

Mail, Wire, or Bank Fraud –

“Scheme to Defraud or to Obtain Money or Property” Defined The first element that the government must prove beyond a reasonable doubt is that (name) knowingly devised (or wilfully participated in) a scheme to defraud (the victim) of money or property (or the intangible right of honest services) by materially false or fraudulent pretenses, representations or promises. A "scheme" is merely a plan for accomplishing an object.

"Fraud" is a general term which embraces all the various means by which one person can gain an advantage over another by false representations, suppression of the truth, or deliberate disregard for the truth. Thus, a “scheme to defraud” is any plan, device, or course of action to deprive another of money or property (or the intangible right of honest services) by means of false or fraudulent pretenses, representations or promises reasonably calculated to deceive persons of average prudence. In this case, the indictment alleges that the scheme to defraud was carried out by making false (or fraudulent) statements (representations) (claims) (documents).

The representations which the government charges were made as part of the scheme to defraud are set forth in the indictment.

The government is not required to prove every misrepresentation charged in the indictment. It is sufficient if the government proves beyond a reasonable doubt that one or more of the alleged material misrepresentations were made in furtherance of the alleged scheme to defraud.

However, you cannot convict the defendant unless all of you agree as to at least one of the material misrepresentations. A statement, representation, claim or document is false if it is untrue when made and if the person making the statement, representation, claim or document or causing it to be made knew it was untrue at the time it was made. A representation or statement is fraudulent if it was falsely made with the intention to deceive.

In addition, deceitful statements of half truths or the concealment of material facts or the expression of an opinion not honestly entertained may constitute false or fraudulent statements.

The arrangement of the words, or the circumstances in which they are used may convey the false and deceptive appearance. The deception need not be premised upon spoken or written words alone. If there is deception, the manner in which it is accomplished is immaterial.

[The failure to disclose information may constitute a fraudulent representation if the defendant was under a legal, professional or contractual duty to make such a disclosure, the defendant actually knew such disclosure ought to be made, and the defendant failed to make such disclosure with the intent to defraud.]

The false or fraudulent representation (or failure to disclose) must relate to a material fact or matter. A material fact is one which would reasonably be expected to be of concern to a reasonable and prudent person in relying upon the representation or

statement in making a decision (describe relevant decision; e.g., with respect to a proposed investment).

This means that if you find that a particular statement of fact was false, you must determine whether that statement was one that a reasonable person (or investor) might have considered important in making his or her decision. The same principle applies to fraudulent half truths or omissions of material facts. In order to establish a scheme to defraud, the government must also prove that the alleged scheme contemplated depriving another of money or property (or of the intangible right of honest services).

However, the government is not required to prove that (name) (himself)(herself) originated the scheme to defraud. Furthermore, it is not necessary that the government prove that (name) actually realized any gain from the scheme or that (the)(any) intended victim actually suffered any loss. (In this case, it so happens that the government does contend that the proof establishes that persons were defrauded and that (name) profited.

Although whether or not the scheme actually succeeded is really not the question, you may consider whether it succeeded in determining whether the scheme existed.) If you find that the government has proved beyond a reasonable doubt that the (overall) scheme to defraud charged in the indictment did exist and that the defendant knowingly devised or participated in the (overall) scheme charged in the indictment, you should then consider the second element.