

## **HOW THE U.S. DEPARTMENT OF ENERGY AND CALIFORNIA SENATORS CREATED THE LARGEST INSIDER TRADING SCHEME IN HISTORY**

Companies in PR-hype industries sometimes have a history of [reinventing themselves](#). For Tesla Motors and Solyndra the potential transition from start-up to future energy monopoly was being facilitated by the government. Now Kodak has copied this corruption scam. The **U.S. DEPARTMENT OF ENERGY (DOE)** [signed a letter of interest](#) to provide hundreds of millions in loans to them to support the company's plans to produce green energy things for the U.S. domestic market. Thereafter, a series of ensuing events raised concerns about potentially illegal insider trading, and of an uneven level playing field for investors in U.S. stock markets. The immediate response by U.S. Congress was to investigate. The new KODAK Covid loan is the same kind of crime, which insiders learned they could get away with in the Obama **U.S. DEPARTMENT OF ENERGY**.

Whether the suspicious trading activity is a case of illegal insider trading activity is difficult to judge without further scrutiny by prosecutors. However, these new types of substantial loans from the government to private companies give rise to a new type of private information. While traditional corporate events, such as earnings announcements or corporate takeovers, are subject to strict rules about the disclosure of information and reporting requirements, it appears that the disbursement of government subsidies and grants falls into a grey area not effectively covered by existing rules. Thus, it is necessary to consider more transparent and consistent protocols on information disclosure to avoid providing unfair advantages to a select group of

company insiders including California Senators and Energy Department staff.

Just one day before the official announcement of the loan, on July 27, Kodak's stock price jumped by about 25 percent on a trading volume of 1,645,719 shares, over five times the average daily trading volume in prior months. These unusual trading activities were likely [attributable to the premature release of the news by several media outlets](#).

Unusual trading activity also occurred in Kodak's stock options, even prior to the news leakage. The trading volume was especially strong in out-of-the-money (OTM) call options, which are set to profit especially from a positive jump in stock prices, with daily trading volumes of all OTM call options on July 17, 20 and 27 that was more than ten times larger than average volumes since the beginning of 2020.

Kodak's executives and board members are also linked to controversial transactions. About one month before the announcement, on June 23, the company's executive chair and a director [purchased over 50,000 shares](#) of the company's stock a day during the time when the company was negotiating loans with the government. In addition, four executives were [granted stock options right on July 27](#), just one day before the stock price skyrocketed. Prior to another major stock price drop, due to a freezing of the Kodak loan associated with the congressional investigation, a board [member donated \\$116 million](#) in company shares, entitling the donors to a substantial tax deduction.

These events have alerted legislators and raised concerns that trades of investors may explain the suspicious activity with access to material non-public information. On August 3, Sen.

[Elizabeth Warren](#) (D-Mass.) formally [requested the Securities and Exchange Commission \(SEC\)](#) to [investigate](#) the possibility of insider trading and violation of regulatory compliance rules. Two House committee chairs also launched their own inquiries, [requesting detailed records](#) from the loan provider, DFC.

Besides these valid outcries due to concerns about the potential for illegal insider trading, this turn of events raises a question of broad public interest. Why was the usual protocol for the enforcement of news disclosure and insider trading regulations around corporate events not followed in this case? The announcement of the government-sponsored Kodak loan is no different from traditional corporate events, such as earnings disclosures, announcements of mergers and acquisitions, spinoffs, or new product announcements. It also involves secret negotiations in executive offices that give rise to the potential for trading on privileged information.

In the Kodak case, the private information was indeed material. The \$765 million government loan it received amounts to 54 percent of the company's total assets, 78 percent of its annual revenue, and is 64 times larger than its annual operating cash flows, according to its [most recent 10-K filing](#). It is not surprising that such news boosted the stock price from about \$2 to \$60 in a matter of days. Another related issue is that the DFC and Kodak did not release the news at the same time. This lack of consistency in information disclosure makes it difficult to pinpoint when the information was publicly available.

The Kodak experience was not unique. The [massive monetary and fiscal interventions](#) that have been announced in the U.S.,

Europe and elsewhere are likely to lead to similar types of sensitive news releases. The difference with respect to more traditional corporate announcements is that the government has a seat at the table. U.S. officials and their counterparts elsewhere are picking winners and losers in the disbursement of grants, loans and contracts. Thus, a new source of privileged information has emerged that raises the possibility that insiders may well profit from possession of such information before it is released to the market.

In the Department of Energy Cleantech Crash political payola quid pro quo, government money was used by Goldman Sachs and their clients for the following scams, EVERY SINGLE ONE OF WHICH was used in the DOE ATVM AND LGP funds manipulations:

## **Pools**

Agreements, often written, among a group of traders to delegate authority to a single manager to trade in a specific stock for a specific period of time and then to share in the resulting profits or losses."<sup>[5]</sup> In Australia section 1041B prohibits pooling.

## **Churning**

When a trader places both buy and sell orders at about the same price. The increase in activity is intended to attract additional investors, and increase the price.

## **Stock bashing**

This scheme is usually orchestrated by savvy online message board posters (a.k.a. "Bashers") who make up false and/or misleading information about the target company in an attempt to get shares for a cheaper price. This activity, in most cases, is conducted by posting libelous posts on multiple public forums. The perpetrators sometimes work directly for unscrupulous Investor Relations firms who have convertible notes that convert for more shares the lower the bid or ask price is; thus the lower these Bashers can drive a stock price down by trying to convince shareholders they have bought a worthless security, the more shares the Investor Relations firm receives as compensation. Immediately after the stock conversion is complete and shares are issued to the Investor Relations firm, consultant, attorney or similar party, the basher/s then become friends of the company and move quickly to ensure they profit on a classic Pump & Dump scheme to liquidate their ill-gotten shares. (see P&D)

## **Pump and dump**

A [pump and dump](#) scheme is generally part of a more complex grand plan of market manipulation on the targeted security. The Perpetrators (Usually stock promoters) convince company affiliates and large position non-affiliates to release shares into a free trading status as "Payment" for services for promoting the security. Instead of putting out legitimate information about a company the promoter sends out bogus e-mails (the "Pump") to millions of unsophisticated investors (Sometimes called "Retail Investors") in an attempt to drive the price of the stock and volume to higher points. After they accomplish both, the promoter sells their shares (the "Dump") and the stock price falls, taking all the duped investors' money with it.

## Runs

When a group of traders create activity or rumours in order to drive the price of a security up. An example is the [Guinness share-trading fraud](#) of the 1980s. In the US, this activity is usually referred to as *painting the tape*.<sup>[6]</sup> Runs may also occur when trader(s) are attempting to drive the price of a certain share down, although this is rare. (see Stock Bashing)

## Ramping (the market)

Actions designed to artificially raise the market price of listed securities and give the impression of voluminous trading in order to make a quick profit.<sup>[7]</sup>

## Wash trade

In a [wash trade](#) the manipulator sells and repurchases the same or substantially the same security for the purpose of generating activity and increasing the price.

## Bear raid

In a [bear raid](#) there is an attempt to push the price of a stock down by heavy selling or [short selling](#).<sup>[8]</sup>

## Lure and Squeeze

This works with a company that is very [distressed on paper](#), with impossibly high debt, consistently high annual losses but very few assets, making it look as if bankruptcy must be imminent. The stock price gradually falls as people new to the stock short it on the basis of the poor outlook for the company, until the

number of shorted shares greatly exceeds the total number of shares that are not held by those aware of the lure and squeeze scheme (call them "people in the know"). In the meantime, people in the know increasingly purchase the stock as it drops to lower and lower prices. When the short interest has reached a maximum, the company announces it has made a deal with its creditors to settle its loans in exchange for shares of stock (or some similar kind of arrangement that leverages the stock price to benefit the company), knowing that those who have short positions will be squeezed as the price of the stock sky-rocket. Near its peak price, people in the know start to sell, and the price gradually falls back down again for the cycle to repeat.

## **Quote stuffing**

[Quote stuffing](#) is made possible by high-frequency trading programs that can execute market actions with incredible speed. However, high-frequency trading in and of itself is not illegal. The tactic involves using specialized, high-bandwidth hardware to quickly enter and withdraw large quantities of orders in an attempt to flood the market, thereby gaining an advantage over slower market participants.<sup>[9]</sup>

## **Cross-Product Manipulation**

A type of manipulation possible when financial instruments are settled based on [benchmarks](#) set by the trading of physical commodities, for example in United States Natural Gas Markets. The manipulator takes a large [long\\_\(short\) financial position](#) that will benefit from the benchmark settling at a higher (lower) price, then trades in the physical commodity markets at such a large

volume as to influence the benchmark price in the direction that will benefit their financial position.

## **Spoofing (finance)**

[Spoofing](#) is a disruptive algorithmic trading entity employed by traders to outpace other market participants and to manipulate commodity markets. Spoofers feign interest in trading futures, stocks and other products in financial markets creating an illusion of exchange pessimism in the futures market when many offers are being cancelled or withdrawn, or false optimism or demand when many offers are being placed in bad faith. Spoofers bid or offer with intent to cancel before the orders are filled. The flurry of activity around the buy or sell orders is intended to attract other [high-frequency traders](#) (HFT) to induce a particular market reaction such as manipulating the market price of a security. Spoofing can be a factor in the rise and fall of the price of shares and can be very profitable to the spoofer who can time buying and selling based on this manipulation.

## **Price-Fixing**

A very simple type of fraud where the principles who publish a price or indicator conspire to set it falsely and benefit their own interests. [The Libor scandal](#) for example, involved bankers setting the [Libor](#) rate to benefit their trader's portfolios or to make certain entities appear more creditworthy than they were.

## **High Closing (finance)**

High closing is an attempt to manipulate the price of a security at the end of trading day to ensure that it closes higher than it



should. This is usually achieved by putting in manipulative trades close to closing.

## **Cornering the market**

In [cornering the market](#) the manipulators buy sufficiently large amount of a commodity so they can control the price creating in effect a [monopoly](#). For example, the brothers [Nelson Bunker Hunt](#) and [William Herbert Hunt](#) attempted to corner the world [silver](#) markets in the late 1970s and early 1980s, at one stage holding the rights to more than half of the world's deliverable silver.<sup>[10]</sup> During the Hunts' accumulation of the precious metal, silver prices rose from \$11 an ounce in September 1979 to nearly \$50 an ounce in January 1980.<sup>[11]</sup> Silver prices ultimately collapsed to below \$11 an ounce two months later,<sup>[11]</sup> much of the fall occurring on a single day now known as [Silver Thursday](#), due to changes made to exchange rules regarding the purchase of commodities on margin.<sup>[12]</sup>

Given the massive stimulus packages that are in force today and expected to be implemented going forward, regulators need to set clear guidelines for how and when such privileged information can be disclosed, and impose rigorous trading restrictions for investors with access to private information. Failure to do so would give unfair advantage to some and damage the level playing field in financial markets.

To avoid providing such unfair advantage to selected executives, the SEC and the Department of Justice need to develop new procedures to incorporate potential illegal transactions derived from information about government intervention through diverse channels. We advocate for a more transparent and

consistent protocol on information disclosure regarding government's loan programs to prevent similar events from recurring. For example, the government could channel the release of news about COVID-19-related stimulus interventions through a common platform to prevent leakage from diverse sources and reduce information asymmetry among investors.

The DFC loan to Kodak is the first of its kind under the Defense Production Act but not the first ever because DOE already created the pump-and-dump scheme for tech oligarchs. Nobody should be surprised by Kodak trying a proven corruption scam. Since we are in unprecedented times, government agencies and regulators need to make changes to adapt to the current situation and fulfill their mission to ensure a level playing field for investors even during this difficult period. Regulation never happens in these scams because most California Senators and their families profit from these crimes and corruption.