

## DOW JONES

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### **BROKER'S WORLD: Fraud Should Be Addressed In Bonus Contracts**

By Annie Gasparro

NEW YORK --Brokerage firms are likely to more carefully craft their new signing contracts because of a ruling that two former brokers can keep bonuses from Morgan Stanley despite committing criminal fraud.

Morgan Stanley (MS) let Eric Butler and Julian Tzolov go in August 2008, after they were charged with securities fraud stemming from work they did earlier at Credit Suisse Group (CS). They later were convicted on several counts, but a Financial Industry Regulatory Authority arbitration panel decided they did not have to pay back the \$4.45 million in signing bonuses each got from Morgan Stanley.

The Finra panel didn't provide a reason for its ruling, as is typical in arbitration decisions. But defense attorney Zachary Johnson of law firm Galluzzo & Johnson said the decision was based on the wording of the contract the two men signed with Morgan Stanley three years ago.

As is customary, the bonuses came in the form of loans that are gradually forgiven over a period of years and are secured by promissory notes. But terms of the brokers' employment agreements and the underlying promissory notes didn't require repayment if they were terminated without cause, according to Johnson, who was Butler's attorney in the case.

Industry attorneys say the Morgan Stanley contract may have left the definitions of "cause" too open to interpretation.

**"It seems like a loophole that many firms will want to address as a result of this ruling," said attorney Jacob Zamansky. "Brokerage firms need to specifically write in what is defined as termination with cause," he says, because arbitrators strictly interpret contracts.**

David Harmon, attorney with Norris, McLaughlin & Marcus, says there could be more to the case than is publicly available. "Typically any violations of a firm's policy, and certainly securities law violations, would

be considered 'cause' events that would trigger the right of the company to demand repayment of the note," he said.

It also could have been a timing issue. Morgan Stanley didn't wait until the brokers were convicted and pleaded guilty to fire them and go after the bonuses. The defense may have also argued that the allegations against the brokers weren't related to their jobs at Morgan Stanley, says Robert Ross, attorney with Hamburger Law Firm and MarketCounsel.

A high-profile case like this encourages brokerage firms to not only do more due diligence when hiring, but also be more specific in the promissory notes and employment agreements, perhaps to even include a clause in the contracts triggering a clawback on the forgivable loan in the case of criminal charges.

Butler was convicted last year and is appealing his five-year prison sentence. Tzolov, who pleaded guilty and testified against Butler, is awaiting sentencing.