

STOCK-LOAN KICKBACKS — THE FIRM AS VICTIM

In the midst of all the headlines about the need for compliance with regulatory requirements that protect the investor, there is another party whose interests sometimes get overlooked: the brokerage firm. The conviction of a former executive of a brokerage firm on charges of running a stock-loan kickback scheme underscores the huge exposure faced by firms when a trusted employee breaches his fiduciary responsibilities — and internal controls fail to catch it in time.

Stock-Loan Transactions

A stock-loan transaction involves a financial institution borrowing shares from another organization in exchange for cash collateral. Although fees are sometimes paid to intermediaries who connect borrowers and lenders in stock loan transactions, often no third-party finder is necessary to locate the shares being borrowed. In the case of America's fifth largest bank versus the former executive director of its stock-loan desk, the employee fed finder business to family members and then charged the firm for such unnecessary fees — hence the kickback allegations.

\$1.7 Million to Father and Brother

The former executive director was convicted of feeding \$1.7 million in kickbacks to his father and brother for supposed finder's fees — despite the fact that the two family members did virtually no work to secure the stock-loan securities. The defendant had argued on appeal that the kickback law did not apply where recipients of the money, in fact, did some work for the fees. However, a three-judge appeals panel ruled that under the law, the government may file kickback charges involving the private sector even if the recipient of the money performed some work for the fees.

Inordinate Fees for Token Work

The judges agreed with a district court ruling that accepting the defendant's theory would allow potential wrongdoers to avoid liability “merely by performing some token labor in exchange for what would otherwise be an illegal kickback.” The appeals panel further stated: “Although often the recipient does not in fact do any work, the scheme qualifies as a kickback scheme where the recipient receives inordinate amounts of money for doing minimal work.” The amounts received were “inordinate” to the work involved in this case.

29th Conviction for Stock-Loan Offenses

Although this case marks the first time that a conviction for this type of kickback scheme was the result of a trial, 28 other defendants have been convicted after pleading guilty to the same crime involving six other firms. According to a statement issued by Benton J. Campbell, U.S. Attorney for the Eastern Division of New York: “Today's conviction sends a clear message that the culture of corruption and kickbacks in the securities lending industry that victimized shareholders and the investing public will not be tolerated.”

CONTACT US!

DAVID KINNEAR
O: 212.913.0500 x565
M: 917.886.3222
E: DAVID.KINNEAR@GREENPOINTGLOBAL.COM

WILLIAM H. ANDERSON, ESQ
O: 212.913.0500 x586
M: 914.672.4975
E: WILLIAM.ANDERSON@GREENPOINTGLOBAL.COM

PETER K. OVERZAT, ESQ
O: 212.913.0500 x557
M: 917.807.1321
E: PETER.OVERZAT@GREENPOINTGLOBAL.COM

WWW.GREENPOINTLEGAL.COM