

# **REPORT OF INVESTIGATION**

**CASE# 19-ERA-0007-I**



**Office of Inspector General**

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



U.S. Securities and Exchange Commission  
Office of Inspector General



Report of Investigation

**Subject:** (b)(6); (b)(7)(C)  
**Title:** [Redacted]  
**SK-Level/Grade:** (b)(6); (b)(7)(C)  
**Office:** Division of Economic and Risk Analysis  
**Region:** Washington, D.C.  
**Security Clearance:** Y  / N

**Case #:** 19-ERA-0007-I  
(Formerly Case #: 19-ERA-0251-I)  
**Origin:** Office of the Chairman

**Subject:** (b)(6); (b)(7)(C)  
**Title:** [Redacted]  
**SK Level/Grade:** (b)(6); (b)(7)(C)  
**Office:** Division of Economic and Risk Analysis  
**Region:** Washington, D.C.  
**Security Clearance:** Y  / N

**Investigation Initiated:** December 19, 2018

**Investigation Completed:** August 14, 2020

OVERVIEW

This report summarizes the results of an investigation conducted by the U.S. Securities and Exchange Commission’s (SEC) Office of Inspector General (OIG) regarding an allegation involving the potential release of nonpublic information to the media. Specifically, on December 19, 2018, Reuters published an article entitled, *Data problems complicate U.S. regulator’s watch over ratings firms*, which Katanga Johnson authored. The Office of the Chairman alleged that five unidentified current and former Division of Economic and Risk Analysis (DERA) employees contributed to the article through showing nonpublic e-mails and internal reports to Johnson that related to concerns some SEC staff had about the Office of Credit Ratings’ (OCR) oversight of Nationally Recognized Statistical Rating Organizations (NRSRO). (EXHIBIT 1)

The OIG initiated an investigation and identified two former DERA employees (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) who provided the reporter with nonpublic information for the article. Specifically, (b)(6); (b)(7)(C) admitted providing information to the reporter, and the investigation found (b)(6); (b)(7)(C) also provided information. (b)(6); (b)(7)(C) told the OIG that he provided information to the reporter because he had identified issues related to NRSROs’ compliance with the public reporting requirements and suggested the reporter look into these issues.

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The investigation did not identify the three remaining alleged current or former DERA employees mentioned in the article. Witness interviews revealed that the information (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) provided to the media (b)(5) (b)(5)

The facts and evidence developed during this investigation were referred to the U.S. Attorney's Office for the District of Columbia for consideration of prosecution; however, on April 6, 2020, the matter was declined.

## BACKGROUND

An NRSRO is a registered credit rating agency that the SEC governs. In July 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which amended Section 15E of the Securities Exchange Act of 1934 to enhance the regulation, accountability, and transparency of NRSROs. The Dodd-Frank Act also mandated the creation of the SEC's OCR, which in June 2012 was established and is responsible for the SEC's oversight of credit rating agencies registered as NRSROs and administers the SEC-related rules.

The Credit Rating Agency Reform Act of 2006 Rules 17g-2 and 17g-7 require NRSROs to disclose their rating actions history on an easily accessible portion of their corporate Internet websites free to the public. Specifically, Rule 17g-7(b)(3) requires NRSROs to disclose their ratings information in an interactive data file that uses an XBRL format. In 2015, OCR published an XBRL taxonomy applicable to NRSROs' disclosure of credit ratings histories. The taxonomy included a "Preparer's Guide" that included guidance for preparing the XBRL files. DERA handles facilitating NRSRO's compliance with the XBRL disclosure requirements and analyzes the data that is reported.

In 2016, DERA identified issues pertaining to NRSROs' compliance with the XBRL reporting requirements. Specifically, most NRSROs were not publishing their ratings information in the proper XBRL format, and OCR and DERA worked collaboratively to identify and correct the shortcomings and issued subsequent guidance to NRSROs. (EXHIBITS 2 – 7)

On December 19, 2018, Reuters published the article entitled, *Data problems complicate U.S. regulator's watch over ratings firms*. The article stated that "five current and former staff at the SEC's [DERA] responsible for the task, told Reuters insufficient resources and technology challenges have hampered their ability to deliver such analysis [of credit rating agencies]." The article further stated, "Internal SEC emails from 2014 to 2017 seen by Reuters show SEC staff at DERA and the [OCR] were aware of the gaps but there was internal debate as to which department should address the issue. (b)(6); (b)(7)(C) was also cited in the article, stating, "Despite a clear mandate in the Commission's own rulemaking, there are still tons of questions about the lack of analysis the SEC is doing to credit rating agencies." (EXHIBIT 1)

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(b)(6); (b)(7)(C) joined DERA in (b)(6); (b)(7)(C) and left the SEC in (b)(6); (b)(7)(C) to work for (b)(6); (b)(7)(C). A review of (b)(6); (b)(7)(C) Electronic Official Personnel Folder (eOPF) revealed that in (b)(6); (b)(7)(C) she began working for DERA and in (b)(6); (b)(7)(C) (EXHIBITS 8 – 11)

**SCOPE**

The OIG investigated the following potential violations:

- Title 18 United States Code §1905 –Disclosure of Confidential Information Generally
- Title 5 Code of Federal Regulations (CFR) Part 2635 (Standards of Ethical Conduct for Employees of the Executive Branch), §703 (Use of Nonpublic Information)
- Title 17 CFR § 200.735-3(b)(2)(i) - Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission
- SEC Administrative Regulation 18-2 (Press Relations Policies and Procedures); Section B (Press Relations); Part 5 (Nonpublic Information)

Additionally, the OIG interviewed the following individuals:

- (b)(6); (b)(7)(C) DERA
- (b)(6); (b)(7)(C) Office of Information Technology
- (b)(6); (b)(7)(C) DERA
- (b)(6); (b)(7)(C) DERA
- (b)(6); (b)(7)(C) OCR
- (b)(6); (b)(7)(C) University of Texas
- (b)(6); (b)(7)(C) DERA
- (b)(6); (b)(7)(C) DERA
- (b)(6); (b)(7)(C) Office of International Affairs
- (b)(6); (b)(7)(C) OCR
- (b)(6); (b)(7)(C) DERA
- (b)(6); (b)(7)(C) DERA
- (b)(6); (b)(7)(C) Office of the Chairman
- (b)(6); (b)(7)(C) Office of Security Services
- (b)(6); (b)(7)(C) OCR
- (b)(6); (b)(7)(C) DERA

Finally, the OIG reviewed the following documents:

- SEC e-mail records
- eOPF records
- SEC Headquarters badge access logs
- Freedom of Information Act request records

## RESULTS OF INVESTIGATIVE ACTIVITY

### *Identification of NRSRO Reporting Issues*

In January 2016, (b)(6); (b)(7)(C) identified his concerns about the quality and availability of data NRSROs submitted via XBRL, and raised them to his supervisors (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) DERA, and (b)(6); (b)(7)(C) Office of Information Technology (b)(6); (b)(7)(C) DERA). (b)(6); (b)(7)(C) submitted a project proposal that DERA “assess compliance with the XBRL portion of the rule, and in the case that non-compliance is found, we will work with Enforcement and/or OCR for further assessment. Initial findings show extensive non-compliance...” DERA subsequently provided OCR with a “discussion document” that included NRSRO XBRL reporting issues, and DERA and OCR staff met to discuss (b)(6); (b)(7)(C) concerns. (EXHIBITS 2, 8, 9, 12 and 13)

During an interview with the OIG, (b)(6); (b)(7)(C) stated that he worked on the XBRL structured disclosure format issue primarily with (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C). He stated (b)(6); (b)(7)(C) served as the (b)(6); (b)(7)(C) however she had no real technical role in the work. (b)(6); (b)(7)(C) said (b)(6); (b)(7)(C) served as a (b)(6); (b)(7)(C) and near the end of the project when (b)(6); (b)(7)(C) left the SEC, (b)(6); (b)(7)(C) former DERA employee, replaced (b)(6); (b)(7)(C) as the (b)(6); (b)(7)(C) (EXHIBIT 2)

Between February and April 2016, DERA identified that a ratings publication guide (filer manual), that it prepared and NRSROs used, provided inaccurate information regarding reporting data in XBRL format. During an interview with the OIG, (b)(6); (b)(7)(C) said the publication guide was “completely broken” and was the reason the NRSROs were not in compliance with the data reporting requirements. He said he spent weeks reviewing the manual and working on correcting the errors. (b)(6); (b)(7)(C) said that originally (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) did not want him to fix the errors, but after additional discussions with them, they ultimately decided to let him make corrections. According to (b)(6); (b)(7)(C) it was approximately one or two months between the times when he discovered the errors and when he corrected them. (EXHIBITS 2, 8, 9, 12, 14, and 15)

In April 2016, DERA communicated the XBRL reporting issues to OCR and subsequently had a meeting to discuss the inaccuracies in its manual. (b)(6); (b)(7)(C) told the OIG that prior to the meeting (b)(6); (b)(7)(C) coached him on what to say.” He said (b)(6); (b)(7)(C) did not want to admit that DERA made a mistake with the manual, so they told OCR they “made improvements” to it, but did not go into detail about what improvements were made or the reasons behind them. (EXHIBITS 2, 8, 12, 14, and 15)

DERA staff told the OIG that the NRSROs fixed the issues over several months and there were no current issues with NRSROs’ XBRL reporting. (EXHIBITS 5, 7, and 12)

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(b)(6); (b)(7)(C) *Accessed the SEC Headquarters Building and Obtained Unknown Documents*

During an interview with the OIG, (b)(6); (b)(7)(C) DERA, stated that as the result of (b)(6); (b)(7)(C) from the SEC, which resulted in litigation, (b)(6); (b)(7)(C) to access her SEC e-mails to print documents related to (b)(6); (b)(7)(C). Although (b)(6); (b)(7)(C) stated she supervised (b)(6); (b)(7)(C) activities during each occasion, she said that (b)(6); (b)(7)(C) "printed reams of e-mails" and she did not read the documents and did not make copies of the documents that (b)(6); (b)(7)(C) printed. (b)(6); (b)(7)(C) stated that (b)(6); (b)(7)(C) primarily appeared to print "back and forth e-mails regarding projects" and WebEx meeting e-mails. (b)(6); (b)(7)(C) said she did not know whether (b)(6); (b)(7)(C) printed any documents related to OCR or XBRL, and other than e-mail it did not appear that (b)(6); (b)(7)(C) accessed any SEC databases. (EXHIBIT 16)

*Reuters Contacted the SEC*

In July 2018, Johnson first called (b)(6); (b)(7)(C) Office of the Chairman, with questions about the SEC's oversight of NRSROs. In October 2018, (b)(6); (b)(7)(C) together with (b)(6); (b)(7)(C) OCR, and (b)(6); (b)(7)(C) to the (b)(6); (b)(7)(C) OCR, had an additional phone call with Johnson to further discuss his questions pertaining to the SEC's NRSRO oversight, and following the call, Johnson submitted his questions to (b)(6); (b)(7)(C) via e-mail. (b)(6); (b)(7)(C) told the OIG that Johnson's questions referenced "internal e-mails" and a "report" that went to all the Commissioners' offices, but she did not know what e-mails or report he was referencing, and when asked to provide copies of the e-mails and report he referenced, Johnson refused to provide them. (EXHIBITS 3, 13, and 17)

(b)(6); (b)(7)(C) *Admitted He Provided Nonpublic Information to Reuters*

(b)(6); (b)(7)(C) admitted during an interview with the OIG that he "anonymously contributed to" the Reuters article, and "pitched" the idea for the article to Johnson when he suggested for him to look into the NRSRO data reporting issue. He stated he told Johnson about the issues DERA and OCR discussed related to NRSRO data reporting. (b)(6); (b)(7)(C) said he was "frank" with Johnson about the information he provided to him related to internal SEC conversations and he "probably shouldn't have done that" because it was probably nonpublic information, but said he did not provide Johnson with any documents or e-mails. (b)(6); (b)(7)(C) said since he initially met with Johnson, he has spoken with and met with him several times and has also pitched other stores unrelated to NRSRO data reporting. (EXHIBIT 8)

*Reuters Disclosed that (b)(6); (b)(7)(C) Provided Information to Reuters*

(b)(6); (b)(7)(C) was cited in the article stating, "Despite a clear mandate in the Commission's own rulemaking, there are still tons of questions about the lack of analysis the SEC is doing to credit rating agencies."

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In a May 16, 2019, Reuters article entitled, *Former U.S. SEC employee cites discrimination, failed market oversight – lawsuit* it stated that, in May 2018, (b)(6); (b)(7)(C) published and circulated to SEC officials an internal report of the agency’s shortfalls in implementing the 2010 Dodd-Frank financial reform law, seen at the time by Reuters.” The article further stated that (b)(6); (b)(7)(C) told Reuters that insufficient resources and technology challenges had hampered the regulator’s ability to deliver much of the analysis over the nation’s top rating agencies, among other challenges.”

(b)(6); (b)(7)(C) declined an interview with the OIG about this matter. (EXHIBIT 18)

*The Remaining Unidentified DERA Employees Mentioned in the Article*

With the exception of (b)(6); (b)(7)(C) the DERA employees the OIG interviewed about the nonpublic information release to Johnson each said they did not provide the information cited in the Reuters article and did not know who had. (EXHIBITS 2, 5, 7, 12 -15, 19 and 20)

*The Leak’s Effect on the SEC*

(b)(5)

**Coordination**

The facts and evidence developed during this investigation were referred to the U.S. Attorney’s Office for the District of Columbia for consideration of prosecution; however, on April 6, 2020, the matter was declined. (EXHIBIT 21)

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**Signatures**

**Case Agent:**

(b)(6); (b)(7)(C)

8/12/2020

Date

(b)(6); (b)(7)(C)

Date

**Approved:**



8/13/2020

Nicholas Padilla, Jr., Deputy Inspector General  
for Investigations

Date



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**Exhibits**

1. Predicating Document, Complaint Intake, dated December 19, 2018.
2. Memorandum of Activity, regarding the interview of (b)(6); (b)(7)(C) dated February 5, 2019.
3. Memorandum of Activity, regarding the interview of (b)(6); (b)(7)(C) dated December 19, 2018.
4. Memorandum of Activity, regarding the interview of (b)(6); (b)(7)(C) dated December 19, 2018.
5. Memorandum of Activity, regarding the interview of (b)(6); (b)(7)(C) dated December 21, 2018.
6. Memorandum of Activity, regarding the interview of (b)(6); (b)(7)(C) dated December 20, 2018.
7. Memorandum of Activity, regarding the interview of (b)(6); (b)(7)(C) dated April 10, 2019.
8. Memorandum of Activity, regarding the interview of (b)(6); (b)(7)(C) August, dated July 16, 2019.
9. Memorandum of Activity, regarding records/information obtained and reviewed, dated March 5, 2019.
10. Memorandum of Activity, regarding records/information obtained and reviewed, dated February 6, 2019.
11. Memorandum of Activity, regarding records/information obtained and reviewed, dated February 6, 2019.
12. Memorandum of Activity, regarding the interview of (b)(6); (b)(7)(C) dated June 11, 2019.
13. Memorandum of Activity, regarding the interview of (b)(6); (b)(7)(C) dated February 4, 2019.
14. Memorandum of Activity, regarding the interview of (b)(6); (b)(7)(C) dated May 9, 2019.
15. Memorandum of Activity, regarding the interview of (b)(6); (b)(7)(C) dated April 25, 2019.
16. Memorandum of Activity, regarding the interview of (b)(6); (b)(7)(C) dated February 8, 2019.
17. Memorandum of Activity, regarding the interview of (b)(6); (b)(7)(C) dated December 19, 2018.
18. Memorandum of Activity, regarding the interview of (b)(6); (b)(7)(C) dated September 26, 2019.

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19. Memorandum of Activity, regarding the interview of [REDACTED] dated April 10, 2019.
  20. Memorandum of Activity, regarding the interview of [REDACTED] dated September 3, 2019.
  21. Memorandum of Activity, regarding AUSA declination, dated April 6, 2020.