



The Fraud Reporter

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February 2008

ALSTON
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Editors:

[Scott P. Hilsen](#)

Partner, Alston & Bird LLP

[Michael L. Brown](#)

Partner, Alston & Bird LLP

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Welcome to the first issue of The Fraud Reporter, a periodic newsletter designed to be a source of news and information regarding fraud prevention, investigation and litigation. We hope that you will find this newsletter to be a useful tool to stay current on fraud-related issues, and please forward it to anyone who might be interested in subscribing.

*"How many crimes are committed simply because their authors could not endure being wrong."
– Albert Camus*

In the News

\$7.1 Billion Fraud Uncovered at Société Générale

(The New York Times) – The French bank Société Générale said that it had uncovered "an exceptional fraud" by a trader that would cost it €4.9 billion, or about \$7.1 billion, and that it would seek new capital of about \$8 billion.

FBI Wades Into Subprime Mortgage Mess

(abc news) – Official Confirms the Bureau Is Investigating 14 Companies for Accounting Fraud.

FTC Lists 2007's Top Consumer Frauds

(The Register) – For the seventh year in a row, identity theft is the number one complaint reported to the U.S. Federal Trade Commission.

Miami Condo at Ground Zero in Mortgage Fraud

(Reuters) – At first glance, the 43-story building in Miami's international banking district seems little different from other high-rise condominiums overlooking the turquoise waters of Biscayne Bay.

Former Alaska State Speaker of the House Peter Kott Sentenced on Public Corruption Charges

(www.usdoj.gov) Peter Kott, a former elected member of the Alaska House of Representatives and former Alaska Speaker of the House, has been sentenced to 72 months in prison in Anchorage, Alaska, Assistant Attorney General Alice S. Fisher of the Criminal Division announced.

Brocade Ex-Ceo Gets 21 Months in Prison for Stock Options Scheme

(SFGate.com) – Saying he was sending a message to corporate leaders about the price of dishonesty, a federal judge sentenced a tearful former Silicon Valley executive to a year and nine months in prison and fined him \$15 million in the nation's first prosecution for concealing the backdating of stock options.

This newsletter is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may be considered attorney advertising in certain jurisdictions.

400 Guilty Verdicts in Health Fraud Scam

(Orange County Register) – The final tabulation of verdicts is in for the \$190 million investment fraud scam that took the life savings of many Orange County seniors: 400 guilty and one not guilty.

An Ounce of Prevention

Regardless of the kind or size of a company, it loses an estimated 5% of its annual revenues to occupational fraud on a dollar for dollar basis. Only 40% of companies recovered any of the losses.

– *Report to the Nation on Occupational Fraud and Abuse, Association of Certified Fraud Examiners (2006)*

Scott Hilsen, “Corporate Fraud Demands a Proactive Approach,” Corporate Officers & Directors Liability: Litigation Reporter

Being proactive about finding and preventing fraud not only can have a direct impact on the bottom line, it demonstrates fiduciary responsibility.

Audit Committee Under a Microscope: Responding to Fraud Allegations

(David P. Hoffman, Ernst & Young) – A partner at a Big Four audit firm details what to expect if your audit committee is in the position of responding to allegations of fraud.

Building A Robust Fraud Prevention Program

(Fraud Magazine) – An Interview with Martin Biegelman, CFE, ACFE Fellow Director of Microsoft’s Financial Integrity Unit.

How to Guard Against ID Fraud Threat

(Times Online) – Europe’s biggest loss of confidential information sparked a nationwide search for two computer discs containing the addresses, National Insurance numbers, bank account numbers, and sort codes, of families receiving child benefits.

Top 10 Ways to Avoid Federal Fraud Prosecution: The Former Chief Counsel at the OIG Offers Suggestions

(OB/GYN News) – There are 10 things doctors can do—or avoid doing—to help prevent themselves from being prosecuted by the federal government for fraud, D. McCarty Thornton said at a forum sponsored by the American Health Lawyers Association.

Uncertain About Subprime and CDO Exposures – an Internal Investigation May Be in Order

(Metropolitan Corporate Counsel [Lexis/Nexis]) – An investigation can help directors guide business decisions regarding subprime and CDO exposure.

Links to Government Agencies

[U.S. Department of Justice](#)

[U.S. Attorneys Offices](#)

[U.S. Department of Justice: Criminal Division](#)

[U.S. Department of Justice: Tax Division](#)

[U.S. Department of Justice: Antitrust Division](#)

[U.S. Securities & Exchange Commission](#)

[Department of Health and Human Services: Office of Inspector General](#)

[Department of Defense: Office of Inspector General](#)

[Department of the Treasury](#)

[Office of Terrorism and Financial Intelligence](#)

[Internal Revenue Service](#)

A Pound of Cure

"I haven't committed a crime. What I did was fail to comply with the law."
– David Dinkins

SEC Enforcement Actions Shoot Up

(*CFO.com*) – The SEC has filed 14 percent more enforcement cases in its most recent fiscal year, according to Bloomberg. The commission brought 656 cases accusing companies of violating securities laws through September 30, nearly 100 more than in 2006.

Former Media Mogul Conrad Black Sentenced

(*CNN*) – A federal judge sentenced former media tycoon Conrad Black to 6½ years in prison for his role in defrauding shareholders and skimming cash from his Hollinger International newspaper conglomerate.

Count 'Em: 63 CFOs Convicted in Past Five Years

(*CFO.com*) – The Department of Justice, which has said that at least 53 finance chiefs have been convicted in the five-year life of the President's Corporate Fraud Task Force, has provided CFO.com with a list of 53 people who either pleaded guilty or were found guilty. After recalculating to include other cases, CFO.com has confirmed another 10, bringing the total to 63 ex-CFOs who either pleaded guilty or were convicted by juries since July 9, 2002.

SEC Files Actions Against Ten Defendants in Fraudulent Kickback Schemes

The U.S. Securities and Exchange Commission announced that it filed civil actions alleging securities fraud in five separate kickback schemes uncovered by an FBI sting operation conducted pursuant to a cooperation agreement between the FBI and the Commission.

SEC Charges Edward May and E-M Management for Massive Offering Fraud Harming Seniors and Other Investors

(*SEC.gov*) – The Securities and Exchange Commission filed charges stemming from a \$250 million offering fraud that involved phony Las Vegas casino and resort telecommunications deals and victimized as many as 1,200 investors, many of whom were senior citizens.

"The Challenge of White Collar Sentencing" Ellen S. Podgor, Journal of Criminal Law and Criminology, Vol. 93, No. 3, 2007

Sentencing white collar offenders is difficult in that the economic crimes committed clearly injured individuals, but the offenders do not present a physical threat to society. This article questions the necessity of giving draconian sentences, in some cases in excess of 25 years, to non-violent first offenders who commit white collar crimes. The attempts by the U.S. Sentencing Commission to achieve a neutral sentencing methodology, one that is class-blind, fails to respect the real differences presented by these offenders. As the term white-collar crime has sociological roots, it is advocated here that sociology needs to be a component in the sentencing of white collar offenders.

[Office of the Comptroller of the Currency](#)

[Office of Thrift Supervision](#)

[United States Secret Service](#)

[Federal Bureau of Investigation](#)

[Financial Crimes Enforcement Network \(FinCEN\)](#)

[Drug Enforcement Administration](#)

[Federal Bureau of Prisons](#)

[U.S. Customs & Border Protection](#)

[Commodities Futures Trading Commission](#)

[Federal Trade Commission](#)

[NASD Regulation](#)

[NYSE Regulation](#)

On the Docket

"Fraud and falsehood only dread examination. Truth invites it."
– Thomas Cooper

Supreme Court Rejects Plaintiffs' "Scheme Liability" Theory Under the Federal Securities Laws

In a case in which Alston & Bird served as counsel, the Supreme Court recently issued its decision in *Stoneridge Investment Partners LLC v. Scientific-Atlanta, Inc. and Motorola, Inc.* In a five-three decision, the Court held that so-called "scheme liability" claims cannot be asserted against those aiding another's securities fraud and who do not make any public misrepresentations.

Delaware Court Rules that Special Committee Waived Privilege

In *Ryan v. Gifford*, C.A. No. 2213 (Nov. 30, 2007), Chancellor Chandler of the Delaware Court of Chancery ruled that a Special Committee created by a company to investigate alleged stock option backdating waived the attorney-client privilege as to communications between the Special Committee. The waiver occurred because the Special Committee and its counsel made a presentation to the full board about the investigation, which was attended by individual board members who were alleged to have been involved in the option scheme and their counsel. The Chancellor ordered the Special Committee and its lawyers to produce all communications relating to the investigation and report.

Notable quote: "The presentation of the report constitutes a waiver of privilege because the client, the Special Committee, disclosed its communications concerning the investigation and final report to third parties—the individual director defendants and [their counsel] Quinn Emmanuel—whose interests are not common with the client, precluding application of the common interest exception to protect the disclosed communications. ...The Special Committee was formed to investigate wrongdoing and in response to litigation in which certain directors were named as individual defendants. This describes a relationship more akin to one adversarial in nature."

Judge Weighs Dropping Financial Firms from Enron Lawsuit

(Insurance Journal) – A federal judge in Houston said she will evaluate whether three high profile financial institutions being sued for \$40 billion in connection with Enron Corp.'s collapse should be dropped from litigation after the U.S. Supreme Court refused to hear the case.

ATLANTA
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424
404.881.7000

CHARLOTTE
Bank of America Plaza
Suite 4000
101 South Tryon Street
Charlotte, NC 28280-4000
704.444.1000

DALLAS
Chase Tower
Suite 4650W
2200 Ross Avenue
Dallas TX 75201
214.432.7770

NEW YORK
90 Park Avenue
New York, NY 10016-1387
212.210.9400

RESEARCH TRIANGLE
Suite 600
3201 Beechleaf Court
Raleigh, NC 27604-1062
919.862.2200

WASHINGTON, D.C.
The Atlantic Building
950 F Street, NW
Washington, D.C. 20004-1404
202.756.3300