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MAY 01 2012

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
 v.)
)
 DIMITRY VISHNEVETSKY)

No. **12CR0315**

Violations: Title 18, United
States Code, Sections 1341, 1343, and 1344

JUDGE CASTILLO
MAGISTRATE JUDGE VALDEZ

COUNT ONE

The SPECIAL FEBRUARY 2011-1 GRAND JURY charges:

1. At times material to this Indictment:

a. Defendant DIMITRY VISHNEVETSKY ("VISHNEVETSKY") offered and sold investments and brokerage services in the Chicago area. He was a resident of Chicago, Illinois.

b. Defendant VISHNEVETSKY offered and sold investments, including commodities and promissory notes, as well as brokerage services, primarily through Oxford Capital, L.L.C. ("Oxford Capital"), and Hodges Trading, L.L.C. ("Hodges Trading"). Those entities used addresses located in Chicago.

c. Oxford Capital, L.L.C., which the defendant incorporated in the State of Wisconsin, purported to be in the business of providing brokerage/management services to investors and of managing commodities funds, including the Oxford Global Macro Fund, L.P. ("Macro Fund"), the Oxford Global Arbitrage Fund, L.P. ("Arbitrage Fund") and the Quantum Global Fund, L.P. ("Quantum Fund")(collectively "the Commodities Funds"). The Commodities Funds existed in name only and were not incorporated. The defendant

represented that he would conduct commodities transactions on behalf of investors through the Commodities Funds. He also offered to provide brokerage and management services through Oxford Capital.

d. The defendant offered and sold promissory notes - which he described as London Interbank Offered Rate ("LIBOR") adjusted notes - through Hodges Trading, which belonged to the defendant. Hodges Trading existed in name only and was not incorporated. According to a private placement memorandum ("PPM"), investors could purchase LIBOR notes through Hodges Trading, by subscribing for limited partnership interests in Hodges Trading. According to the PPM, Hodges Trading was engaged in buying and selling assets, including equities, bonds, currencies, commodities, and derivatives.

e. The defendant raised approximately \$1,700,000 from investors through the offer and sale of investments and brokerage services.

f. The defendant maintained bank accounts, in his own name, and the name of Oxford Capital and other entities, at LaSalle Bank, N.A. in Chicago, Illinois, which was subsequently acquired by Bank of America, N.A.

2. Beginning in or about September 2006, and continuing until in or about at least March 2012, in the Northern District of Illinois, Eastern Division, and elsewhere,

DIMITRY VISHNEVETSKY

defendant herein, devised and intended to devise, and participated in, a scheme to defraud investors and potential investors, and to obtain money and property by means of materially

false and fraudulent pretenses, representations, and promises, and by material omissions which scheme is further described below.

3. It was part of the defendant's fraudulent financing scheme that, in order to obtain and retain funds for his own benefit and to keep the scheme in operation, the defendant fraudulently offered and sold investments and brokerage/management services by making false representations about the profitability of his prior and current trading, the use of invested funds, the risks involved, the expected and actual returns on investments and trading, and false representations concerning Oxford, Hodges Trading, and the Commodities Funds. In order to conceal and further the scheme, the defendant created and distributed phony account statements and made Ponzi-type payments to investors. The defendant caused a loss to investors of at least approximately \$1,500,000.

4. It was further part of the scheme that defendant VISHNEVETSKY falsely represented to investors and potential investors ("investors") that his trading - including trading done through Oxford Capital and the Commodities Funds - was highly profitable. VISHNEVETSKY provided information and documents to investors, which falsely reported profitable trades purportedly made by the defendant over a period of years. The defendant created and provided to certain investors a fraudulent "Performance Overview" for the Macro Fund, which falsely showed profits as high as 36% per year. In fact, to the extent that VISHNEVETSKY engaged in trading, the trading consistently resulted in net losses, not profits.

5. It was further part of the scheme that defendant VISHNEVETSKY falsely represented to certain investors that their money would be traded through the Commodities Funds. In fact, the defendant never established trading accounts, or bank accounts, in the names of the purported Commodities Funds, and he did not make any trades in the names of those Funds.

6. It was further part of the scheme that defendant VISHNEVETSKY falsely represented to two investors seeking brokerage and management services, that their invested funds would be, and were, maintained and traded through accounts specifically set up for each of them, and that each investor would be able to select or approve the trades for his account. In fact, the defendant did not set up accounts for those investors, did not maintain their funds in separate accounts, and did not execute trades as directed by those investors.

7. It was further part of the scheme that defendant VISHNEVETSKY fraudulently obtained funds from two investors to be invested with Hodges Trading. VISHNEVETSKY falsely represented to those investors that Hodges Trading was offering LIBOR adjusted notes - promissory notes - with an annual return of at least 9.5% and that the lead underwriter was a well-known major financial institution, which guaranteed the return of the full amount of the invested principal. In fact, VISHNEVETSKY knew that Hodges Trading which was his own company, had no way to pay a 9.5% return, and that Hodges Trading did not have a well-known financial institution underwriting the investment or guaranteeing the return of principal.

8. It was further part of the scheme that defendant VISHNEVETSKY created and distributed false and fictitious account statements, and other financial information, to investors, which made it falsely appear that investors had earned substantial returns on their investments. In fact, either the defendant had lost money for those investors or had not traded at all for their benefit.

9. It was further part of the scheme that defendant VISHNEVETSKY intended to and did misappropriate investors' funds for his own purposes, including to pay business expenses and personal expenses, such as mortgage payments, car payments, travel and vacation expenses, restaurant bills, athletic club dues, and other living expenses, and to make trades for his own benefit. VISHNEVETSKY needed to continually raise additional funds from investors to make payments of promised returns to investors and to support himself.

10. It was further part of the scheme that defendant VISHNEVETSKY intentionally concealed and failed to disclose to investors that there were insufficient funds to pay any profits or dividends to investors or to re-pay the investors' principal because of the defendant's misappropriations.

11. It was further part of the scheme that in or about December 2011, defendant VISHNEVETSKY falsely represented to the Hodges Trading investors that their funds were not available for repayment because the funds had been placed with a company which had recently gone bankrupt. In fact, VISHNEVETSKY knew that none of those funds had been placed with the bankrupt company.

12. It was further part of the scheme that, at times, defendant VISHNEVETSKY misappropriated investors' funds to make Ponzi-type payments of returns to investors. That is, when the defendant made payments to investors, he did so using funds that he had obtained from investors, without disclosing the nature of those payments to investors. As a result of this scheme, defendant VISHNEVETSKY fraudulently obtained at least approximately \$1,700,000 and, after making Ponzi-type payments to some investors, caused a loss to investors of at least approximately \$1,500,000.

13. It was further part of the scheme that the defendant misrepresented, concealed, and hid, and caused to be misrepresented, concealed, and hidden, the existence of the scheme, the purposes of the scheme, and acts done in furtherance of the scheme.

14. On or about March 11, 2008, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

DIMITRY VISHNEVETSKY,

defendant herein, for the purpose of executing the above-described scheme, did knowingly cause to be transmitted in interstate commerce, through the Fedwire system, from Mellon Bank, in Pittsburgh, Pennsylvania, to LaSalle Bank, in Chicago, Illinois, by means of wire communications, certain signs, and signals, namely: a wire transfer of approximately \$25,000 sent to the defendant by investor J.Ro., with transaction number 16250;

In violation of Title 18, United States Code, Section 1343.

COUNT TWO

The SPECIAL FEBRUARY 2011-1 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One are realleged and incorporated by reference as if fully restated herein.
2. On or about March 18, 2008, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

DIMITRY VISHNEVETSKY,

defendant herein, for the purpose of executing the above-described scheme, did knowingly cause to be transmitted in interstate commerce, through the Fedwire system, from Citibank, in New York, New York, to LaSalle Bank, in Chicago, Illinois, by means of wire communications, certain signs, and signals, namely: a wire transfer of approximately \$50,000 sent to the defendant by investor J.D.;

In violation of Title 18, United States Code, Section 1343.

COUNT THREE

The SPECIAL FEBRUARY 2011-1 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One are realleged and incorporated by reference as if fully restated herein.

2. On or about April 16, 2008, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

DIMITRY VISHNEVETSKY,

defendant herein, for the purpose of executing the above-described scheme, did knowingly cause to be transmitted in interstate commerce, through the Fedwire system, from LaSalle Bank, in Chicago, Illinois, to Fifth Third Bank, by means of wire communications, certain signs, and signals, namely: a wire transfer of approximately \$25,000 sent by the defendant to investor C.Ca.;

In violation of Title 18, United States Code, Section 1343.

COUNT FOUR

The SPECIAL FEBRUARY 2011-1 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One are realleged and incorporated by reference as if fully restated herein.
2. On or about June 11, 2008, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

DIMITRY VISHNEVETSKY,

defendant herein, for the purpose of executing the above-described scheme, did knowingly cause to be transmitted in interstate commerce, through the Fedwire system, from Mellon Bank, in Pittsburgh, Pennsylvania, to LaSalle Bank, in Chicago, Illinois, by means of wire communications, certain signs, and signals, namely: a wire transfer of approximately \$25,000 sent to the defendant by investor J.Ro., with transaction number 8560;

In violation of Title 18, United States Code, Section 1343.

COUNT FIVE

The SPECIAL FEBRUARY 2011-1 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One are realleged and incorporated by reference as if fully restated herein.
2. On or about April 30, 2009, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

DIMITRY VISHNEVETSKY,

defendant herein, for the purpose of executing the above-described scheme, did knowingly cause to be transmitted in interstate commerce, through the Clearing House Interbank Payments System (“CHIPS”), from JP Morgan Chase Bank, in New York, New York, to Bank of America, by means of wire communications, certain signs, and signals, namely: a wire transfer of approximately \$100,000 sent to the defendant by investor J.Ru.;

In violation of Title 18, United States Code, Section 1343.

COUNT SIX

The SPECIAL FEBRUARY 2011-1 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One are realleged and incorporated by reference as if fully restated herein.

2. On or about November 9, 2009, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

DIMITRY VISHNEVETSKY,

defendant herein, for the purpose of executing the above-described scheme, did knowingly cause to be transmitted in interstate commerce, through the Fedwire system, from JP Morgan Chase Bank, to Bank of America, by means of wire communications, certain signs, and signals, namely: a wire transfer of approximately \$25,000 sent to the defendant by investor E.L.;

In violation of Title 18, United States Code, Section 1343.

COUNT SEVEN

The SPECIAL FEBRUARY 2011-1 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One are realleged and incorporated by reference as if fully restated herein.
2. On or about October 7, 2010, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

DIMITRY VISHNEVETSKY,

defendant herein, for the purpose of executing the above-described scheme, did knowingly cause an envelope to be delivered through the U.S. mail to investor D.H., in Chicago, Illinois, according to the directions thereon, which envelope contained a letter concerning the Hodges Trading investment, acknowledging the receipt of \$500,000 from the investor, and providing information about the Hodges Trading investment;

In violation of Title 18, United States Code, Section 1341.

COUNT EIGHT

The SPECIAL FEBRUARY 2011-1 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One are realleged and incorporated by reference as if fully restated herein.
2. On or about January 4, 2012, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

DIMITRY VISHNEVETSKY,

defendant herein, for the purpose of executing the above-described scheme, did knowingly cause an envelope to be delivered through the U.S. mail to investor D.H., in Chicago, Illinois, according to the directions thereon, which envelope contained a letter concerning the Hodges Trading investment, discussing the potential recovery of the investor's principal;

In violation of Title 18, United States Code, Section 1341.

COUNT NINE

The SPECIAL FEBRUARY 2011-1 GRAND JURY further charges:

1. Paragraph 1 of Count One is realleged and incorporated by reference as if fully restated herein.

2. At times material:

a. NationPoint, located in California, was a division of First Franklin Financial Corporation, an operating subsidiary of Merrill Lynch Bank & Trust, FSB, a Federal Savings Bank ("Merrill Lynch" or "the bank"). Merrill Lynch was a financial institution whose deposits were insured by the Federal Deposit Insurance Corporation.

b. On or about March 28, 2007, Premier Title Company, an agent for Chicago Title Insurance Company, conducted a real estate closing in Chicago, Illinois, in which defendant VISHNEVETSKY purchased a condominium located in Chicago.

3. Beginning in or early March 2007, and continuing through at least in or about April 2010, at Chicago, in the Northern District of Illinois, Eastern District, and elsewhere,

DIMITRY VISHNEVETSKY,

defendant herein, knowingly devised, intended to devise, and participated in a scheme to defraud, and to obtain money, funds, assets, and other property owned by and under the custody and control of Merrill Lynch, a financial institution, by means of materially false and fraudulent pretenses, representations, and promises, and material omissions as further described below.

4. It was part of the scheme that defendant VISHNEVETSKY intentionally made

material false representations to Merrill Lynch concerning his income and assets in order to cause Merrill Lynch to issue two loans, totaling approximately \$519,500 to the defendant, for the purchase of a condominium located in Chicago. VISHNEVETSKY subsequently made additional material false representations to the bank concerning his income in order to cause the bank to favorably modify the terms of the loans and change his monthly payments.

5. It was further part of the scheme that in or about March 2007, defendant VISHNEVETSKY submitted two Loan Applications to Merrill Lynch, which contained false information in order to obtain a first mortgage of \$415,900 and second mortgage of \$104,000, for the purchase of a condominium. In each of those Loan Applications, VISHNEVETSKY represented that he was self employed at Oxford Capital, and falsely represented that his base employment income was \$15,000 a month (\$180,000 a year), and that he had \$127,000 in a specific bank account. In fact, VISHNEVETSKY knew that the identified bank account did not exist, he had little or no legitimate income from Oxford Capital, and that he was misappropriating investors' funds to support himself. The defendant failed to disclose to the bank that his income was based on misappropriated funds.

6. It was further part of the scheme that defendant VISHNEVETSKY fraudulently submitted phony bank statements to Merrill Lynch for a twelve month period (February 2006 through March 2007). The defendant submitted those phony bank statements to support his false statement on each loan application concerning his base employment income. The phony bank statements falsely showed that Oxford Capital made monthly payments of

\$15,000 to the defendant, when, in fact, no such payments were made.

7. It was further part of the scheme that in or about September 2009, defendant VISHNEVETSKY requested that the bank modify the terms of his loan and change his monthly payments, and the defendant subsequently submitted to Merrill Lynch phony bank statements for a six month period (October 2009 through March 2010) as proof of his purported income. The defendant subsequently stopped making payments on the loan.

8. It was further part of the scheme that defendant VISHNEVETSKY misrepresented, concealed, and hid, and caused to be misrepresented, concealed and hidden, the nature and purposes of the acts done in furtherance of the scheme.

9. On or about March 28, 2007, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

DIMITRY VISHNEVETSKY,

defendant herein, knowingly executed and attempted to execute the above-described scheme to defraud Merrill Lynch by fraudulently causing Merrill Lynch to fund two loans, totaling approximately \$519,500, which funds were disbursed during and in connection with the real estate closing which took place on that date, in which the defendant purchased a condominium;

In violation of Title 18, United States Code, Section 1344.

A TRUE BILL:

FOREPERSON

UNITED STATES ATTORNEY