

United States Senate

WASHINGTON, DC 20510

March 6, 2024

Mr. Mark Bialek
Inspector General
Office of Inspector General Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Dear Mr. Bialek:

We are writing regarding the January 18, 2024 report produced by your office that closed the investigation of suspicious trades made in 2020 by Federal Reserve (Fed) Presidents Robert Kaplan and Eric Rosengren.¹ This report does not hold either of these two officials accountable for their violation of Fed rules and their abuse of the public trust. Your failure to do so – combined with your failure to ensure that the Fed has proper rules in place to prevent a repeat of this scandal – underscores the culture of corruption at the Fed.

While millions of Americas grappled with the Covid-19 pandemic and the economy teetered on collapse in March 2020, these leaders of the Federal Reserve System actively traded individual stocks and investments while helping set key policies in response to the crisis.² During this time, Mr. Kaplan made multiple \$1 million plus trades, and Mr. Rosengren held dozens of real-estate backed trusts at a time when the Fed was intervening in the housing sector. This trading scandal – the most severe ethics failure in the Fed’s history – eroded the public’s trust and raised legitimate questions about the integrity of Fed officials and the Fed’s policymaking process.³ The Fed’s repeated denials of requests for transparency⁴ and your apparent inability to live up to your responsibilities as the Fed’s watchdog unfortunately suggest that the public may never get to the bottom of the scandal.

The aftermath of this scandal is an ongoing example of why the inherent conflict of interest in your position – in which you are charged with holding Fed officials accountable, but are hired by those same officials and serve at their pleasure – prevent you from being an effective watchdog.

Your Investigations of the Fed’s Trading Scandals

¹ Wall Street Journal, “Fed Leaders Eric Rosengren, Robert Kaplan to Resign Following Trading Controversy,” Michael S. Derby, September 27, 2021, <https://www.wsj.com/articles/boston-fed-leader-rosengren-to-retire-early-from-bank-11632747033>.

² New York Times, “A Fed Official’s 2020 Trade Drew Outcry. It Went Further Than First Disclosed,” Jeanna Smialek, January 6, 2022, <https://www.nytimes.com/2022/01/06/business/economy/richard-clarida-fed-stock-fund.html>.

³ *Id.*

⁴ Letter from Senator Elizabeth Warren to Federal Reserve Chair Jerome Powell, November 7, 2020, <https://www.warren.senate.gov/download/20221104-letter-to-chair-powell-re-fed-trading-scandal-and-fomc>; Revolving Door Project, “The Fed’s FOIA Office Is Obscuring Its Trading Scandals,” K.J. Boyle and Toni Aguilar Rosenthal, February 8, 2024, <https://therevolvingdoorproject.org/the-feds-foia-office-is-obscuring-its-trading-scandals/>.

The January report represents the second investigation you have conducted into the Fed’s 2020 trading scandals. And for the second time, you have not held agency officials accountable in any meaningful way.

In July 2022, you released a report that revealed improper trading and failure to report trades by Chair Jerome Powell and Vice Chair Richard Clarida.⁵ But this investigation was essentially a whitewash of their misdeeds: you accepted uncritically their claims about their improper trades and reporting failures, failed to investigate several disturbing aspects of these trades, and made no recommendations to hold them accountable.⁶

You appear to have made many of the same mistakes in your latest report, which investigates the trades by Robert Kaplan, former President of the Dallas Federal Reserve Bank, and Eric Rosengren, former President of the Boston Federal Reserve Bank.⁷ Your years-long delay before completing this investigation, your failure to hold Mr. Rosengren and Mr. Kaplan accountable for violating key Reserve Bank rules and policies, and your inability to address ongoing weaknesses in Federal Reserve ethics rules represent failures to uphold your mission of providing independent oversight of the agency.

The IG Report Was Not Completed in a Timely Fashion

Mr. Rosengren and Mr. Kaplan’s trades were made, respectively, in January and June of 2020, and became known to the public in September 2021.⁸ On October 4, 2021, the Board of Governors of the Federal Reserve System requested that you conduct an independent review of these trades. But your report was not released until January 2024 – nearly four years after the trades were made, and two years and three months after you were asked to conduct your investigation. Mr. Kaplan and Mr. Rosengren have long since resigned from the Fed, making it all the more difficult for them to be held accountable.⁹ This delay also meant that, in the intervening years, Fed officials had inadequate or incomplete guidance and recommendations from you on ethics rules surrounding trades – opening the door to other scandalous and unethical behavior.

The IG must act swiftly and decisively in order to conduct effective oversight that holds officials accountable. You did not do so in this case.

Your Findings on Mr. Kaplan’s Trades and Disclosures

⁵ Memorandum from Inspector General Mark Bialek to The Honorable Jerome Powell, July 11, 2022, <https://oig.federalreserve.gov/releases/board-closing-trading-activity-jul2022.pdf>.

⁶ Letter from Senator Elizabeth Warren to FED IG Mark Bialek, May 16, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.05.16%20Letter%20to%20FED%20IG%20re%20April%202023%20review%20of%20Fed%20ethics%20rules1.pdf>.

⁷ Office of the Inspector General, “Report of Investigation on the Closing of 22-0030-I Reserve Bank Trading Activity,” January 18, 2024, <https://oig.federalreserve.gov/releases/investigation-closing-reserve-bank-trading.pdf>.

⁸ Wall Street Journal, “Dallas Fed’s Robert Kaplan Was Active Buyer and Seller of Stocks Last Year,” Michael S. Derby, September 7, 2021, <https://www.wsj.com/articles/dallas-feds-robert-kaplan-was-active-buyer-and-seller-of-stocks-last-year-11631044094>.

⁹ The Economist, “Two Fed presidents resign after criticism of their investment activities,” Oct. 2, 2021, <https://www.economist.com/finance-and-economics/2021/10/02/two-fed-presidents-resign-after-criticism-of-their-investment-activities>.

Your report reviewed whether Mr. Kaplan and Mr. Rosengren’s activities violated the Reserve Bank disclosure statement and prohibited holdings policies, the Federal Open Market Committee (FOMC) blackout rule and federal conflict of interest laws, and Reserve Bank conflict of interest policy.

Mr. Kaplan made multiple \$1 million-plus trades in 2020 in more than a dozen companies.¹⁰ You concluded that, with regard to Mr. Kaplan, “we did not find that his trading activities violated laws, rules, regulations, or policies related to trading activities as investigated by our office.”¹¹ But you describe in detail numerous problems with Mr. Kaplan’s disclosures, concluding that “(1) Mr. Kaplan’s description of his trading activities in his 2020 Form A did not provide relevant information that would have provided a more comprehensive understanding of his trading activities and (2) Mr. Kaplan did not report two trades on his 2020 Form A supplemental list of transactions dates.”¹²

The failures you describe appear to be a direct and willful violation of the Fed’s disclosure policies, which are designed to ensure that Fed officials are complying with the law.¹³ These rules are important: absent proper disclosure, ethics officials and the public have no recourse to identify and prevent illegal or inappropriate financial activity.

Moreover, your description of the investigation appears to indicate that Mr. Kaplan may have been untruthful with regard to the information he provided to you during the course of the investigation. The nature of the dispute here was whether Mr. Kaplan could list trades as occurring on “multiple” dates, or whether he was required to list specific dates. You concluded that he was required to list specific dates.

According to your report, Mr. Kaplan appeared to indicate to you that this was a fresh issue that had never been raised before, informing you “that no one had ever raised the issue of his listing of “multiple” on his Form As.”¹⁴ However, your own investigation described a specific discussion between the Dallas Fed General Counsel and Mr. Kaplan in August 16, 2021, in which “she spoke to Mr. Kaplan, who stated that he wanted to keep his Form A as it was [listing “multiple” instead of specific trading dates] because he did not have the time to complete the revisions by the due date.”¹⁵

¹⁰ Bloomberg, “Fed Official Who Warned on Real Estate Traded REITs Actively,” Craig Torres, Catarina Saraiva, and Steve Matthews, September 8, 2021, <https://www.bloomberg.com/news/articles/2021-09-08/fed-official-who-warned-on-real-estate-was-active-reit-trader>.

¹¹ Office of the Inspector General, “Report of Investigation on the Closing of 22-0030-I Reserve Bank Trading Activity,” January 18, 2024, <https://oig.federalreserve.gov/releases/investigation-closing-reserve-bank-trading.pdf>.

¹² *Id.* at pp. 8-10. The report states, “Mr. Kaplan’s 2020 Form A identified neither the specific dates of his transactions nor his transactions that were based on stock option contracts.” Additionally, by cross-referencing brokerage statements and trading data, the OIG investigation found that “on June 9, 2020, Mr. Kaplan made two separate sales of General Electric Co. (GE), which were not reported on his 2020 Form A Supplemental List of Transaction Dates.”

¹³ Federal Reserve Bank of Dallas Code of Conduct, section 9; Federal Reserve Bank of Boston Code of Conduct, section 9; Federal Reserve Administrative Manual, section 2-026.1.

¹⁴ Office of the Inspector General, “Report of Investigation on the Closing of 22-0030-I Reserve Bank Trading Activity,” January 18, 2024, p. 8, <https://oig.federalreserve.gov/releases/investigation-closing-reserve-bank-trading.pdf>.

¹⁵ *Id.* at p. 9. This conversation was following an email sent by Board Ethics to Mr. Kaplan in 2021, recommending he list the specific transaction dates on his 2020 Form A. In this email, the Board stated, “2020 was a particularly turbulent year for the markets, and the Federal Reserve played a key role in responding to events, so there is even more public

Put simply, Mr. Kaplan appeared to be untruthful when he informed you that “no one had ever raised the issue” of his improper disclosures when the in-house attorney clearly had discussed that very issue with Mr. Kaplan prior to the submission of his disclosures. But your report failed to mention any wrongdoing related to these actions, and failed to hold Mr. Kaplan accountable for his actions.

Your Findings with Regard to Mr. Rosengren

Likewise, Mr. Rosengren did not report multiple trades on his 2020 Form A, and there were multiple discrepancies between his brokerage statements and trading data and what he reported on his 2020 Form A, including seventeen purchases of real estate trusts at up to \$250,000 each, at a time when the Fed was intervening to support the housing sector, in 2020.¹⁶ Plainly, Mr. Rosengren was instrumental in policy decisions that influenced the nation’s housing market while simultaneously making personal decisions in the housing and real estate market to increase his personal wealth.

Throughout 2020, Mr. Rosengren gave several public speeches regarding the precarious state of the real estate market in his capacity as FRB Boston President. But at the same time that Mr. Rosengren warned of a “second shoe dropping,” he actively traded REITs (real estate investment trusts) at an unprecedented level.¹⁷ Between January 31 and December 29 of 2020, Mr. Rosengren made forty-two transactions in four REITs, up from seven transactions in only one REIT over the previous three years combined.¹⁸ Of these transactions, fifteen were not reported on Mr. Rosengren’s 2020 Form A, and many did not list the dates of the trades, or had other discrepancies.¹⁹ Your report also noted that Mr. Rosengren employed a covered call strategy for many of these trades, an options

interest in listing transaction dates during this period.” Even after receiving this email, Mr. Kaplan did not list the specific dates.

¹⁶ *Id.* at pp. 13-14. The OIG’s cross-analysis of Mr. Rosengren’s brokerage statements and trading data reflect the following unreported REIT trades: January 31, 2020, purchase of Annaly Capital (NLY) in the amount of \$1,001–\$50,000; February 5, 2020, purchase of NLY in the amount of \$50,001–\$250,000; February 5, 2020, purchase of Invesco Mortgage Capital (IVR) in the amount of \$50,001–\$250,000; February 20, 2020, purchase of IVR in the amount of \$1,001–\$50,000; February 20, 2020, purchase of AGNC Investment (AGNC) in the amount of \$50,001–\$250,000; May 4, 2020, purchase of NLY in the amount of \$1,001–\$50,000 • May 5, 2020, purchase of AGNC in the amount of \$1,001–\$50,000; June 12, 2020, purchase of AGNC in the amount of \$1,001–\$50,000; June 16, 2020, purchase of AGNC in the amount of \$1,001–\$50,000; June 26, 2020, purchase of AGNC in the amount of \$1,001–\$50,000; August 3, 2020, purchase of IVR in the amount of \$1,001–\$50,000; September 2, 2020, sale of Two Harbors (TWO) in the amount of \$1,001–\$50,000; November 24, 2020, purchase of IVR in the amount of \$1,001–\$50,000; December 28, 2020, purchase of TWO in the amount of \$1,001–\$50,000; December 29, 2020, purchase of NLY in the amount of \$1,001–\$50,000.

¹⁷ *Id.* at pp.19: “For example, in remarks to the Boston Economic Club on September 23, 2020, titled “The Economy’s Outlook, Challenges, and Way Forward,” Mr. Rosengren stated, ‘A structural shock, like the pandemic, can result in a significant increase in the number of nonperforming loans, eventually impinging the ability of banks and insurance companies to continue to make credit available to borrowers. Hence, I am especially worried about a ‘second shoe dropping’ that will particularly affect small and medium-sized banks, which provide a large share of commercial real estate loans and small business loans. A curtailment of credit resulting from such problems has caused serious headwinds to recoveries in the past and may be a serious problem going forward.’”

¹⁸ *Id.* at pp. 16-18.

¹⁹ *Id.* at pp. 13-15.

trading *strategy* that allows an investor to profit from anticipated price rises.²⁰ Given the Fed’s intervention to support the housing sector in 2020, Mr. Rosengren’s unprecedented (and unreported) REIT purchases and sales using a covered call strategy is highly suspicious.

You concluded that these actions “create an appearance of a conflict of interest” that could cause a reasonable person to question Mr. Rosengren’s impartiality under FRB Boston’s code of conduct,” but still concluded that “these findings did not rise to the level of a violation of laws, rules, regulations, or policies related to trading activities as investigated by [y]our office.”²¹

It is unclear how you reached that conclusion. At a minimum, Mr. Rosengren’s conduct appears to clearly violate the broad *Standards of Ethical Conduct for Employees of the Executive Branch*, the *Reserve Bank Conflict of Interest Policies*, and the *Federal Reserve’s Guide to Conduct for Senior Officials*, each of which require that employees avoid even the appearance of conflicts of interest.²²

In addition, although you indicated that Mr. Rosengren did not violate the FOMC blackout policy by making trades in the specified days before and after an FOMC meeting, you ignored the plain language of the policy, which states that employees “should avoid engaging in *any* financial transaction the timing of which could create the appearance of acting on inside information concerning Federal Reserve deliberations and actions,” emphasis ours.²³

It appears quite obvious that Mr. Rosengren, who made dozens of trades in real estate trusts while having knowledge of Federal Reserve deliberations on interventions in the housing sector in the early days of the pandemic, may have acted, or at minimum, appeared to act, based on this knowledge. But you ignored this provision of the rules when you absolved Mr. Rosengren of wrongdoing.

Your Failure to Address Ongoing Weaknesses in Fed Conflict of Interest Rules

Your failures to address the misbehavior of Mr. Kaplan and Mr. Rosengren are magnified by what appear to be ongoing weaknesses in the Fed’s conflict of interest rules. In the wake of the trading scandal, the Fed finally announced updated conflict of interest rules in February 2022.²⁴ More than a year later, you reviewed these rules, reporting that there were still significant weaknesses.²⁵ Specifically, among the key problems you identified were a lack of enforcement mechanism to impose consequences for officials who violate the policy, and the inability to verify the accuracy of

²⁰ *Id.* at p. 18.

²¹ *Id.* at p. 21.

²² Code of Federal Regulations, § 2635, “Standards of Ethical Conduct for Employees of the Executive Branch,” <https://www.ecfr.gov/current/title-5/chapter-XVI/subchapter-B/part-2635>; Federal Reserve, “Guide to Conduct for Senior Officials,” This statement was adopted November 18, 1970, and amended April 1979, May 1997, July 1998, November 2017, and March 2022. <https://www.federalreserve.gov/monetarypolicy/files/FRAM2-026-1.pdf>.

²³ Federal Reserve System, “Federal Open Market Committee Rules and Authorizations,” as of February 17, 2022, https://www.federalreserve.gov/monetarypolicy/files/FOMC_RulesAuthPamphlet_202202.pdf.

²⁴ Board of Governors of the Federal Reserve System, “FOMC formally adopts comprehensive new rules for investment and trading activity,” press release, February 18, 2022, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20220218a.htm>.

²⁵ Office of Inspector General, The Board Can Further Enhance the Design and Effectiveness of the FOMC’s Investment and Trading Rules, OIG Report 2023-SR-B-006, April 26, 2023, <https://oig.federalreserve.gov/reports/board-FOMC-investment-trading-rules-apr2023.pdf>.

the information on financial disclosures submitted by individuals subject to the *Investment and Trading Policy*.²⁶

You specifically recommended that the Fed “[f]ormalize a process for determining and enforcing consequences for Reserve Bank covered individuals who violate the Investment and Trading Policy that includes clear roles and responsibilities,” and that the Board “require covered individuals to provide brokerage statements to their respective ethics officer for all accounts with holdings and transactions reported on their annual financial disclosure report.”²⁷

Given your findings with regard to Mr. Rosengren and Mr. Kaplan, these are important actions that the Fed must take to ensure that the rules are meaningful, and in April 2023, Chair Powell promised to do so in a letter to you.²⁸ You indicated that you would “ensure the recommendations are fully addressed.”²⁹ But both you and Chair Powell have again failed to impose stricter ethics requirements: a status update sent by your office last month revealed that while the Board concurred with all six of the IG’s recommendations, and promised to implement at least two of them before the end of 2023, the matters all remain “open”.³⁰

Furthermore, the few actions the Board has taken to fulfill the recommendations appear to be inadequate. For example, in response to the IG’s recommendation that the Board should develop a plan to enhance the System’s financial disclosure report review process, “including considering additional controls and guidance,” the Board merely hosted a training on how to review financial disclosure reports. This clearly fails to fulfill the IG’s broader recommendation, which is that the Board create a new financial disclosure report review process with guidance and enforcement mechanisms.

Additionally, the Federal Reserve released an updated *Investment and Trading Policy* on January 31, 2024, which contained several modifications to strengthen ethics rules.³¹ But notably, the changes fail to address two of your key recommendations. First, there is no requirement that Fed officials provide brokerage statements to ethics officials to confirm that their trading reports are accurate; instead, the rules only require that Ethics Officials “may” ask for these statements – providing no assurance that Fed officials’ disclosure statements will be disclosed or checked for accuracy.³² Second, the new policy – like the old one – contains no enforcement or compliance mechanism, rendering it effectively meaningless.

²⁶ *Id.*

²⁷ *Id.* at p. 3.

²⁸ *Id.* at pp. 28-30. In a letter from Fed Reserve Chair Jerome Powell to Fed IG Mark Bialek on April 19, 2023, Chair Powell wrote outlining actions that will be taken to address all of the OIG’s findings, vowing to enforce several of the recommendations by the end of 2023.

²⁹ *Id.* at pp. 2, 18, 22, 26.

³⁰ Electronic mail from the Office of the Federal Reserve Inspector General to the Office of Senator Elizabeth Warren, February 28, 2024, [Document is on file with the Office of Senator Elizabeth Warren].

³¹ Board of Governors of the Federal Reserve System, “Federal Open Market Committee announces updates that further enhance its policy on investment and trading,” January 31, 2024, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20240131c.htm>.

³² Federal Reserve, “FOMC Policy on Investment and Trading for Committee Participants and Federal Reserve System Staff,” amended effective January 30, 2024. Section IV subpoint c at p. 3 states: “Ethics officials may direct System employees with knowledge of information that is classified as “Class I FOMC – Restricted Controlled (FR)” to submit

These are glaring gaps that – nearly four years after the Fed was embroiled in its trading scandals - leave the door open for more such scandals in the future.

Conclusion

On multiple occasions, we have raised concerns about the institutional weaknesses of your position, and your inherent conflicts of interest: in particular, the fact that the Fed IG is chosen by the Fed Chair, and can only be removed from office by a vote of the Federal Reserve Board – an irresolvable conflict given that the role includes investigating and holding the Board accountable for any policy and implementation failures.³³

To address these concerns, we introduced S. 915 on March 22, 2023, a bill that would require the inspector general of the Board of Governors of the Federal Reserve System to be appointed by the President and confirmed by the Senate.³⁴ This would ensure that the Federal Reserve IG is a truly independent watchdog enabled to provide accountability and transparency to the American people. Your failure to hold multiple key Fed officials responsible for scandalous trades and clear violations of ethics and disclosure rules, and your failure to ensure that the Fed has put effective new rules in place to prevent future scandals, reveals the urgent need for this legislation and an independent Federal Reserve IG.

Sincerely,



Elizabeth Warren
United States Senator



Rick Scott
United States Senator

copies of any brokerage statements, or other securities transaction statements, they (or their spouse or dependent children) have received.”

³³ Senator Elizabeth Warren, “Chairing Subcommittee on Economic Policy, Senator Warren Highlights Need for Legislative Reforms to Promote Accountability, Transparency at Federal Reserve,” press release, May 17, 2023. <https://www.warren.senate.gov/newsroom/press-releases/chairing-subcommittee-on-economic-policy-senator-warren-highlights-need-for-legislative-reforms-to-promote-accountability-transparency-at-federal-reserve>. In the hearing, Sen. Warren and Sen. Rick Scott questioned Federal Reserve Inspector General Mark Bialek and a panel of academic experts on the independence of the IG office and the regulatory and supervisory failures that contributed to Silicon Valley Bank’s collapse.

³⁴ Senator Elizabeth Warren, “Warren, Scott Lead Bipartisan Legislation to Establish Independent IG Oversight at the Federal Reserve,” press release, March 22, 2023, <https://www.warren.senate.gov/newsroom/pressreleases/warren-scott-lead-bipartisan-legislation-to-establish-independent-ig-oversight-at-the-federal-reserve>; 5 U.S.C. App. § 12(2).