



***United States Attorney
Southern District of New York***

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**FORMER BROKERAGE FIRM CEO CHARGED IN NATURAL GAS
MISMARKING SCHEME AND FORMER LEAD TRADER AT
BANK OF MONTREAL PLEADS GUILTY**

*Brokerage Firm CEO Also Charged With Defrauding NYMEX,
Intercontinental Exchange, and Shareholders*

MICHAEL J. GARCIA, the United States Attorney for the Southern District of New York, and MARK J. MERSHON, the Assistant Director-in-Charge of the New York Office of the Federal Bureau of Investigation ("FBI"), announced today the unsealing in Manhattan federal court of a six-count Indictment charging KEVIN CASSIDY, the former chief executive officer ("CEO") of Optionable Inc. ("Optionable"), a brokerage firm focusing on energy derivatives, with conspiracy, wire fraud, aiding and abetting the making of false bank entries, and securities fraud. These charges stem from CASSIDY's involvement in a scheme to deceive the Bank of Montreal ("BMO") about the value of its multi-million dollar natural gas portfolio; his driving up the share price of Optionable stock through false and misleading statements to the investing public; his defrauding the New York Mercantile Exchange ("NYMEX") in connection with NYMEX's 2007 purchase of an ownership stake in Optionable; and his defrauding the Intercontinental Exchange ("ICE") in connection with ICE's contemplated purchase of a stake in Optionable in 2003. After the scheme to deceive BMO was uncovered, BMO later announced commodities trading losses of more than 800 million in Canadian dollars.

Mr. GARCIA also announced today that DAVID LEE, BMO's former lead natural gas trader, pleaded guilty on November 13, 2008, to a four-count criminal Information charging him with inflating the value of his natural gas portfolio and conspiring with others to deceive BMO into believing that this portfolio was properly valued, or "marked." LEE admitted to destroying evidence in response to an investigative inquiry from the United States Commodity Futures Trading Commission.

Manhattan District Attorney ROBERT M. MORGENTHAU announced today that LEE also pleaded guilty to violating New York State's Banking Law by falsifying BMO's trading records. The Federal Reserve Board also separately announced the issuance of a Consent Order of Prohibition against LEE.

According to the Indictment against CASSIDY:

BMO required its commodities traders to "mark their books" by assigning the fair market value to each open financial position in the trader's portfolio. BMO used these marks, among other things, to value its commodities trading positions, to determine its daily commodities-related profit and/or loss, and to assess BMO's risk exposure related to its trading positions. Through a process called "independent price verification," BMO sought to verify the accuracy of the marks that commodities traders assigned to their positions by comparing those marks to independent market quotes for similar positions.

Beginning in May 2003, LEE began overvaluing, or "mismarking", his natural gas book by overstating the fair market value of some of his positions, which made his book look more profitable to BMO than it was and which earned LEE larger bonuses. As part of its independent price verification of LEE's marks, BMO compared LEE's marks to price quotes for similar positions that BMO obtained from third-party brokerage firms, including Optionable, which presented price quotes to BMO as independent and as accurately reflecting market prices.

As Optionable's CEO and a consultant to Optionable, CASSIDY helped LEE manipulate BMO's independent price verification process by deceiving BMO into believing that LEE's inflated marks accurately reflected the fair market value of LEE's positions. Under an agreement with CASSIDY, LEE sent to Optionable price quotes for his positions that matched the self-serving, inflated marks that LEE submitted directly to BMO, and at CASSIDY's direction, Optionable brokers later reiterated LEE's price quotes, virtually unchanged, to BMO's price verification personnel in "round trip" or "u-turn" emails. Optionable brokers

presented LEE's pricing information to BMO as if it reflected Optionable's accurate view of prevailing market prices for LEE's positions and was independent of LEE. In coordinating these "round trips," CASSIDY knew that BMO was using this pricing information from Optionable to evaluate the accuracy of LEE's marks while under the impression that it was accurate and independent of Lee.

CASSIDY helped LEE defraud BMO as a way to give LEE an incentive to use Optionable to execute commission-generating trades. From 2003 to 2007, Optionable received an increasing amount of commission-generating trading business from BMO and these commissions constituted a growing and material percentage of Optionable's revenues. By 2007, Optionable obtained more than 40 percent of its annual brokerage revenues from BMO. Optionable included these BMO commissions in its revenue figures in its public regulatory filings that were available to the investing public without disclosing that (a) CASSIDY and other Optionable personnel had been helping Lee deceive BMO about the value of Lee's positions; or (b) these commissions from BMO included trades that Lee selected Optionable to execute on his behalf in furtherance of the fraudulent scheme.

From September 2005 (when Optionable stock began trading publicly) to April 2007 (when BMO first announced massive commodities trading losses), Optionable's stock price increased from \$1.00 to \$7.20 per share. On May 8, 2008, after the mismarking scheme had been uncovered, BMO publicly announced that it had terminated all business relations with Optionable; on May 9, 2007, Optionable publicly announced that its loss of BMO's business would adversely impact its operations; and on May 10, 2007, Optionable stock closed at less than one dollar per share. In early 2008, Optionable publicly reported no revenue.

In addition to the charges relating to the BMO mismarking scheme, the Indictment charges CASSIDY with defrauding NYMEX in connection with NYMEX's April 2007 purchase of a 19 percent ownership interest in Optionable. NYMEX obtained this interest by buying Optionable common stock, including \$5.1 million of Optionable common stock that was beneficially owned by CASSIDY. The price of Optionable stock at the time of NYMEX's purchase had been inflated by the false and misleading revenue figures that Optionable had reported in public regulatory filings. In addition, while negotiating this transaction, CASSIDY provided NYMEX with similar false and misleading revenue figures for Optionable.

Finally, CASSIDY is charged with wire fraud in connection with the contemplated purchase of an ownership stake in Optionable in November 2003 by the Intercontinental Exchange ("ICE"), which operates global commodity and financial products marketplaces. During negotiations with ICE, CASSIDY provided ICE with a false name and social security number for himself in an effort to conceal his prior criminal record. At the time, CASSIDY had previously been convicted of wire fraud, tax fraud, trafficking in a counterfeit device, and improper reporting of a currency transaction. After learning CASSIDY's true name and social security number, and learning that he had federal criminal convictions, ICE terminated negotiations with Optionable.

CASSIDY was arrested this morning and is expected to appear this afternoon before United States Magistrate Judge ANDREW J. PECK in Manhattan federal court.

CASSIDY is charged with one count of conspiracy to commit wire fraud and to make false bank entries, two counts of wire fraud, one count of aiding and abetting the making of false bank entries, and two counts of securities fraud. The conspiracy charge carries a maximum sentence of 5 years' imprisonment and a maximum fine of the greater of \$250,000, or twice the gross gain or gross loss from the offense. The wire fraud counts each carry a maximum sentence of 20 years' imprisonment and a maximum fine of the greater of \$250,000, or twice the gross gain or gross loss from the offense. The false bank entries count carries a maximum sentence of 30 years' imprisonment and a maximum fine of the greater of \$1,000,000, or twice the gross gain or gross loss from the offense. The securities fraud counts each carry a maximum sentence of 20 years' imprisonment and a maximum fine of \$5 million, or twice the gross gain or gross loss from the offense.

CASSIDY, 49, lives in Bedford Hills, New York.

LEE, 37, lives in Rutherford, New Jersey. LEE pleaded guilty to conspiracy, wire fraud, making false bank entries, and obstructing a federal regulatory investigation. In addition to the applicable maximum penalties discussed above, the obstruction count carries a maximum sentence of 5 years' imprisonment and a maximum fine of the greater of \$250,000, or twice the gross gain or gross loss from the offense.

Mr. GARCIA commended the investigative work of the FBI and expressed his appreciation to the Manhattan District Attorney's Office, the U.S. Securities and Exchange Commission, the United States Commodity Futures Trading Commission, and the Federal Reserve System. He said the investigation is continuing.

Assistant United States Attorneys REED MICHAEL BRODSKY and NICHOLAS S. GOLDIN and Special Assistant United States Attorney MATTHEW ROSEN from the Manhattan District Attorney's Office are in charge of the prosecution.

The charges against CASSIDY are merely accusations and he is presumed innocent unless and until proven guilty.

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