Real-Estate Chief Is Indicted

By Craig Karmin

A federal grand jury in Boise, Idaho, indicted the head of a private real-estate firm for financial crimes, the latest development in a long-running saga that wiped out hundreds of millions of dollars from thousands of small investors.

In the indictment filed in U.S. District Court in Idaho, the government alleged that Douglas Swenson, chief executive of **DBSI** Inc., conspired to commit securities fraud, money laundering and other charges related to a tenant-in-common company, or TIC, which pooled investor money to buy commercial real estate.

The indictment says that the Meridian, Idaho, real-estate company "essentially operated like a Ponzi scheme" and was "almost entirely dependent" on funds from new investors to pay old investors.

An attorney for Mr. Swenson, Angelo Calfo, said his client would plead not guilty. "DBSI investors were provided extensive risk disclosures expressly warning...how DBSI intended to use the money, Mr. Calfo said in an email. "There was no fraud."

The government alleges that starting in January 2007, Mr. Swenson and other employees said publicly that DBSI was a profitable company with a net worth of more than $105 million, when he knew "DBSI's real estate and non real estate business activities were universally unprofitable."

The indictment says the conspiracy continued until DBSI filed for bankruptcy protection in November 2008 after suffering losses from soured investments on more than 200 properties valued at about $2.65 billion.

The 8,500 DBSI investors in more than 30 states are expected to receive a fraction of their initial investments, according to the bankruptcy liquidation plan.

Three other DBSI employees were also charged. Gary Bringhurst, the company's former chief operating officer, pleaded guilty Monday to conspiracy to commit securities fraud.

The charges against Mr. Swenson represent another black eye for the TIC industry, which thrived during the boom years because TICs gave investors a way to shelter capital gains from real-estate deals from taxes.

Investors have put in nearly $14 billion of equity in TIC property deals since 2002, according to FactRight, a financial firm that tracks nontraded securities.

But these and similar tax-oriented real-estate partnerships have fallen out of favor in recent years, partly because investors have had fewer capital gains to shelter.

Only $278 million was invested in TICs in 2012, a fraction of the $3.7 billion invested in 2006.

DBSI was one of the largest TIC companies during the last decade's boom years.

TICs buy office buildings, strip malls and other commercial properties while a property manager overseas the buildings. These investment vehicles became a popular way for mom-and-pop investors to roll over proceeds from a recent property sale as a way of deferring capital gains tax. TICs also offered around a 6% annual return.

When the market's collapse wiped away capital gains, the tax deferment disappeared but investors still had to pay commission on brokers' fees as high as 13%.

"If you don't have tax advantages, most people aren't going to stomach the transaction fees," said Scott Smith, FactRight's chief operating officer.