PostBusiness

INSIDE-TRADE DEBATE

POINT: Feds are only grandstanding with case

Robert Heim

LAST week we learned that the Department of Justice and the Securities and Exchange Commission are conducting criminal and civil investigations into what has been characterized as potentially a widespread insider-trading ring on Wall Street.

Federal investigators led by US Attorney **Prett Bharara** have focused on whether hedge funds received inside tips from experts about companies the funds invest in.

But federal investigations are normally highly secretive affairs.

Yet, here we have seen highly publicized raids on three hedge funds and the disclosure that numerous other subpoenas have been issued.

So what gives? Why is such a large amount of information suddenly being released on these usually secretive investigations?

In a word, grandstanding.

The feds' aggressive raids are an attempt to publicly demonstrate they are cracking down on Wall Street's excesses.

Tellingly, the raids only happened after the feds were caught flat-footed when an expert who had been visited by the FBI and pressured to cooperate revealed their investigation.

As a former Assistant Regional Director for the SEC, I know that proving an insider-trading case against the hedge fund managers will be extremely tough.

The law requires that the prosecutors prove that the hedge funds knew that the experts were obtaining information illegally and then passing it on to them.

But even if an expert did obtain information illegally, it is highly unlikely they would have disclosed that fact to a hedge fund.

It seems to me that federal prosecutors are clearly overreaching in their attempts to criminalize the hedge funds' use of experts to ferret out corporate information.

In the Internet age when information is a readily available commodity, it seems hopelessly antiquated for prosecutors to investigate hedge funds or experts for uncovering business information about public companies.

Let's hope the feds move on from chasing headlines to prosecuting real cases of fraud.

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COUNTERPOINT: Bharara may be the new Giuliani

Terry Keenan

MUCH ink and battery power have been expended this week amid revelations that the US Attorney's office in the Southern District of New York and the FBI have gone into overdrive in an insider-trading investigation that casts a wide net across Wall Street — ranging from hedge funds to investment banks.

Given the fact that it has been a good 25 years since the last big insider-trading bust, many have been quick to dismiss the likely damage.

Some have gone so far as to say that the probe is so sweeping, it will catch the minnows, but no big fish. Wall Street should turn a blind eye to the investigation at its own peril.

That's because with US Attorney Prett Bharara, the Justice Department's cop on the beat, Wall Street is facing its toughest enforcer since **Rudy Giuliani** held the office back in the 1980s.

And like Giuliani, who used powerful racketeering laws to bring down Drexel Burnham, Bharara is employing some of the same bare-knuckles tactics usually reserved for mob bosses.

This week we learned he has been making broad use of wiretaps in his investigation. The raid on three hedge funds this week was eerily reminiscent of February 1987, when federal agents carried out a coordinated sweep of Kidder Peabody and Goldman Sachs, which led to several traders being paraded from their offices in handcuffs.

Back then, as now, there was much talk of federal overreaching and grandstanding. Giuliani, not yet the hero of 9/11, was the most hated man on Wall Street. But the insider-trading probe that started with the 1986 arrests of **Dennis Levine**, **Marty Siegel** and the oily arbitrageur **Ivan Boesky** eventually led to carnage on Wall Street, dozens of criminal prosecutions and ultimately the collapse of Drexel in 1990. As for big fish, Giuliani ensnared plenty.

But while the insider-trading probe of the late Eighties shows the sheer power of government prosecutors on the prowl, those under investigation should also consider the toxic political climate of late 2010.

If Americans were put off by the antics of Boesky, who reportedly would order two entrées at a restaurant before deciding which one to eat, they are positively repelled by the many of the hedge fund billionaires who have continued to flaunt their private planes and private islands during the Great Recession. As Bharara has said, referring to his insider-trading dragnet, "Sometimes, greed is not good."

A well-executed investigation into the trading of well-timed information among Wall Street's top players will go a long way toward restoring some confidence.

Let's hope the US Attorney is heading in that direction. If so, the entire US economy will be well-served.

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Wall St. sheriff.