

The Virgin Islands Consortium

Strong Allegations Leveled Against ABR CEO Robert Moore By Federal Agency CFTC

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On Tuesday, the 30th Legislature of the Virgin Islands Finance Committee met in St. Thomas to hear testimony from various firms. However, perhaps the most anticipated hearing was that of Atlantic Basin Refining's (ABR), where its executives, along with government officials and supporters, offered a myriad of reasons why the Operating Agreement, signed between ABR and the de Jongh Administration, should be approved by the Senate.

Finance Committee Chairman Sen. Clifford Graham also requested information about the HOVENSA sales agreement; however, the senator said the time given before Tuesday's hearing to view the document was not adequate to review all of its 300 pages.

Present at the hearing was ABR Chief Executive Officer Robert Moore, who declined to give substantive testimony because he was battling influenza, stating, "As a result, I will testify now only briefly to identify the representatives of ABR and some of our key strategic partners who will testify before you today." The executive, however, ensured Senate members that should they have questions for him, he stood ready to respond.

Moore comes with a checkered past in the banking business as a result of his previous where he was executive director of the bank's commodity



Gov. de Jongh and ABR CEO Robert Moore signs

Operating Agreement at Government House in October.

Back on March 10, 2010, the [U.S. Commodity Futures Trading Commission](#) (CFTC) said it had settled charges it leveled against Moore in 2008, alleging he did not adequately supervise a trader who was accused of overstating the value of BMO's natural gas options book. That trader, David P. Lee, cost the bank around 680 million Canadian dollars (about \$660 million USD) after Lee was accused of mismarking and misvaluing the bank's natural gas trading books for many years.

According to a [New York Times article](#), Moore was ordered to pay a fine of \$150,000. The court order also permanently bans him from engaging in any conduct in violation of the [Commodity Exchange Act](#) as well as CFTC regulations concerning any commodity options transaction, a statement released by the federal agency said.

Lee, who pleaded guilty in a New York court to inflating the value of his portfolio and conspiring with option broker Optionable Inc., to hide trade losses from his bank, was able to deceive BMO from 2003 until 2007. He was ordered to pay a fine of \$500,000, and was barred from commodity trading for the rest of his life, according to the same [New York Times](#) article.

Allegations Leveled Against Robert Moore By U.S. Commodity Futures Trading Commission

Court documents obtained by *VI Consortium* brings to the fore the accusations the CFTC leveled against Kevin Cassidy, former CEO of Optional Inc.; Edward O'Connor, former

president of Optional Inc.; Optionable Inc.; Lee and Moore on November 18, 2008.

The 38-page lawsuit, which was heard in the United States District Court for the Southern District of New York, alleged that, "from at least 2003 until approximately May 2007, David Lee ("Lee"), a Bank of Montreal trader, engaged in acts and practices that constitute violations of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ i et seq. (2002)."

The lawsuit explained in detail the violations the four men and the company committed, which amounted to the largest trade loss in Canada's history. It also revealed that, "prior to being hired as the Executive Managing Director of BMO's derivatives trading group, Moore had been a trader himself at other organizations, [and] touted himself as an expert in energy trading."

After listing Moore's duties as stated by his job description at BMO, the CFTC alleged Moore "engaged in and permitted violations of BMO policies."

In its lawsuit, the CFTC alleged Moore "knowingly allowed Lee and others to violate critical BMO policies." The federal agency said Moore "violated and allowed Lee to violate BMO's ethical policies. For example, each BMO employee was required to comply with its group's "Professional and Ethical Standards"."

According to the lawsuit, BMO's Commodity Derivatives Group "Professional and Ethical Standards" required employees to adhere to the following directives:

- 4.1 To conduct the Bank's business in accordance with established market practices.
- 5.2 Business must not be directed to any counter-party or brokers in order to reciprocate gifts, entertainment or favors. Any such benefits are to be declared openly.
- 5.3 No gift or entertainment should be accepted if: - it would be embarrassing to explain; or - it is in excess of that which would be considered as being of modest value; or- the motives of the party providing the gift or entertainment are questionable.
- Any offers that contravene these guidelines, or any doubt concerning these matters, should be referred to the Commodity Products Group Executive Managing Director.
- 5.4 Any attempt by a market participant, broker, or counterparty to obtain favors directly must be reported at once to the Commodity Products Group Executive Managing Director.

In addition, the bank's employees, during the relevant time, were required to abide by its "Principles, Code of Conduct, and Ethics." It says a conflict of interest exists in any situation where any of BMO's employees:

(a) has a personal interest that would be likely to adversely affect, or even appear to adversely affect, our loyalty to, or judgment on behalf of, BMO or a prospective or actual customer or supplier;

(b) has chosen, or may appear to have chosen his/her interests over the interests of BMO, a prospective or actual customer, or a supplier of BMO; or (c) takes actions or has

interests that may make it difficult to perform his/her work at BMO objectively or effectively.

Nonetheless, according to the lawsuit, "disregarding these ethical policies, Moore received gifts, travel, meals and money from Cassidy that were not business related, in excess of that which would be considered as being of modest value, from a source whose motives were highly questionable, and failed to openly declare them."

Furthermore, the suit states, "Moore's willing receipt of such gifts, travel arrangements, meals, and funds made it difficult for him to perform his work at BMO objectively or effectively when it came to Optionable Inc., and Cassidy."

The CFTC further alleged that Moore "disregarded the signs of Lee's fraud," and had he viewed Optionable Inc. and Lee at arm's length, "he would have discerned that Bank of Montreal's IPV process could be undermined by a corrupt broker and trader." An independent price verification is a process for regular review of valuation of trading assets and liabilities against independently sourced instrument prices to ensure the firm's trading positions are correctly valued and apply appropriate corrections if there are discrepancies.

The lawsuit went on to describe the relationship between Moore and Cassidy.

"The nature, frequency, and value of the gifts, travel arrangements, meals and money Moore received from Cassidy created both the appearance, as well as an actual, conflict of interest. Notably, Cassidy repeatedly paid for Moore's gambling vacations, some of which were jointly attended by Lee. During these gambling vacations, Cassidy provided both Lee and Moore with several thousand dollars with which to gamble."

According to the lawsuit, some of Cassidy's expenditures on Moore are as follows:

? On March 16, 2004 Cassidy paid \$650 to Trading Places Concierge for tickets purchased on behalf of Moore.

? On December 5, 2004 Cassidy paid \$190.40 for a room for Moore at the Hiltop Inn, a hotel close to the Foxwoods Resort Casino in Ledyard, Connecticut. The same day, Cassidy paid \$ 1 80.40 for dinner at Cedars Steak House, a gourmet restaurant in the Great Cedar Hotel at the Foxwoods Resort Casino.

? On February 5, 2005 Cassidy paid \$96.83 for dinner with Moore at the Summer Shack, a seafood restaurant at the Mohegan Sun Resort and Casino in Uncasville, Connecticut.

? On March 7, 2005 Cassidy paid \$191.39 for car service for Moore.

? On April 9, 2005 Cassidy paid \$258.85 for dinner with Moore at Cedars Steak House.

? On July 28, 2005 Cassidy paid \$454.00 to John Allan's, a men's grooming club in Manhattan, which included expenses for Moore and Noah Rothblatt, a floor broker employed by Optionable.

? On October 17, 2005 Cassidy paid \$939.00 to John Allan's, which included expenses for Moore and Lee.

? Over the weekend of November 18 and 19, 2005, Cassidy paid \$1,218.46 for expenses incurred with Lee and Moore at the Borgata Spa in the Borgata Hotel Casino & Spa in Atlantic City, New Jersey.

? On April 21, 2006 Cassidy paid \$132.42 for dinner with Moore at the Summer Shack.

? On April 22, 2006 Cassidy paid \$414.40 for dinner with Moore at the Foxwoods Grand Pequot Tower, a hotel at the Foxwoods Resort Casino.

? On June 1, 2006 Cassidy arranged for transportation for Moore with Quality Executive Limousine, costing \$1,054.14.

? On August 17, 2006 Cassidy arranged for transportation for Moore with Quality Executive Limousine, costing \$412.09.

? On November 1, 2006 Cassidy paid \$374.61 in expenses incurred with Moore at the Grand Pequot Hotel and Cedars Restaurant at the Foxwoods Resort Casino.

? On March 2, 2007 Cassidy paid \$785.07 for dinner with Moore at Michael Jordan's Steakhouse in New York.

? On March 3, 2007 Cassidy paid \$524.52 for a meal with Moore at the Mohegan Sun Hotel, at the Mohegan Sun Resort and Casino.

The lawsuit can be viewed [here](#) (start on page 25 for allegations against Moore). It goes on to allege that Moore's interests overrode his loyalty to BMO, which became evident when he considered becoming a director of Optionable Inc., in at least 2001, yet never disclosed this to Bank of Montreal. It added, "Moore also sought to invest funds in one of Cassidy's businesses, yet did not disclose this to his BMO superiors either."

Concluding its allegations against Moore, the CFTC said: "By accepting 'entertainment, travel arrangements, meals, refreshments or accommodations' (unrelated to business discussions), Moore violated BMO ethical policies. Lee knew of Moore's behavior and violations and this knowledge persuaded him and encouraged him to continue his fraudulent conduct with Cassidy and Optionable Inc. By violating BMO ethical policies and by allowing the appearance, as well as engaging in, an actual, conflict of interest with Cassidy and Optionable Inc., Moore failed to implement an adequate level of supervision and failed to act in good faith as Lee's controlling person.

"By failing to require Lee to avoid activities, interests, or associations that might interfere or appear to interfere with his independent exercise of good judgment, or with the best interests of BMO, Moore allowed Lee to violate BMO ethical policies. By allowing Lee to accept 'entertainment, travel arrangements, meals, refreshments or accommodations unrelated to business discussions,' Moore allowed Lee to violate BMO ethical policies. Lee knew that Moore allowed him to violate BMO's ethical policies and this knowledge persuaded him and encouraged him to continue his fraudulent conduct with Cassidy and Optionable. By allowing Lee to violate BMO ethical policies, Moore failed to implement an adequate level of supervision and failed to act in good faith as Lee's controlling person.

"Aside from allowing or committing violations of BMO policies that were put in place to engender a culture of compliance and ethics, Moore disregarded salient facts that, if they had been investigated, could have led to the detection of Lee's fraud earlier. For example, Moore knew and encouraged Lee to trade his book while on vacation, despite BMO policies strongly recommending against such practice. Moore also knew about the disparities between Lee's valuation of his options book and the valuations resulting from multi-contributor sources.

"Despite the size of the valuation discrepancies, Moore did not question Lee about how he arrived at the implied volatility values that were inputted into the model or the reliability of the skews employed in his model. Moore also knew that during the relevant period, several OTC counter-parties disputed the value Lee attributed to their OTC transactions, which were based on Lee's options model. Moore did not question Lee about the reason why so many disputes arose and why the discrepancies were so large between him and the counter-parties. Moore did not perform any meaningful investigation into these and other matters that, had they been investigated, could have led to the detection of Lee's fraud earlier. Moore failed to implement an adequate level of supervision and failed to act in good faith as Lee's controlling person."

As previously stated, the ABR CEO settled with the CFTC for \$150,000, and was permanently banned from engaging in any conduct in violation of the Commodity Exchange Act as well as CFTC regulations concerning any commodity options transaction. Cassidy was sentenced to 30 months in prison for fraud.