

# Financial and Securities Fraud Task Force Established in the Eastern District of Virginia

The US Attorney for the Eastern District of Virginia has announced the formation of an interagency financial and securities fraud task force to investigate cases of national significance. The establishment of a center of financial fraud prosecution near Washington DC, in addition to the traditional center of financial fraud investigations in New York, signals that financial and securities fraud will receive increasing prosecutorial attention in the near future. The prospect of fast-paced investigations in the Eastern District of Virginia based on limited contacts with the forum also raises the significance of challenges to venue.

## Task Force

On May 21, 2010 the US Attorney for the Eastern District of Virginia (EDVA) announced the launch of a new task force to prosecute financial fraud cases in the EDVA. The Virginia Financial and Securities Fraud Task Force will include representatives of the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the Virginia Attorney General's Office, the Federal Bureau of Investigation, the US Postal Inspection Service, the Internal Revenue Service, and the Virginia State Corporation Commission. This team will target securities fraud, fraud associated with the Troubled Asset Relief Program (TARP), fraudulent interbank financial transfers, and fraud involving funds provided by the 2009 American Recovery and Reinvestment Act (ARRA). According to US Attorney Neil MacBride, the task force will use the EDVA's "unique venue opportunities" to bring nationwide financial fraud cases in the EDVA. Although he identified no specific cases, MacBride promised aggressive civil and criminal investigations to come.

## The Rocket Docket

According to Robert Khuzami, director of the SEC's Division of Enforcement, the new coordination among agencies should lead to "more prosecutions and faster prosecutions." In addition, the US District Court for the EDVA is known as the "Rocket Docket" because of its fast pace and tight deadlines. Judges in the Rocket Docket are known for expeditiously trying cases and rarely granting extensions. This setting is seen as favorable for prosecutors because it will allow them to try cases quickly and, in turn, try a greater number of cases.

## Multiple Prosecutors

Historically, the US Attorney's Office for the Southern District of New York (the home of Wall Street) has been the leader in financial and securities prosecutions. MacBride asserted that the Task Force will "have the same ability" to bring large securities fraud cases as the SDNY. "We're going to be working with the SEC to start bringing some large, national-impact securities

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fraud cases," MacBride said. By bringing to bear a new office of prosecutors with experience in financial fraud teamed with subject-matter experts in the SEC and other agencies, the Task Force will spur competition between the districts, likely resulting in more cases.

## Venue

MacBride asserted that "the Eastern District of Virginia has the legal authority to bring cases [in the EDVA] with national significance, regardless of where the fraud occurs." To justify prosecuting national cases in the EDVA, the task force will point to the location of the SEC's EDGAR server in Alexandria, Virginia, the Federal Deposit Insurance Corporation's office in Arlington, Virginia, and the Federal Reserve's wire transfer clearinghouse in Richmond, Virginia. For example, the task force may seek to base venue on filing allegedly false financial statements on the EDGAR server, or by sending wire transfers through the Federal Reserve, even though defendants may not be aware that their activities touch the Eastern District and may themselves have never been present in the district. Although the federal courts in Virginia have opened the door to these tactics through broad interpretations of the venue rules, *see United States v. Johnson*, 510 F.3d 521 (4th Cir. 2010) (allowing venue based on the location of the EDGAR server), they also have warned that the location of the EDGAR servers could "not in and of itself transform the Eastern District of Virginia into the exclusive jurisdiction for criminal securities fraud cases." *United States v. Ferguson*, 432 F. Supp. 2d 559 (E.D. Va. 2006) (transferring venue to the District of Connecticut based on convenience to the defendants).

Defendants will need to be vigilant to challenge venue in cases where the EDVA is an inconvenient and burdensome forum. Criminal cases generally must be prosecuted "in a district where the offense was committed," Fed. R. Crim. P. 18, but identifying the district of the offense in a nationwide case can be difficult. The general venue statute provides that offenses committed in more than one district may be "prosecuted in any district in which such offense was begun, continued, or completed." 18 U.S.C. § 3237. Specific venue provisions appear in certain statutes, such as the securities fraud statute (which provides that "[a]ny criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred" 15 U.S.C. § 78aa) and the mail fraud statute (which provides for venue in any district in which mail was placed, received or delivered, 18 U.S.C. § 1341). Objections to venue must be made early and affirmatively, or they will be waived.

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