



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



Report of Investigation

Subject: McNeil, Tracey L.
Title: SEC Ombudsman (former)
SK-Level/Grade: Senior Officer (former)
Office: Office of the Ombudsman
Office of the Investor Advocate
Region: Headquarters

Case No.: 21-IAD-0027-I

Origin: Anonymous Complainant

Investigation Initiated: July 14, 2021

Investigation Completed: August 4, 2022

SUMMARY

The U.S. Securities and Exchange Commission (SEC) Office of Inspector General (OIG) investigated anonymous allegations that Tracey L. McNeil, the SEC Ombudsman, provided false statements to OIG auditors regarding the Tips, Complaints, and Referral (TCR) program, and that McNeil had violated SEC Regulation (SECR) 3-2 (TCR Intake Policy) by failing to enter TCRs in accordance with the policy.

We found that McNeil misrepresented facts in her written response to an OIG draft management letter related to TCR practices by the Office of the Ombudsman. McNeil's written response to the OIG letter was in direct contravention to what she conveyed to the OIG during its engagement with her on the TCR program, what we confirmed through TCR records, and what we learned from her own staff. Additionally, McNeil approved a spreadsheet provided to the OIG containing 14 TCR entries that were purportedly entered by her office, which was inaccurate and misleading. We found that ten of the 14 TCRs presented by McNeil did not originate with the Office of the Ombudsman, were not related to Ombudsman matters, nor were they entered into the TCR system by Ombudsman staff.

We found that McNeil violated SECR 3-2 by failing to enter TCRs on investor matters received by the Office of the Ombudsman that warranted entry. As a matter of practice, the Office of the Ombudsman referred investors to enter their own TCRs on matters related to alleged securities law violations or fraud, rather than entering the matters into the TCR system or forwarding the matters to a TCR point of contact as required.

Finally, we found that McNeil presented vignettes in her annual Ombudsman's Report to the Congress for fiscal years (FY) 2017 through 2020, in which she described investor matters addressed by the Office of the Ombudsman, that were potentially misleading. The vignettes (b)(6); (b)(7)(C) were, according to her, hypothetical or composite descriptions of Ombudsman matters, but she did not state so in the congressional reports. Following concerns

expressed by the OIG in 2021, McNeil added language to her Ombudsman's Report for fiscal year 2021 clarifying that the vignettes presented were simplified or composite descriptions of investor complaints.

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

We are providing our findings to the Commission for any action deemed appropriate.

BACKGROUND

SECR 3-2 sets forth the responsibilities of SEC staff for the entry of TCRs into the TCR system. The pertinent part of the regulation defines a TCR as any credible allegation or statement of concern about a possible violation of federal securities laws or conduct reasonably related to securities that poses a possible risk of harm to investors. The term "credible" is defined as an allegation or statement that is not frivolous on its face. According to the regulation, all SEC staff are responsible for entering TCRs or forwarding TCRs to their respective TCR point of contact, and should err on the side of entering a TCR when in doubt. Additional guidance on the responsibilities of SEC staff in executing the TCR program is further detailed in the *Commission-Wide Policies and Procedures for Handling Tips, Complaints, and Referrals*.

On February 24, 2021, the OIG reported the results of its evaluation of the SEC TCR program titled *The SEC Can Further Strengthen the Tips, Complaints, and Referrals Program, Report No. 566*.¹ In conjunction with the evaluation, OIG auditors engaged with McNeil on several occasions to discuss her management of the TCR program within the Office of the Ombudsman. Following the publishing of Report No. 566, the OIG prepared a document titled *Discussion Draft Management Letter: Actions May Be Needed to Improve the Efficiency of Receiving and Coordinating Investor Submissions*, to notify SEC management of several matters identified during the TCR evaluation that warranted further attention, some of which pertained to the Office of the Ombudsman. On April 5, 2021, the discussion draft management letter was provided to SEC officials for comment and feedback. On April 15, 2021, a consolidated management response to the draft document was provided to the OIG. On May 24, 2021, the OIG published its *Final Management Letter: Actions May Be Needed To Improve Processes for Receiving and Coordinating Investor Submissions*.²

Pursuant to the Exchange Act, §4(g)(8)(D), codified in 15 U.S.C. §78d(g)(8)(D), the SEC Ombudsman submits semiannual reports to the Investor Advocate that describe the activities and evaluate the effectiveness of the Ombudsman during the preceding year, which are included in the Investor Advocate's reports to Congress. Annually, the Investor Advocate separately submits to

¹ OIG Report No. 566 may be found on the SEC OIG public website located here:
https://www.sec.gov/oig/reportspubs/inspector_general_recent_reports.html.

² *Final Management Letter: Actions May Be Needed To Improve Processes for Receiving and Coordinating Investor Submissions* may be found on the SEC OIG public website located here:
https://www.sec.gov/oig/reportspubs/inspector_general_recent_reports.html.

Congress a Report on Objectives and a Report on Activities, both of which contain reporting by the Office of the Ombudsman.³

SCOPE

The OIG investigated whether McNeil (b)(6); (b)(7)(C) in her response to the OIG's Discussion Draft Management Letter, and whether she violated SECR 3-2 by not entering TCRs on investor matters reported to the Office of the Ombudsman that met the TCR reporting requirement.

RESULTS OF INVESTIGATIVE ACTIVITY

The OIG initiated this investigation after receiving two anonymous complaints related to alleged misconduct by McNeil. On (b)(6); (b)(7)(C) an anonymous complainant alleged that McNeil

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App 3 § 7(b)(IG Act)

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App 3 § On June 8, 2021, an anonymous complainant further alleged

(b)(6); (b)(7)(C); (b)(3):5 U.S.C. App 3 § 7(b)(IG Act)

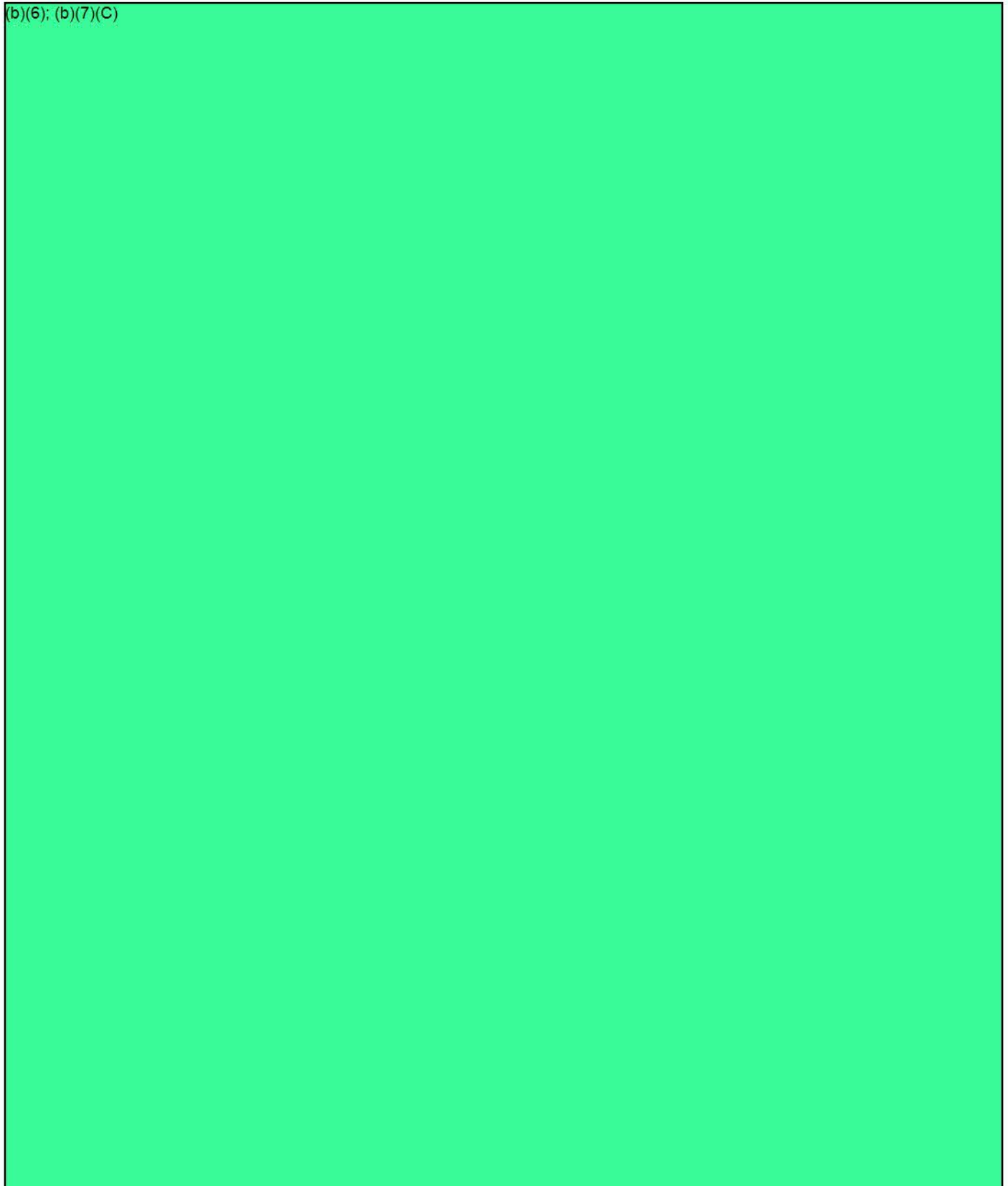
McNeil (b)(6); (b)(7)(C) in Her Written Response to the OIG Discussion Draft Management Letter

We found that McNeil made written statements that misrepresented facts about TCR practices in the Office of the Ombudsman and contradicted verbal statements she made to OIG auditors during their engagement with McNeil on TCR practices by her office.

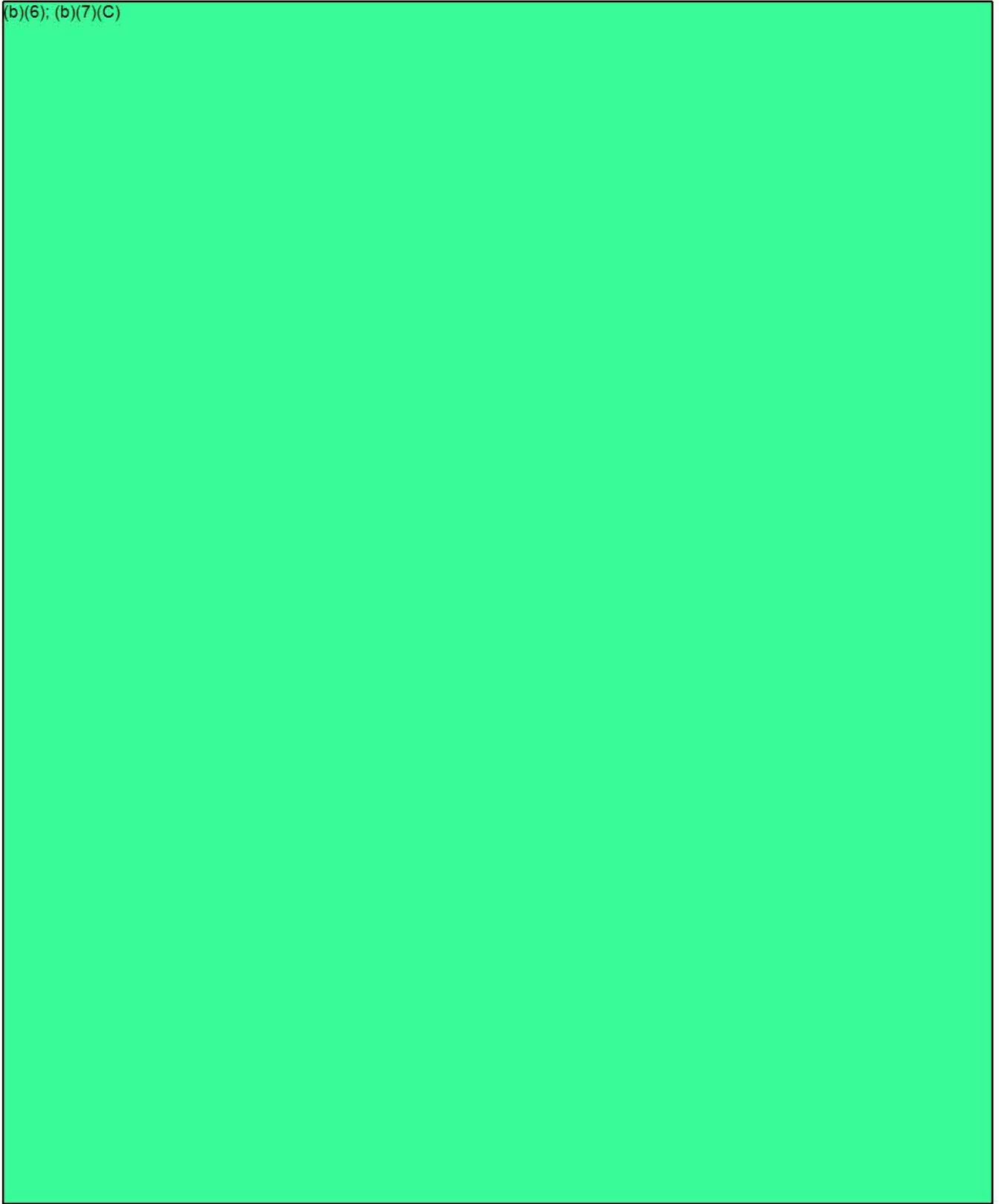
(b)(6); (b)(7)(C)

³ Investor Advocate reports to Congress may be found on the SEC Investor Advocate public website located here: <https://www.sec.gov/advocate/investor-advocate-reports.html>.

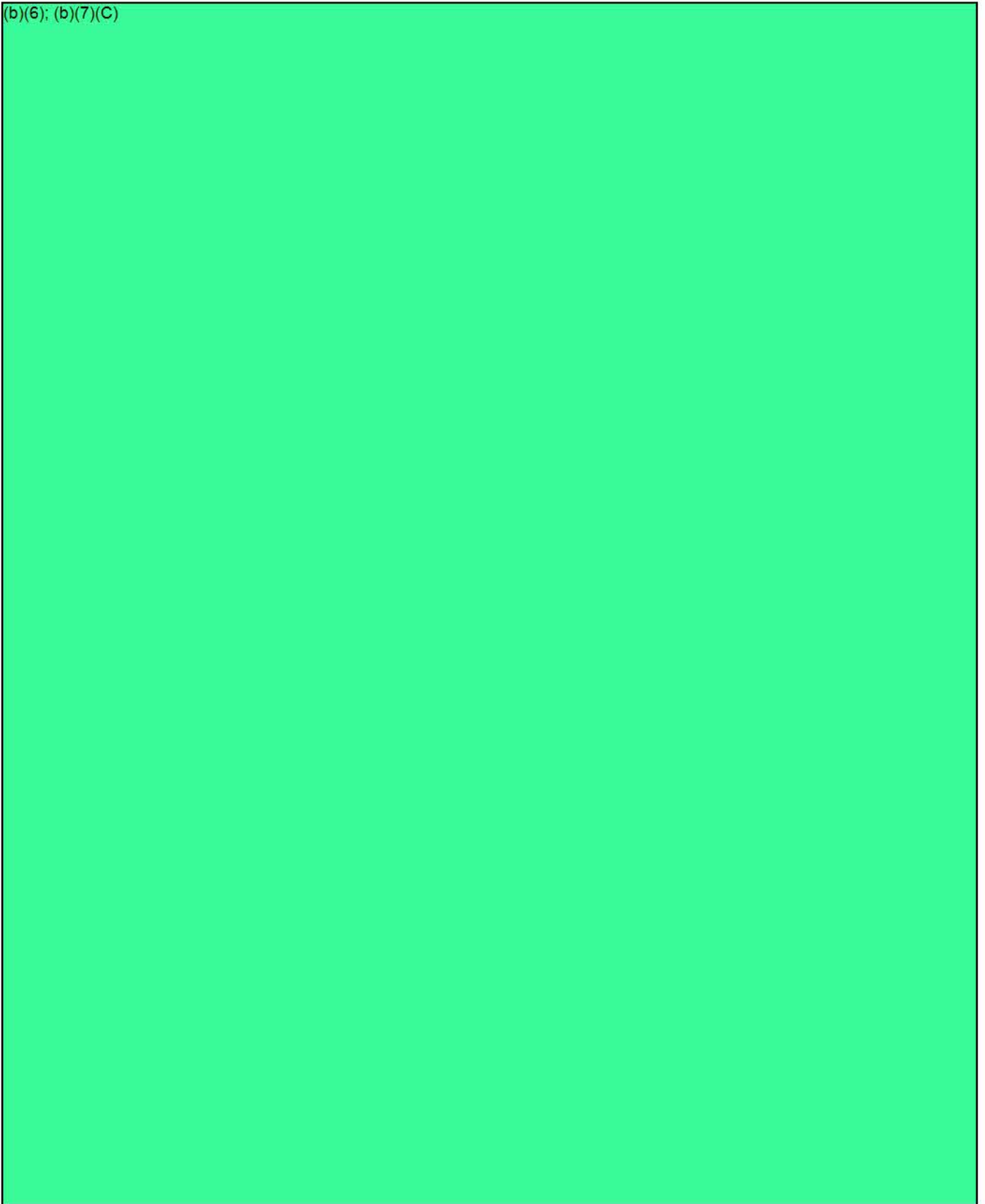
(b)(6); (b)(7)(C)



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



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



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

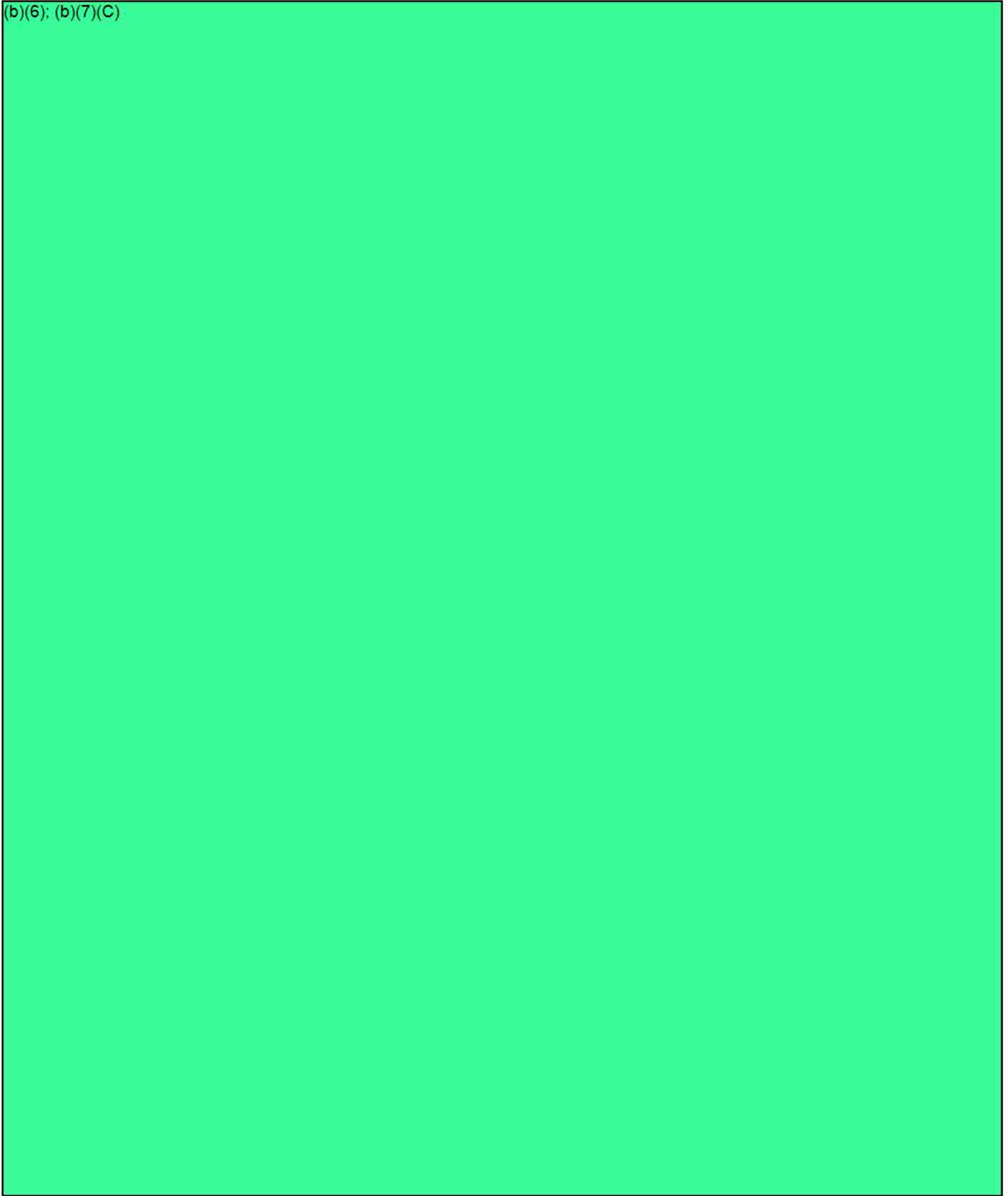
*McNeil's Written Response to the Discussion Draft Management Letter Contradicted Statements to
OIG Auditors*

On April 5, 2021, OIG auditors provided McNeil the *Discussion Draft Management Letter*, which outlined observations made by the OIG that warranted attention, including deficiencies relating to the TCR practices by the Office of the Ombudsman (Exhibit 13).

On April 14, 2021, McNeil provided (b)(6); (b)(7)(C) Office of the Chief Operating Officer, her written response to the *Discussion Draft Management Letter* (Exhibit 14). (b)(6); (b)(7)(C) was responsible for preparing the consolidated response to the OIG on behalf of several SEC offices. In her written response, McNeil refuted the auditors noted deficiencies regarding TCRs. McNeil made the following salient statements in her response to OIG observations in the *Discussion Draft Management Letter* (Figures 6 through 10):

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

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



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

On April 15, 2021, (b)(6); provided the OIG the consolidated management response to the *Discussion Draft Management Letter*, which included McNeil's response relating to the Office of the Ombudsman (Exhibit 15). (b)(6); told us that he coordinated the written Ombudsman response directly with McNeil but would not have edited anything of substance given he was not a subject matter expert on the material (Exhibit 16). (b)(6); related that any edits he may have had in consolidating the collective responses would be limited to format, transition, or phrasing.

According to McNeil, she reviewed the consolidated response document that (b)(6); prepared before it was provided to the OIG (Exhibit 11). We compared the language of the response prepared personally by McNeil, including edits she made to a consolidated draft document, with the final consolidated response coordinated by (b)(6); We found the language in (b)(6); consolidated response to be nearly verbatim to the response McNeil provided him, with one instance in which one of McNeil's sentences was rephrased.

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

We interviewed Office of the Ombudsman staff, which comprised two attorneys, a senior law clerk, and a senior paralegal, all of whom (b)(6); (b)(7)(C)

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

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

The Ombudsman policy documents provided to (b)(6); (b)(7)(C) contained the following relevant guidance in reference to how investor matters related to alleged securities fraud should be processed by Ombudsman staff (portions bolded for emphasis):

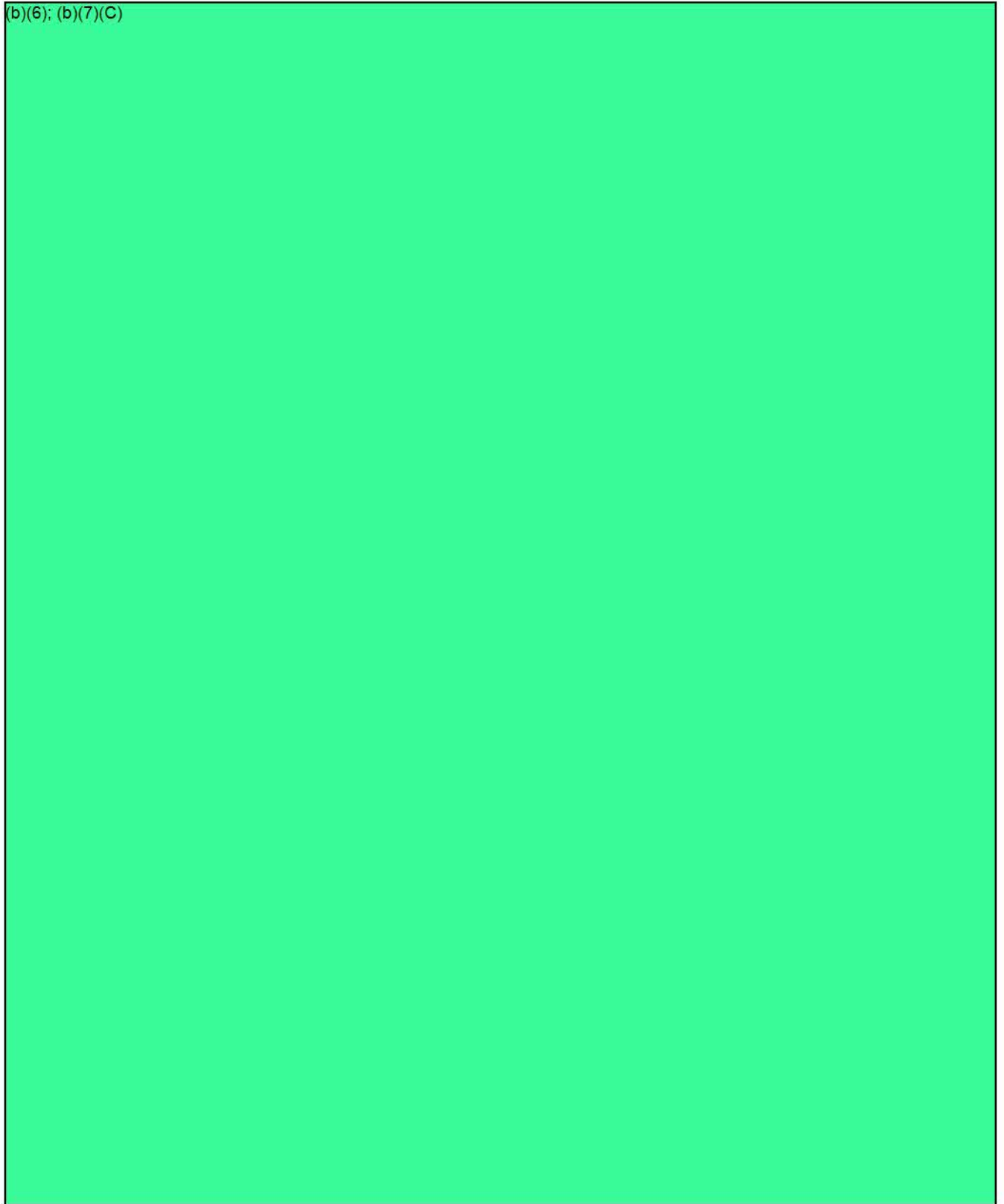
Figure 11. Office of the Ombudsman Policy Documents.

Ombudsman Draft Policies and Procedures Manual (Page 8)
3. The submitter is a retail investor, and the issue is within the SEC’s jurisdiction, but not within the Ombudsman’s purview. <u>Examples:</u> Submitter is trying to establish ownership of old stock certificates. Submitter believes that he is the victim of a securities fraud. <u>Response:</u> After describing the scope of the Ombudsman’s role, refer the submitter to the appropriate SEC Division or Office. (e.g., OIEA for personal investment questions, ENF (TCR) for alleged violations of the securities laws.) (See Appendix B for resources within the SEC).
Appendix B – Internal Resources
<u>For matters where submitter alleges securities fraud:</u> Suggest that the investor submit a TCR to the Division of Enforcement at https://www.sec.gov/tcr

Source: Exhibit 17, attachment 2. Interview of (b)(6); (b)(7)(C)

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

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



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

McNeil (b)(6); (b)(7)(C) in Reporting TCRs Submitted During the Period Evaluated

We found that (b)(6); (b)(7)(C) approved a spreadsheet that was provided to the OIG to demonstrate her record of TCR submissions, which we later determined contained TCR entries that had no affiliation with the Office of the Ombudsman or Ombudsman activities.

Upon receiving the consolidated management response in which McNeil disputed the OIG's observations related to TCR practices by the Office of the Ombudsman, OIG auditors contacted (b)(6); and requested documentation that demonstrated McNeil or her staff had entered TCRs during the period evaluated. On April 20, 2021, (b)(6); provided the OIG with a spreadsheet that contained 14 TCR entries purportedly entered by Ombudsman staff during the period (Exhibit 23).

(b)(6); reported to us, and e-mail records reflect, that (b)(6); (b)(7)(C) Division of Enforcement, provided the TCR spreadsheet to (b)(6); on April 20, 2021, with McNeil copied on the e-mail correspondence (Exhibits 14 and 16).

We interviewed (b)(6); (b)(7)(C) who told us that she obtained the TCR spreadsheet provided to (b)(6); from (b)(6); formerly of OMI (Exhibit 24). (b)(6); said that the original data pull provided by (b)(6) contained additional TCR entries but it was pared down to the 14 entries based on McNeil's review and confirmation that the entries were from the Office of the Ombudsman.

We sought to speak with (b)(6); who was no longer an SEC employee, but she declined our request for an interview.

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

The TCR Spreadsheet Provided to the OIG

The spreadsheet contained 14 TCRs entered into the TCR system between November 7, 2017, and October 29, 2019, that were submitted by TCR users (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (Exhibit 23) (Table 1).

Table 1. Listing of TCRs on Spreadsheet Provided to the OIG.

TCR ID		Date Submitted	TCR Submitted By	TCR ID		Date Submitted	TCR Submitted By
1	679670	11/7/2017	(b)(6); (b)(7)(C)	8	761305	7/30/2018	(b)(6); (b)(7)(C)
2	679672	11/7/2017		9	762331	8/17/2018	
3	751078	2/6/2018		10	778660	7/26/2019	
4	752814	3/5/2018		11	780014	8/26/2019	
5	753828	3/20/2018		12	780033	8/26/2019	
6	753830	3/20/2018		13	783066	10/25/2019	
7	760192	7/6/2018		14	783240	10/29/2019	

Source: Exhibit 23, TCR spreadsheet.

We spoke with (b)(6); (b)(7)(C) who was previously assigned as a senior paralegal in the Office of the Investor Advocate (OIAD), and reviewed the TCR entries contained in the spreadsheet that she reportedly entered on behalf of the Office of the Ombudsman (Exhibit 25). (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) who was previously assigned as an attorney advisor in OIAD, confirmed with us that she was a TCR user in that office and routinely entered TCRs based on information received through the OIAD e-mail and voicemail systems (Exhibit 26). (b)(6); (b)(7)(C) (b)(6); (b)(7)(C)

We coordinated with OIAD and confirmed that nine of the TCR entries (TCR Nos. 679670, 679672, 751078, 760192, 778660, 780014, 780033, 783066, and 783240) were captured in the OIAD internal tracking system (Exhibit 27). According to (b)(6); (b)(7)(C) OIAD, the nine entries in the OIAD tracking system that were entered by (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) indicated that the TCRs originated within OIAD. He reported that TCR No. 761305, which was entered by (b)(6); (b)(7)(C) was not in the OIAD tracking system but was entered into the TCR system after (b)(6); (b)(7)(C) departed OIAD to her current assignment. The TCR entries made (b)(6); (b)(7)(C) did not appear in the OIAD tracking system.

(b)(6); (b)(7)(C) who was a contractor previously assigned to the Office of the Ombudsman, departed employment with the SEC (b)(6); (b)(7)(C) and was not interviewed. We did, however, confirm through the (b)(6); (b)(7)(C) that the four TCRs reportedly entered by (b)(6); (b)(7)(C) were captured in the internal tracking system, indicating that the four matters had originated in the Office of the Ombudsman (Exhibit 28).

When we advised McNeil that 10 of the 14 entries had no affiliation with the Office of the Ombudsman, she told us that the Office of the Ombudsman investor matters were routinely discussed and coordinated with OIAD, and as a result, OIAD staff may have on occasion entered TCRs on behalf of the Office of the Ombudsman (Exhibit 11). (b)(6); (b)(7)(C)

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

McNeil Violated SEC Policy When She Failed to Enter TCRs for Ombudsman Matters and Instructed Her Staff Not to Enter TCRs

We found that McNeil violated SECR 3-2 when she promoted the practice within the Office of the Ombudsman of referring investor complainants, whose matters related to alleged securities law violations or fraud, to file their own TCRs rather than entering the information into the TCR system herself or by her staff as required.

McNeil Failed to Enter TCRs for Ombudsman Matters

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

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

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

According to the statutorily required Ombudsman Reports contained in the annual Office of the Investor Advocate Reports on Activities and the TCR records we obtained from OMI, we found the following disparities in matters that the Ombudsman Reports characterized as

“allegations of securities law violations/fraud” and the number of TCRs⁴ entered by McNeil or her staff (Table 2):

Table 2. Reported Ombudsman Matters Compared to TCRs (FY 2016 – FY2020).

	Ombudsman Matters Reported as Allegations of Securities Law Violations/Fraud	Number of TCRs Submitted by Ombudsman Staff
FY 2016	34	1
FY 2017	44	0
FY 2018	51	4
FY 2019	319	0
FY 2020	301	0
Totals	749	5

Source: Office of Investor Advocate Reports on Activities and Exhibit 29, OMI Records.

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

We found, however, that there was a marked increase in the number of TCRs submitted by Ombudsman staff following the engagement by OIG auditors with McNeil in 2021 on TCR practices (Table 3).


Table 3. Reported Ombudsman Matters Compared to TCRs (FY 2021).

	Ombudsman Matters Reported as Allegations of Securities Law Violations/Fraud	Number of TCRs Submitted by Ombudsman Staff
FY 2021	622	120

Source: Office of Investor Advocate Reports on Activities and Exhibit 29, OMI records.

⁴ For comparison, SECR 3-2 defines a TCR as “**any credible allegation or statement of concern about a possible violation of the federal securities laws** or conduct reasonably related to securities that poses a possible risk of harm to investors.”

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



McNeil Reported Activity in Congressional Ombudsman Reports That Was Potentially Misleading

We found that McNeil reported 27 vignettes in her Ombudsman Activity Reports for fiscal years 2017 through 2020 that, according to McNeil, contained hypothetical, composite, or simplified information. Because the vignettes were presented as individual Ombudsman matters

and activity by McNeil's office and were not qualified as hypothetical, composite, or simplified information, they may have been misleading to Ombudsman Activity Report users.⁵

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

When we spoke to McNeil about the vignettes, she explained that the vignettes were composite or hypothetical descriptions of investor matters intended to assist the reader in understanding the types of services provided and did not necessarily correlate with a specific investor matter documented in OMMS (Exhibit 11).

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

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

Following engagement with McNeil by OIG auditors on this issue in 2021, McNeil added a caveat to her vignette reporting in the FY 2021 Activities Report clarifying that the presented information may be composite or simplified material.

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

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

Separately, we reviewed the Ombudsman Report on Objectives contained within the annual Office of Investor Advocate Reports on Objectives and found that McNeil reported 17 similar vignettes in FY 2019 through FY 2021 without any language clarifying that the information may have been based on hypothetical, composite, or simplified material.

⁵ Investor Advocate reports to Congress may be found on the SEC Investor Advocate public website located here: <https://www.sec.gov/advocate/investor-advocate-reports.html>.

Signatures

Case Agent:

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

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

Date: 2022.08.04 13:30:14 -04'00'

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

Senior Special Agent

Date

Concurrence:

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

Digitally signed by (b)(6); (b)(7)(C)

Date: 2022.08.04 14:07:45 -04'00'

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

Special Agent in Charge

Date

Approved:



8/4/2022

Nicholas Padilla, Jr., Deputy Inspector General
for Investigations

Date

Exhibits

1. Anonymous Complaint to the OIG, dated June 1, 2021.
2. Anonymous Complaint to the OIG, dated June 8, 2021.
3. E-mail Records between OIG and McNeil, dated May 28, 2020 – June 1, 2020.
4. TCR Evaluation Questionnaire by McNeil, dated June 17, 2020.
5. E-mail Records between OIG and McNeil, dated August 3-4, 2020.
6. E-mail Record between OIG and McNeil, dated January 22, 2021.
7. Auditor Meeting Notes, dated January 22, 2021.
8. Auditor Meeting Notes, dated March 12, 2021.
9. Auditor Meeting Notes, dated April 20, 2021.
10. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on June 14, 2021.
11. Memorandum of Activity, Interview of Tracey McNeil on May 26, 2022.
12. Memorandum of Activity, Receipt of Records from McNeil Legal Counsel, dated May 16, 2022.
13. E-mail Record between OIG and McNeil, containing Discussion Draft Management Letter, dated April 5, 2021.
14. Memorandum of Activity, Receipt of Records from (b)(6); (b)(7)(C) dated October 29, 2021.
15. E-mail Record between (b)(6); and OIG, containing the consolidated response to the Discussion Draft Management Letter, dated April 15, 2021.
16. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on October 22, 2021.
17. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on June 30, 2021.
18. Memorandum of Activity, Receipt of Records from (b)(6); (b)(7)(C) dated July 22, 2021.
19. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on July 9, 2021.
20. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on October 18, 2021.
21. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on January 26, 2022.
22. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on January 27, 2022.
23. E-mail Record between (b)(6); and OIG, containing TCR spreadsheet, dated April 20, 2021.
24. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on December 14, 2021.
25. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on January 10, 2022.
26. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on January 10, 2022.
27. Memorandum of Activity, Coordination with OIAD, dated January 20, 2022.
28. Memorandum of Activity, Receipt of OMMS Records, dated July 1, 2022.
29. Memorandum of Activity, Receipt of Records from OMI, dated February 17, 2022.
30. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on January 11, 2022.
31. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on January 27, 2022.
32. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on January 13, 2022.
33. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) on January 18, 2022.