

Investors Hold Bank Liable for Losses at Currency Firm

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A group of international investors who say they were swindled out of more than \$15 million by a currency trading firm that was based in the World Trade Center say that J. P. Morgan Chase (news/quote) bears some responsibility for their losses, which they discovered after the trading firm's offices were destroyed on Sept. 11 and several of its executives disappeared.

Scores of clients of the trading firm, Evergreen International Spot Trading, now defunct, sent money by wire to associated accounts at J. P. Morgan Chase. The transfers came with instructions that the funds were to be credited to the clients, in sub accounts, but that did not happen, according to lawyers for the investors, who have obtained some of the transfer documents.

When the terror attacks of Sept. 11 destroyed the World Trade Center, Evergreen ceased to function. In November, federal prosecutors indicted the owner of the firm, Andrei Koudachev, on charges of wire and mail fraud conspiracy and money laundering conspiracy. They also charged Gary Farberov, president of First Equity Enterprises, Evergreen's trading arm, with money laundering. Mr. Farberov pleaded guilty in December and began cooperating with prosecutors; Mr. Koudachev is believed to have fled to Russia, and his lawyers have denied the charges.

In all, according to prosecutors, more than 1,400 Evergreen clients in more than a dozen countries - many from Australia and New Zealand - were cheated of \$110 million from 1998 to September 2001. Mr. Farberov forfeited \$5.1 million as part of his plea agreement.

Mark Van Leewarden, a lawyer from Auckland, New Zealand, representing the group of investors who say they lost more than \$15 million, said he was preparing to sue Chase this month. His suit will probably join one already filed against the bank and Evergreen executives and brokers by Christos Tzaras, a Greek shipping executive who lives in Monaco. Mr. Tzaras's suit, filed in federal court in Manhattan on Dec. 20, says he lost \$1.7 million in the affair.

Last week, J. P. Morgan Chase filed a motion to dismiss the Tzaras lawsuit. Catherine Keary, a J. P. Morgan Chase spokeswoman, said the bank had no liability in the matter and that "the allegations are without merit." She said the bank would not comment on the similar allegations raised by Mr. Van Leewarden's clients because they had not yet filed suit.

Most of Evergreen's clients were not from the United States, apparently because its brokers thought that non-Americans would be more receptive to its sales pitch. Among the company's

promises were annual returns of 25 to 30 percent from currency trading, prosecutors have said.

According to documents assembled by Mr. Van Leewarden, when clients were ready to invest, Evergreen executives had many of them wire funds to an account at Chase in the name of First Equity, a company that they were told acted as Evergreen's clearing agent. This was done, the clients say they were told, so the money could be pooled and used for large, profitable trades. But, they say, Evergreen brokers told them that their money would be kept securely at Chase in separate sub accounts in their names.

Wire transfer documents on Evergreen stationery from several customers - including some of Mr. Van Leewarden's clients as well as Mr. Tzaras - list First Equity Enterprises as the beneficiary and then say "for further credit to" the client. Mr. Van Leewarden and Bryan C. Skarlatos, a New York lawyer representing Mr. Tzaras, say that J. P. Morgan Chase never tried to follow the full instructions, because if it had done so, it would have been apparent that no sub-accounts existed.

Chase had "a duty to the client to act with reasonable care," Mr. Skarlatos said, and it should not have disregarded the "further credit" part of the wire instructions. Instead, he said, the bank should have sent the money back. He said J. P. Morgan Chase should also have noticed that First Equity was regularly transferring the arriving money into other bank accounts overseas, a process that he called "a classic money laundering pattern."

In its motion to dismiss Mr. Tzaras's suit, J. P. Morgan Chase says it properly credited funds to the bank account of First Equity, whose name and account numbers are on the wire transfer documents. After identifying a beneficiary, like First Equity, by an existing account number, the bank "is permitted to credit the bank account identified by number without regard to any additional information on the transfer instructions," the motion said.

Mr. Tzaras cannot complain that the bank breached a duty to him the bank says, "because, simply, none was owed." According to several banking and legal experts, the "further credit" instructions on the wire transfer documents are significant, but details of the way the main account was set up would determine whether it was the bank's responsibility to carry them out, or First Equity's.

According to Mr. Tzaras's suit, Chase closed two accounts in Evergreen's name in September 2000 when it "was concerned about certain suspicious transactions in these accounts." But wire transfer documents show that Chase did not close the affiliated First Equity accounts at least until August 2001.

The Chase spokeswoman, citing client confidentiality, said the bank could not discuss the accounts.