

CBI. The Commission considered the mitigating circumstances that the firm had reported the breach promptly, took immediate steps to minimize the effect of the breach, and strengthened procedures to prevent future breaches. In addition, none of the persons found to have breached had a record of prior breaches.

*Case 3:* The Commission determined that two attorneys breached the APO when one of them sent copies of the Commission's confidential views to executives of the law firm's clients with an attached cover memorandum that had been drafted by one attorney and signed by the firm's lead attorney. In determining that the lead attorney breached the APO, the Commission considered the fact that the lead attorney had overall responsibility for APO matters. The Commission issued private letters of reprimand to both attorneys, even though it was both attorneys' first breach, because of the serious nature of the breach. The Commission noted that the confidential brief had been in the possession of the clients for seven days before the breach was discovered and that two of the clients read the BPI.

*Case 4:* The Commission investigated whether two attorneys had breached the APO. The lead attorney had asked at the Commission hearing if the confidential record from a prior investigation could be incorporated into the confidential record of the subject investigation. The Commission had not yet determined whether to allow the prior record to be used when the attorney used the BPI from the previous investigation by referencing it to support arguments in his post-hearing brief. The Commission determined that the lead attorney breached the APO by including arguments in his post-hearing brief that referenced and compared BPI in the previous investigation with BPI in the subject investigation. The Commission found a breach even though the BPI was not actually disclosed to non-signatories to the APO.

The Commission noted that it had not found that the attorney breached the APO by making arguments using public information, by asking the Commission to include BPI from one investigation in the confidential record of another investigation, or by asking the Commission in the subject investigation to consider issues already discussed in the confidential prehearing staff report of the subject investigation.

The Commission decided to issue a warning letter after considering that this was the only breach in which the attorney had been involved within the two year period prior to the breach, his

prompt action to remedy the breach, and the fact there had been no disclosure of BPI to persons not already under the APO. The Commission also noted that the attorney might not have realized that comparing BPI from two different investigations, and referencing without disclosing BPI from a separate investigation, could trigger an APO violation.

The Commission decided the second attorney did not breach the APO because the lead attorney had clearly stated that the decision to put the arguments in the post-hearing brief was his alone.

*Case 5:* The Commission investigated a breach involving the use of CBI by one attorney in a firm who was not a signatory to the APO. The lead attorney for the firm in the Commission investigation assigned an associate to the investigation and gave him access to CBI. Both attorneys thought the associate was a signatory to the APO. The Commission found that the lead attorney breached the APO by assigning the associate to handle CBI when he was not a signatory to the APO. The Commission also found that the lead attorney failed adequately to supervise the handling of CBI. The Commission found that the associate did not breach the APO because he was not a signatory. However, the Commission found there was good cause to caution the associate pursuant to 19 CFR 201.15(a).

The Commission issued warning letters to both attorneys. The mitigating circumstances considered by the Commission that led to warning letters included the facts that the breach was unintentional, that there were no prior breaches or allegations of violations under section 201.15 for either attorney within the prior two year period, that the attorneys immediately notified the Commission of the breach once they discovered it, that they took action to prevent further breaches, that the associate protected the CBI as if he had been a signatory, and that the firm immediately sought APO access to the CBI for the associate as soon as the breach was discovered.

*Case 6:* The Commission determined that two attorneys and a records administrator in a law firm breached the APO for failing to return or destroy a document containing BPI within the time required by the APO and for falsely certifying that it had been destroyed. When searching in an archives file to retrieve documents for litigation purposes, one of the attorneys discovered a copy of a post-hearing brief that had not been returned or destroyed with the rest of the APO material obtained in a Commission investigation.

The Commission found that both during and after the Commission investigation, that attorney and the records administrator failed to assure that the document in question was filed and stored in a manner and place that was inaccessible to persons unauthorized to review APO material, as required by 19 CFR 207.7(b)(1) and (4).

The Commission found that the senior attorney in the firm committed a breach because a document containing BPI was not filed properly or destroyed at the conclusion of the Commission investigation. The Commission noted that as head of his firm the senior attorney was responsible for establishing adequate procedures to assure that documents containing BPI are handled, maintained, and destroyed in a manner consistent with the Commission's APO regulations.

The Commission issued warning letters to the two attorneys and the records administrator. It considered the mitigating factors that the breach was unintentional, that prompt action was taken to report and remedy the breach, that no unauthorized person accessed the document, and, with regard to the first attorney and the records administrator, that this was their first breach. The senior attorney was found to have breached under similar circumstances in the previous year, but the Commission declined to issue a sanction because the current breach occurred prior to the one for which he had already received a warning letter and he had instituted new procedures at the firm to avoid future breaches as a result of the previous year's APOB investigation.

*Case 7:* The Commission determined that three attorneys breached an APO by failing to redact BPI from one page of the public version of their prehearing brief. The three attorneys were mid-level associates and were solely responsible for preparing the public version of the brief. The brief was filed with the Commission and served on the parties on the public service list including a non-signatory. The brief was also sent to several clients who were not signatories.

The Commission determined that three other attorneys whose names were on the brief did not breach. None of these attorneys participated in the preparation of the public version of the brief. In addition, the Commission found that the lead attorney did not breach because he had reasonably delegated the task of preparing the public version of the brief to three experienced associates. None of these associates had previously breached an APO.