate that goal—and risk their reputations and even criminal prosecution and jail by acting inappropriately—is not one supported by experience.”²⁷³

Nester added that the academic study on the revolving door had confirmed his experience, “finding that future job prospects for SEC enforcement attorneys had no measurable impact on enforcement outcomes and that SEC alumni appear to have no measurable advantage on behalf of their clients facing SEC investigation.”²⁷⁴

However, POGO's review found that this study does not do much to alleviate concerns about the SEC revolving door. The study sought to quantify any influence the revolving door might have on SEC enforcement actions, but the subtleties involved do not lend themselves to such simple measurement. POGO remains concerned that the steady movement of employees in and out of the SEC creates opportunities for powerful companies and industry groups to “capture” the agency.

POGO does not wish to hamper the SEC's recruitment efforts or eliminate all movement between the agency and the financial industry. But when an employee leaves the SEC on Friday, and shows

up on Monday working for a company he used to regulate, such a rapidly spinning revolving door can weaken the agency's protection of investors, enable regulated entities to exert undue influence, demoralize other government employees, and damage the public's trust.

There may not be a single, comprehensive solution to eliminate every potential conflict of interest at the agency. Nonetheless, some steps could be taken to prevent regulated companies and industries from exerting undue influence on our federal regulatory system.



Recommendations

POGO urges the SEC, Congress, federal judges, and the White House to take the following steps to mitigate the revolving door's most adverse effects.

Let the public see where federal employees go after they leave the government, and disclose their ethics agreements.

- SEC alumni are currently required to file post-employment disclosure statements when they communicate with or appear before the agency in the first two years after they leave. Congress instead should require SEC alumni to file post-employment statements whenever they go to work for a regulated entity. Congress should also require all individuals outside the government to file a disclosure statement whenever they communicate with or appear before an official at the SEC or another agency to discuss agency business—including regulations or rules, policymaking, federal funds, examinations, and enforcement actions. Congress should require them to identify their employer or client and with whom they met, and explain the communication in detail. If an individual contacting the agency used to work at that agency, he or she should be required to disclose the previous title and responsibilities.
- The SEC and other agencies should post all disclosure statements online shortly after receiving them.
- The SEC and other agencies should provide online access to ethics records—including advice provided by ethics officials, recusal agreements, and waivers.

Extend the cooling off periods for employees who enter and leave the agency.

- Congress should require employees who leave the SEC and other federal agencies to wait at least two years before contacting the agency on behalf of anyone to discuss agency business, including

regulations or rules, policymaking, federal funds, examinations, and enforcement matters.

- Congress should require employees who leave the SEC and other federal agencies to wait at least one year before taking a job with a firm if they had contact with that firm on agency business affecting the firm within a year prior to their departure.
- Congress should make President Obama’s revolving door restrictions for incoming and outgoing political appointees a permanent statute in federal law, and extend the restrictions to other employees throughout the executive branch. However, an exception should be made for those lobbying for an entity without a pecuniary interest.
- Congress should require new employees at the SEC and other federal agencies to wait at least two years before participating in agency business that could affect a former employer or client.

Give the public more information about agency actions.

- When agency officials meet with industry representatives, the agency should provide a webcast of the meeting or provide a complete public record detailing the discussions. Likewise, when agency personnel give speeches to industry groups, they should be made public in a timely manner via the agency website, along with any questions and answers.
- Enforcement cases brought before an administrative law judge should be as transparent and accessible as cases brought before a federal court. The SEC and other agencies should disclose administrative case documents and identify the attorneys who work on those cases.

Give the SEC the resources it needs.

- Congress should ensure the SEC and other federal agencies have sufficient resources to hire and retain a skilled and motivated workforce, keep up with the companies and industries they oversee, and lessen their reliance on private interests to regulate themselves.

Other players should do their part.

- When the SEC charges companies or individuals with wrongdoing, federal judges should require the agency to lay out all the facts and evidence—not just a negotiated set of narrow or vague disclosures—so the public can evaluate at least three key points: the conduct of the accused, whether the punishment fits the offense, and whether the responsible parties have been charged. More disclosure would also help the public and Congress hold regulators accountable, and help defrauded investors and other injured parties seek damages through private lawsuits.
- Recognizing the SEC’s limits, and instead of relying on the SEC alone to protect investors, lawmakers should make it easier for private litigants to uncover financial fraud and hold law-breaking companies and related actors accountable. Congress should pass legislation that would enable private litigants to take action against secondary actors who aid and abet securities fraud. In addition, lawmakers should amend the Private Securities Litigation Reform Act to lower the bar for bringing private lawsuits.
- In order to maximize the effectiveness of private litigation, Congress should require private litigants to place more evidence and underlying facts in the public record— instead of burying the evidence in exchange for out-of-court financial settlements that avert the airing of facts in public trials.
- Other players—including state regulators, state attorneys general, and the Department of Justice—should participate in a healthy rivalry with the SEC to punish law-breaking companies and protect investors.



About the Author

Michael Smallberg is a Project On Government Oversight investigator covering the financial sector and issues such as the revolving door and excessive secrecy at financial regulatory agencies. Prior to joining POGO in 2006, Smallberg interned at the National Archives. He earned a B.A. in American History from Brown University. This report is based in part on interviews with current and former SEC officials and thousands of federal records obtained through the Freedom of Information Act. It follows a similar report he did on the SEC's revolving door in 2011.

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Endnotes

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Hilzenrath is currently POGO’s Editor-in-Chief and contributed to POGO’s investigation and report.

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35 Memorandum from Smeeta Ramarathnam regarding Invesco Meeting, p. 4.

In one of Karrie McMillan’s letters to the SEC on behalf of the Investment Company Institute, she argued that the “2010 regulatory reforms are working, and further changes are not necessary.” Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, regarding President’s Working Group Report on Money Market Fund Reform Options, File Number 4-619, February 16, 2012. <http://www.sec.gov/comments/4-619/4619-119.pdf>

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Susan Ferris Wyderko, the former SEC official, signed a letter raising a similar concern on behalf of the Mutual Fund Directors Forum: “The fundamental changes to money market funds currently being considered by the SEC...will likely result in investors moving their cash to less-regulated and/or less-transparent

products.” Lancellotta and Wyderko MFDF Letter, p. 4.

According to [SEC records](#), Wyderko met with Aguilar in February 2012 to discuss “potential regulatory changes to money market funds”; the records don’t reveal what she told him in person. Memorandum from Smeeta Ramarathnam regarding MFDF meeting.

SEC alumni at the Investment Company Institute expressed a similar view in a letter to international regulators that was submitted as a public comment on Schapiro’s proposals: “Regulatory changes that push assets from regulated products (i.e., money market funds) to less regulated and less transparent products arguably serve to increase systemic risk.” Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Mohamed Ben Salem, General Secretariat, International Organization of Securities Commissions, regarding IOSCO Money Market Fund Systemic Risk Analysis and Reform Options, May 25, 2012, p. 23. <http://www.sec.gov/comments/4-619/4619-182.pdf> (Downloaded November 26, 2012)

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Here’s how the Investment Company Institute had put it: “Regulators...ought to be highly careful about implementing any proposal that contracts credit available to firms and governments, given...the fragility of the economic recovery.” Letter from Paul Schott Stevens, President & CEO, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, regarding President’s Working Group Report on Money Market Fund Reform Options, File Number 4-619, January 10, 2011, p. 56. <http://www.sec.gov/comments/4-619/4619-49.pdf> (Downloaded November 26, 2012)

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Recommendations, p. 5.

Geithner argued that the SEC is “best positioned to implement reforms.” But he added that the Council and its members “should, in parallel, take active steps in the event the SEC is unwilling to act in a timely and effective manner.” Letter from Timothy F. Geithner, Secretary, Department of the Treasury, to Members of the Financial Stability Oversight Council, regarding potential reforms of money market funds, September 27, 2012, p. 3. <http://www.treasury.gov/connect/blog/Documents/Sec.Geithner.Letter.To.FSOC.pdf> (Downloaded November 26, 2012) (Hereinafter Geithner letter regarding potential reforms of money market funds)

For instance, the Council has the authority to designate any non-bank financial company as a threat to financial stability and subject it to supervision by the Federal Reserve. Other agencies also have the authority to address some of the risks posed by money market funds. FSOC Proposed Recommendations, p. 5.

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White’s husband, a former director of the SEC’s Corporation Finance Division, is partner at Cravath, Swaine & Moore, where he represents public companies

“on a wide variety of matters including corporate governance matters, public reporting obligations, public financings and restatements and other financial crises.” Cravath, Swaine & Moore LLP, “John W. White.” <http://www.cravath.com/jwhite/> (Downloaded January 29, 2013)

As an SEC chairman, White may be restricted from working on matters affecting her husband’s clients. Peter J. Henning, “How Mary Jo White’s Connections Could Complicate Her S.E.C. Job,” DealBook, January 28, 2013. <http://dealbook.nytimes.com/2013/01/28/how-mary-jo-whites-connections-could-complicate-her-s-e-c-job/> (Downloaded January 29, 2013)

62 Dina ElBoghday, “Obama nominates Mary Jo White as SEC chair,” *The Washington Post*, January 24, 2013. http://www.washingtonpost.com/business/economy/obama-to-nominate-mary-jo-white-as-sec-chair/2013/01/24/02dc496c-662b-11e2-93e1-475791032daf_story.html (Downloaded January 29, 2013) (Hereinafter “Obama nominates Mary Jo White as SEC chair”)

63 Minority staff of the Senate Committee on Finance and the Senate Committee on the Judiciary Committee, *The Firing of an SEC Attorney and the Investigation of Pequot Capital Management*, 110th Congress, Senate Report 110-28, August 2007, pp. 5, 32. <http://pogoarchives.org/m/er/senate-pequot-report-august2007.pdf> (Hereinafter *The Firing of an SEC Attorney and the Investigation of Pequot Capital Management*)

64 Ed deHaan, et al., *Does the Revolving Door Affect the SEC’s Enforcement Outcomes?* July 2012. <http://pogoarchives.org/m/fo/sec-revolving-door-study-july2012.pdf> (Hereinafter *Does the Revolving Door Affect the SEC’s Enforcement Outcomes?*); Edward Wyatt, “Study Questions Risk of S.E.C. Revolving Door,” *The New York Times*, August 5, 2012. <http://www.nytimes.com/2012/08/06/business/study-casts-doubt-on-how-a-revolving-door-hurts-the-sec.html?smid=pl-share>; Alison Frankel, “New study says SEC revolving door not important. Don’t believe it,” Thomson Reuters, August 6, 2012. http://newsandinsight.thomsonreuters.com/Legal/News/2012/08 - August/New_study_says_SEC_revolving_door_not_important_Don_t_believe_it/ (All downloaded November 26, 2012)

65 Robert Khuzami, “Column: Cynics perpetuate SEC’s ‘revolving door’ myth,” Reuters, August 29, 2012. <http://www.reuters.com/article/2012/08/29/us-robert-khuzami-sec-idUSBRE87S0RS20120829> (Hereinafter “Column: Cynics perpetuate SEC’s ‘revolving door’ myth”) (Downloaded November 26, 2012)

66 Project On Government Oversight, *Revolving Regulators: SEC Faces Ethics Challenges with Revolving Door*, May 13, 2011. <http://www.pogo.org/our-work/reports/2011/fo-fra-20110513.html> (Hereinafter *Revolving Regulators*); Project On Government Oversight, “SEC Revolving Door Database.” <http://www.pogo.org/tools-and-data/sec-revolving-door-database/> (Hereinafter “SEC Revolving Door Database”)

67 Project On Government Oversight, web page containing SEC post-

employment disclosure statements filed by William R. Baker III. <http://www.pogo.org/tools-and-data/sec-revolving-door-database/search/search.jsp?query=%22william+r+baker+iii%22&typeID=346170484> (Hereinafter Web page containing SEC post-employment disclosure statements filed by William R. Baker III)

68 *Revolving Regulators*.

69 “SEC Revolving Door Database.”

There are several other caveats that should be kept in mind when reviewing POGO’s database.

POGO extracted the following information from the post-employment disclosures: employee name, former SEC division/office, former regional office, former title, new employer, date of resignation, and date of statement.

In order to create a searchable, sortable database, POGO had to standardize some of this information:

- Some alumni did not spell their names consistently. POGO tried to standardize the spelling and to provide middle initials wherever possible.
- POGO standardized the names of former SEC divisions/offices where alumni said they used to work. (For instance, the “Division of Enforcement” and “Enforcement Division” are counted as the same division.)
- Many SEC employees work at the agency’s headquarters in Washington, DC. Others are located at one of the SEC’s 11 regional offices. Securities and Exchange Commission, “Securities and Exchange Commission Organization Chart.” <http://www.sec.gov/images/secorg.pdf> (Downloaded January 4, 2013) POGO’s database lists only the functional division or office in which SEC alumni used to work, regardless of where they were located. For instance, one alumnus might have worked for the Enforcement Division in the agency’s Washington, DC, headquarters, while another might have worked for the Enforcement Division in the agency’s New York office. Both alumni would simply be listed under the Enforcement Division in POGO’s database.
- In some disclosure statements, alumni said where they used to work, but did not identify a functional division or office. For instance, Kit Addleman only disclosed that she was a regional director of the SEC’s Atlanta office. As a regional director, she apparently oversaw multiple functions, according to a bio posted on the website of the law firm where she currently works. In POGO’s database, her former division/office is marked simply as “Regional Office.” Letter from Kit Addleman, Haynes and Boone, LLP, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, regarding notice of representation pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b), December 23, 2010. <http://pogoarchives.org/tools-and-data/fo/sec/addleman-20101223-1.pdf>; Haynes and Boone, LLP, “Kit Addleman.” http://www.haynesboone.com/kit_addleman/ (All

downloaded January 4, 2013)

- If an alumnus worked in several different divisions or offices during her time at the agency, POGO recorded the division/office where she was most recently employed.
- There were some inconsistencies in the spelling of former SEC titles (e.g., “attorney-adviser” and “attorney advisor”). POGO standardized this information wherever possible.
- Some of the firms that hired SEC alumni have gone through mergers or acquisitions. Other firms are different subsidiaries of the same corporate parent. Wherever possible, POGO tried to record the latest name of the firm (e.g., the law firm of “Wilmer, Cutler & Pickering” is recorded under its current, post-merger name, “Wilmer Cutler Pickering Hale & Dorr”), or the name of the corporate parent (e.g., “Deutsche Bank Securities” is recorded under the name of its corporate parent, “Deutsche Bank AG”).
- POGO tried to record the exact day on which the SEC alumni left the agency, but some alumni only provided a month and year. In these cases, POGO recorded their resignation date as the first of the month, in order to conservatively estimate how much time elapsed before these alumni filed their first post-employment disclosure statement.
- In some cases, the date of the disclosure statement is obscured by non-FOIA markings, or does not match up with other information in the statement (e.g., the date of the statement is earlier than the date of resignation). In these cases, POGO relied on the SEC stamp indicating the date on which the agency received the statement.

For more information, see POGO’s database methodology. Project On Government Oversight, “Securities and Exchange Commission Revolving Door Database Methodology.” <http://www.pogo.org/tools-and-data/sec-revolving-door-database/methodology.html>

70 “Practice by former members and employees of the Commission,” 17 C.F.R. § 200.735-8(b). <http://www.gpo.gov/fdsys/pkg/CFR-2012-title17-vol2/pdf/CFR-2012-title17-vol2-sec200-735-8.pdf> (Downloaded November 26, 2012)

71 Securities and Exchange Commission, Division of Corporation Finance, “Statement on Well-Known Seasoned Issuer Waivers,” July 8, 2011. <http://www.sec.gov/divisions/corpfin/guidance/wksi-waivers-interp.htm> (Downloaded November 26, 2012) (Hereinafter “Statement on Well-Known Seasoned Issuer Waivers”)

72 “Statement on Well-Known Seasoned Issuer Waivers.”

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74 Edward Wyatt, “S.E.C. Is Avoiding Tough Sanctions for Large Banks,” *The*

New York Times, February 3, 2012. <http://www.nytimes.com/2012/02/03/business/sec-is-avoiding-tough-sanctions-for-large-banks.html> (Downloaded November 26, 2012) (Hereinafter “S.E.C. Is Avoiding Tough Sanctions for Large Banks”)

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77 Debevoise & Plimpton LLP, “Kenneth J. Berman.” <http://www.debevoise.com/attorneys/detail.aspx?id=da25b829-d6b9-4b17-8749-2e0f56ad5f3f&type=showfullbio>; Letter from Kenneth J. Berman, Debevoise & Plimpton LLP, to Mary Kosterlitz, Chief, Office of Enforcement Liaison, Division of Corporation Finance, Securities and Exchange Commission, regarding Securities and Exchange Commission v. UBS Securities LLC and UBS Financial Services, Inc., File Number HO-10915, December 9, 2008, p. 4. <http://www.sec.gov/divisions/corpfin/cf-noaction/2008/ubsfinancial122308-405.pdf> (All downloaded November 26, 2012)

78 Securities and Exchange Commission, “SEC Charges UBS with Fraudulent Bidding Practices Involving Investment of Municipal Bond Proceeds,” May 4, 2011. <http://www.sec.gov/news/press/2011/2011-105.htm> (Downloaded November 26, 2012)

79 Letter from Kenneth J. Berman, Debevoise & Plimpton LLP, to Mary Kosterlitz, Chief, Office of Enforcement Liaison, Division of Corporation Finance, Securities and Exchange Commission, regarding Securities and Exchange Commission v. UBS Financial Services Inc., May 4, 2011, p. 4. <http://www.sec.gov/divisions/corpfin/cf-noaction/2011/ubs050611-405.pdf> (Downloaded November 26, 2012)

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81 Skadden, Arps, Slate, Meagher & Flom LLP, “Colleen P. Mahoney.” <http://www.skadden.com/professionals/colleen-p-mahoney>; Securities and Exchange Commission, “Colleen P. Mahoney to Leave Commission After 15 Years of Service,” July 6, 1998. <http://www.sec.gov/news/press/pressarchive/1998/98-63.txt>; Letter from Colleen P. Mahoney, Skadden, Arps, Slate, Meagher & Flom LLP, to Mary Kosterlitz, Chief, Office of Enforcement Liaison, Division of Corporation Finance, Securities and Exchange Commission, regarding the Matter of UBS Financial Services Inc. of Puerto Rico, File Number FL-3491, April 24, 2012. <http://www.sec.gov/divisions/>

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82 Securities and Exchange Commission, Division of Corporation Finance, No-Action, Interpretive and Exemptive (sic) Letters, "Rule 405 - Determination regarding ineligible issuer status." <http://www.sec.gov/divisions/corpfin/cf-noaction.shtml#405> (Downloaded November 26, 2012) The number of waivers is accurate as of February 6, 2012.

POGO reviewed WKSI waivers posted on the SEC's website. POGO identified the individual who requested the WKSI waiver, and consulted several sources—including online profiles and post-employment disclosures—to determine if the individual had worked at the SEC. Based on this review, POGO has determined that at least 34 of the 63 WKSI waivers issued since 2006 were requested by SEC alumni. It is possible that additional waivers were requested by SEC alumni whose agency experience was not reflected in the online profiles or other publicly available records that POGO consulted.

83 "Securities Act of 1933," 15 U.S.C. §§ 77a et seq. <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title15/pdf/USCODE-2011-title15-chap2A-subchapI.pdf> (Downloaded November 28, 2012)

For instance, the SEC's Regulation A exempts offerings that do not exceed \$5 million in a 12-month period. Securities and Exchange Commission, "Q&A: Small Business and the SEC-Regulation A," December 21, 2012. <http://www.sec.gov/info/smallbus/qasbsec.htm#rega>

The SEC has told the Government Accountability Office that this exemption was intended to "provide a simple and relatively inexpensive procedure for small business use in raising limited amounts of needed capital." Government Accountability Office, *Securities Regulation: Factors That May Affect Trends in Regulation A Offerings*, GAO-12-839, July 2012, p. 5. <http://www.gao.gov/assets/600/592113.pdf> (Hereinafter *Securities Regulation: Factors That May Affect Trends in Regulation A Offerings*)

The Jumpstart Our Business Startups (JOBS) Act, enacted in April 2012, requires the SEC to increase the offering limit from \$5 million to \$50 million. Testimony of Mary L. Schapiro, Chairman, Securities and Exchange Commission, before the House Oversight Subcommittee on TARP, Financial Services and Bailout of Public and Private Programs, on the "JOBS Act in Action Part II: Overseeing Effective Implementation of the JOBS Act at the SEC," June 28, 2012. <http://www.sec.gov/news/testimony/2012/ts062812mls.htm> (All downloaded November 26, 2012)

Rule 505 of the SEC's Regulation D is quite similar. Like Regulation A, it provides an exemption for the sale of securities totaling up to \$5 million for a 12-month period. However, companies that use the Rule 505 exemption can only sell their securities to 35 or fewer "non-accredited" investors. Securities and Exchange Commission, "Rule 505 of Regulation D," December 2, 2009. <http://www.sec.gov/answers/rule505.htm> (Downloaded November 26, 2012)

They can still sell to an unlimited number of "accredited investors," i.e., a "purchaser that has enough knowledge and experience in finance and business matters to evaluate the risks and merits of the prospective investment." *Securities Regulation: Factors That May Affect Trends in Regulation A Offerings*, p. 7

84 An underwriter is a "brokerage firm, securities dealer, or investment banking firm that sells company securities to investors, other brokerage firms, securities dealers, and investment banking firms." *Securities Regulation: Factors That May Affect Trends in Regulation A Offerings*, p. 20.

85 For example, a company cannot issue or underwrite securities that are exempted under Regulation A or Rule 505 of Regulation D if the company "is subject to an administrative order or an injunction involving certain securities laws violations." Securities and Exchange Commission, "Process for Requesting Waivers of Disqualification Under Rule 262 of Regulation A and Rule 505 of Regulation D," December 31, 2009. <http://www.sec.gov/divisions/corpfin/guidance/262-505-waiver.htm> (Downloaded November 26, 2012)

86 Securities and Exchange Commission, "J.P. Morgan to Pay \$153.6 Million to Settle SEC Charges of Misleading Investors in CDO Tied to U.S. Housing Market," June 21, 2011. <http://www.sec.gov/news/press/2011/2011-131.htm> (Downloaded November 26, 2012)

87 Bingham McCutchen LLP, "Herbert F. Janick III." <http://www.bingham.com/People/Janick-Herbert>; Letter from Herbert F. Janick III, Bingham McCutchen LLP, to Gerald J. Laporte, Chief, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, regarding SEC v. J.P. Morgan Securities LLC (f/k/a J.P. Morgan Securities Inc.), Civil Action Number 11-CV-4206, U.S. District Court for the Southern District of New York, June 21, 2011. <http://www.sec.gov/divisions/corpfin/cf-noaction/2011/jpmorgansecurities062911-505.pdf> (Hereinafter Letter from Herbert F. Janick) (All downloaded November 26, 2012)

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- 91 Security and Exchange Commission, “Investment Company Act of 1940,” Section 9. <http://www.sec.gov/about/laws/ica40.pdf> (Downloaded November 26, 2012)
- 92 Securities and Exchange Commission, “SEC Charges J. P. Morgan Securities with Fraudulent Bidding Practices Involving Investment of Municipal Bond Proceeds,” July 7, 2011. <http://www.sec.gov/news/press/2011/2011-143.htm> (Downloaded November 26, 2012) (Hereinafter “SEC Charges J. P. Morgan Securities with Fraudulent Bidding Practices”)
- 93 “SEC Charges J. P. Morgan Securities with Fraudulent Bidding Practices”; “Application Pursuant to Section 9(c) of the Investment Company Act of 1940 for Temporary and Permanent Orders Exempting Applicants from the Provisions of Section 9(a) of Such Act,” In the Matter of J.P. Morgan Securities LLC, et al., File Number 812-13919, July 8, 2011. <http://www.sec.gov/Archives/edgar/data/919185/000119312511185222/d40appa.htm> (Downloaded November 26, 2012) (Hereinafter JPMorgan Application)
- 94 JPMorgan Application.
- 95 Wilmer Cutler Pickering Hale and Dorr LLP, “Stephanie Avakian.” http://www.wilmerhale.com/stephanie_avakian/; Wilmer Cutler Pickering Hale and Dorr LLP, “James E. Anderson.” http://www.wilmerhale.com/james_anderson/; Wilmer Cutler Pickering Hale and Dorr LLP, “John M. Faust.” http://www.wilmerhale.com/john_faust/ (All downloaded November 26, 2012)
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- Similarly, the SEC can “conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions” from the Securities Exchange Act of 1934 if the exemption is “necessary or appropriate in the public interest, and is consistent with the protection of investors.” “Securities Exchange Act of 1934,” Section 36(a). <http://www.sec.gov/about/laws/sea34.pdf> (Downloaded November 26, 2012)
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Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Final Rule, 17 C.F.R. Parts 229, 232, 240, and 249, Release Numbers 33-9175, 34-63741, File Number S7-24-10, January 20, 2011. <http://www.sec.gov/rules/final/2011/33-9175.pdf>; Securities and Exchange Commission, “Asset-Backed Securities,” June 29, 2012. <http://www.sec.gov/spotlight/dodd-frank/assetbackedsecurities.shtml> (All downloaded November 26, 2012)

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112 “Shareholder proposals,” 17 C.F.R. § 240.14a-8. <http://www.gpo.gov/fdsys/pkg/CFR-2012-title17-vol3/pdf/CFR-2012-title17-vol3-sec240-14a-8.pdf> (Downloaded November 26, 2012)

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The GAO’s 2011 report noted that the SEC has now started asking all departing staffers for information about their future employer. Furthermore, an SEC ethics official told POGO that the agency now provides mandatory post-employment briefings for all outgoing staffers. These briefings provide an additional opportunity to advise employees about potential conflicts of interest.

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