May 24, 2011

Hon. Dennis M. Walcott Chancellor New York City Public Schools Department of Education 52 Chambers Street, Room 314 New York, NY 10007

> Re: George Raab, Bill Howatt, David O'Connor & Joyce Thorne SCI Case No. 2010-2126

Dear Chancellor Walcott:

An investigation conducted by this office has substantiated that former Department of Education ("DOE") Chief Financial Officer George Raab had an inappropriate financial relationship with three consultants while they were under contract to provide services to the DOE. While Raab was still employed by the DOE and at his request, DOE consultants Bill Howatt and David O'Connor assisted him in planning to set up a department at Guggenheim Securities, LLC ("Guggenheim"), which Raab joined immediately after resigning from the DOE. ¹ Joyce Thorne, another DOE consultant, assisted in the planning at Howatt's direction. ² O'Connor and Thorne provided some of this assistance during times when, according to their billing records, they were supposedly servicing the DOE. The three consultants and Raab utilized his DOE e-mail account to transmit planning documents and "PowerPoint" slides regarding Guggenheim among themselves. Raab then transmitted final versions of these documents and slides via DOE e-mail to a Guggenheim executive. Finally, Raab sent and received e-mails using his DOE address concerning personal residential real estate investments.

¹ Raab resigned from the DOE in September 2009 and is now employed by Guggenheim Securities, LLC. Howatt's contract was terminated by the DOE in October 2009. O'Connor's contract with the DOE ended in January 2010. He became a contract consultant at Guggenheim, and is now an employee of that firm, where he reports to Raab. According to Raab, he has contracted with Howatt to provide consulting services for Guggenheim.

² Thorne's contract with the DOE ended in September 2009.

In April 2010, DOE General Counsel Michael Best contacted the office of the Special Commissioner of Investigation ("SCI") and reported that a review of Raab's DOE e-mail account showed that Raab may have been performing work for Guggenheim using DOE resources while he was still employed by the DOE, and that he may have been assisted by Howatt, who was a contract consultant with the DOE. Best provided some of the pertinent e-mails to SCI, and referred investigators to the DOE Central Records Access Officer Joseph Baranello.

SCI investigators interviewed Baranello, who said that the New York <u>Daily News</u> filed a Freedom of Information Law ("FOIL") request with the DOE for e-mail correspondence between Raab and Howatt for the period encompassing November 2009. Baranello arranged for the DOE Division of Instructional and Information Technology ("DIIT") to produce Raab's e-mails, and he reviewed them to respond to the FOIL request. In so doing, Baranello discovered e-mails which, he told investigators, appeared to suggest that Raab was using the DOE account for non-DOE business, and he informed Best about this. Baranello provided SCI with CD-ROMs containing e-mails from Raab's DOE account encompassing April through September 2009.

SCI investigators also obtained time records submitted by the subject consultants with bills to the DOE. With respect to O'Connor and Thorne, their time records indicated the start and end times for the dates on which they claimed to be working for the DOE. Howatt's time records for the dates referenced herein merely showed the total hours he attributed to DOE work on a particular date without specifying the start and end times. None of the consultants' time records detailed the work performed. Concerning the dates examined in this investigation where Howatt was paid for working on DOE matters, on all but a few dates, he claimed that he worked "9 hours off site." Howatt is the proprietor of Howatt HR Consulting, Inc., of Kentville, Nova Scotia. He apparently worked from Canada on several of the dates for which he billed the DOE.

An examination of Raab's DOE e-mails and available consultants' time records indicate that he, Howatt, O'Connor and Thorne worked on matters concerning Guggenheim on dates for which the consultants billed the DOE for their time. On each of the dates in 2009 specified below, except where indicated, Howatt billed the DOE "9 hours off site:"

³ See http://www.howatthr.com/default.asp?mn=1.24.28 (last visited May 15, 2011). The site identifies as clients Bear Stearns (from 2003 through 2008) and the DOE (from 2008 through 2009). Howatt's services as a speaker are also offered by Limelight Entertainment Group, Inc. See http://www.limelightgroup.com/default.asp?mn=1.3 (Id.).

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- Friday, July 31, at 9:06 p.m.: Howatt transmitted a message to Raab and O'Connor titled "Here are some more edits." It contained a two-page document bearing the file name "George Raab Exit Strategy Confidentail [sic] 2009.doc." The document was formatted in three columns titled "Month," "DOE," and "Guggenheim." The columns listed tasks, apparently to be undertaken by Raab from August 2009 through April 2010. The first entry in the DOE column was "Recommend successor for Acting CFO." The first entries in the Guggenheim column were "Define Expense Budget for IB [investment banking] and Equity build out," and "To determine what current systems are in place (what are the outputs) that can support investment banking." O'Connor's time sheet for this date stated that he worked from 9:00 a.m. to 4:30 p.m.
- Friday, August 14: At 5:04 p.m., O'Connor sent an e-mail from a private account to Thorne (also to a private account) with the message indicating "Some more edits," and stating that he was on his way to the airport after 6:30 p.m. Attached was an apparent flow chart titled "IB Financial and IT Integration Discussion." O'Connor's time sheet for this date showed that he worked for the DOE from 9:00 a.m. to 4:30 p.m.
- Saturday, August 15, at 4:57 p.m.: Thorne e-mailed O'Connor, copying Raab, and Howatt, stating that she had made the changes O'Connor had submitted and made other changes in the diagram based on input from Raab. Thorne's DOE time sheet indicated that she worked on this date from 1:00 p.m. to 5:00 p.m. Howatt claimed to have worked three hours "off site."
- Sunday, August 16: At 10:09 a.m., O'Connor responded to Thorne's message, attaching what he termed, "a couple of edits." Thorne replied at 5:28 p.m. that day, apparently with an attachment and the message, "Here are your edits incorporated in the most current version." On their time sheets submitted to the DOE, O'Connor stated that he worked from 9:00 a.m. to 4:30 p.m. on this date, Thorne claimed that she worked from 3:00 p.m. to 6:00 p.m., and Howatt claimed two hours "off site."
- Friday, August 21: At 10:30 a.m., from his DOE account, Raab e-mailed Howatt stating that he wished to speak with Howatt "about a couple of important topics, but you'll have to reach me on my cell." In a follow up message the same morning, Raab advised Howatt that he was "at his desk." That afternoon, Thorne e-mailed Raab and Howatt a message titled "Support Strategy," indicating that she was "standing by for edits." The attachment, which was labeled "Guggenheim" on the margins, consisted of five pages of PowerPoint slides including a complex flow chart and discussion points with the stated objective:

⁴ All of Howatt's e-mail messages referenced herein are apparently from a private (and not a DOE) account. Most contain the closing "Dr. Bill Howatt, Howatt HR Consulting Inc., with the telephone and fax numbers for that firm. Each of Howatt's messages contains a quote at the bottom: "Whatever the mind can conceive and believe, it can achieve," with the attribution to "Napoleon Hill, <u>Think and Grow Rich</u>."

⁵ These messages were transmitted to and from private e-mail accounts.

"To achieve a flexible and portable document production solution that is efficient and effective while minimizing fixed costs." The same afternoon, Howatt replied with an e-mail to Thorne and Raab, apparently with modifications to the Guggenheim presentation and a message clearly intended for Thorne: "George wants to keep this under the radar." At 4:00 p.m., Howatt forwarded this document, now labeled, "Project_Museum_IB_Support_Strategy," an apparent coded reference to "Guggenheim," to Raab's DOE e-mail address. Eighteen minutes after receiving it, Raab forwarded this document, identified as a "Confidential Presentation by George Raab," to Andrew Decker at a Guggenheim e-mail address. The accompanying message stated, "Attached is my thought process with respect to document production." Raab further advised that he would be on vacation for the next two weeks, but was available on his cell phone. Finally, Raab informed the recipient, "Although I've informed the DOE of my intention to join Guggenheim Partners, they are keeping it quiet for various reasons so I'd ask that you keep my coming confidential." Decker responded to the message at 6:58 p.m., with comments on the presentation, and an attached schematic of further items for the Guggenheim operation. Thorne's DOE time sheet for this date stated that she worked from 12:00 p.m. to 4:00 p.m.; Howatt's stated that he worked nine hours "off site."

Raab was on vacation from the DOE for two weeks beginning Monday, August 24th. During this time, he had several e-mail communications concerning Guggenheim, including exchanges with Howatt and Thorne, who submitted time sheets to the DOE for work during the two weeks:

- Monday, August 24: In the afternoon, Raab e-mailed Howatt, stating that Decker (of Guggenheim) "wants to discuss implementation strategy." At 5:29 p.m., Decker forwarded previous e-mails concerning Guggenheim to Raab, which Raab forwarded to his personal Gmail account.
- Tuesday, August 25: Howatt began the morning with an e-mail to Raab concerning the DOE Parent Call Center stating, "Making progress on this front, too." Most of their exchanges for the remainder of the day concerned the other "front," Guggenheim. One message from Raab to Howatt in the morning concerned a discussion with Decker, and a review of attachments regarding Guggenheim. Later in the morning, Raab wrote to Decker, requesting that he forward some attachments to Howatt. In the afternoon, Raab and Howatt exchanged messages attempting to confirm that Howatt had received the attachments from Decker. After 5:00 p.m., in the same message to Howatt, Raab discussed a PowerPoint presentation for DOE Deputy Chancellor Photeine Anagnostopoulos, as well as the Guggenheim project. Later, Howatt advised Raab that he received the attachments from Decker. At 8:34 p.m., Howatt wrote to Raab discussing the chart prepared for Guggenheim.

⁶ The previous messages this date were to and from private e-mail accounts.

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- Wednesday, August 26: At 8:22 a.m., Raab e-mailed Howatt indicating that he agreed with his assessment, and invited him to discuss the matter with him later in the morning. Approximately two hours later, Howatt e-mailed Raab and Thorne some Guggenheim-related attachments titled, "Pitch Book Must Haves." Thorne's DOE time sheets for this date indicated that she worked for the DOE from 9:30 p.m. to 4:30 p.m.
- Thursday, August 27: Howatt e-mailed Raab further discussion on "Project Museum" and, in the same message, a DOE project.
- Friday, August 28: Howatt and Raab exchanged three e-mails in the morning and early afternoon discussing the Guggenheim project (one of the messages also mentioned a DOE presentation). Raab directed Howatt to telephone him. After informing Howatt that he was making some "minor fixes," Raab forwarded the "Pitch Book Must Haves" attachment to Decker with a message discussing staffing at Guggenheim. The attachment was a six-page PowerPoint presentation again labeled, "Confidential Presentation by George Raab." It contained a variation of the earlier flow chart sent to Decker, and bulleted lists of items necessary for the project ("Must Have's"), items which might enhance the project ("Nice to have"), and apparent discussion points under the headlines, "Pros and Cons," and "Link Between Old and New Paradigm."
- Monday, August 31: Howatt e-mailed Raab in the morning regarding an "important update" apparently concerning a prospective Guggenheim employee. Raab agreed to telephone Howatt.
- Monday, September 7 (Labor Day): (apparently while on vacation), Raab e-mailed an apparent business acquaintance using his DOE address. Raab stated that he had "been providing advice (mostly a night a week) on setting up an IB operation," adding that [Howatt] and [O'Connor] are busy with other matters aside from DOE."

SCI investigators interviewed Robert Jason Henry, the Chief Administrator of DOE's Division of Contracts and Purchasing. He stated that Thorne, O'Connor and Carolyn Hill were contract consultants hired at Raab's direction through GoodTemps and School Professionals, temporary staffing firms under contract with the DOE. Thorne's services were billed to the DOE at \$35 per hour, and O'Connor's at \$100 per hour. Henry reported that Thorne worked on a "business mapping project," and left the DOE at around the same time as Raab and Howatt, in September 2009. O'Connor remained at the DOE for a time, and continued to work on budget matters with Deputy Chancellor Anagnostopoulos. Henry said that he believed that O'Connor and Raab previously worked at the now-defunct investment firm Bear Stearns.

⁷ Howatt's time sheet for the previous Saturday, August 29, states that he worked "7 hours off site;" for Sunday, August 30, he claimed "3 hours off site."

⁸ Henry has since resigned from the DOE.

SCI investigators interviewed Cassie Farrelly, who had been employed by the DOE as Raab's chief assistant. She reported that she had met Raab when both were employed by Bear Stearns and that he hired her for the DOE position as his assistant. According to Farrelly, her duties at the DOE included managing Raab's schedule. He authorized her to look through his e-mail messages and gave her the necessary password to do so. Farrelly said that in late July 2009, while searching Raab's e-mails for a document he had requested, she discovered messages concerning Raab's "exit strategy" from the DOE and future employment with Guggenheim. In August 2009, at Raab's request, Farrelly searched for a document in his e-mails and discovered more correspondence concerning Guggenheim. Farrelly said that she forwarded some of these messages to her personal e-mail address to preserve them. Farrelly reported that while Raab was on vacation in August he apparently noticed that she had forwarded the emails, and complained to Anagnostopoulos, who admonished her for doing so. According to Farrelly, Anagnostopoulos told her that Raab wanted her fired, but Anagnostopoulos was not going to comply with this request. Farrelly provided Anagnostopoulos with a timeline of events concerning the Raab e-mails, a copy of which Farrelly gave to SCI investigators. Farrelly said that she remained assigned to Raab, but that when he returned from vacation, she had few assignments or direction from him.

SCI investigators interviewed Anagnostopoulos. She was DOE Deputy Chancellor of Finance and Technology at the time of the interview, and was previously the DOE Chief Operating Officer. She reported that Raab was hired around October 2008, and he requested that Howatt, whom he had worked with at Bear Stearns, be hired as a consultant. Anagnostopoulos said that O'Connor also had previously worked at Bear Stearns on accounting systems, and Raab had recommended him to work with her. According to Anagnostopoulos, in August 2009, Raab's aide, Farrelly, informed her that she had seen an e-mail message in Raab's mailbox related to Guggenheim. 10 Anagnostopoulos said that she spoke with Raab concerning this, and he expressed some anger that Farrelly had read his e-mails. According to Anagnostopoulos, she reminded Raab that he had given Farrelly access to his e-mail messages, and that he directed his aide to read them. Anagnostopoulos said that she directed Raab not to use DOE e-mail for personal correspondence. Also in August 2009, Raab informed Anagnostopoulos of his intention to resign from the DOE and to work for Guggenheim. Anagnostopoulos said that she requested that he remain with the DOE until school opened in September, and he agreed to do so. At Anagnostopoulos's request, the interview was continued on another date due to a scheduling conflict.

When the interview with Anagnostopoulos resumed, she produced a copy of the timeline memorandum given to her by Farrelly. Anagnostopoulos reported that she only "glanced" at Farrelly's memo, and did not inform any of her supervisors about Farrelly's information concerning Raab. According to Anagnostopoulos, Raab advised her of his

⁹ Anagnostopoulos resigned from the DOE in November 2010.

¹⁰ Anagnostopoulos said that she directed Farrelly to write a memo concerning the e-mail.

intention to resign from the DOE on August 18, and she did not inform anyone at the DOE concerning this until he retuned from vacation after Labor Day. Consistent with Farrelly's account, Anagnostopoulos said that while Raab was on vacation, he informed her that Farrelly had copied a number of his e-mails, and that he wanted her employment terminated. Anagnostopoulos told Raab that she would not fire Farrelly, and told him not to use DOE e-mail to communicate with Guggenheim or for personal business.

Anagnostopoulos testified that Raab hired (as consultants) Howatt, O'Connor and Thorne. Anagnostopoulos said that she was aware that they had previously worked with Raab at Bear Stearns. She did not review the consultants' time sheets, and did not know whether they were working on other matters during their DOE engagement, but did not think that they worked for other clients during times for which they billed the DOE.

SCI investigators interviewed Joyce Thorne under oath. She confirmed that she (and DOE consultants Howatt, O'Connor, and Hill) previously worked with Raab at Bear Stearns. Thorne stated that she did not have a set schedule at the DOE, and she worked from home as well as from DOE offices at the Tweed Courthouse and Court Street in Brooklyn. According to Thorne, Jason Henry granted permission for her to work from home. She said that in August 2009, Raab announced that he was leaving the DOE to work for his "mentor" from Bear Stearns, who was now at Guggenheim. Thorne was shown the e-mails from Raab's DOE account containing the Guggenheim "Project Museum" attachments. She said that she had worked on the flow charts at O'Connor's request, and that Howatt also asked her to work on other Guggenheim charts. Thorne claimed that she did not bill the DOE for the work concerning Guggenheim. She stated that while working from home, she answered e-mails and took calls from multiple clients while also working for (and billing) the DOE. Thorne said that she spoke with Howatt after being asked to appear for the SCI interview and that Howatt told her that they had "nothing to worry about." 12

SCI investigators interviewed O'Connor under oath in November 2010. He stated that he was currently employed at Guggenheim as an accountant and that he reported to Raab. He began working for Guggenheim on a consulting basis in November 2009 and became an employee of the firm a short time later. O'Connor had worked for Raab at Bear Stearns for approximately 10 years. He testified that at Raab's request, he started working as a consultant for the DOE in March 2009. O'Connor said that his initial rate was \$60 per hour, but Raab raised it to \$100 per hour. After Raab left the DOE in September 2009, O'Connor simultaneously worked as a consultant for the DOE and for Guggenheim until he left his DOE engagement in January 2010. O'Connor testified that he worked "mostly" from the Tweed Courthouse and from his home. He said that he was

¹¹ Thorne said that she reported to Henry and submitted her time sheets (electronically) to Gil Palmer of the DOE.

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¹² Thorne stated that she may have maintained spreadsheets specifying her DOE work, and would search for them and advise SCI. She did not contact SCI after her interview.

familiar with Raab's "Exit Strategy" document, and allowed that he "possibly" performed some edits on the document. According to O'Connor, Raab told him (he did not recall when) that he was leaving the DOE to work at Guggenheim. O'Connor said that Raab told him that work he performed for him on behalf of Guggenheim was "pro bono" and that he was not to charge the DOE for it. When shown the "Project Museum" document (and the corresponding e-mails), O'Connor said that he and Thorne had worked on the document. He said that Raab told him that the matter was confidential.

O'Connor was asked about his e-mail of Friday, August 14, to Thorne in which he transmitted edits of a Guggenheim document to Thorne and indicated that he was on his way to the airport. Subsequent e-mails showed that on Saturday morning, August 15, Thorne transmitted revisions to O'Connor, and that he did the same with an e-mail to her on the following morning. O'Connor said that he left for vacation, but did not recall whether he had travelled to Ireland or to Brazil. When advised of time sheets in which he billed the DOE for working from 9:30 a.m. to 4:30 p.m. on Saturday and Sunday August 15 and 16, he testified that he must have had work due to the DOE, but he could not recall what it was or produce pertinent records.

Raab was interviewed under oath at the SCI office. He testified that he worked as the DOE CFO from October 2008 through September 2009, and since that time he had been employed by Guggenheim. He said that he previously worked at Bear Stearns for 18 years. Raab assisted in hiring Howatt and O'Connor as DOE consultants, and Howatt "possibly" assisted in hiring Thorne and Hill as consultants. Raab confirmed that he was acquainted with the consultants, who also had worked at Bear Stearns. According to Raab, Howatt worked at Tweed, Court Street, or "off site." He said that Thorne possibly worked off site "on occasion."

Raab testified that he was asked by a former Bear Stearns colleague for assistance in setting up a department at Guggenheim. Raab, in turn, asked Howatt and O'Connor to assist him. He claimed that he informed the consultants that the Guggenheim work was to be done on their personal time. Raab described one evening meeting in July 2009 with Guggenheim executives at their Manhattan office which Howatt and O'Connor attended at his request. According to Raab, when he was asked to help Guggenheim, he had not intended to join the firm. He eventually agreed to take employment at Guggenheim, and advised Anagnostopoulos of his intention in early to mid-August. Raab said that he personally informed Chancellor Klein of his resignation when he returned from vacation in September 2009.

Raab was shown the e-mails described above. He said that Howatt and possibly O'Connor worked on the "exit strategy" chart sent to Raab's DOE e-mail address. Raab said that certain of the charts were adaptations of documents which O'Connor had prepared while employed at Bear Stearns. Raab admitted to sending and receiving

Guggenheim documents and messages on his DOE e-mail account. He claimed that he did not recall the August 21st message forwarded to him by Howatt (attaching the five-page PowerPoint presentation) in which Howatt advised Thorne, "George wants you to keep this under the radar." Raab said that he did not receive any compensation from Guggenheim until he joined the firm in September 2009.

Raab said that he negotiated Howatt's engagement with the DOE with Chancellor Klein's permission. He said that he did not review all of Howatt's time sheets, which were forwarded to the DOE Contracts Office. Raab believed that Howatt was "capped" at eight or 12 hours per day as a DOE consultant.

Concerning Farrelly, Raab confirmed that he complained to Anagnostopoulos regarding her access to his e-mails, but denied that he asked that Farrelly's employment be terminated.

Raab was also asked about "Veranda Bay," a real estate development, which was the subject of eight e-mails to and from Raab's DOE account from April through August 2009. Raab said that he was an investor in the Delaware venture with his brother-in-law, his prime e-mail correspondent concerning Veranda Bay. Raab said that he generally forwarded these messages to his personal e-mail account. ¹³

Raab testified that he planned to hire Howatt as a consultant for a project at Guggenheim.

An SCI investigator attempted to contact Howatt several times by telephone at his office in Canada. Howatt replied by voice mail with instructions to "stop calling me," and said that he would not agree to be interviewed by SCI unless written questions were provided to him in advance and approved by Raab. This was not tenable to SCI's investigation. As a resident of Canada, Howatt was not in SCI's subpoena jurisdiction. In a subsequent e-mail to an SCI investigator, Howatt claimed that he did not perform work on Guggenheim matters on DOE time, and that he was authorized to work from his home office in Canada by Raab and Anagnostopoulos.

Raab engaged in prohibited private business relationships with DOE consultants while in the employ of the DOE. He used his DOE e-mail address to facilitate work done on behalf of Guggenheim, a private investment firm where he later accepted employment. Notwithstanding Raab's purported directive to the consultants to work for an investment bank "pro bono" and not on DOE time, some of this work was performed by consultants Thorne and O'Connor during periods for which they billed the DOE. Howatt generally billed the DOE nine hours each weekday without specifying the start or end times. In addition, the consultants, who owed their DOE engagements (directly or indirectly) to

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¹³ The DOE e-mails indicate that this was true of some of the "Veranda Bay" messages.

Raab, were not in a position to refuse his requests, and Howatt and O'Connor have since been hired by Raab at Guggenheim. We recommend that Raab, Howatt, O'Connor and Thorne be placed on the ineligible list, and that this matter be taken into account should they apply for employment with the DOE or its affiliates.

We note that some of the conduct described herein may violate the provisions of Chapter 68 of the New York City Charter, which is administered by the New York City Conflicts of Interest Board.

We are sending a copy of our report and of our recommendations to the Office of Legal Services. Should you have any inquiries concerning this matter, please contact Deputy Commissioner Gerald P. Conroy, the attorney assigned to this case. Please advise Deputy Commissioner Conroy within 30 days of receipt of this letter what, if any, action has been taken or is contemplated with respect to George Raab, Bill Howatt, David O'Connor and Joyce Thorne. Thank you for your attention to this matter.

Sincerely,

RICHARD J. CONDON Special Commissioner of Investigation for the New York City School District

By:		
	Gerald P. Conroy	

Gerald P. Conroy Deputy Commissioner

RJC:GPC:gm

c: Michael Best, Esq.
Theresa Europe, Esq.