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John Joseph Plunkett

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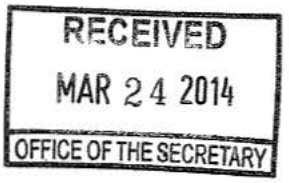

The Office of the Secretary

United States Securities and Exchange Commission

100 F Street, N.E.

Mail Stop 1090 – Room 10915

Washington, DC 20549 Filed via Overnight Mail

March 20, 2014

Brief filed as ordered by the Securities and Exchange Commission on February 21, 2014

Release # 71600/February 21, 2014

Administrative Proceeding

File No. 3-14810r

Pursuant to Rule 450(a) of the Rules of Practice

In the matter of Administrative Proceeding File No. 3-14810

Opinion of the Commission regarding

Conduct Inconsistent with Joint and Equitable Principles of Trade

Failure to Provide Required Information

Remand to the NAC and their decision on 12.17.2013

Re: Complaint No. 20060052598-01

It is noted that I am not able to afford counsel fees, and therefore I am responding directly without counsel.

This brief is in response to the Opinion of the Commission and the Remand to the National Adjudicatory Council (NAC), and the NAC decision and response to the Commission dated 12.17.2013.

Opening Statement

The new information contained in the NAC decision received from FINRA, and the arrests, indictments, guilty pleas, and sentencing to jail time of George Milter, the nephew of Roman and Eduard Orlov, the foreign owners of Lempert Brothers International USA, Inc. (the US Broker Dealer) and Cliffe Bodden, the U.S. individuals who conspired with Eduard and Roman Orlov, to continue their European Ponzi Scheme in the United States directly against U.S. citizens is the basis of my appeal.

My Statements Regarding:

First Cause of Action

Conduct Inconsistent with Just and Equitable Principles of Trade

Second Cause of Action

Not Responding to an 8210 Request

A. I hereby agree with the Opinion of the Commission, and the Remand to the National Adjudicary Council (NAC), regarding a review of the "Second Cause of Action" based upon the totality of the circumstances. However I disagree with the NAC decision, and I believe the NAC should have eliminated all penalties based upon the information received from FINRA.
B. I further submit that a review of the "First Cause of Action" is also warranted based upon the same consideration; that being the totality of circumstances and the new developments regarding the guilt of the owners, and guilty plea of their nephew, George Milter. The Chairman of the Arbitration Panel (DOE vs. John Joseph Plunkett) had stated that this was indeed a unique case and that no others like it existed without any previous cases to compare it to. It is my assertion that extracting bits and pieces of previous cases which did not compare to the totality of the

circumstances in my case, is unfair and unjust because there have been no previous cases like this.

My Position on The Second Cause of Action

Regarding the Second Cause of Action, Not Responding to an 8210 Request:

I am stating as I did to the Panel at the Arbitration Hearing that I had always responded to 8210 requests from Staff. In fact at the hearing I asked William Kennedy, FINRA Staff, if that was true and he responded that it was indeed so, which the Commission states as well. I also asked if there had been many 8210 requests and responses and again he stated yes. The response in question was unable to be responded to due to the fact that the firm had been locked out of the office by the landlord and the records needed to review could not be accessed. This was stated to Pat MacGeorge, FINRA Staff, and William Kennedy, FINRA Staff, was also aware of this. When the landlord eventually allowed us to access the office to remove personal belongings we discovered that the files had been destroyed and thrashed by the demolition team tearing apart the office. This fact was also conveyed to these individuals.

The broker dealer was unable to operate due to a net capital deficiency. While I was attempting to raise additional capital from friends and family, and the registered representatives were going to other firms and clients were following them via Automated Customer Account Transfers (ACATS), the landlord had locked us out of the office via a marshal, and my lifetime dream was evaporating.

In the FINRA response to the NAC due to the remand FINRA stated that indeed they had issued overlapping 8210 requests. While it was not realized at the time it did contribute to this cause of action.

The lack of a response was not an act of ignoring the request but was due to the above described circumstances and I believe that consideration should be given to me based upon my record of previous compliance with requests which the Commission pointed out to the NAC in the Remand, and the totality of the circumstances surrounding this particular request.

I hereby request that the Commission eliminate all penalties due to this Second Cause of Action.

Regarding the First Cause of Action, Conduct Inconsistent with Just and Equitable Principles of Trade:

I assert that the Arbitration Panel supported the assertions of FINRA which presented an argument based upon segments of previous cases and ignored the totality of the circumstances in my case. I believe that this process was not fair and equitable since each case sited had numerous differences from my case with these differences outweighing the similarities. The Arbitration Panel, the NAC, and the Commission all referred to and relied upon parts of other cases, which I contend omitted the complexities of my case, causing me harm by not viewing the totality of the circumstances of my case.

In this cause of action there are two overriding themes which keep being referred to. One is the loyalty due to the firm and the industry, and the other is the safety and protection of client information. Both will be addressed below. However I believe that for informational flow purposes the next section follows first, and I will address these themes returning to the First Cause of Action after this next section.

Footnote Misstatements and Clarifications

Additionally in the SEC review there are several inconsistencies or misstatements in footnotes which were made. This could be due to the number of litigations and ensuing opaqueness of where information is. There was the arbitration between Emerald Investments and Lempert, then the arbitration between FINRA DOE and me, then the NAC review, then the appeal, then the Remand to the NAC, the ensuing briefs from FINRA and me to the NAC, and then the NAC decision. I will address these here in order to provide a more concise and accurate statement of the facts in my case.

First - Issue of no proof of allegations – The forged documents were presented at the arbitration between Emerald and Lempert and entered into the record. These documents clearly demonstrated the forgeries, and the intent to transfer all of the overseas accounts with their massive losses onto the books of the US broker dealer. Some of these documents were obtained from law firms in Latvia and Ukraine which had been given them by their clients which had fallen prey to the Orlov Ponzi Scheme in Europe. Al Greco, Esq., and I had obtained them from the law firms.

Second - Statement that the Lempert attorney convinced the Law Firm in Latvia that Lempert USA was not involved in the European losses is incorrect – I personally engaged Alfred V. Greco, Esq., a former SEC attorney, to intercede on my behalf since the Orlovs were saying it was just a misunderstanding and brushing it aside. The "Lempert Attorney", was working with the Orlovs to defraud the SEC. The Latvian Law Firm was accusing me of being involved in the theft of their clients' money. Together, Mr. Greco and I were able to convince the attorneys at

the Latvian Law Firm of my non- involvement and innocence during numerous phone calls and letters. Eventually the Latvian Law Firm actually provided us some of the forged documents which they had obtained from their clients via Lempert Europe which we submitted at the same Emerald vs Lempert arbitration, at which time these were entered into the official record.

Third - Statement that the record is vague regarding the SEC conducting an audit at Lempert at the time we left is inconsistent – The SEC was on the premises of Lempert conducting what was explained to me as a routine review of a just completed FINRA review of the firm. SEC Staff on site was Albert Poon. In fact his review of the files showed that the financial statement of the parent holding company was stale and we needed an updated certified financial statement. In routine review of the firm e-mails I discovered the e-mail from the Orlovs to George Milter telling him to simply change some numbers on the stale financial statement, date it as current and submit it to me as genuine, in order for me to present it to Mr. Poon as the parent current certified financial statement. This is a key fact which caused me to confront the Orlovs, who would not respond to me, by phone, fax, or e-mail. When I confronted Milter, he ignored me and did not come back to the office. Then Marlin Kruskov, the Lempert attorney sent an e-mail to Milter stating that Milter should not worry about me; that I would be dismissed and the forged financial statement then presented to Albert Poon, SEC staff, as authentic. All of this was stated at the Emerald vs Lempert arbitration, and is therefore in the record. The same material was addressed by the Panel at the FINRA DOE vs John Joseph Plunkett arbitration and should also be part of that record.

Additionally the day that we left Lempert, at nine o'clock a.m., I personally called John Hickey, FINRA staff, Albert Poon, SEC Staff, and the clearing firm, Penson Financial, to inform them of our actions and the reasons why we left. Mr. Poon went to the Lempert office and gathered his files from there, and that same afternoon he and his supervisor met with me and Alfred V. Greco, Esq. at Mr. Greco's office on Fifth Avenue in Manhattan. The meeting lasted about an hour and Mr. Poon's supervisor stated that he was in agreement and that we did the correct thing. Mr. Greco took notes at this meeting and they are in his files. All of this was stated at both of the arbitrations and should be part of the record. This is a critical part of the record and a vital part of the totality of the circumstances in my case.

Fourth - Another very important piece of information which is omitted is that when FINRA agreed to meet with me and Alfred V. Greco, Esq., John Hickey, FINRA Staff, told the two of us that my fears, which I had conveyed to him on the phone, of Lempert changing the records in order to incriminate me and anyone else who did not go along with their criminal pursuit were indeed correct. Lempert personnel had informed him that I was not the President for the past two years. Hickey said that he told Lempert that the CRD indicated differently even though Lempert said that they had the documents showing that they were correct. As I stated

above there were other forged documents presented at the two arbitrations. This is a critical issue showing the Orlovs and George Milter's propensity to forge documents and records to foster their interests.

Fifth - The fact that after the arbitration Emerald vs Lempert, the attorney that represented Lempert at the arbitration, Alan Brodherson, told me and Corey Kupfer, Esq. on a joint conference call that Dan Druz who represented Emerald at that arbitration should be disbarred for the incompetent way he handled our case and he offered to testify against Druz. Although happy that he won he stated it was his duty to inform us of that. We later discovered that Druz was representing himself, during the same period as our arbitration, in his arbitration with Morgan Stanley. He won that one and received $750,000 in damages.

Sixth - I believe that the following which occurred near the end of the arbitration between Emerald and Lempert was extremely detrimental to Emerald and to me personally. Lempert had filed a Broker Dealer Withdrawal during the arbitration proceeding. FINRA held it up and did not process it in a timely manner. My investigation indicated that a BDW is processed within the day or the next at most. When we inquired why it was not processed Pat MacGeorge, FINRA Staff, stated that FINRA had indeed received the BDW, but she could not answer why it was not being processed. It should have been processed and therefore the arbitration dismissed. The BDW was signed, dated, and submitted to FINRA which did not process it. Approximately 7 to 10 days later the panel rendered the decision against Emerald. It never should have occurred since Lempert had withdrawn its membership!

Seventh - The assertion that the move out of Lempert was to foster my own personal gain is without merit and has no basis in fact. If we were not facing a criminal enterprise that made threats to physically harm us, as well as destroy our careers, and that attempted on several occasions to illegally have the registered representatives give the names and numbers of their clients to the Orlovs to contact for phony deals, or to have the registered representatives sell such deals to their clients, we would have resigned in a normal orderly fashion. No one including me, Raymond Thomas, or the registered representatives had signed or verbally agreed to any contract or covenant not to compete. As such we were all free to resign when we so desired.

If leaving a firm that owed us salary for over one year to launch a new business with no guarantee of having any of the registered representatives join us, nor any guarantee of any clients signing ACATS to transfer their accounts to the new firm, nor any guarantee of doing any business at all is considered "to foster my own gain" so be it.

Raymond Thomas, S-24, and I had worked together for a number of years. He joined Lempert at my suggestion. He in turn recruited all of the registered representatives through contacts and

friendships he had developed in the business. Virtually 100% of the clients at Lempert transferred into Lempert because of Raymond and the registered representatives he brought onboard. Lempert did not pay one cent for any advance or sign on bonus to Raymond or any of the registered representatives. Of course we were hopeful that the registered representatives would want to join us and hopefully their clients as well, but this was not guaranteed. In fact a transfer made the registered representatives extremely nervous. I could have left, and a couple of weeks later Raymond would have left. Then these representatives would have had to decide to follow Raymond later or not, and then transferred any of their clients, who indicated that they wanted to transfer their accounts, via ACATS over time which is the accepted procedure in the brokerage business.

An orderly transition was not possible since the clients would have been decimated by the criminals, the registered representatives hit with many lawsuits, and all of their licenses ruined. Think about this...Why for God's sake would we all get up and leave Lempert without having a place to go?! My personal gain! It was just the opposite. I was risking everything to protect the clients and the representatives, while turning in the criminals to the regulators to thwart their Ponzi Scheme in Europe and preventing the U.S. clients from being included in it, which was being put into action via George Milter at the time.

Return to the First Cause of Action

<u>TheTwo Central Themes Of:</u>

1. loyalty to the firm and Just & Equitable Principles of Fair Trade
2. customers at risk and protection of the clients information

Number One –

a. Brian, Mitch, and I were not paid for one year, but promises that it would be made up to us were made by the Orlovs. Of course as the amount owed grew it became more difficult to leave.
b. The three of us stated to the Orlovs and George Milter that the three of us, me, Brian Coventry, and Mitch Borcherding were preparing to leave the firm. This was re-stated several times.
c. The Orlovs and Georg Milter solicited the registered reps to contact their clients to invest in a deal with a commission payout of twenty five percent, while I was out of the office! This was confirmed to me by Raymond Thomas, S-24 principal.

d. The Orlovs and Milter lied to the SEC and attempted to perpetrate a fraud on the SEC with phony financial statements.
e. The Orlovs continuously had Milter in my face confronting me on everything I said.
f. The Orlovs and George Milter threatened me to just remain silent or things may happen to my family. They stated that they knew where my children went to school.
g. The Orlovs prepared to dismiss me (due to SEC financial statement issue amongst others)

.....AND I AM SUPPOSED TO HAVE A LOYALTY OBLIGATION TO THEM?

I contend that they broke the "contract" between the firm and me by engaging in the criminal activities that had been uncovered, we had not been paid for our services, and we informed them we were leaving. I contend that any and all Just and Equitable Principles of Fair Trade were honored by us by remaining there and informing them of our intention to leave. I further contend that they totally thrashed all of the Just and Equitable Principles of Fair Trade making a mockery of the concept.

Number Two –

a. I agree with the Commission that the customers were at risk, **the difference being that they were at risk remaining at Lempert**. The Orlovs and Milter had also approached the registered representatives to sell unlicensed and unregistered private placements overseas to the registered representatives largest clients. Of course when the reps informed me of this I prohibited it and had very nasty arguments with Milter about it. I believed we would come to blows in the office on numerous occasions.
b. When we left all of the documents and records were placed in the law offices of a major law firm several floors above ours. Brian Coventry knew one of the Senior Partners who authorized this. All of the customer information remained in this secure location under lock and key.
c. When we left each registered representative called each of his clients and explained why they had left Lempert. They gave each client the phone number to the Penson (our clearing firm) trading desk and the names of two individuals that would execute any trades that the clients wished to make. Ray Thomas, S-24, had arranged this for the clients at Penson.
d. Each registered representative gave their clients the option to transfer with him to the new firm or remain at Lempert. Each registered representative stated that if the client wanted to transfer, each client needed to submit an ACAT form directly to me or Ray Thomas or to Penson. All ACATS were received and reviewed by either myself or Ray Thomas.
e. So the clients were protected via our actions:

i. Their funds were at Penson, and the criminal Orlovs and Milter could not access them.
ii. Their personal information including social security numbers etc. was safe and secure at all times.
iii. Their ability to access their accounts was provided for.
iv. Their choice of remaining with Lempert or transferring to us was provided.
v. Their ACAT forms were reviewed and re-reviewed for compliance purposes.

Not one penny was lost by any client

Not one bit of private client information was ever unsecure

Not one client was ever exposed to risk of any sort due to our actions

Disciplinary History

I must comment on the Discipline History that FINRA, NAC, and the SEC refer to being so detrimental in my case. They cite two instances, which are the only two. I have never had a customer complaint.

The two week suspension in any supervisory capacity and $7,500 fine was told to me by the Seaboard Compliance officer that if I did not accept I needed to fight it alone which I could not. I was also told that if I left they would mark my license derogatorily and I would not be able to work anywhere else. The facts here are overlooked by all. I was informed by Compliance that David Goldblatt, S-24, in an office a couple of blocks away had been designated the Supervising 24 for our office as well. Either they lied to me or did not process the designation; but I had no reason to not believe them. There was no access to CRD back then only at the main office Compliance in New Jersey for me to check on it. If you check my U-4 you will see that it is noted that there were no issues at the office other than this. I later discovered that the other Seaboard offices had major issues. It was my contention that the person who should have processed the Dave Goldblatt designation failed to do so.

The suspension for not paying the arbitration award again does not look at the whole picture. The award was issued and we made arrangements to pay it (even though we believed it was unjust). We raised capital and paid off a chunk of it. The Lempert attorney then released Emerald, holding the remaining four of us to pay it. Coventry, Ince, and Rivard (the other three that were obligated to pay) never paid a penny. I was the only one who paid any money, essentially taking everything I earned and paying it to Alan Brodherson, the attorney for Lempert, each month.

When the firm became out of capital compliance due to the inability to conduct much income producing business because of the overall market conditions, and virtually no income for the firm, I was preparing to move to much smaller space that the landlord had offered us. Additional capital to get the firm into capital compliance did not materialize, we could not open to do business, the landlord cancelled the deal on smaller space, and the firm remained shut down. With no income I could not pay monthly installments to the Lempert attorney. I did not walk away from the obligation but I did everything I could to honor it.

In light of the above informational facts I believe that using the issue of disciplinary issues is not appropriate in my case.

The Wells Notice

I had engaged David Gehn, Esq. of Gusrae, Kaplan Law Firm, when I received the Wells Notice not knowing how to handle it myself. David specialized in regulatory cases for over ten years and was highly recommended. He spoke with and had reached a preliminary agreement with FINRA that by signing a statement of neither admitting nor denying guilt and paying a fine of between twenty five and fifty thousand dollars FINRA would settle. Of course not having the money, I could not comply with the offer which I had told David Gehn that I agreed with him and wanted to accept.

Orlov Brothers Branded as Criminals

At some point after that an attorney from a foreign law firm scheduled an appointment with Mr. Gehn and me at Mr. Gehn's office. This meeting lasted for about one and a half hours. He was from another European law firm, different from the foreign law firm that Alfred Greco and I had dealt with in Latvia. He was there to verify my not having any involvement with the criminal Orlovs. That was the term he used, and I have used throughout this brief. He went on to inform us that Roman Orlov was arrested and was in jail in Vienna. He also told us that Interpol had an international arrest warrant outstanding for Eduard Orlov, who was believed to be hiding in the Russian neighborhood of Brighton Beach, Brooklyn NY. David Gehn took notes during the meeting and they are in his file.

George Milter

The third element of the criminal operation that I have been referring to, George Milter, was arrested in Florida by the Federal Bureau of Investigation for financial fraud. This is a matter of record which I accessed online. The FBI had been investigating him for several years going back to 2005 covering the time I have described above, while he was at Lempert. Arrested with him was Cliff Boden, a very close friend of Mitch Borcherding, who was working on the Lempert fund that Mitch would not abandon and leave with us, which is why Mitch stayed at Lempert.

Attached are copies of his arrest and charges, his indictment, his pleading guilty in order to not face the possibility of a 20 year prison term, and his sentencing which recently occurred on March 14, 2014 in Manhattan.

The US attorney in conjunction with the FBI stated among other things:

1. Milter and Boden stole nearly one million dollars from foreign investors.
2. They did not invest it, but used it for their own gain and provided it to other family members
3. They were in the process of moving foreign investors to the US Broker Dealer, Lempert Brothers International USA, Inc. with guarantees of limited losses.
4. They had prepared forged account statements which they sent to foreign clients.
5. They had told clients that their money could not be taken out of the investments since it was invested in private companies that were waiting to go public.

Cliff Boden was sentenced in New York to 74 months in prison

George Milter was sentenced in New York to 61 months in prison

Both are to make restitution of the nearly one million dollars and have three years of supervised release after serving their prison sentences.

Conclusion

As I have alleged all along and have been proven by the incarcerations of the Orlovs and Milter they were running a criminal enterprise throughout the Ukraine, Latvia, and Europe.

They were very smart, cunning, and very convincing. FINRA had approved them and we were all duped while they stole tens if not hundreds of millions of dollars from overseas investors which amounts were told to me and David Gehn in the meeting described above. When they could no longer get more new investors to provide them with fresh money to keep feeding their criminal enterprise, they decided to transfer all of the client accounts with millions of dollars in losses to Lempert Brothers International USA, Inc., the US Broker Dealer, which they stated to their clients would make up for the losses and make them whole. As previously stated documents were obtained and submitted at the Emerald vs Lempert arbitration hearing attesting to this.

As I discovered more and more about their Ponzi Scheme, (which happened very quickly), they needed me out of the way in order to proceed.

Then they would forge additional documents, change e-mails to cover themselves, implicate me and mark my license with lies, have Mitch accept all of the foreign account transfers, and then have all of the clients institute law suits against the US Broker Dealer. They then intended to

wash their hands of everything and walk away. Thankfully as a result of our actions none of this happened.

I sincerely hope that the Commission will review everything I have stated above and due to the Remand on the Second Issue, and the ensuing FINRA response and NAC agreement, also review the First Issue with the same concern along with the clarification I have tried to bring to light as well as the new information concerning the arrest and incarceration of Roman Orlov, the Interpol arrest warrant for Eduard Orlov, the FBI arrest, guilty plea, and sentencing of George Milter, and FINRA admitting that they indeed had overlapping requests.

Remedies

I seek the following remedies from the Commission:

1. Elimination of all bars, suspensions, and monetary fines against me.
2. Overturn the arbitration verdict against me.
3. Overturn the arbitration verdict against Emerald Investments Inc.
4. Cancel any and all awards to be paid by me.
5. Clear all my records as well those of Emerald.
6. Return to me all money paid by me under the arbitration rulings either to Lempert or Alan Brodherson (their attorney), which continued well after Lempert did not exist any longer.
7. Activate all of my licenses with all references to these matters expunged.
8. Institute a monetary payment to me from FINRA of $10,000,000.(ten million US Dollars) due to their actions against me which consumed all of my time not allowing me to conduct a profit making business of the broker dealer contributing to its demise. FINRA pursued litigations against me and ignored all of the information and proof presented to them about the Orlov Ponzi scheme and other criminal activities. The compensation is for my pain and suffering continuing over several years to me and my family; my reputation and good name which was tarnished; my time, effort, and personal funds being spent in this effort; my lost income to date, and the impact on my future earnings.

Thank you for your time, effort, and consideration in this matter.

John Joseph Plunkett

Attachments:

1. NAC Decision of 12.17.13
2. Feds Nab Florida Pair in Alleged Investment Fraud on Foreign Investors, April 19, 2012
3. The United States Attorneys Office
   Southern District of New York
   Manhattan U.S. Attorney and FBI Assistant Director-In-Charge Announce Indictment Of Two Men Who Orchestrated Fraudulent Investment Scheme, April 19, 2012
4. United States District Court
   Southern District of New York
   Sealed Indictment
   United States of America v. S. George Milter and Cliffe R. Bodden
5. Florida Man Sentenced in Manhattan Federal Court to 74 Months In Prison For Engaging In A Fraudulent Investment Scheme, February 22, 2013
6. Manhattan Man Pleads Guilty in Manhattan Federal Court to Engaging in a Fraudulent Investment Scheme, November 01, 2013
7. New York Man Sentenced In Manhattan Federal Court to 61 Months In Prison For Fraudulent Investment Scheme. March 14,2014

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. John Joseph Plunkett Brooklyn, NY, Respondent.	DECISION Complaint No. 2006005259801 Dated: December 17, 2013

On remand from the Securities and Exchange Commission for reconsideration of sanctions. Held, sanctions modified.

Appearances

For the Complainant: Elisa Meth Kestin, Esq., Leo F. Orenstein, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro Se

Decision

This matter is before us on remand from the Securities and Exchange Commission. In a National Adjudicatory Council ("NAC") decision dated February 21, 2012, we found that John Joseph Plunkett ("Plunkett"), just prior to resigning from Lempert Brothers International USA, Inc. ("Lempert Brothers"), and in anticipation of being fired, directed others to remove the firm's books and records and erase the firm's electronic files and computer servers, in violation of NASD Rule 2110. For this misconduct, we barred Plunkett in all capacities.

In our decision, we further found that Plunkett failed to respond to two FINRA requests for information and documents until four months after the filing of a complaint initiating disciplinary proceedings against him, and then only partially responding, in violation of FINRA Rules 8210 and 2010. In assessing sanctions for this misconduct, we applied the presumption articulated in the FINRA Sanction Guidelines ("Guidelines") that a response to a FINRA Rule 8210 request subsequent to the filing of a disciplinary complaint constitutes a complete failure to

respond, and again barred Plunkett in all capacities.[1]

Plunkett appealed the NAC's decision to the Commission. In an opinion dated June 14, 2013, the Commission sustained the NAC's findings that Plunkett violated FINRA rules as described in the NAC's decision. For Plunkett's misconduct relating to the firm's books and records, the Commission affirmed the bar the NAC imposed. With respect to the sanctions that the NAC imposed concerning Plunkett's failure to respond to FINRA information requests, however, the Commission found that the NAC erred by failing to analyze factors other than the presumptive unfitness indicated by a failure to respond in any manner. The Commission concluded that because Plunkett "meaningfully" responded to several earlier FINRA Rule 8210 requests during the same investigation, his failure to respond to two later FINRA Rule 8210 requests until after the filing of a complaint constituted conduct "closer to" a partial failure to respond. The Commission noted that Plunkett had previously "provided information about Lempert Brothers' accounts, staff, management structure, organizational structure, and contractual arrangements with a third party, and communications regarding the possible improprieties involving the Orlovs and the firm."[2] Some of this information related to the inquiries FINRA posed in its later Rule 8210 requests, and the Commission noted that FINRA failed to take the interrelatedness of the requests into account when it assessed sanctions. The Commission therefore set aside the bar imposed by the NAC and remanded this matter with instructions that the NAC analyze Plunkett's violation of FINRA Rule 8210 under the Guidelines for a partial but incomplete response. The Commission's remand was limited to the issue of sanctions for the Rule 8210 violation and did not include any other findings or sanctions.

After careful consideration, we have determined to modify the sanction that we imposed upon Plunkett for violating FINRA Rule 8210. We reduce the bar to a $20,000 fine and six-month suspension.

I. Facts

The following facts are pertinent to the Commission's decision to remand this matter to the NAC for further analysis under the Guidelines concerning Plunkett's violation of FINRA Rule 8210. The facts related to Plunkett's books and records violation are discussed in detail in the previously issued NAC decision as well as the Commission's opinion, and we refer to them only as relevant to this decision.

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[1] *FINRA Sanction Guidelines* 33 (2011) (Requests Made Pursuant to FINRA Rule 8210), http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry 'p011038.pdf [hereinafter *Guidelines*].

[2] *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *55 (June 14, 2013).

A. FINRA's Initial Requests for Information to Plunkett

Between May and October 2006, FINRA requested information from Plunkett pursuant to FINRA Rule 8210 concerning Plunkett's separation from Lempert Brothers. FINRA issued these requests on March 31, May 23, July 20, August 18, and October 20, 2006. Specifically, the information sought and provided by Plunkett included, but was not limited to, a catalogue of the records and files that Plunkett removed from Lempert Brothers at the time of his resignation and an explanation as to why Plunkett removed said files, six months' worth of Lempert Brothers' e-mails, documents and information related to Lempert Brother's corporate structure, information related to Lempert Brothers' brokerage and banking accounts, information related to employees' and owners' roles and responsibilities, as well as Plunkett's written explanations for various letters and other correspondence that FINRA had attached to the requests. Plunkett responded to each of these requests, although typically not promptly, and answered all questions, except one concerning his tax returns. Through the testimony of its investigator at the hearing, FINRA acknowledged that with the exception of providing his tax returns, Plunkett fully responded to these requests.

B. Information Provided by Plunkett Pursuant to a Wells Notice

On May 8, 2009, Enforcement sent Plunkett and his attorney a Wells Notice, informing them that FINRA had made a preliminary determination to initiate formal disciplinary proceedings against Plunkett for his conduct involving Lempert Brothers' books and records. Plunkett responded to the Wells Notice on June 29, 2009. Plunkett again explained the circumstances surrounding his departure from Lempert Brothers and claimed that the firm and its owners intended to defraud its investors, and that he had purportedly taken the firm's records as a defensive measure. In his response, Plunkett referred to certain documents, which he did not attach, and individuals, that he did not identify by name, that Plunkett asserted corroborated his claims.

C. FINRA's Final Requests for Information and Documents

On July 15, 2009, in reply to Plunkett's June 29 Wells response, FINRA staff sent to Plunkett a FINRA Rule 8210 request for information and documents. FINRA asked Plunkett to provide copies of the documents and identify the individuals he referenced in his June 29 Wells response by July 27, 2009. On July 27, 2009, Plunkett requested an extension of time to respond to the request. He stated that he required additional time to search for the documents. FINRA staff granted Plunkett an extension until August 10, 2009. Plunkett, however, did not respond to the request by August 10, 2009. On August 11, 2009, Plunkett requested additional time to respond. He stated that he could not respond at that time because he was ill.

On August 20, 2009, FINRA staff sent Plunkett a second request for information and documents pursuant to FINRA Rule 8210. The second request enclosed a copy of the original request dated July 15, 2009, and required Plunkett to respond no later than September 3, 2009, which Plunkett failed to do.

On December 1, 2009, FINRA filed the complaint in this matter. On April 29, 2010, nine months after FINRA's July 15, 2009 request for information and documents, Plunkett responded. He did not provide any documents, but rather offered a number of excuses as to why he could not find them. Plunkett nevertheless addressed in his written narrative each of FINRA's requests and represented that the documents referred to in his Wells response were ones that he had either provided to FINRA earlier in its investigation or could not locate or were otherwise unavailable. He also provided the names of the people to whom he had referred to in his Wells response, and indicated that, earlier in the investigation, he had identified some of the people whose names the staff sought.

II. Discussion

We have considered the complete record in this case, the parties' briefs filed on remand,[3] and their respective sanction recommendations.[4] Consistent with the Commission's instructions that we analyze Plunkett's violation of FINRA Rule 8210 as a partial response under the Guidelines, we modify our prior sanction for Plunkett's FINRA Rule 8210 misconduct and reduce the bar to a six-month suspension. We also impose a fine of $20,000.[5]

In reaching this conclusion, we take note of the Commission's statement that some of Plunkett's earlier responses to FINRA "related to the inquiries FINRA posed in the Rule 8210 requests it sent after receiving Plunkett's Wells submission." *Plunkett*, 2013 SEC LEXIS 1699, at *55. Indeed, upon further consideration, we find that there was extensive overlap between the earlier and later requests for information. As the Commission notes, "[t]he March 31, 2006 request focused on the investor allegation concerning fraud by the Orlovs; later requests focused on the removal and erasure of Lempert Brother's records." *Id.*, at *13 n.13.

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[3] Upon remand from the Commission, the NAC requested that the parties submit briefs addressing the appropriate sanctions for Plunkett's violation of FINRA 8210. In his brief, Plunkett focused primarily on the NAC's findings and sanctions for his misconduct relating to the firm's books and records violation. Because the Commission affirmed the NAC's findings and the sanction it imposed with respect to that misconduct, Plunkett's arguments in this respect are beyond the scope of the Commission's remand.

[4] Enforcement argues that the appropriate sanctions for Plunkett's violation of Rule 8210 are a six-month suspension and a $20,000 fine. Plunkett's brief only requests generally that the sanctions be reduced from a bar.

[5] For a partial but incomplete response, the Guidelines also recommend a fine of $10,000 to $50,000. *Guidelines*, at 33.

We are guided also by the three principal considerations that are articulated within the Guidelines for FINRA Rule 8210 violations that involve a partial but incomplete response.[6] These considerations include: 1) the importance of the information requested that was not provided as viewed from FINRA's perspective, and whether the information provided was relevant and responsive to the request; 2) the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response; and 3) whether the respondent thoroughly explained valid reasons for the deficiencies in the response.[7]

As to the first of these considerations, the information sought via these requests was essential to Enforcement's investigation into Plunkett's possible misconduct and also to support the claims made by Plunkett in his June 29 response to FINRA's Wells Notice. Because Plunkett did not initially provide the documents or identifying information in his Wells response, FINRA could not ascertain whether Plunkett was referring to documents he had already produced or to other documents FINRA had not yet seen. Plunkett also claimed in that same letter that certain people possessed information relevant to the alleged fraud by Lempert Brother's owners and removal of the documents. Because Plunkett did not identify those people by name, Plunkett hindered FINRA's investigative efforts.

Plunkett did ultimately respond to FINRA's July 15, 2009 request. He represented in his April 2010 response that the documents referred to in his June 29 Wells response were ones that he either had already provided to FINRA or did not have. He also provided the names of the individuals referenced in his June 29 Wells response. Thus, while the information sought was important as viewed from FINRA's perspective, Plunkett's answers, albeit late, were responsive to FINRA's requests.

Turning to the second principal consideration, Enforcement had to exert a great deal of regulatory pressure to elicit a response from Plunkett. FINRA staff attempted to accommodate Plunkett, granting him an extension in addition to sending him a second request, extending his time to respond yet further. Ultimately FINRA had to exert the highest level of regulatory pressure available — a complaint— to compel a response. In addition, a great deal of time elapsed between the initial requests and when Plunkett actually responded—over nine months. It was not until Plunkett submitted his delinquent responses that FINRA learned that much of the information provided by Plunkett was duplicative of his 2006 responses and thus already in FINRA's possession. However, Plunkett's extended delays and the amount of effort exerted by FINRA to compel his response is an aggravating factor.

Finally, we consider whether the respondent thoroughly explained valid reasons for the deficiencies in the response.[8] *See Rooney A. Sahai*, Exchange Act Release No. 55046, 2007 SEC

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6 *Guidelines*, at 33.

7 *Id.*

8 *Id.*

LEXIS 13, at *13 (Jan. 5, 2007) ("We have long said that if a respondent is unable to provide the information requested, there remains a duty to explain that inability."). Plunkett has offered no valid explanation for his delay in responding to FINRA's requests or his failure to produce certain documents. Plunkett maintains that he had been locked out of his office by his landlord, thereby blocking his access to the documents, and that much of the requested information was eventually destroyed by the landlord upon Plunkett's eviction. The record, however, reflects that Plunkett received FINRA's requests for those documents before the lockout or eviction occurred. Thus, Plunkett fails to provide satisfactory justification for the delay and deficiencies in his responses.

While Plunkett's responses to FINRA's requests for information were dilatory and his deficient document production without excuse, we acknowledge that he ultimately provided information that complied with the requests. Furthermore, it is Enforcement's position that we give Plunkett credit for eventually complying with the 8210 requests, and that he should not be barred for this violation. Based on the directives from the Commission on remand, we believe that a sanction above the recommended minimum, but not a bar, is an appropriately remedial sanction. For these reasons, we fine Plunkett $20,000 and suspend him for six months in all capacities for his partial failure to respond to FINRA requests for information and documents, in violation of FINRA Rules 8210 and 2010.

III. Conclusion

Plunkett responded partially to FINRA's requests for information and documents, in violation of FINRA Rules 8210 and 2010. For this misconduct, we fine Plunkett $20,000 and suspend him for six months in all capacities. In light of the bar that the Commission upheld for Plunkett's misconduct relating to Lempert Brothers' books and records, however, we decline to impose the fine and suspension. We have considered and reject without discussion all other arguments of the parties.

On behalf of the National Adjudicatory Council,

Marcia E. Asquith

Marcia E. Asquith,
Senior Vice President and Corporate Secretary

Bill Singer, **(http://www.forbes.com/sites/billsinger/)** Contributor
I am a critic of the inept and ineffective

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Feds Nab Florida Pair In Alleged Investment Fraud On Foreign Investors

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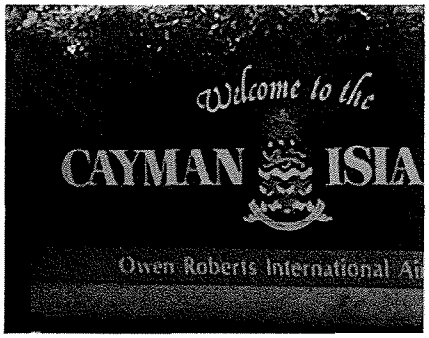

On April 19, 2012, federal prosecutors issued an *Indictment* in federal court in Manhattan, NY, charging S. George Milter, 33, and Cliffe R. Bodden, 48, both of Lake Mary, FL, with one count of conspiracy to commit wire fraud and one count of wire fraud.

NOTE: The charges contained in the *Indictment* are merely allegationss and the defendants are presumed innocent unless and until proven guilty beyond a reasonable doubt in a court of law.

The Indictment alleges that Milter held himself out as the Chief Executive Officer of Lempert Brothers International U.S.A., a registered broker-dealer

in Manhattan; and President and CEO of Lempert Capital Management, Ltd., a corporation purportedly incorporated in the Cayman Islands. Similarly, Bodden allegedly held himself out as a Managing Director of Lempert Capital.

Beginning around 2005, Milter is charged with having lured foreign investors into sending at least $946,509 to bank accounts that he controlled under the pretense that those funds would be invested in the U.S. financial markets by Lempert Brothers through Lempert Capital. To induce investors into wiring funds, the *Indictment* alleges that Milter falsely told them that the funds would be safeguarded. Milter is also charged with falsely guaranteeing that if the investment fell over 20% that the funds would be frozen and any remaining balance returned.

In furtherance of their scheme, Milter and Bodden allegedly sent to the investors, monthly account statements that falsely reflected the investment of funds and purported to show substantial income. When investors attempted to withdraw funds from their accounts, the defendants failed to honor such requests and offered fraudulent explanations, including, for example, that because funds had been invested in various non-public companies and those investments were presently illiquid. In fact, according to the prosecutors, Milter and Bodden used the money for their personal use, and transferred some of the funds to a member of Milter's family and to entities affiliated with Bodden.

Milter and Bodden face on each count a maximum sentence of 20 years in prison. The *Indictment* also seeks forfeiture of the proceeds of, and property involved in, the charged crimes, including at least $946,509 in United States currency.

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THE UNITED STATES ATTORNEY'S OFFICE
SOUTHERN DISTRICT of NEW YORK

PRESS RELEASES

MANHATTAN U.S. ATTORNEY AND FBI ASSISTANT DIRECTOR-IN-CHARGE ANNOUNCE INDICTMENT OF TWO MEN WHO ORCHESTRATED FRAUDULENT INVESTMENT SCHEME

FOR IMMEDIATE RELEASE Thursday April 19, 2012

Preet Bharara, the United States Attorney for the Southern District of New York, and Janice K. Fedarcyk, the Assistant Director-in-Charge of the New York Office of the Federal Bureau of Investigation ("FBI"), today announced charges against S. GEORGE MILTER and CLIFFE R. BODDEN for participating in an investment scheme that allegedly defrauded foreign investors out of nearly $1 million. MILTER allegedly lured investors with false promises that their funds would be invested in the U.S. financial markets through a legitimate broker-dealer. Instead, MILTER and BODDEN misappropriated the money and used it to pay their own personal expenses. MILTER was arrested this morning in Manhattan and arraigned in Manhattan federal court before U.S. Magistrate Judge Debra Freeman. BODDEN was arrested today at his home in Lake Mary, Florida, and presented in federal court in Orlando, Florida.

The following allegations are based on the Indictment unsealed today in Manhattan federal court:

MILTER held himself out as the Chief Executive Officer of Lempert Brothers International U.S.A., a registered broker-dealer in Manhattan, and President and CEO of Lempert Capital Management, Ltd., a corporation purportedly incorporated in the Cayman Islands. BODDEN held himself out as a Managing Director of Lempert Capital.

Starting in approximately 2005, MILTER lured foreign investors into sending at least $946,509 to bank accounts that he controlled under the pretense that those funds would be invested in the U.S. financial markets by a registered broker-dealer, Lempert Brothers, through its purported management company, Lempert Capital. To induce investors into wiring funds, MILTER falsely told them that the funds would be safeguarded and that if the

value of the funds dropped more than 20%, the money would be frozen with all remaining funds available for return to investors.

In fact, MILTER and BODDEN misappropriated the investors' funds, and used the money for their personal use. They also transferred the investors' money to a member of MILTER's family and to entities affiliated with BODDEN.

To keep the scheme going, MILTER and BODDEN sent fraudulent monthly account statements to the investors. These statements falsely reflected that their funds were invested and earning substantial income. When investors attempted to withdraw funds from their accounts, MILTER and BODDEN made additional false and fraudulent representations as to why the funds could not be returned when requested. For example, they falsely told investors that their money was illiquid because it had been invested in various companies that had not yet gone public.

* * *

MILTER, 33, of New York, New York, and BODDEN, 48, of Lake Mary, Florida, are each charged with one count of conspiracy to commit wire fraud and one count of wire fraud. Each count carries a maximum sentence of 20 years in prison. The Indictment also includes allegations seeking forfeiture of the proceeds of, and property involved in, the charged crimes, including at least $946,509 in United States currency.

The case has been assigned to U.S. District Judge Barbara S. Jones.

Mr. Bharara praised the investigative work of the FBI.

This prosecution is being handled by the Office's Complex Frauds unit. Assistant U.S. Attorney Carrie H. Cohen is in charge of the prosecution.

The charges contained in the Indictment are merely accusations and the defendants are presumed innocent unless and until proven guilty.

12-114

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SOUTHERN DISTRICT of NEW YORK
One St. Andrews Plaza - New York, NY 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	SEALED INDICTMENT
- v. -	:	12 Cr.
S. GEORGE MILTER and CLIFFE R. BODDEN,	:	12 CRIM 291
Defendants.	:	

COUNT ONE

(Conspiracy to Commit Wire Fraud)

The Grand Jury charges:

Relevant Individuals and Entities

1. At all times relevant to this Indictment, Lempert Brothers International U.S.A. ("Lempert Brothers") was a New York corporation and a registered broker-dealer with the Financial Industry Regulatory Authority ("FINRA") and the Securities Exchange Commission ("SEC"), and a member of the Securities Investor Protection Corporation ("SIPC"). Lempert Brothers maintained a corporate address in Manhattan, New York.

2. At all times relevant to this Indictment, Lempert Capital Management, Ltd. ("Lempert Capital") was a corporation purportedly incorporated in the Cayman Islands that shared a Manhattan address with Lempert Brothers. Lempert Capital was not registered with FINRA, SIPC, or the SEC.

3. At all times relevant to this Indictment, Lempert, Inc. ("Lempert, Inc.") was a New York corporation that shared an

address for service of process with Lempert Brothers. S. GEORGE MILTER, the defendant, held Lempert, Inc. out as the management company for Lempert Capital. Lempert, Inc. was not registered with FINRA, SIPC, or the SEC.

4. At all times relevant to this Indictment, S. GEORGE MILTER, the defendant, resided in Manhattan and held himself out as the Chief Executive Officer ("CEO") of Lempert Brothers and the President and CEO of Lempert Capital.

5. At all times relevant to this Indictment, CLIFFE R. BODDEN, the defendant, resided in Florida and held himself out as a Managing Director of Lempert Capital.

The Scheme to Defraud

6. From in or about 2005 up to and including in or about 2010, S. GEORGE MILTER and CLIFFE R. BODDEN, the defendants, and others known and unknown, perpetrated a scheme to defraud foreign investors in which they solicited at least $946,509 for purported investments but then failed to invest the solicited money as represented and, without the investors' knowledge or authorization, misappropriated and converted the investors' funds to their own benefit and the benefit of others.

7. In furtherance of the scheme to defraud, S. GEORGE MILTER, the defendant, made material misrepresentations to induce foreign investments, including, but not limited to, the following false statements made to certain foreign investors:

a. that the investors' funds would be invested in the United States financial markets;

b. that the investors' funds would be invested by a registered broker-dealer, i.e., Lempert Brothers, through its purported management company, Lempert Capital; and

c. that the investors' funds could not lose more than 20% of their total value because if the value of the funds dropped more than 20%, the money effectively would be frozen with all remaining funds available for return to investors.

8. Based on the misrepresentations described above and others by S. GEORGE MILTER, the defendant, and others known or unknown, beginning in or about November 2005 up to and including in or about October 2006, certain foreign investors wired approximately $946,509 to accounts in the name of Lempert, Inc., which accounts were located in Manhattan and controlled by MILTER.

9. In furtherance of the scheme to defraud, and after receiving money from certain foreign investors as described above, from in or about late 2005 up to and including in or about early 2007, S. GEORGE MILTER and CLIFFE R. BODDEN, the defendants, caused false monthly account statements to be sent to the investors purporting to reflect that the investors' funds had earned substantial income. In truth and in fact, the investors' money was not invested as represented and was instead misappropriated.

10. In furtherance of the scheme to defraud, S. GEORGE MILTER and CLIFFE R. BODDEN, the defendants, used the investors' money to benefit themselves and others, including by, among other things, using the money to pay office rent, transferring the money to MILTER's family member, transferring the money to entities affiliated with BODDEN, and withdrawing the money as cash or through debit card purchases.

11. In furtherance of the scheme to defraud, from in or about 2007 up to and including in or about 2010, when investors attempted to withdraw funds from their purported investment accounts, S. GEORGE MILTER and CLIFFE R. BODDEN, the defendants, made additional false and fraudulent representations as to why the funds could not be returned when requested and that the funds were safe and secure. Among other things, MILTER and BODDEN falsely told investors that their money was illiquid because it had been invested in various companies that had not yet gone public. In truth and in fact, the investors' money was not available for return to the investors because it had not been invested as represented, but rather had been used by MILTER and BODDEN to benefit themselves and others.

Statutory Allegations

12. From in or about 2005 up to and including in or about 2010, S. GEORGE MILTER and CLIFFE R. BODDEN, the defendants, and others known and unknown, willfully and knowingly, did

combine, conspire, confederate, and agree together and with each other to commit wire fraud, in violation of Title 18, United States Code, Section 1343.

13. It was a part and object of the conspiracy that S. GEORGE MILTER and CLIFFE R. BODDEN, the defendants, and others known and unknown, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire, radio, and televison communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

Overt Acts

14. In furtherance of the conspiracy and to effect its illegal object, S. GEORGE MILTER and CLIFFE R. BODDEN, the defendants, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about November 25, 2005, MILTER caused an individual investor ("Victim 1") to wire approximately $249,970 from a bank account outside the United States to a bank account located in Manhattan that MILTER controlled.

b. On or about March 21, 2006, MILTER caused an

individual i... ictim 2") to wire approximately $145,426 from a bank account outside the United States to a bank account located in Manhattan that MILTER controlled.

c. On or about March 23, 2006, MILTER caused false monthly account statements to be sent from Manhattan to investors located outside the United States, including to Victim 1.

d. On or about March 28, 2006, MILTER and BODDEN caused approximately $330,000 of investors' funds to be wired from a bank account that MILTER controlled and that was located in Manhattan to an entity affiliated with BODDEN.

e. On or about April 14, 2006, BODDEN caused false monthly account statements to be sent from Manhattan to investors located outside the United States, including to Victim 1.

f. On or about October 4, 2006, MILTER and BODDEN caused Victim 1 to wire approximately $135,947 from a bank account outside the United States to a bank account located in Manhattan that MILTER controlled.

g. On or about May 3, 2007, MILTER made false representations to Victim 1 over the telephone regarding how Victim 1's money had been invested.

h. On or about May 3, 2007, BODDEN made false representations to Victim 1 over the telephone regarding how Victim 1's money had been invested.

(Title 18, United States Code, Section 1349.)

COUNT TWO

(Wire Fraud)

The Grand Jury further charges:

15. The allegations contained in paragraphs 1 through 11 and 14, are hereby repeated, realleged, and incorporated by reference as if fully set forth herein.

16. From in or about 2005 up to and including in or about 2010, in the Southern District of New York and elsewhere, S. GEORGE MILTER and CLIFFE R. BODDEN, the defendants, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, MILTER and BODDEN engaged in an investment fraud scheme that defrauded investors out of approximately $946,509, and in furtherance of the scheme to defraud, MILTER and BODDEN caused wire communications, including, but not limited to, wire transfers of money from locations outside the United States to Manhattan and false representations made over the telephone from Manhattan to investors located outside the United States.

(Title 18, United States Code, Sections 1343 and 2.)

FORFEITURE ALLEGATION

17. As the result of committing the conspiracy and wire fraud offenses in violation of Title 18, United States Code, Sections 1349 and 1343 as alleged in Counts One and Two of this Indictment, S. GEORGE MILTER and CLIFFE R. BODDEN, the defendants, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses, including, but not limited to, the following:

a. At least $946,509 in United States currency, in that such sum in aggregate is property representing the amount of proceeds obtained as a result of the charged conspiracy and wire and mail fraud offenses.

Substitute Asset Provision

18. If any of the above-described forfeitable property, as a result of any act or omission of the defendants,

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third person;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the forfeitable property described above.

(Title 18, United States Code, Section 981(a)(1)(C); Title 21, United States Code, Section 853(p); and Title 28, United States Code, Section 2461.)

[redacted]
FOREPERSON

PREET BHARARA
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

S. GEORGE MILTER and
CLIFFE R. BODDEN,

Defendants.

INDICTMENT

12 Cr. ___

(18 U.S.C. §§ 1349, 1343, and 2.)

PREET BHARARA
United States Attorney.

[redacted]

Foreperson.

UNITED STATES ATTORNEY'S OFFICE
Southern District of New York

U.S. ATTORNEY PREET BHARARA

FOR IMMEDIATE RELEASE
Friday, February 22, 2013
http://www.justice.gov/usao/nys

CONTACT: Ellen Davis, Julie Bolcer, Jerika Richardson, Jennifer Queliz, (212) 637-2600

FLORIDA MAN SENTENCED IN MANHATTAN FEDERAL COURT TO 74 MONTHS IN PRISON FOR ENGAGING IN A FRAUDULENT INVESTMENT SCHEME

Preet Bharara, the United States Attorney for the Southern District of New York, announced that CLIFFE R. BODDEN was sentenced today in Manhattan federal court to 74 months in prison for participating in an investment scheme that defrauded foreign investors out of nearly $1 million. As part of the scheme, investors were lured with false promises that their funds would be safely invested in the U.S. financial markets through a legitimate broker-dealer. Instead, the money was misappropriated, used to pay certain expenses, and transferred to, among other places, entities related to BODDEN. He pled guilty in September 2012 to one count of conspiracy to commit wire fraud and one count of wire fraud and was sentenced by U.S. District Judge Katherine B. Forrest.

Manhattan United States Attorney Preet Bharara said: "With today's sentence, Cliffe Bodden now knows there is a price to be paid for lying to investors, no matter where the victims live. Our ongoing efforts to prosecute the perpetrators of investment fraud are not limited by geographic boundaries."

According to the court filings and statements made in court:

BODDEN held himself out as a Managing Director of Lempert Capital Management, Ltd., a corporation purportedly incorporated in the Cayman Islands. Starting in approximately 2005, foreign investors were lured into sending nearly $1 million to Lempert Capital's purported management company Lempert Brothers under the pretense that those funds would be invested in the U.S. financial markets by Lempert Brothers, which was a registered broker-dealer. To induce investors into wiring funds, among other false promises, investors were told that the funds would be safeguarded, and that if the value of the funds dropped more than 20%, the money would be frozen and all remaining funds available for return to investors. In fact, the nearly $1 million of investor funds were misappropriated and diverted to, among other things, entities affiliated with BODDEN.

To keep the scheme going, BODDEN sent fraudulent monthly account statements to the investors. These statements falsely reflected that the investors' funds were invested and earning substantial income. When investors attempted to withdraw funds from their accounts, BODDEN made additional false and fraudulent representations as to why the funds could not be returned

when requested. For example, BODDEN falsely told investors that their money was illiquid because it had been invested in various companies that had not yet gone public.

* * *

In addition to the prison sentence of 37 months on each count to run consecutive for a total term of imprisonment of 74 months, Judge Forrest sentenced BODDEN, 49, of Tampa, Florida to two years of supervised release to run consecutively and ordered him to pay a fine of $25,000 and a special assessment of $200. Judge Forrest ordered restitution and forfeiture in the amount of $946,509, which represents the amount of the crime proceeds.

The charges against BODDEN's co-defendant S. George Milter, 34, of New York, New York, are pending. These charges and the allegations against Milter are merely accusations, and he is presumed innocent unless and until proven guilty.

Mr. Bharara praised the investigative work of the Federal Bureau of Investigation.

This case is being handled by the Office's Complex Frauds Unit. Assistant United States Attorney Carrie H. Cohen is in charge of the prosecution.

13-059 ###

THE FBI FEDERAL BUREAU OF INVESTIGATION

New York Field Office

Manhattan Man Pleads Guilty in Manhattan Federal Court to Engaging in a Fraudulent Investment Scheme

U.S. Attorney's Office **Southern District of New York**
November 01, 2013 (212) 637-2600

Preet Bharara, the United States Attorney for the Southern District of New York, announced that S. George Milter pled guilty today in Manhattan federal court to participating in an investment scheme that defrauded foreign investors of nearly $1 million. As part of the scheme, Milter lured investors with false promises that their funds would be safely invested in the U.S. financial markets through a legitimate broker-dealer. Instead, Milter and his co-defendant Cliffe R. Bodden misappropriated the money by transferring it to related individuals and entities and using it to pay certain personal expenses. Milter pled guilty today before U.S. District Judge Katherine B. Forrest.

Manhattan U.S. Attorney Preet Bharara said, "George Milter lied to foreign investors about the safety and performance of their funds while he diverted their money for his own purposes. With his guilty plea today, he joins the disgraced ranks of those convicted for perpetrating investment fraud."

According to the Indictment against Milter and Bodden, and statements made during Milter's plea allocution today, and prior court proceedings:

Milter held himself out as the chief executive officer of Lempert Brothers International U.S.A., a registered broker-dealer in Manhattan, and president and chief executive officer of Lempert Capital Management Ltd., which purportedly was incorporated in the Cayman Islands and managed by Lempert Brothers. Bodden held himself out as a Managing Director of Lempert Capital.

Starting in approximately 2005, Milter lured foreign investors into sending at least $946,509 to Lempert Brothers under the pretense that those funds would be invested in the U.S. financial markets. To induce investors into wiring funds, Milter falsely told them that the funds would be safeguarded, and that if the value of the funds dropped more than 20 percent, the money would be frozen and all remaining funds available for return to investors. In fact, Milter and Bodden misappropriated the nearly $1 million of investors' funds by using the money to pay their personal expenses and diverting the funds to a member of Milter's family and entities affiliated with Bodden.

To keep the scheme going, Milter and Bodden sent fraudulent monthly account statements to the investors. These statements falsely reflected that the investors' funds were invested and earning substantial income. When the investors attempted to withdraw money from their accounts at Lempert Brothers, Milter and Bodden made additional false and fraudulent representations as to why the funds could not be returned when requested. For example, they falsely told investors that their money was illiquid because it had been invested in various companies that had not yet gone public.

* * *

Milter, 35, of New York, New York, pled guilty to one count of wire fraud and faces a maximum sentence

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of 20 years in prison. In addition, he has agreed to a money judgment of $946,509 representing the amount of the crime proceeds. Milter is scheduled to be sentenced by Judge Forrest on March 7, 2014, at 2:00 p.m.

Bodden pled guilty in September 2012 to one count of conspiracy to commit wire fraud and one count of wire fraud for his participation in the investment scheme. He was sentenced by Judge Forrest in February 2013 to 74 months in prison and ordered to pay a money judgment and restitution of $946,509 representing the amount of the crime proceeds, as well as a fine of $25,000.

Mr. Bharara praised the investigative work of the Federal Bureau of Investigation.

This case is being handled by the Office's Complex Frauds Unit. Assistant United States Attorney Carrie H. Cohen is in charge of the prosecution.

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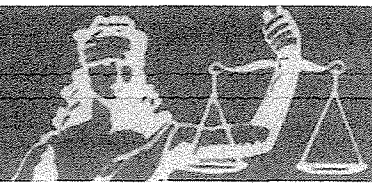
PRESS RELEASES



New York Man Sentenced In Manhattan Federal Court To 61 Months In Prison For Fraudulent Investment Scheme

FOR IMMEDIATE RELEASE
Friday, March 14, 2014

Preet Bharara, the United States Attorney for the Southern District of New York, announced that S. GEORGE MILTER was sentenced today in Manhattan federal court to 61 months in prison for participating in an investment scheme that defrauded foreign investors out of nearly $1 million. As part of the scheme, investors were lured with false promises that their funds would be safely invested in the U.S. financial markets through a legitimate broker-dealer. Instead, the money was misappropriated, used to pay certain expenses, and transferred to other entities and individuals, including MILTER and his family. MILTER pled guilty in November 2013 to one count of conspiracy to commit wire fraud and was sentenced by U.S. District Judge Katherine B. Forrest.

Manhattan United States Attorney Preet Bharara said: "Mr. Milter deliberately deceived investors, diverted their funds to members of his family and himself, and then lied when questions were asked. The sentence Judge Forrest imposed today ensures that Milter will spend substantial time behind bars paying for his fraud."

According to the court filings and statements made in court:

MILTER held himself out as a President and Chief Executive Officer of Lempert Capital Management, Ltd., a corporation purportedly incorporated in the Cayman Islands, and Chief Executive Officer of Lempert Brothers, which was a registered broker-dealer. Starting in approximately 2005, foreign investors were lured into sending nearly $1 million to Lempert Capital's purported management company Lempert Brothers under the pretense that those funds would be invested in the U.S. financial markets by Lempert Brothers To induce investors into wiring funds, among other false promises, MILTER told investors that the funds would be safeguarded, and that if the value of the funds dropped more than 20%, the money would be frozen and all remaining funds available for return to investors. In fact, the nearly $1 million of investor funds were misappropriated and diverted to, among other things, MILTER's family and himself.

To keep the scheme going, MILTER sent fraudulent monthly account statements to the investors. These statements falsely reflected that the investors' funds were invested and earning substantial income. When investors attempted to withdraw funds from their accounts, MILTER made additional false and fraudulent representations as to why the funds could not be returned when requested. For example, investors falsely were told that their money was illiquid because it had been invested in various companies that had not yet gone public.

* * *

In addition to the prison sentence of 61 months, Judge Forrest sentenced MILTER, 35, of New York, New York, to three years of supervised release and ordered him to pay a special assessment of $100. Judge Forrest also ordered restitution in the amount of $946,509, and

forfeiture of the same amount, which amount represents the crime proceeds.

MILTER's co-defendant Cliffe R. Bodden, 50, previously pled guilty and currently is serving his sentence of 74 months in prison.

Mr. Bharara praised the investigative work of the Federal Bureau of Investigation.

This case is being handled by the Office's Complex Frauds Unit. Assistant United States Attorney Carrie H. Cohen is in charge of the prosecution.

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