

# Corporate Compliance and Business Crimes Practice

North America

BAKER & MCKENZIE

## Client Alert

August 2010

### In This Issue:

Virginia: Bellwether Venue for Financial and Securities Fraud Enforcement

### Virginia: Bellwether Venue for Financial and Securities Fraud Enforcement

On June 15, 2010, Lee Bentley Farkas, the former CEO and Chairman of Florida-based Taylor, Bean and Whitaker (TBW), was handcuffed and arrested outside of his health and fitness club, and was sent to the U.S. District Court in Alexandria, Virginia where he was arraigned on a 16-count indictment. Once the head of one of the nation's largest privately-held mortgage lending companies, Mr. Farkas and his coconspirators were charged with conspiracy to commit bank fraud, mortgage fraud, and securities fraud allegedly resulting in \$1.9 billion in losses caused to Ocala Funding, Colonial Bank, and the Troubled Asset Relief Program (TARP). Venue in the Eastern District of Virginia (EDVA) for this Florida-based conduct was predicated largely on allegations that funds and emails were routed by TBW through servers in Richmond and that securities disclosures were filed electronically in Alexandria by Colonial Bank, a theory of venue that has been previously upheld in the courts.

The indictment against Mr. Farkas and the other defendants was filed less than one month after the establishment of the Virginia Financial and Securities Fraud Task Force, headquartered in Richmond, Virginia, within the federal jurisdiction of the EDVA. The new task force includes the SEC, FBI, Commodities Futures Trading Commission, US Postal Service, and the IRS, which joined forces as an investigative arm of the President's Financial Fraud Enforcement Task Force. Widely known for its high-profile prosecutions of espionage and terrorist cases, EDVA is now rapidly emerging as the preferred venue for the aggressive pursuit of civil and criminal financial and securities fraud cases that are national in scope.

Historically, the Justice Department filed its high-profile fraud cases in Manhattan, within the Southern District of New York (SDNY). That jurisdiction has been the venue for the federal prosecution of some of Wall Street's most luminary executives and companies for corporate fraud, insider trading, and options backdating. The Department's creation of the newly-constituted EDVA Task Force represents a change in strategy for the enforcement authorities based on the multiple advantages presented by EDVA over SDNY:

- (1) Jurisdiction over virtually any fraud case involving a public company or its executives by virtue of the SEC EDGAR computer server based in Alexandria, as well as the Federal Reserve Bank in Richmond;
- (2) A region with generally conservative, pro-government jury pools;
- (3) The widely-regarded EDVA "Rocket Docket" that disposes of criminal cases in generally half the time—normally 70-90 days from indictment to trial—relative to other federal jurisdictions, and

[www.bakermckenzie.com](http://www.bakermckenzie.com)

For further information please contact

**Brian Whisler**  
+1 202 452 7019  
[brian.whisler@bakermckenzie.com](mailto:brian.whisler@bakermckenzie.com)

**Paul McNulty**  
+1 202 835 1670  
[paul.mcnulty@bakermckenzie.com](mailto:paul.mcnulty@bakermckenzie.com)

**John Rowley**  
+1 202 835 6151  
[john.rowley@bakermckenzie.com](mailto:john.rowley@bakermckenzie.com)

815 Connecticut Avenue, NW  
Washington DC 20006

- (4) Judges who are well-known for imposing stiff sentences in fraud cases, as evidenced by the recent record-breaking 100- year sentence for former Miami executive Edward Okun convicted for a \$126 million fraud scheme (compare Bernie Madoff's 150 year sentence in SDNY for his \$65 billion scheme) as well as the longest Foreign Corrupt Practices Act sentence imposed to date: 87 months for Charles Jumet's scheme involving payments of \$200,000 to Panamanian government officials (compare Frederic Bourke's sentence in SDNY of 13 months for an alleged bribery scheme involving well over \$1 million).

Now, with an abundance of support and resources pouring in from the SEC and FBI, EDVA is seeking to become the premier venue of choice for high-profile corporate fraud and securities prosecutions. Indeed, the SEC, FBI, and U.S. Attorney have gone on record as stating that the Task Force's rapid hiring of a new array of federal prosecutors and agents is designed to investigate and prosecute "national impact securities fraud cases."

The creation of the EDVA Task Force will have significant consequences for both companies and their executives regardless of where they are located. The Department's effort to make a "national impact" by holding more companies accountable for the conduct of their employees makes stricter levels of compliance all the more important for companies.

Baker & McKenzie has been guiding clients in this realm by providing risk assessments and designing enhanced compliance measures in light of the intensified focus on corporate accountability. If an undetected problem emerges, Baker & McKenzie is also uniquely positioned to navigate clients through this new environment by tapping our experience with the prosecutors, agents, and judiciary in EDVA. Led by former EDVA U.S. Attorney Paul McNulty, along with former EDVA supervisory prosecutors John Rowley and Brian Whisler, Baker's White Collar team comprised of seasoned practitioners has the experience, capacity, and relationships to influence the decision makers in EDVA's Task Force on behalf of a wide range of corporate clients.

Prevention, detection, and aggressive responsiveness are the keys to our clients' success. We welcome the opportunity to share more of our observations on this significant development in Eastern Virginia and to offer practical guidance for addressing the demands of this effort as they impact companies and executives.