

# ***NEWS RELEASE***

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## ***OFFICE OF THE UNITED STATES ATTORNEY SOUTHERN DISTRICT OF CALIFORNIA San Diego, California***

***United States Attorney  
Laura E. Duffy***

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***For Immediate Release***

### **New Jersey Stock Trader Pleads Guilty to Conspiring with San Diego CEO in \$28 Million Securities Fraud**

*Conspirators pull off fraud by exploiting a little-known provision of the securities laws allowing companies to issue unregistered shares of stock to settle "bona fide" debts*

#### **NEWS RELEASE SUMMARY** - November 20, 2012

United States Attorney Laura E. Duffy announced that New Jersey-based stock trader Mark Allen Lefkowitz pled guilty today before United States Magistrate Judge William McCurine, Jr., and admitted conspiring with the Chief Executive Officer of a San Diego-based company to defraud the company's own shareholders. Court documents refer to the Chief Executive Officer simply as "CEO" and his company as "Company A" because neither has been charged with a crime to date. The plea is subject to final acceptance by United States District Judge Irma E. Gonzalez.

According to court documents, Lefkowitz and the CEO manipulated the company's share price and volume to benefit corporate insiders at the expense of shareholders. As a result of the fraud, the company issued more than 9 billion new shares of its stock that it did not register with the Securities and Exchange Commission ("SEC"). These new, unregistered shares diluted the value of existing shares, causing them to drop in value by as much as \$7 million. At the same time, Lefkowitz received free-trading shares from the company which were worth more than \$28 million according to documents filed by the SEC.

To carry out the fraud, Lefkowitz and the CEO exploited Section 3(a)(10) of the Securities Act of 1933—a little-known provision that allows companies to issue unregistered shares of stock to settle "bona fide" debts. The CEO, on behalf of Company A, would enter into "purported" loan agreements with various corporations owned by Lefkowitz, most of them based in the Turks and Caicos Islands. It was understood by Lefkowitz and the CEO, however, that Company A would purposefully default on the purported loan agreements. After the company defaulted, one or more of Lefkowitz's companies would initiate a "lawsuit" against Company A.

Each and every lawsuit would be brought by Florida-based lawyers in a Sarasota, Florida court. The Florida attorneys, even though they represented opposite sides in the lawsuits, would obtain their pleadings from a single Manhattan-based law firm that oversaw the sham lawsuits. Very soon after the lawsuit was filed—and typically within the very same week—the CEO and Lefkowitz would draft a written settlement agreement. The terms of the written settlement agreement would be extremely favorable to Lefkowitz. In short, the CEO would agree to settle Company A's debt by issuing new, unregistered shares of stock worth as much as five times, or more, than the debt that Company A actually owed.

Prior to the written settlement agreement being presented to the Florida court, Lefkowitz and the CEO would enter into a secret side-agreement. According to this undisclosed side-agreement, Lefkowitz would sell the new unregistered shares to unsuspecting investors who were unaware of the fraudulent way Company A's stock was being diluted. Lefkowitz would then kick back a portion of the proceeds from

the sale of the new shares to Company A. This kickback would take the form of a new loan—which would have the added benefit of continuing the fraud scheme.

Finally, Lefkowitz and the CEO would present the written settlement agreement to the Florida court, all while concealing the true nature of their secret insider deal. Misled by Lefkowitz and the CEO, the Florida court would approve the settlement agreement and authorize the company to issue the new, unregistered shares to Lefkowitz. Lefkowitz would then sell the shares on the open market to buyers who were unaware they were new, unregistered shares. Lefkowitz would then transmit a portion of his profits to a bank account in the Turks and Caicos Islands.

The plea agreement further revealed that to maintain his position as a corporate insider, Lefkowitz plied the San Diego-based CEO with various perks. These included paid vacations to Las Vegas, Nevada and the Turks and Caicos Islands, as well as other unspecified benefits.

As a result of his guilty plea, Lefkowitz faces up to 25 years in prison and a \$250,000. Lefkowitz also must pay restitution to victims of the fraud in an amount to be later set by Judge Irma E. Gonzalez.

United States Attorney Duffy emphasized that this type of fraud attacks the very heart of our financial system, “Not only does stock manipulation harm individual investors—many of whom rely on their investments for retirement and other savings—it also threatens to undermine confidence in our financial markets and slow our ongoing economic recovery.” Duffy added that this investigation was initiated by special agents of the Federal Bureau of Investigation.

Lefkowitz is expected to appear in court before the Honorable Irma E. Gonzalez, United States District Court Judge, on February 4, 2013, at 9:00 a.m., for sentencing.

**DEFENDANT**

**Case Number: 12CR4714-IEG**

Mark Allen Lefkowitz

**SUMMARY OF CHARGE**

Conspiracy to Commit Securities Fraud, in violation of Title 18, United States Code, Section 1349.  
Maximum penalties: 25 years in prison, 5 years' supervised release, a \$250,000 fine and a \$100 special assessment.

**INVESTIGATING AGENCY**

Federal Bureau of Investigation