



City of New York

OFFICE OF THE COMPTROLLER

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MANAGEMENT AUDIT

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Deputy Comptroller for Audit

Follow-up Audit Report on the
Monitoring of the Private Carting and
Public Wholesale Markets by the
Business Integrity Commission

MD12-078F

December 17, 2012

<http://comptroller.nyc.gov>



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December 17, 2012

To the Residents of the City of New York:

My office has audited the Business Integrity Commission (BIC) to determine whether it has implemented the key recommendations made in a previous audit, *Audit Report on the Monitoring of the Private Carting and Public Wholesale Market Industries by the Business Integrity Commission* (Audit No. FK07-089A, issued June 30, 2008). We perform follow-up audits of City agencies as a means of ensuring they operate efficiently and properly safeguard City resources entrusted to them.

Of the 13 recommendations reviewed, the audit found that six recommendations were implemented, one recommendation was partially implemented, and six recommendations were not implemented. A number of issues identified from the previous audit still exist. Specifically, BIC: does not perform any reconciliation to ensure that all complaints received are recorded in the complaint database; does not adequately supervise Market Agents' activities; does not conduct background checks for some renewal applications; and allows wholesale market businesses to operate without current registrations.

The report makes 12 recommendations, including that BIC should implement a process to ensure that all complaints received are entered into its database; improve its monitoring of Market Agents' activities; and ensure that the background check process is completed, adequately documented, and maintained for all principals and key employees of all public wholesale markets that it regulates.

The results of the audit have been discussed with BIC officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "JCL", with a period at the end.

John C. Liu

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ADDENDUM

THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

Follow-up Audit Report on the Monitoring of the Private Carting and Public Wholesale Markets by the Business Integrity Commission

MD12-078F

AUDIT REPORT IN BRIEF

In November 2001, a revision of the New York City Charter created the Organized Crime Control Commission, later renamed the Business Integrity Commission (BIC), to consolidate under one agency regulatory jurisdiction over the private carting, the public wholesale market, and the shipboard gambling industries. Previously, these industries were regulated by the Trade Waste Commission, the Department of Small Business Services, and the Gambling Control Commission, respectively.

BIC is both a law enforcement and regulatory agency. Its mission is to eliminate organized crime and other forms of corruption and criminality from the industries it regulates. BIC is empowered to investigate applicants, issue licenses and registrations, enforce applicable laws, and promulgate rules and regulations that govern the conduct of the businesses it oversees. The New York City Administrative Code requires that businesses operating in the trade waste and market industries obtain a license or registration from BIC. Before a license or registration is granted, BIC conducts background and criminal investigations of the applicant's business and its principals for the purpose of determining the good character, honesty, and integrity of the applicant business. This follow-up audit determined whether the key recommendations made in the previous audit entitled *Audit Report on the Monitoring of the Private Carting and Public Wholesale Market Industries by the Business Integrity Commission* (Audit No. FK07-089A, issued June 30, 2008) were implemented. The previous audit found significant weaknesses in BIC's monitoring of the trade waste and market industries.

Audit Findings and Conclusions

In this follow-up audit, we assessed the implementation status of 13 recommendations made in the prior audit report. Of the 13 recommendations, we determined that six recommendations were implemented, one recommendation was partially implemented, and six recommendations were not implemented. A number of issues identified from the previous audit still exist. Specifically, BIC: does not perform any reconciliation to ensure that all complaints received are recorded in the complaint database; does not adequately supervise Market Agents' activities;

does not conduct background checks for some renewal applications; and allows wholesale market businesses to operate without current registrations.

In addition, we identified the following new issues which need to be addressed: BIC does not maintain a minor violation log as required by its procedures and does not assign background checks for investigation in a timely manner.

Audit Recommendations

The follow-up audit makes 12 recommendations, including that BIC should:

- Implement a process to ensure that all complaints received are entered into its database.
- Improve its monitoring of Market Agents' activities to ensure that they make regular entries of their actions in their memo books as required and complete required documents.
- Ensure that the background check process is completed, adequately documented, and maintained for all principals and key employees of all public wholesale markets that it regulates.
- Develop timeliness measures for the processing of new and renewal applications.
- Ensure that the Background Check Unit supervisors assign applications for investigation when received in order to improve the processing time.

Agency Response

In its response, BIC generally agreed with seven recommendations, disagreed with three recommendations, and did not address two recommendations.

INTRODUCTION

Background

In November 2001, a revision of the New York City Charter created the Organized Crime Control Commission, later renamed BIC, to consolidate under one agency regulatory jurisdiction over the private carting, the public wholesale market, and the shipboard gambling industries. Previously, these industries were regulated by the Trade Waste Commission, the Department of Small Business Services, and the Gambling Control Commission, respectively.

BIC consists of a Chair appointed by the Mayor and the Commissioners of the Police Department (NYPD), the Department of Investigation, the Department of Sanitation (DSNY), the Department of Consumer Affairs, and the Department of Small Business Services (DSBS). The BIC Chair has administrative management responsibility for the agency. BIC has more than 60 employees and is supplemented by NYPD and DSNY police officers.

BIC is both a law enforcement and regulatory agency. Its mission is to eliminate organized crime and other forms of corruption and criminality from the industries it regulates. BIC is empowered to investigate applicants, issue licenses and registrations, enforce applicable laws, and promulgate rules and regulations that govern the conduct of the businesses it oversees. The New York City Administrative Code requires that businesses operating in the trade waste and market industries obtain a license or registration from BIC. Before a license or registration is granted, BIC conducts background and criminal investigations of the applicant's business and its principals for the purpose of determining the good character, honesty, and integrity of the applicant business. By conducting these investigations, BIC attempts to prevent individuals and businesses with organized crime connections from being involved in the regulated industries.

Several units at BIC operate in the fulfillment of its mission. The Licensing Unit processes the application and issues registrations/licenses and photo IDs to individuals active in the market. Licenses and registrations must be renewed every two years, with the exception of registrations issued to businesses operating in the produce and meat markets, which must be renewed every three years. The Investigation Unit receives and handles complaints from the public regarding the trade waste hauling and wholesale market businesses and logs them into its database. The Market Enforcement Unit employs Market Agents who patrol the City and the markets to ensure that carting companies comply with the rules and regulations and ensure that markets operate without influence of organized crime. The Background Check Unit ensures that all applicants are vetted and cleared of criminal activities. The Legal Unit reviews background reports and examines grounds for approving or denying the applications.

BIC officials informed us that there were no businesses operating in the shipboard gambling industry during our audit period.

A prior audit report, *Audit Report on the Monitoring of the Private Carting and Public Wholesale Market Industries by the Business Integrity Commission* (Audit No. FK07-089A), issued in June 2008, determined whether BIC was properly and effectively monitoring the City's trade waste and market industries. The previous audit found significant weaknesses in BIC's monitoring of the trade waste and market industries.

This report is based on a follow-up audit we conducted to determine whether BIC has implemented the key recommendations made in the previous audit. In this report, we discuss 13 key recommendations made in the prior audit as well as the current implementation status of each of these recommendations. (See the appendix for a list of the key recommendations made in the prior audit report that were addressed in this follow-up audit.)

Objective

The objective of the audit was to determine whether BIC implemented the key recommendations made in the prior audit report.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope was Fiscal Year 2011. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with BIC officials during and at the conclusion of this audit. A preliminary draft report was sent to BIC officials and discussed at an exit conference held on August 29, 2012. We submitted a draft report to BIC officials with a request for comments. We received a written response from BIC officials on October 10, 2012. In its response, BIC generally agreed with seven of the audit's 12 recommendations. BIC disagreed with three recommendations relating to the development of timeliness measures, the processing of new and renewal applications, and ensuring that businesses do not operate without a valid license or registration. BIC did not directly address two recommendations relating to ensuring that background checks are completed and that they are done for all renewal applications.

The full text of BIC's response is included as an addendum to this report.

RESULTS OF FOLLOW-UP AUDIT

In this follow-up audit, we assessed the implementation status of 13 recommendations made in the prior audit report. Of the 13 recommendations, we determined that six recommendations were implemented, one recommendation was partially implemented, and six recommendations were not implemented.

Previous Finding: “BIC Did Not Institute Required Standard Operating Procedures for the Investigation and Resolution of Complaints”

The previous audit found that BIC failed to institute Standard Operating Procedures (SOPs) for the investigation and resolution of complaints as required by law. New York City Administrative Code §16-522 states that BIC “shall by rule establish a procedure for the investigation and resolution of complaints by commercial establishments regarding overcharging and other problems related to the collection, removal or disposal of waste.”

According to BIC officials, many complaints, such as excessive noise and missed pick-ups, can be resolved immediately by calling trade waste businesses. However, there were no written guidelines or instructions that dictated which types of complaints could be resolved with a phone call and which types required investigation. Further, the decisions by the BIC Inspector were neither documented nor reviewed. Without SOPs and supervisory review, BIC could not ensure that all complaints that warranted investigation were investigated.

Previous Recommendation #1: “Develop and implement standard operating procedures for the investigation and resolution of complaints, as required by New York City Administrative Code §16-522.”

Previous Recommendation #2: “Ensure that appropriate personnel review ongoing investigations and approve the manner in which complaints are resolved.”

Previous BIC Response #1 and #2: The prior BIC Commissioner responded, “Since my arrival, the Agency has implemented an enhanced standard operating procedure to improve the processing and tracking of all complaints, inquiries and investigations. . . . Integral to this procedure are a series of supervisory reviews to ensure that matters are properly entered into the database, assigned to appropriate staff and, ultimately, resolved. . . . The Deputy Commissioner for Investigations or, when appropriate, the Chief Investigator reviews all pending investigations and complaints to ensure that they are handled properly and efficiently. The ultimate resolution of any complaint must be approved by supervisory staff.”

Current Status Recommendation #1: IMPLEMENTED

Since the previous audit, BIC has developed and implemented standard operating procedures for the investigation and resolution of complaints.

Current Status Recommendation #2: IMPLEMENTED

Since the previous audit, BIC has implemented proper operating procedures to improve the complaint review process. The Director of the Complaint Unit reviews complaints, assigns them to investigators, and ensures that they are properly resolved.

Previous Finding: “BIC Lacks Segregation of Duties over Complaints”

The previous audit found that BIC violated the segregation of duties principle because one BIC Inspector received and recorded complaints, decided whether complaints warranted investigation, and also investigated and resolved complaints. Comptroller’s Directive #1 states, “Key duties and responsibilities need to be divided or segregated among different staff members to reduce the risk of error or fraud.” By not dividing these responsibilities, BIC could not ensure all complaints that were received were ultimately resolved and resolved appropriately.

Previous Recommendation #3: “Ensure that different staff members perform the functions of receiving and recording complaints and determining whether complaints warrant investigation.”

Previous BIC Response #3: “Since my arrival, the Agency has implemented an enhanced standard operating procedure to improve the processing and tracking of all complaints, inquiries and investigations. . . . Separate staff members receive, enter and make jurisdictional decisions about every complaint, inquiry and investigation.”

Current Status: IMPLEMENTED

Our review disclosed that BIC has enhanced the segregation of duties in the processing of complaints. Complaints are received through seven different means: a Complaint Hotline number (311); calls made directly to BIC; emails; faxes; walk-ins; referrals by other agencies; and webmail that originates from the Mayor’s Office. The intake staff person performs the tasks of receiving the initial complaints from the public and recording them in the BIC database. Every morning, the Director of the Complaint Unit receives a report generated from the Complaint database prepared by the intake staff person, listing all the complaints received. He reviews the listing and determines those complaints that warrant investigation and assigns them to an investigator.

Previous Finding: “BIC Lacks an Effective System for Tracking Trade Waste Complaints”

The prior audit found that BIC lacked an effective system for tracking trade waste complaints. It did not adequately document complaints received and, therefore, could not verify that all complaints were recorded in its database; it recorded such limited information in the database that the system was incapable of tracking essential data or generating useful management reports; and the system was not used exclusively for complaints and did not isolate or properly identify record types.

The previous audit made four recommendations to BIC regarding tracking trade waste complaints, three of which were addressed in this audit.

Previous Recommendation #5: “Verify that all complaints received are entered into its database.”

Previous BIC Response #5: “Since my arrival, the Agency has implemented an enhanced standard operating procedure to improve the processing and tracking of all complaints, inquiries and investigations. . . . Integral to this procedure are a series of supervisory reviews to ensure that matters are properly entered into the database, assigned to appropriate staff and, ultimately, resolved. In addition to entering all matters into the database, the Agency creates and retains a paper file which includes original documents. . . .

“Contrary to the draft Audit Report’s conclusion, the Agency’s complaint operating procedure during the Audit Period did ensure that all complaints were properly entered, handled and resolved.”

Current Status: NOT IMPLEMENTED

Since the previous audit, complaints are entered into the complaint database and include all related, relevant information, such as assignment date, resolution date, source of complaint, and action taken. However, BIC does not perform any reconciliation to ensure that all complaints received are recorded in the complaint database. When receiving complaints via the telephone, the intake person writes the complaint down in scratch notes in a notepad and then enters the complaint into the database. No complaint template (logging notebook) is used and BIC still does not adequately document complaints received. We found no evidence that the initial information received from telephone complaints is being formally recorded and found no evidence that any initial complaint information received is reconciled with the information entered into the database. Therefore, we cannot confirm with reasonable assurance that all complaints submitted by the public have been recorded in the database.

Previous Recommendation #6: “Record essential complaint data in its database, including but not limited to—complaint source, action taken to date, status, number of days open, date resolved, and how complaint was resolved.”

Previous BIC Response #6: “The Agency has added fields to its database to track complaint source, current status, date resolved and manner of resolution.”

Current Status: IMPLEMENTED

Since the previous audit, BIC has begun recording essential complaint data in its database, including complaint entered date, assignment date, complaint source, resolution date, status, and disposition.

Previous Recommendation #7: “Monitor TWEU handling of complaints and ensure that complaints are resolved efficiently and effectively.”

Previous BIC Response #7: “Since my arrival, the Agency has implemented an enhanced standard operating procedure to improve the processing and tracking of all complaints, inquiries and investigations. . . . The Deputy Commissioner for Investigations or, when appropriate, the Chief Investigator reviews all pending investigations and complaints to ensure that they are handled properly and efficiently.”

Current Status: PARTIALLY IMPLEMENTED

As explained above, according to BIC officials, the Director of the Complaint Unit reviews, on a daily basis, a listing of complaints received and determines those complaints that warrant investigation and assigns them to an investigator. After the investigation is completed, he reviews the investigators' reports to ensure complaints are properly resolved and closes them in the database. According to a BIC official, complaints are usually resolved within five days from the assignment to an investigator. However, BIC has not established a goal to assess the efficiency and timeliness of the complaint review process. While BIC has developed and implemented standard operating procedures for the investigation and resolution of complaints, the procedures do not include time benchmarks within which BIC expects complaints to be resolved. We reviewed 25 complaints and determined that the resolution time for 10 complaints ranged from seven to 40 days after they were assigned, and the resolution time for three complaints was between 34 to 40 days. Without established time benchmarks, we cannot determine whether these complaints were resolved in a timely manner. As a result, there is a risk that hazardous situations, which could put citizens' health or the environment at risk, may remain unresolved for too long. Two of these 10 cases were for possible hazardous situations. For example, one of the complaints was made by the Police Department about a truck that spilled grease on one of its unmarked cars. The other complaint was about an unlicensed van removing construction/demolition materials.

Previous Finding: “BIC Is Not Regulating All Public Wholesale Markets”

BIC did not regulate all public wholesale markets and did not implement a timetable for their regulation. There were six designated public wholesale markets operating in the City: the Hunts Point Produce Market, the Hunts Point Meat Market, the New Fulton Fish Market, the Brooklyn Wholesale Meat Market, the Brooklyn Terminal Market, and the Gansevoort Meat Market. However, BIC regulated only four of these markets—the Hunts Point Produce Market, the Hunts Point Meat Market, the New Fulton Fish Market, and the Brooklyn Wholesale Meat Market. BIC did not require businesses operating in the remaining two markets—the Brooklyn Terminal Market and Gansevoort Meat Market—to be licensed or registered and did not patrol these markets. Unless it vets these businesses through its license and registration process, BIC cannot prevent individuals and businesses with organized crime connections from being involved in market businesses and, without actively patrolling markets, BIC cannot enforce laws and regulations governing market businesses.

The previous audit made three recommendations to BIC regarding the regulation of all public wholesale markets, one of which was addressed in this audit.

Previous Recommendation #9: “Require the vetting of all businesses and their principals, managerial employees, and key employees, as well as labor unions and their officials, and trade associations and their officers in the Brooklyn Wholesale Meat Market, the Brooklyn Terminal Market, and the Gansevoort Meat Market.”

Previous BIC Response #9: “I respectfully disagree with the draft Audit Report's recommendations that the Agency commence regulating the Brooklyn Terminal Market and the Gansevoort Meat Market or develop a timetable for the sequenced implementation of regulation of these markets. During the audit period, the Agency continually assessed the enforcement and policy rationales for implementing a timetable for regulation and determined that it was not appropriate.¹

¹The Agency continues to assess these rationales to ensure that a timetable is implemented when appropriate.

“Under A.C. §22-268, the Agency is empowered, but not obligated, to develop a timetable for the sequenced implementation of regulation of all public wholesale markets, including the Brooklyn Terminal Market and Gansevoort Meat Market. The unambiguous meaning of the statute is that the Agency has the power to determine when a public wholesale market should be subject to the Agency’s regulation. The statute clearly envisions that the Agency has the unique ability to assess the enforcement needs and policy rationales for regulating each public wholesale market. As a result of this assessment, during the audit period the Agency exercised its discretion and chose not develop a timetable for sequenced implementation of regulation with respect to the Brooklyn Terminal Market and the Gansevoort Meat Market. As the Agency should only develop a timetable for implementation when it determines that regulation is appropriate, the recommendation in the draft Audit Report to develop such a timetable and deploy enforcement staff accordingly is misplaced.”

Current Status: NOT IMPLEMENTED

Our review disclosed that even though BIC is regulating all six public wholesale markets operating in the City, it is still not properly vetting all the businesses and key employees in some of these markets. BIC is mandated to make certain that these industries and businesses remain free from the influence of organized crime by conducting vigorous background investigations of license and registration applicants. Applicants are required to submit disclosure and release forms. Disclosure forms include applicants’ submission of their past history, such as all residences for the last five years, employment history, criminal, and investigative history among other things. Release forms authorize the release of any personal or professional information of key company employees and gives permission to BIC to conduct background checks. There were a total of 27 principals from the Gansevoort Wholesale Meat Market and 15 principals from the Brooklyn Wholesale Meat Market in our samples as can be seen in Table I.

Table I
Breakdown of Our Sampled Principals

Category of Industries	Number of Principals	Number of Principals without Background Checks	Number of Principals without Disclosure Forms
New Applications			
Gansevoort Wholesale Meat Market	27	8	0
Brooklyn Wholesale Meat Market	15	1	1
Renewal Applications			
Wholesale Market Renewal Applications	41	23	0
Trade Waste Renewal Applications	24	0	0
Total	107	32	1

For eight of 27 sampled principals for the Gansevoort Wholesale Meat Market and one of 15 sampled principals for the Brooklyn Wholesale Meat Market, there was no evidence that background checks were conducted. During our walk-through, we observed that the staff from the Background Check Unit could not find any information on the background checks conducted for these applicants in the BIC database, and BIC officials could not provide any other evidence

that the background checks were conducted. In addition, we reviewed the vetting process of 65 sampled principals and key employees for the Trade Waste businesses and Wholesale markets renewal applications. We found that BIC did not conduct background checks for 23 of 41 sampled principals for the wholesale market.

In order to give BIC officials an opportunity to locate the missing background checks, in April 2012, we provided BIC officials with a list of the applications for which we were missing documentation and afterwards followed up with them on several occasions. BIC officials were unable to locate the missing documents. It was not until the exit conference, held on August 29, 2012, that BIC officials informed us that they had located the missing background checks, in additional files, for the majority of the principals who were missing them. BIC officials explained that the background checks for these principals were conducted by the Police Department, not by BIC's Intelligence Check Unit. Although we asked, BIC officials did not clearly indicate where the additional files were located.

We reviewed the additional files and obtained the background check documents for all eight of the Gansevoort Wholesale Meat Market principals and the one Brooklyn Wholesale Meat Market principal. We also obtained the background checks for five principals relating to two of the sampled wholesale market renewal applications. BIC officials were unable to locate the background checks for 18 principals related to the remaining wholesale market renewal application. Based on the dates on the background check printouts, it appears that the background checks were conducted back when the applications were received .

However, no background check memos were present with the newly found background checks. The background check memo provides an overall conclusion on the results of the background investigation, is signed by the investigator and the supervisor, and provides evidence that the background check was properly supervised. The fact that 1) BIC was unable to locate these files for over four months, 2) there was no indication in the BIC database that background checks were conducted in these cases, and 3) there was no evidence of supervisory review of these background checks, brings into question the reliability of the background check information. BIC should ensure that applications are properly reviewed by the appropriate person and adequately documented before any registrations or licenses are issued.

BIC Response: "Contrary to the findings . . . the sample analysis performed by the Comptroller makes clear that BIC has achieved full compliance in conducting thorough background checks of regulated businesses. The Comptroller points to the failure to locate 18 of 107 principal background checks (or 1 of 26 companies sampled) as evidence of a protocol lapse. However, after subsequent review of the sample, BIC identified that the missing background checks were from a cooperative entity application. This entity was comprised of principals of companies who were already vetted as part of their original checks during their respective companies' licensing process so there was no need to do them again. At best, the failure of BIC to locate the background checks in a timely fashion suggests that the agency needs to improve its record-keeping and filing system. . . . However, we disagree with any claim that the agency is failing to conduct background checks of principals in a comprehensive, reliable, and accurate manner."

Auditor Comment: We are puzzled by BIC's comments regarding the missing background checks being from a cooperative entity application. This is the first time that BIC has presented this argument, although it had numerous opportunities to do

so when the issue of the missing background checks was raised during the course of the audit-- as early as April 2012.

Additionally, we cannot accept BIC's argument regarding these background checks for a number of reasons. First, BIC officials provided no evidence to corroborate their assertion that these principals were vetted as part of the original checks of their respective companies. Accordingly, we are unable to confirm that the background checks were, in fact, conducted. Second, a number of the aforementioned 18 principals joined the organization subsequent to the initial licensing by BIC, so background checks should have been done on them when joining the organization. Finally, BIC's own protocol requires it to vet all principals for both new *and* renewal applications. Therefore, having been vetted during the initial application process does not exempt applicants and principals from being submitted for background checks during subsequent renewals. Given BIC's mission to eliminate organized crime and other forms of corruption and criminality from the industries it regulates, it is vital that BIC be vigilant in its background investigations. Therefore, we stand by our finding.

Previous Finding: "BIC Does Not Adequately Monitor Market Agents"

BIC did not adequately monitor Market Agents and ensure that they were actively patrolling markets. BIC Market Agents patrol markets and enforce applicable laws and regulations by issuing civil or administrative violations or making arrests for violations of these laws and regulations. Market Agents must sign in at the start of each shift; make entries during each shift in memo books to document their actions as well as the activities and conditions in markets; and sign out at the end of each shift. Market Supervisors initial Market Agents' memo books during each shift to verify that agents are on patrol. Memo books are issued by BIC's Desk Agent and returned to her upon completion.

The auditors could not verify that Market Agents were actively patrolling markets because BIC could not provide them with memo books for all agents, and Market Agents did not make entries in their memo books for all shifts indicated as worked.

Previous Recommendation #12: "Require Market Agents to make regular entries in their memo books during each shift documenting their actions, as well as the activities and conditions in markets."

Previous BIC Response #12: "The Agency is committed to ensuring that memo books are properly completed and reviewed. Since the audit period, the Agency has sent several written reminders to enforcement staff about the need to make regular entries in their memo books and to review memo books. In addition, the Agency has disciplined several employees for failing to make regular entries in their memo books."

Current Status: NOT IMPLEMENTED

Our review of the activities recorded in the January and February 2011 memo books revealed inadequate controls over the memo books. BIC's patrol unit maintains a memo book log that records the number of every memo book, the date it was issued, the name of the Market Agent it was issued to, the date the agent returned the book, and the supervisor's signature. Our review disclosed that new memo books were issued to Market Agents who did not return the

memo books in their possession. As a result, BIC could not locate one of the eight memo books in our sample and BIC officials were unable to explain what happened to the book.

In addition, our review of daily activities of the Market Agents for the two sampled months disclosed that they did not properly complete the memo books and that they are not making regular entries in their memo books during each shift to document their actions. The memo books did not have information recorded for certain days even though there was evidence that the agents were working those days. In many cases, the missing information included weather conditions and the inspections conducted, which are required entries according to BIC's Memo Books procedure. In addition, in some instances, the time for the activities reported was incorrect. For example, in one instance, the memo book noted that the Market Agent's tour ended at 10:00 a.m., but the Daily Activity Report (DAR) recorded the end of the tour as 7:00 a.m. As a result of the Market Supervisors' inadequate monitoring of the Market Agents' activities, there were 17 (89 percent) out of 19 days in one memo book and 11 (73 percent) out of 15 days in the other memo book where the Market Agents did not properly complete them.

In addition, we also found instances where certificates of inspections (COIs) were not prepared and the resulting notices of violation were not issued. The Market Agents record any inspections done during their tours in their memo books and complete COIs. For inspections where violations are observed, based on information in the COIs, the agents prepare a Notice of Violation (NOV) at the end of the tour using the violation database. Upon completion of the tours, the supervisors review the COIs and NOVs for accuracy and completeness. The agents will then email them to BIC's Legal Unit for review. After review, the Legal Unit sends copies of the NOVs to ECB and the companies. The COIs and copies of the NOVs are filed away at the central office. We found 10 instances where violations were cited in the memo books or DARs, but where COIs were not prepared and the resulting NOVs were not issued. As a result, some violations observed during inspections are not being processed. This is another indication of inadequate monitoring of the Market Agents' activities.

Because the information in the memo book is the proof that the wholesale markets and trade waste businesses are being monitored and secured, BIC needs to improve its monitoring of Market Agents' activities to ensure that they comply with the procedures, make regular entries in their memo books, and complete COIs and NOVs when violations are observed.

Previous Recommendation #13: "Require Market Supervisors to review memo books, ensure Market Agents make regular entries, and initial memo books during each shift."

Previous BIC Response #13: "In November of 2007, we established the position of Chief Investigator with overarching responsibility for the supervision and administration of regulatory enforcement agents, including agents working in the markets. The unit was restructured, prioritizing patrol work within the wholesale markets and with a greater emphasis on good order and discipline. Accountability of the supervisory staff is emphasized with a requirement that supervisors regularly monitor market agent activity through reviews of logs and memo books. Agents' assignments, patrols, duties and performance are strictly monitored by multiple methods including review of memo books, observation of patrols and on-site inspections."

Current Status: NOT IMPLEMENTED

Our review disclosed inadequate supervision of the Market Agents' activities. As required by the procedures, the Market Agents' supervisors must regularly inspect the memo books (at least twice during each tour). We found evidence indicating that the maximum amount of times the supervisor inspected the memo books during a tour was only once and, for some of our sampled days, there was no evidence of any review done by the supervisor. We reviewed two memo books and determined there was no supervisor signature for 12 of 16 days in one and for 11 of 14 days in the other. As a result, there is no evidence that supervisors reviewed the memo books on those days.

Furthermore, the Market Agents' supervisors did not properly review the memo books and the DARs¹ as required by the procedures. According to the procedures, entries will include name, date, tour, assignment, supervisor's name, assigned vehicle, and beginning odometer readings, and it will also chronologically list all patrol and enforcement activity. We reviewed the memo books and the corresponding DARs and found that they did not match for eight of 10 days for one and two of 14 days for the other. As a result of this inadequate supervisory review, we found instances where Market Agent activities were recorded on the DARs but not in the memo books and vice versa or when the time of the activities reported differed. For example, on January 20, 2011, an agent recorded in a memo book that at 20:03 he was on patrol in the borough of Queens; however, the DAR indicated that he was at the Bronx base at that time. In addition, we found five instances where inspections and violations were recorded on DARs and the memo books did not mention them, and one instance where violations were issued according to the memo books but nothing was mentioned in the DAR. As a result, we question the reliability of these documents.

Proper supervision of the Market Agents' activities is needed to effectively control the trade waste and wholesale market businesses. By not consistently reviewing the memo books and the DARs to ensure that Market agents are doing their work diligently, BIC is creating an environment where fraudulent activities could occur. This may lead to possible organized crime involvement in the industries BIC regulates.

Previous Finding: "BIC Did Not Institute SOPs for Market Monitoring"

BIC failed to institute SOPs instructing Market Agents how to perform their duties and responsibilities. As previously stated, SOPs are a set of written instructions that detail the work processes that are to be conducted or followed within an organization. SOPs provide all employees with the information needed to perform a job properly and facilitate consistency in the quality of services provided. Written policies and procedures are needed that adequately and specifically address the duties and responsibilities of key employees responsible for monitoring the markets.

During the course of the previous audit, the auditors repeatedly requested BIC's SOPs, and BIC officials repeatedly informed them that BIC did not institute SOPs for the monitoring of markets. At the exit conference held on May 14, 2008, BIC officials informed the auditors that BIC did, in fact, have SOPs and provided them with its "Markets Standard Operations Procedural Manual." The auditors did not understand why this document was not provided to them when they initially requested it on October 18, 2006, and when they made each subsequent request. The manual includes instructional information and procedures related to certain aspects of the Market

¹ All market agents and market patrol teams are required to fill out daily activity reports (DARs), which are to conform to the guidelines and which are subject to regular inspection.

Agents' duties and responsibilities—issuing parking violations, testifying at hearings, and making memo book entries. However, the manual addresses only a limited number of ancillary duties and responsibilities. It does not detail the fundamental work processes to be conducted or followed.

Previous Recommendation #15: “Develop and implement standard operating procedures that adequately and specifically address the fundamental duties and responsibilities of key employees responsible for monitoring the markets.”

Previous BIC Response #15: “Prior to and throughout the audit period the Agency had implemented and promulgated the ‘Markets Standards Operating Procedural Manual.’⁴ The Manual, along with frequent written addenda and field trainings, constitutes a comprehensive guide to all key areas of operation, including memo books, incident reports and photo identification inspections. While the Agency does have standard operating procedures, since my arrival at the Agency, we have tasked the Chief Investigator with conducting a systematic review of these procedures with an eye towards revising and adding to these procedures where appropriate.

⁴Miscommunication between the Agency and the Comptroller’s Office seems to have caused an inadvertent delay in providing the written standard operating procedures for the market agents.”

Current Status: IMPLEMENTED

BIC has implemented standard operating procedures that address the duties and responsibilities of its employees engaged in the monitoring of markets.

Previous Finding: “Weaknesses in the Processing of Renewal Applications”

The prior audit found that BIC did not consistently adhere to the New York City Administrative Code and its Policies and Procedures for Processing Trade Waste and Market Renewal Applications when renewing licenses and registrations. Specifically, BIC:

- Renewed licenses for two trade waste businesses that did not submit disclosure forms for all newly appointed principals and managerial employees.
- Did not perform criminal background checks on all principals or managerial employees of three businesses.
- Did not perform legal checks on the business and its key employees of three businesses.
- Allowed businesses to operate in the trade waste and market industries without a valid license or registration because it did not process renewal applications in a timely manner.

The previous audit made five recommendations to BIC regarding the weaknesses in the processing of renewal applications, three of which were addressed in this audit.

Previous Recommendation #17: “Ensure that disclosure forms are submitted for all principals and managerial employees of businesses applying for renewals, as required by the New York City Administrative Code.”

Previous Recommendation #18: “Ensure that background, legal, and criminal checks are conducted on all businesses applying for renewals and all their principals and managerial employees.”

Previous BIC Response #17 and #18: “One of my highest priorities upon arrival at the Agency was to centralize and regularize the Agency’s intelligence gathering process. Therefore, we created an Intelligence Unit headed by the Assistant Commissioner for Intelligence and staffed by intelligence analysts. The Intelligence Unit has streamlined the back-grounding process. In addition, an Assistant Commissioner and/or Deputy Commissioner personally reviews all new and renewal applications to ensure that all necessary information has been received and all relevant background checks have been completed and approves the recommended disposition.”

Current Status Recommendation #17: IMPLEMENTED

We reviewed 26 application renewal files representing 65 principals and found that all principals and managerial employees submitted disclosure forms. (See Table I above).

Current Status Recommendation #18: NOT IMPLEMENTED

There were 26 sampled renewal applications reviewed with 65 principals and key employees. Our review disclosed that the background check was not conducted for three (12 percent) of the 26 applications for a total of 23 (35 percent) principals. Therefore, registrations/licenses were issued to these businesses without verifying whether their key employees have any connection with organized crime or any other criminal activities or whether they are subject to any litigation.

As stated previously, after the exit conference, BIC officials provided us with additional files for two of the three renewal applications. These files contained the background checks for five of the 23 principals. BIC was unable to locate the background checks for the remaining 18 principals.

The Legal Unit issues a memo after its review of the background check findings and gives the authorization for approval or denial of the application. However, there was no legal memo in the files of two sampled applications.

The lack of supporting documentation indicates that the vetting process was not always done properly, which increases the risk that if an applicant has ties to organized crime, the connection may not be identified. Therefore, there is a risk that BIC might not achieve its mission to eliminate organized crime and other forms of corruption and criminality from the industries it regulates.

Previous Recommendation #20: “Process license and registration renewal applications promptly to ensure that trade waste and market businesses do not operate without a valid license or registration.”

Previous BIC Response #20: “While the Intelligence Unit ensures the prompt processing of all applications, including renewal applications, some complex background investigations necessitate that a final determination about a renewal application cannot occur prior to the original expiration date of the registration or license. However, contrary to what is indicated in Recommendation Twenty, this does not mean that those applicants are operating without a valid license or registration. If a registrant or licensee timely files a renewal application, the underlying registration or license is valid until the Commission indicates that the company is no longer authorized to operate.”

Current Status: NOT IMPLEMENTED

Our review disclosed that BIC allowed wholesale market businesses to operate without current registrations. We requested from BIC the processing times for new and renewal applications that it considers reasonable. BIC provided us with statistics on the average processing times; however, these timeframes represent the actual average timeframes for processing applications during Fiscal Year 2011. It does not appear that BIC has established a standard timeframe criteria as a goal for processing applications.

Seven of 22 (32 percent) sampled renewal applicants, who submitted their renewal applications in a timely manner, operated without current registrations. These businesses operated without current registrations from seven to 16 months from receipt of their renewal applications. According to BIC, the average time to approve renewal wholesale market registrations is six and a half months. These seven applicant files did not indicate any extenuating circumstances that would indicate why the renewals took over seven months to process.

In addition, we observed a delay in the processing of applications for the Gansevoort and Brooklyn wholesale markets. Of the 15 Gansevoort wholesale market new applications reviewed, the processing time for 10 of the applications ranged from 10 to 23 months. Of the 10 Brooklyn wholesale market applications reviewed, the processing time for one application was 30 months. According to BIC, the average time to approve new wholesale market registrations is a little over eight months. Again, no information on extenuating circumstances to indicate why the applications took over 10 months to process was found in nine of the 11 files. The grant memos in only two of the 11 files indicated the reason for the delays in processing. (The delays were not attributable to BIC.)

Furthermore, there were another two instances where renewal applications were submitted by applicants after the expiration date of their previous registrations. As a result, these applicants were also operating with expired registrations. One registration was expired for one month and the other for one week before the applicants submitted renewal applications. However, these applicants operated for three months and two and a half months, respectively, before the renewal registrations were issued.

In addition, for six out of 26 renewal applications reviewed for Trade Waste and Wholesale Market businesses, previous applications remained pending for years as of the date of our review (March 26, 2012). According to BIC officials, applicants have until their next renewal to resolve certain issues that may have been raised during background checks on their prior applications. For example, any outstanding violations must be cleared before the company is granted a renewal. Therefore, the application status for these companies will remain as pending in the database until their licenses or registrations are renewed.

In these six instances, the database did not reflect a date showing when a registration had been printed, which indicates that the registrations were not issued. Therefore, these applicants were operating without current registrations. In fact, one applicant was operating without a current registration for 16 months. In another instance, an application has remained open for 55 months. Furthermore, we found two instances where current applications were approved even though the previous applications were still listed as pending in the system. According to a BIC official, an administrative error allowed these applicants to operate without valid registrations. However, no additional information was given to explain what the administrative error was or how it occurred.

Because the BIC application processing database is not properly equipped to prevent applications from remaining indefinitely pending in the system, BIC processed renewal applications while previous applications were still listed as pending.

Recommendations

To address the issues that still exist, we recommend that BIC:

1. Implement a process to ensure that all complaints received are entered into its database.

BIC Response: “We are pleased that the Comptroller recognizes the various improvements in BIC’s complaint handling operations. In an effort to further enhance the integrity of the intake process, BIC agrees with Recommendation 1 of the audit report and is developing an appropriate complaint template (‘logging notebook’) to perform the suggested reconciliation. Moreover, BIC has formalized a ‘secret shopper’ program to provide additional quality control over the intake process.”

2. Develop timeliness measures for the complaint review process and establish performance targets to be met.

BIC Response: BIC disagreed. “Recommendation 2 from the audit report indicates that the Comptroller does not have a clear understanding of nor properly assessed BIC’s complaint intake and assignment process. As detailed by BIC to the Comptroller in the Exit Conference, after a complaint is received and immediately entered in the complaint database, it is reviewed by the Director of Investigations for assignment to an investigator. The investigator then has five days to make first contact with the complainant or subject of complaint. Once contact is made, investigation of a particular complaint may require extended follow up depending on the complexity of the issues raised by the complaint, the need for a legally required hearing, or the willingness of the complainant and collateral witnesses to cooperate. Resolution reflects the final stage of processing of a complaint; setting a benchmark of five days to resolve a complaint ignores the reality of what it means to thoroughly investigate a complaint.”

Auditor Comment: Contrary to BIC’s claim, we are not recommending that BIC set a benchmark of five days to resolve a complaint. Instead, we recommend that BIC develop its own timeliness measures for the complaint review process in order to establish performance targets to be met. Notwithstanding the existence of extenuating circumstances for certain types of complaints, performance targets would help BIC ensure that the complaint review process is carried out consistently,

efficiently, and in a timely manner. Accordingly, we reiterate this recommendation.

3. Ensure that the background check process is completed, adequately documented, and maintained for all principals and key employees of all public wholesale markets that it regulates.

BIC Response: BIC disagreed with the finding related to this recommendation, but did not address whether or not it agreed with the recommendation itself.

4. Improve controls over the issuance of memo books to ensure that all books are accounted for.
5. Improve its monitoring of Market Agents' activities to ensure that they make regular entries of their actions in their memo books as required and complete COIs and NOV's when inspections are conducted.
6. Ensure that supervisors regularly review the memo books and the DARs to ensure that entries are correctly recorded and accurately reflected in each document.

BIC Response: BIC generally agreed with recommendations 4, 5, and 6 stating, "BIC agrees with the Comptroller's view that 'proper supervision' of the Market Agents is a critical component of oversight of the regulated industries. Indeed, as of January 2012, BIC had already executed a number of administrative and organizational improvements to ensure that the Enforcement/Markets Unit has in place clear supervisory controls, lines of responsibilities, reporting, and conduct standards. These improvements directly address Recommendations 4, 5, and 6 from the audit report and have already resulted in improved management."

Auditor Comment: BIC's response to Recommendations #4, #5, and #6 is listed as "Partially Agree." However, it is not clear from BIC's response which portions of the recommendations it disagrees with. BIC's response appears to agree with these recommendations and outlines the implementation plan to help improve the supervisory review process and oversight of the memo books and the DARs.

7. Properly monitor the background check process to ensure that background and criminal checks are done for all principals before approving renewal applications.

BIC Response: BIC disagreed with the finding related to this recommendation, but did not address whether or not it agreed with the recommendation itself.

8. Develop timeliness measures for the processing of new and renewal applications.

BIC Response: "BIC firmly believes it is always an important goal of achieving timely processing and review of any application it receives. However, that goal cannot undermine the statutorily-based mission of the agency to identify and root out forms of criminality and corruption in the regulated industries. Setting in stone a 'timeliness measure' as Recommendation 8 suggests, would be counterproductive to the investigative and intelligence work conducted by BIC.

"There are a number of potential negative consequences of such a measure on a law enforcement entity like BIC. These range from failing to identify undisclosed principals to missing opportunities to uncover criminal activity and develop intelligence. Further BIC's review of an application often involves other law enforcement entities. The imposition of a timeliness measure, as suggested by the

Comptroller, would force BIC to make license decisions prematurely. This could result either in premature denial of a new or renewal application (and the mandatory closure of a business) without an adequate record, or failure to ferret out corruption in a business by compromising an ongoing, City, State or Federal government investigation.”

Auditor Comment: BIC’s response is contradictory. It asserts that it “firmly believes that it is always an important goal of achieving timely processing and review” of applications yet disagrees that it should develop measures by which it can assess whether it is processing and reviewing those applications in a timely manner.

Furthermore, BIC’s assertion that we recommend “setting in stone a timeliness measure” demonstrates both a misreading of the recommendation and a fundamental misunderstanding of the purpose of timeliness measures. Timeliness measures, and performance measures in general, are tools intended to help an entity understand, manage, and improve what it does. In this case, timeliness measures would help BIC better track the application process, enhance its supervision, and properly monitor those applications with sensitive or critical intelligence. Timeliness measures are not, as BIC suggests, absolute targets that must be met under any circumstance. We recognize that some investigations may have extenuating circumstances that may require additional time. By no means are we recommending that BIC make license decisions prematurely simply to meet a timeliness measure. That would be a misapplication of the measure. Setting performance targets, such as timeliness measures, will help BIC to ensure that the processing of applications is carried out consistently, efficiently, and in a timely manner. In fact, an established timeliness measure would have allowed BIC to identify the delays in assigning background checks to investigators that we identified during the audit and discuss in this report. Accordingly, we reiterate this recommendation.

9. Ensure that trade waste and market businesses do not operate without a valid license or registration.

BIC Response: BIC disagreed. “Implementation of Recommendation 9 would be highly damaging to the financial state of regulated businesses and their customers and negatively impact BIC’s capacity as a regulator. After review of the Preliminary Draft Report, BIC emphasized to the Comptroller at the Exit Conference that this is a wholly unworkable recommendation.

“BIC has made the policy decision that any business that has submitted its renewal for a license or registration in a timely fashion (i.e. prior to the expiration date) is permitted to operate unless and until BIC determines through the renewal approval process that the business should be denied. The underlying objective of this policy is to avoid unnecessarily jeopardizing a business’ operation by requiring them to suspend operations while the renewal process is completed.”

Auditor Comment: BIC’s practice of deeming expired licenses/registrations as valid is contrary to New York City Administrative Code §16-506, §22-213, and §22-256, which stipulate that licenses and registrations are valid for a finite period—either two or three years—and do not provide for extensions. It is our understanding that the background investigations for renewal applications are not as extensive as those for initial applications. If BIC cannot complete its investigation for renewal applications

prior to the expiration of the prior license/registration, perhaps it should consider increasing the lead time for renewal application submission. Given the nature of the environment where those companies operate, having a valid license/registration reinforces public trust and shows that the businesses possess the integrity required to operate in the industries BIC regulates. Accordingly, we reiterate this recommendation.

10. Ensure that its systems are programmed to prevent the processing of renewal applications while the prior application remains pending.

BIC Response: “BIC supports recommendation 10 which suggests BIC ‘equip’ its application processing database to flag and initiate a response for this processing concern regarding renewal applications and has designed a solution that will prevent this type of data entry-based processing concern in the future.”

New Issues

While examining the implementation status of the recommendations made in the previous audit, we found weaknesses in some areas. These weaknesses need to be addressed in order to ensure that applicants comply with the registration rules and do not operate with invalid licenses or registrations. BIC does not maintain a minor violation log as required by its procedures. In addition, BIC did not assign background checks for investigation in a timely manner.

These new issues are discussed in greater detail in the following sections of this report.

Delay in Assigning Background Checks to Investigators

Our review disclosed that the Background Investigation Unit (BIU) supervisors did not assign applications to the investigators in a timely manner. According to BIC officials, the assignment of applications to investigators should occur after the file is forwarded from the Licensing Unit and received and entered into the BIU database by the BIU clerk. Sometimes it took more than a month for the supervisor of the BIU to assign cases to investigators after the applications were received and entered into the database. Of the 26 sampled renewal applications for the Trade Waste and Wholesale Markets, the processing time data was available for only 11. For seven of these 11 applications, the number of months before the case was assigned to an investigator ranged from one to 10 months. This ultimately delays the approval process of the applications.

In addition, we observed a delay in the forwarding of the completed application to the Legal Unit. For example, in one of 13 instances for which the completion dates were available, it took 11 months for the application package to be transferred to the Legal Unit after BIU completed the background check. In another eight instances, the delay ranged from four days to one month. Because the Legal Unit is located on the same floor as the BIU, it is not clear why the transfer of files could not be done within one to two days.

BIC should ensure that it improves the processing time of background checks and promptly forwards the applications to the Legal Unit to allow them to be promptly processed.

No Violation Log Maintained

BIC procedures require that a minor violation log be maintained by Market Agent supervisors to serve as a monitoring tool. The log is supposed to note any deficiencies observed by the Market Agents and any corrective actions taken as a result of the deficiencies. BIC officials stated they do not have a minor violation log and only recently started keeping track of actions taken, but BIC could not provide any evidence that it has, in fact, recently started tracking actions taken.

Recommendations

To address the new issues that were identified, we recommend that BIC:

11. Ensure that the Background Check Unit supervisors assign applications for investigation when received in order to improve the processing time.

BIC Response: “Since the beginning of 2012, BIC has implemented a number of critical organizational changes to improve the efficiency of the BIU Unit and which directly address Recommendation 11. BIU is under new leadership which directly reports to BIC’s General Counsel and is housed in the Legal Unit. Additionally, BIU’s new management has established internal protocols to ensure timely and appropriate assignment and transfer to the legal unit upon completion.”

12. Ensure that Market Agent supervisors maintain a minor violation log so that deficiencies observed during tours and the actions taken to address them are properly documented.

BIC Response: “BIC agrees with this recommendation 12 and has implemented a minor violation log as indicated in the Draft Audit Report. This minor violation log memorializes minor infractions committed by Market Agents such as uniform deficiencies, lateness, and lost equipment. This log will be maintained, reviewed and, when appropriate, acted upon by the Director of Market Enforcement.”

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope was Fiscal Year 2011. In addition, for any sampled renewal applications, we also reviewed all prior applications including initial applications.

To obtain an understanding of BIC's responsibilities regarding the regulation and enforcement of the trade waste and market industries, we reviewed relevant provisions of the following:

- Chapter 63 of the New York City City Charter: Business Integrity Commission
- The Rules of the City of New York: Title 17 of "New York City Trade Waste Commission" and Title 66 Chapter 1. Subchapter A-1 "Public Wholesale Markets," Subchapter B, "Fulton Fish Market," Subchapter C, "Wholesale Seafood Business Outside Fulton Fish Market." and Subchapter D, "Market Businesses." New York City Administrative Code: Title 16-A, Chapter 1 – "New York City Trade Waste Commission;" Title 22, Chapter 1A – "Fulton Fish Market Distribution Area and Other Seafood Distribution Areas;" and Title 22, Chapter 1B – "Other Public Markets"
- Commission Directive Regarding Vehicles Used in Trade Waste

We also reviewed BIC's standard operating procedures, including Market Standard Operating Procedures and Protocols, Licensing Unit Standard Operating Procedures, Complaint Operating Procedures, Procedures for Generating Monthly Renewals, and Procedures for Approving Renewal Pending Trade Waste Applications.

To obtain an understanding of BIC's operations, we reviewed its procedures and policies, prior audit, and related regulations. In addition, to gain an understanding of the monitoring systems in place, we conducted interviews and walk-throughs with BIC units responsible for processing applications, complaints, and background checks, and for patrolling the city and the markets.

To assess BIC's implementation of recommendations related to the recording, processing, and resolving of complaints, we randomly selected a sample of 25 complaints out of 602 from Fiscal Year 2011 for review. To determine whether Market Agents are correctly filling in the memo books and whether the supervisors are properly reviewing them, we randomly selected a sample of two months of memo book entries for Fiscal Year 2011. In addition, we randomly selected two memo books from the seven provided and reviewed all the entries for the two-month period. In addition, we obtained the daily activity reports for the same time period and compared them to the two memo books to see if the Market Agents and supervisors are following BIC procedures.

To determine whether BIC implemented the recommendations related to the renewal of applications, for Fiscal Year 2011, we randomly selected 13 trade waste renewal applications out of 778 and 13 wholesale market renewal applications out of 26 for review. We examined the sampled files to ensure the applications included all required documents (such as disclosure forms, background checks, release forms, and legal memos). We verified whether the application renewals were processed in a timely manner to ensure that businesses are not operating without valid licenses or registrations.

Furthermore, to ensure that all businesses and their principals and key employees operating in the Gansevoort Meat Market and the Brooklyn Wholesale Market were properly vetted, we randomly selected 15 and 10 businesses, respectively, from each market. We examined the vetting process and verified whether BIC has properly reviewed and monitored the processing of these applications.

To assess the reliability of the application data provided by BIC, we compared the information from the sampled files to the information generated from BIC's databases. We determined whether all the principals and required information were recorded in BIC's databases and whether the information entered was accurate and complete. In the course of handling its responsibilities related to monitoring of the private carting and public wholesale market industries, BIC uses several databases: Trade Waste Licensing database, Wholesale Markets database, Market Photo ID database, Background Tracking Database, Violations Database, and Complaints Database.

The results of the above tests, while not statistically projected to their respective populations, provided a reasonable basis to determine whether BIC has implemented the key recommendations made in the prior report.

APPENDIX

List of Recommendations Made in the Prior Report

	Recommendations Made in Prior Report	Recommendation Addressed by this Audit
	BIC should:	
1.	Develop and implement standard operating procedures for the investigation and resolution of complaints, as required by New York City Administrative Code §16-522.	Yes
2.	Ensure that appropriate personnel review ongoing investigations and approve the manner in which complaints are resolved.	Yes
3.	Ensure that different staff members perform the functions of receiving and recording complaints and determining whether complaints warrant investigation.	Yes
4.	Keep a record of all complaints received and retain original copies of all complaints received by mail, e-mail, and fax.	No
5.	Verify that all complaints received are entered into its database.	Yes
6.	Record essential complaint data in its database, including but not limited to—complaint source, action taken to date, status, number of days open, date resolved, and how complaint was resolved.	Yes
7.	Monitor TWEU handling of complaints and ensure that complaints are resolved efficiently and effectively.	Yes
8.	Track self-initiated investigations and ensure that they are resolved appropriately and promptly.	No
9.	Require the vetting of all businesses and their principals, managerial employees, and key employees, as well as labor unions and their officials, and trade associations and their officers in the Brooklyn Wholesale Meat Market, the Brooklyn Terminal Market, and the Gansevoort Meat Market.	Yes
10.	Develop a timetable for the sequenced implementation of regulation of the Brooklyn Terminal Market and the Gansevoort Meat Market if it cannot commence regulation of these markets at this time.	No
11.	Evaluate the enforcement needs of all six designated public wholesale markets and deploy staff accordingly.	No
12.	Require Market Agents to make regular entries in their memo books during each shift documenting their actions, as well as the activities and conditions in markets.	Yes
13.	Require Market Supervisors to review memo books, ensure Market Agents make regular entries, and initial memo books during each shift.	Yes
14.	Investigate the feasibility of relocating its Market Enforcement Unit Headquarters in or near the Hunts Point Food Distribution Center.	No
15.	Develop and implement standard operating procedures that adequately and specifically address the fundamental duties and responsibilities of key employees responsible for monitoring the markets.	Yes
16.	Request that NYPD officers search relevant NYPD databases for all principals and managerial employees for businesses applying for their third renewal, as stipulated in BIC's Policies and Procedures for Processing Trade Waste and Markets Renewal Applications.	No
17.	Ensure that disclosure forms are submitted for all principals and managerial employees of businesses applying for renewals, as required by the New York City Administrative Code.	Yes
18.	Ensure that background, legal, and criminal checks are conducted on all businesses applying for renewals and all their principals and managerial employees.	Yes
19.	Ensure that all renewal checklists are reviewed and approved by authorized BIC personnel.	No
20.	Process license and registration renewal applications promptly to ensure that trade waste and market businesses do not operate without a valid license or registration.	Yes



Shari C. Hyman
Commissioner and Chair

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October 10, 2012

Ms. Tina Kim
Deputy Comptroller, Bureau of Audit
Office of the Comptroller
Municipal Building
1 Centre St, Room 1100
New York, NY 10007

**Re: AGENCY RESPONSE TO FOLLOW-UP AUDIT REPORT
ON THE MONITORING OF THE PRIVATE CARTING AND
PUBLIC WHOLESALE MARKETS BY THE
BUSINESS INTEGRITY COMMISSION (MD12-078F)**

Dear Ms. Kim:

This letter is submitted on behalf of the New York City Business Integrity Commission (“BIC”) which, with the attached response to the recommendations, comprise BIC’s formal response to the Office of the Comptroller’s (“Comptroller”) draft report entitled *Follow-up Audit Report on the Monitoring of the Private Carting and Public Wholesale Market by the Business Integrity Commission*. I want to thank the Comptroller for the opportunity to respond to the draft report.

Sincerely,



Shari C Hyman
Commissioner & Chair

CC: Abigail Goldenberg, General Counsel, BIC
Jayant Kairam, Assistant Commissioner, BIC
George Davis III, Mayor’s Office of Operations



As a law enforcement and regulatory body, BIC is charged with ensuring that the trade waste, public wholesale markets, and shipboard gambling industries are free from criminality and corruption. By working to preserve a level playing field in these regulated industries, BIC protects those serviced by these industries and ensures a fair and competitive marketplace.

After review of the Draft Audit Report, BIC is pleased to see that the Comptroller has highlighted a number of enhancements that BIC has already implemented across the agency's key work-streams as well as in its performance. In particular, the Draft Audit Report correctly recognizes that BIC has implemented recommendations from the prior audit that have improved how complaints are catalogued and assigned, how market agents are monitored, and how renewal applications are administered.

As you know, under BIC's comprehensive regulatory scheme, companies that seek to operate trade waste businesses or wholesale food businesses in designated areas must first obtain a license or registration from BIC. In order to keep those industries free of corruption and criminality, BIC evaluates applicants to determine whether they possess the requisite "good character, integrity and honesty." BIC does this through a multi-unit, extensive investigatory and legal review. The sample analysis detailed in the Draft Audit Report indicates an extremely high-level of performance and reliability of work conducted by BIC on these applications:

- BIC successfully regulates all six wholesale public markets in the City and, as indicated in the Comptroller's analysis, has achieved a 100% completion rate in conducting or maintaining background investigative information of all businesses in the Gansevoort and Brooklyn Wholesale Meat Markets.
- In Fiscal Year 2011, BIC processed 1,013 trade waste and market renewal applications. Using the results from the Comptroller's sample analysis as a benchmark, 96% of all renewals processed by BIC in FY2011 contained full background checks.

What is not reported however is that shortly after the audit began in September 2011, BIC underwent a comprehensive restructuring that has dramatically altered the execution of agency operations. This reorganization (which was an unrelated undertaking) has resulted in a number of critical administrative improvements that address the shortcomings noted in four of the Comptroller's recommendations, and further support that these reforms were timely and necessary. Of these changes, the two most critical improvements have focused on the Enforcement/Markets Unit (referred to as the "Market Enforcement Unit" in the report) and the Background Investigation Unit. New leadership and management in these units have established direct supervisory controls, clear lines of responsibility, and reporting standards.



With respect to the specific recommendations:

Recommendation 1: Implement a process to ensure that all complaints received are entered into its database

Response: Agree

Comment: We are pleased that the Comptroller recognizes the various improvements in BIC's complaint handling operations. In an effort to further enhance the integrity of the intake process, BIC agrees with Recommendation 1 of the audit report and is developing an appropriate complaint template ("logging notebook") to perform the suggested reconciliation. Moreover, BIC has formalized a "secret shopper" program to provide additional quality control over the intake process.

Recommendation 2: Develop timeliness measures for the complaint review process and establish performance targets to be met

Response: Disagree

Comment: Recommendation 2 from the audit report indicates that the Comptroller does not have a clear understanding of nor properly assessed BIC's complaint intake and assignment process. As detailed by BIC to the Comptroller in the Exit Conference, after a complaint is received and immediately entered in the complaint database, it is reviewed by the Director of Investigations for assignment to an investigator. The investigator then has five days to make first contact with the complainant or subject of complaint. Once contact is made, investigation of a particular complaint may require extended follow up depending on the complexity of the issues raised by the complaint, the need for a legally required hearing, or the willingness of the complainant and collateral witnesses to cooperate. Resolution reflects the final stage of processing of a complaint; setting a benchmark of five days to resolve a complaint ignores the reality of what it means to thoroughly investigate a complaint.

For example, one of the complaints cited by the Comptroller as purportedly demonstrating that the complaint review process is too slow was a three-party contract dispute, where the complainant business claimed a carter used deceptive trade practices. Resolution of this complaint required multiple conversations with the affected parties as well as extensive document review by the BIC Legal Unit. This in-depth follow up ultimately resulted in the issuance of violation. Moreover, because BIC is an investigatory agency, complaints often serve a vital intelligence purpose and can trigger long-term investigations into criminal activity as was evidenced recently when a complaint concerning unlicensed activity sparked BIC's exposure of an organized cardboard theft ring.



Recommendation 3: Ensure that the background check process is completed, adequately documented, and maintained for all principals and key employees of all public wholesale markets that it regulates

Recommendation 7: Properly monitor the background check process to ensure that background and criminal checks are done for all principals before approving renewal applications

Response: Disagree

Comment: Contrary to the findings in Recommendations 3 and 7, the sample analysis performed by the Comptroller makes clear that BIC has achieved full compliance in conducting thorough background checks of regulated businesses. The Comptroller points to the failure to locate 18 of the 107 principal background checks (or 1 of 26 companies sampled) as evidence of a protocol lapse. However, after subsequent review of the sample, BIC identified that the missing background checks were from a cooperative entity application. This entity was comprised of principals of companies who were already vetted as part of their original checks during their respective companies' licensing process so there was no need to do them again. At best, the failure of BIC to locate the background checks in a timely fashion suggests that the agency needs to improve its record-keeping and filing system. BIC is aware of this administrative issue and is working to address it through reorganization of the licensing unit, and improvements to the filing system. However, we disagree with any claim that the agency is failing to conduct background checks of principals in a comprehensive, reliable, and accurate manner.

Additionally, the Comptroller erroneously concludes that because, "no background check memos were present" these background checks were not "properly supervised." This claim is unfounded given the history of the unit and the age of the applications with the missing background checks (all original applications are from 2005 and earlier). As explained in detail to the Comptroller, the sample highlighted was based on background checks performed at a point in the agency's history when trade waste background checks were conducted by the Organized Crime Investigations Division of the NYPD and wholesale public markets and shipboard gambling background checks by the Department of Small Business Services. This process changed dramatically in March 2008 when the agency began conducting the background checks internally and the Background Investigations Unit (BIU) was created. To cite BIC for a lapse in administrative protocols and procedures at a time when these reviews were sourced to other agencies is an unjustifiable conclusion. BIU has a robust and well-designed process and the audit failed to identify any instance where BIU did not produce these background check memos.



Recommendation 4: Improve controls over the issuance of memo books to ensure that all books are accounted for

Recommendation 5: Improve its monitoring of Market Agents' activities to ensure that they make regular entries of their actions in their memo books as required and complete COIs and NOVs when inspections are conducted.

Recommendation 6: Ensure that supervisors regularly review the memo books and the DARs to ensure that entries are correctly recorded and accurately reflected in each document

Response: Partially Agree

Comment: BIC agrees with the Comptroller's view that "proper supervision" of the Market Agents is a critical component of oversight of the regulated industries. Indeed, as of January 2012, BIC had already executed a number of administrative and organizational improvements to ensure that the Enforcement/Markets Unit has in place clear supervisory controls, lines of responsibilities, reporting, and conduct standards. These improvements directly address Recommendations 4, 5, and 6 from the audit report and have already resulted in improved management.

Specific improvements include: 1). Re-organization of the management of the Enforcement/Markets Unit, with a direct report to the Director of Investigations 2). Hiring of a Deputy Director of Market Enforcement with direct, day-to-day oversight and administration of the Enforcement/Markets Unit 3). Establishing an open line of communication between, and regular meetings with, BIC's General Counsel to help streamline the disciplinary process 4). Conducting regular internal audits and spot checks of various reporting and recording vehicles (for example, memo books and DARs) to ensure quality control and disciplinary action when breaches of protocol occur.

Recommendation 8: Develop timeliness measures for the processing of new and renewal applications

Response: Disagree

Comment: BIC firmly believes in the always important goal of achieving timely processing and review of any application it receives. However, that goal cannot undermine the statutorily-based mission of the agency to identify and root out forms of criminality and corruption in the regulated industries. Setting in stone a "timeliness measure" as Recommendation 8 suggests, would be counterproductive to the investigative and intelligence work conducted by BIC.

There are a number of potential negative consequences of such a measure on a law enforcement entity like BIC. These range from failing to identify undisclosed principals to missing opportunities to uncover criminal activity and develop intelligence. Further, BIC's review of an application often involves other law enforcement entities. The imposition of a timeliness measure, as suggested by the Comptroller, would force BIC to make license determinations prematurely. This could result either in the premature denial of



a new or renewal application (and the mandatory closure of a business) without an adequate record, or failure to ferret out corruption in a business by compromising an ongoing City, State, or Federal government investigation.¹ This would clearly be detrimental to BIC's effective oversight. Moreover, it is critical that the regulated industries, which remain prone to influences of criminality and corruption, treat the application with the highest regard and understand that all information will be screened with the utmost scrutiny that cannot be easily reduced to an artificial time constraint.

Recommendation 9: Ensure that trade waste and market businesses do not operate without a valid license or registration

Response: Disagree.

Comment: Implementation of Recommendation 9 would be highly damaging to the financial state of regulated businesses and their customers and negatively impact BIC's capacity as a regulator. After review of the Preliminary Draft Audit Report, BIC emphasized to the Comptroller at the Exit Conference that this is a wholly unworkable recommendation.

BIC has made the policy decision that any business that has submitted its renewal for a license or registration in a timely fashion (i.e. prior to the expiration date) is permitted to operate unless and until BIC determines through the renewal approval process that the business should be denied. The underlying objective of this policy is to avoid unnecessarily jeopardizing a business' operations by requiring them to suspend operations while the renewal process is completed. In most instances, renewals are granted. In those instances where the license is revoked or suspended, it is only after due process requirements are met – a protracted process. If an emergency suspension is necessary based on bad practices or actions by a regulated business that pose an “imminent danger to life or property”, BIC has the statutory authority to enact such a remedy pursuant to the Administrative Code.² BIC has exercised this ability in the past and will continue to do so when necessary.

Finally, to require suspension pending renewal approval would negatively impact the bottom line of the thousands of NYC commercial customers who need consistent trash removal and/or wholesale food.

Recommendation 10: Ensure that its systems are programmed to prevent the processing of renewal applications while the prior application remains pending

Response: Agree

Comment: BIC supports Recommendation 10 which suggests BIC “equip” its application processing database to flag and initiate a response for this processing concern regarding renewal applications and has designed a solution that will prevent this type of data entry-based processing concern in the future.

¹ As discussed in the response to Recommendation 9 below, BIC strongly opposes any measure that would require previously licensed businesses to cease operations during the pendency of BIC's review of their renewal applications.

² Admin Code §16-514; Admin Code §22-218; Admin Code §20-959b



Recommendation 11: Ensure that the Background Check Unit supervisors assign applications for investigation when received in order to improve the processing time

Response: Agree

Comment: Since the beginning of 2012, BIC has implemented a number of critical organizational changes to improve the efficiency of the BIU Unit and which directly address Recommendation 11. BIU is under new leadership which directly reports to BIC's General Counsel and is housed in the Legal Unit. Additionally, BIU's new management has established internal protocols to ensure timely and appropriate assignment and transfer to the legal unit upon completion.

Recommendation 12: Ensure that Market Agent supervisors maintain a minor violation log so that deficiencies observed during tours and the actions taken to address them are properly documented

Response: Agree

Comment: BIC agrees with this Recommendation 12 and has implemented a minor violation log as indicated in the Draft Audit Report. This minor violation log memorializes minor infractions committed by Market Agents such as uniform deficiencies, lateness, and lost equipment. This log will be maintained, reviewed and, when appropriate, acted upon by the Director of Market Enforcement.