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Ex-State Street Exec Can Try To Depose Clifford Chance Atty

By **Daniel Siegal**

Law360, Los Angeles (January 11, 2018, 9:51 PM EST) -- A Massachusetts federal judge on Wednesday granted a former State Street Global Markets LLC executive's motion to depose a Clifford Chance attorney in the Netherlands before his trial on securities fraud charges, agreeing with the executive that the attorney's testimony could swing his defense.

In a one-paragraph electronic docket order, U.S. District Judge Leo T. Sorokin said he was granting defendant and former State Street executive Ross McLellan's motion to take a Rule 15 deposition of Clifford Chance associate Sarah Lewis, finding "exceptional circumstances and the interests of justice" justify preserving her testimony for trial.

McLellan stands accused of plotting with another former State Street employee, Edward Pennings, to secretly charge additional transition fees on securities trades, and actively hiding those commissions from their clients and fellow bankers

In Wednesday's order, Judge Sorokin said he agreed with the reasons for compelling the deposition stated in McLellan's motion, which prosecutors did not oppose.

In that seven-page motion, filed last month, McLellan argued that Lewis, a resident of the Netherlands, is a critical witness because, in late 2010 or early 2011 as part of the English firm Herbert Smith Freehills, she was part of the team hired by the U.K. branch of State Street to review and revise its transition fee template agreement.

McLellan contends that Lewis was on an April 2011 phone call with Pennings and several other State Street executives, during which Pennings said State Street does not act as its clients' agent, and asked to "[m]ake [the] working looser [regarding] compensation."

McLellan argues that this conversation is evidence that Pennings had disclosed the commission markups to State Street's legal team, and that State Street and its legal team "are believed to have been informed of and approved of State Street's charging practices."

As she is in the Netherlands, Lewis is outside the jurisdiction and subpoena power of the district court, and has told McLellan she will not voluntarily appear at trial or for deposition. McLellan plans to compel her compliance through the Hague Convention should she not comply with Wednesday's order, according to his motion.

Judge Sorokin said the deposition shall be arranged at a mutually agreeable time that will not impact the scheduled June start of McLellan's trial, shall take place with a court reporter and a lawyer representing the government, and that Lewis may appear with her own counsel. The deposition will be limited to the purported conversations between Lewis and Pennings, according to the order.

McLellan and Pennings were **indicted in April 2016** on charges of conspiracy, securities fraud and wire fraud stemming from the government's allegations that McLellan secretly marked up transition fees for moving investments between asset managers or liquidating large portfolios.

In June 2017, a third former State Street executive was charged in the scheme: Richard

Boomgaardt, a managing director whose name had previously been redacted in the case and who allegedly reported to Pennings in the U.K. and helped stick clients with extra fees.

Pennings and Boomgaardt have both pled guilty to the scheme, leaving McLellan, a former executive vice president of State Street and president of its broker-dealer subsidiary in the U.S., the only one of the defendants to deny guilt and **head to trial**.

Lewis and attorneys for McLellan and the government did not immediately respond to requests for comment on Thursday.

The government is represented by Assistant U.S. Attorneys Stephen Frank and Aisling O'Shea.

McLellan is represented by Martin G. Weinberg of Martin G. Weinberg PC.

The case is U.S. v. McLellan et al., case number 1:16-cr-10094, in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Jon Hill and Jody Godoy. Editing by Adam LoBelia.

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