

4A. Perhaps best to begin here with some discussion of the conflicts issues. Nothing that has been related to this point would appear to prevent an attorney from forming a joint advising relationship here, although it might not be a good idea in terms of how it could hamper individual representation down the road. But allowable, and the privilege would apply. Then the advice would move to the fact pattern here involving insider trading and work through the issues about mens rea, benefit, materiality, and so on.

4B. The conflicts issue gets trickier now. The lawyer's ability to advise the bank may depend on how much was disclosed by the individuals and whether there was any discussion about their legal options, as opposed to simply a liability analysis. In any event, if a lawyer-client relationship was formed with any of them, advising the bank will require informed consent of the GC after a full conversation about the nature of potential conflicts. The answer would then proceed to repeat (or refer to) the insider trading liability analysis in 4A, while adding analysis of potential respondeat superior liability for the bank, and some discussion of DOJ's possible approach to the bank's potential exposure.

4C. Brief answer here would talk about the need to consider conflicts again, and the potential for waiver. (Of course, now we are at a point where in reality most lawyers likely would have referred some of these folks to other counsel.) Then simply add analysis of Corrigan's potential liability to the insider trading analysis already provided above.

4D. No need to fully rehash the liability analysis here. Can consider whether the civil standard and burden of proof for insider trading liability would make a difference in the SEC's decisions.

Then it becomes an enforcement discretion problem and an answer can consider all that SEC might take into account in deciding whether to go forward and what remedies to seek, using the materials in Chapter 10.

4E. Same approach as 4D, except now considering the tools that DOJ has in enforcement which are of course very different than the SEC's, at both the investigative and prosecution stages. And also consider the greater seriousness of criminal prosecution and how to evaluate, as a matter of discretion, when to treat insider trading as a civil and/or criminal matter.

4F. This final question allows wide opportunity to apply many of the materials from the sentencing and plea/disposition chapters at the end of the book, as to both the individuals and the firms. Judgment is being called for here, not simply a recitation of what the law would allow DOJ to do as a maximal matter.