



The ‘Delete’ Key Doesn’t Help These Insider-Trading Defendants

February 24, 2011

On February 8, 2011, the U.S. Attorney in Manhattan and the FBI announced some new indictments in a massive probe of insider trading on Wall Street. They charge two defendants not only with conspiracy to commit securities fraud but also with obstruction of justice for destroying evidence.

The five-page release issued that day by the government reads like something out of a TV crime drama, complete with turncoat informants, telltale e-mail messages, and late-night dumpster trips in a failed effort to hide evidence.

In just one instance of alleged insider trading, two hedge funds pulled in \$2 million in profits nearly overnight.

“When you are paying insiders for earnings data before it’s announced, that isn’t ‘research.’ That’s cheating,” said Janice K. Fedarcyk, assistant director-in-charge of the FBI’s New York office in announcing the indictments. “And the efforts to destroy evidence are laid out largely in the defendants’ own words. For all their presumed sophistication, the defendants lacked a mobster’s instinct for conversational discretion.”

In fact, Samir Barai and Donald Longueuil, the two hedge fund managers who were charged, seemed to have no hesitation to lay out an electronic paper trail leading to their allegedly illegal activities.

For example, Barai sent Jason Pflaum, a co-worker who, unbeknownst to Barai, was a government informant, a BlackBerry Messenger message instructing him to “shred as much as u can,” “put all ur data files onto an encrypted drive,” and “delete all emails from” a particular person.

These traders seemed to have no idea that their words would soon be held against them. They thought that hitting the “delete” key was all they had to do to conceal their conduct. Actually, of course, no such communication is safe from a well-crafted government investigation.

Pflaum and another informant pleaded guilty, also on February 8, to one count each of securities fraud and of conspiracy to commit securities fraud.

This probe is far from over, and we will be looking at the government’s tactics and at the defendants’ arguments carefully as it goes on.

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