











al, 1:09-cr-00662 (PAC)(S.D.N.Y.), the Division respectfully seeks summary disposition against Mandell and requests that the Court bar Mandell from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or NRSRO.

**I. Summary Disposition Standard**

Rule 250(a) of the Commission's Rules of Practice permits a party, with leave of the hearing officer, to move for summary disposition of any or all the OIP's allegations. By order dated September 12, 2012 (following a September 11 Court conference), this Court granted the Division leave to file a motion for summary disposition against Mandell.

Rule 250 further provides that a motion for summary disposition should be granted if there is "no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law." Summary disposition is particularly appropriate where, as here, the pertinent facts already have been litigated and determined in a prior judicial proceeding. See, e.g., In the Matter of Joseph P. Galluzzi, Exchange Act Rel. No. 34-46405, 2002 SEC LEXIS 2202 (Aug. 23, 2002)(Commission upheld ALJ's grant of Division's motion for summary disposition where facts were determined in earlier injunctive action and criminal conviction), aff'g Initial Dec. Rel. No. 187, 2001 SEC LEXIS 1582 (Aug. 7, 2001)).

No genuine dispute of material fact exists regarding the Division's requested relief. Respondent's conviction for egregious fraud is a matter of public record and sufficiently establishes the Division's entitlement to a permanent securities industry bar. Furthermore, Mandell has not raised, nor can he raise, any "mitigating" factor sufficient to overcome the public interest in barring him permanently from the securities industry. Thus, the Court should grant the Division summary disposition against Mandell.

## II. Respondent's Conviction Establishes the Basis for Administrative Relief

As noted above, no genuine dispute exists that Mandell was convicted, within ten years of the commencement of this proceeding, of a “felony or misdemeanor” that “involves the purchase or sale of any security” and that “arises out of the conduct of the business of a broker [or] dealer” within the meaning of Sections 15(b)(4)(B) and 15(b)(6)(A)(ii) of the Exchange Act. Indeed, in his response to the OIP, Mandell admitted (as he must) the existence of his conviction. (Mandell Response, dated September 18, 2012.) Each individual count for which Mandell was convicted – securities fraud, wire fraud, mail fraud, and conspiracy – alone is a sufficient basis upon which the Commission may impose remedial sanctions in this case, because each count “involves the purchase or sale of any security” and/or “arises out of the conduct of the business of a broker [or] dealer.” 15 U.S.C. §78o(b)(A)(ii).

As an alleged defense, Mandell repeatedly has pointed to the pending appeal of his conviction. Any such appeal, however, does not preclude the imposition a bar here. See Elliott v. SEC, 36 F.3d 86, 87 (11<sup>th</sup> Cir. 1994) (“Nothing in the statute's language prevents a bar [from being] entered if a criminal conviction is on appeal.”); Hunt v. Liberty Lobby, Inc., 707 F.2d 1493, 1497 (D.C. Cir. 1983) (“Under well-settled federal law, the pendency of an appeal does not diminish the *res judicata* effect of a judgment rendered by a federal court.”). Accordingly, the Commission may impose remedial, disciplinary sanctions against Mandell based upon his criminal conviction. See 15 U.S.C. §78o(b).<sup>3</sup>

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<sup>3</sup> To the extent Mandell attempts to collaterally attack either the legal or factual basis for his conviction, any such alleged defense would be barred by the doctrine of collateral estoppel. See Parklane Hosiery Co., Inc. v. Shore, 439 U.S. 322, 326-334 (1979); In the Matter of David G. Ghysels and Kenneth E. Mahaffy, Jr., Exchange Act Rel. 34-62937 (Sep. 20, 2010) (“Respondents are foreclosed from using this proceeding to challenge their criminal convictions, and these collateral estoppel principles extend to [respondent’s] procedural and constitutional

### III. The Public Interest Requires that Mandell be Barred from the Securities Industry

For the following reasons, the Court should permanently bar Mandell from the securities industry. In determining what sanction to impose, the Court should be guided by the following factors:

- (a) the egregiousness of the defendant's actions; (b) the isolated or recurrent nature of the infraction; (c) the degree of scienter involved; (d) the sincerity of the defendant's assurances against future violations; (e) the defendant's recognition of the wrongful nature of his conduct; and, (f) the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5<sup>th</sup> Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981), quoting SEC v. Blatt, 583 F.2d 1325, 1223 n.29 (5<sup>th</sup> Cir. 1978) (internal quotations omitted). Moreover, where the basis for the requested sanction is the respondent's prior criminal conviction concerning securities fraud, long-established precedent provides that the respondent should not be permitted to remain in the securities industry absent "extraordinary" mitigating circumstances. See Alberto W. Vilar and Gary Alan Tanaka, 2009 SEC LEXIS 2053, Initial Decisions Release No. 375 \*4 (April 17, 2009) ("[A]bsent extraordinary mitigating circumstances, an individual who has been criminally convicted in connection with activities related to the purchase or sale of securities cannot be permitted to remain in the securities industry.") (Citations omitted); see also John S. Brownson, c/o Payless Furniture, 2002 SEC LEXIS 1715, \* 8 (July 3, 2002).

No genuine dispute exists that Mandell was convicted of securities fraud, wire fraud, mail fraud, and conspiracy related to securities transactions at broker-dealers he controlled.

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claims."); In the Matter of Jose P. Zollino, Exchange Act Rel. 34-55107, 2007 SEC LEXIS 85, at \*16 n. 20 (Jan. 16, 2007) ("[A] party cannot challenge his . . . criminal conviction in a subsequent administrative proceeding"); William F. Lincoln, Exchange Act Rel. No. 39629, 1998 SEC LEXIS 193, at \*8, (Feb. 9. 1998) (In proceedings based on a criminal conviction, a respondent "is collaterally estopped from attacking here the merits of the criminal proceeding against him.").

Furthermore, no genuine dispute exists that no “extraordinary” mitigating factors exist in this case.

The conduct for which Mandell was convicted was egregious and involved a high degree of scienter. Mandell actively and knowingly engaged in a series of fraudulent private placements, manipulated the securities of two companies affiliated with Sky Capital and defrauded investors out of over \$50 million. (Ex. 5, at 55). Furthermore, Mandell’s misconduct did not involve an isolated occurrence, but rather he participated in a criminal conspiracy and committed securities fraud that lasted eight years. (*Id.*; Ex. 1, at ¶16, 44). See Richard J. Daniello, 50 S.E.C. 42, 46 (1989) (four months of misappropriating employer’s funds was not isolated). Presumably for these reasons, the Court sentenced Mandell to twelve years in prison, ordered him to pay restitution of \$24,880,460 and to forfeit \$50 million. (Ex. 4; Ex. 5, at 55, 57; Ex. 7). Indeed, at Mandell’s sentencing hearing, the Court remarked, *inter alia*, “[H]ere we have substantial evidence which convinced the jury beyond a reasonable doubt that Mandell’s conduct and the conduct of his associates was criminal, fraudulent, and caused substantial losses in excess of \$50 million to over 250 victims.” (Ex. 5, at 55.)

Moreover, Mandell has not recognized the wrongful nature of his conduct. To the contrary, at his sentencing hearing, Mandell denied any wrongdoing and appeared to blame the prosecution and various witnesses, rather than accept any personal responsibility for his actions. (Ex. 5, at 37-49.) Furthermore, at the September 11, 2012 pre-hearing conference in this administrative proceeding, Mandell continued to argue that he has done nothing wrong. (Ex. 8, at 17.) (Mandell stated, “...I don’t want to be railroaded for something I did not do, and that did not happen...”)

Finally, as a general matter, because the securities industry presents many opportunities

for abuse and overreaching, and because its survival depends upon the integrity of its participants, the public interest is best served by permanently barring from the industry individuals whose honesty and integrity have been seriously impugned. See Bruce Paul, 1985 SEC LEXIS 2004; see also Ahmed M. Soliman, 52 S.E.C. 227 (1995) and In re Richard C. Spangler, 46 S.E.C. 238, 252 (1976). Respondent's criminal conviction reflects strongly against his fitness to take part in the securities industry, and a bar against him is necessary to protect the investing public. Because no genuine dispute of fact exists regarding this matter, summary disposition is both appropriate and in the public interest.

### CONCLUSION

For the foregoing reasons, the Division respectfully requests that its motion for summary disposition be granted, and that the Court issue an order barring Mandell from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or NRSRO.

Dated: October 15, 2012  
New York, New York

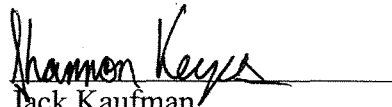
  
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Exhibit 8      September 11, 2012 Pre-Hearing Conference Transcript Excerpts

October 15, 2012

New York, NY

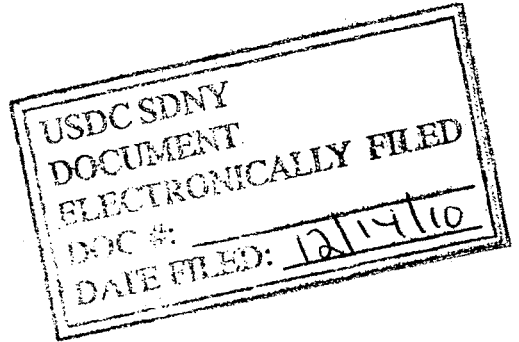
  
Shannon Keyes

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
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UNITED STATES OF AMERICA :  
 :  
 - v. - :  
 :  
 ROSS H. MANDELL, :  
 STEPHEN SHEA, :  
 ADAM HARRINGTON, :  
 a/k/a "Adam Rukdeschel," :  
 ARN WILSON, :  
 ROBERT GRABOWSKI, and :  
 MICHAEL PASSARO, :  
 :  
 Defendants. :  
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INDICTMENT

S1 09 Cr. 662 (PAC)



COUNT ONE

(Conspiracy To Commit Securities Fraud,  
Wire Fraud and Mail Fraud)

The Grand Jury charges:

RELEVANT PERSONS AND ENTITIES

1. Sky Capital Holdings Ltd. ("Sky Capital Holdings" or "SKH") was a corporation that purported to provide financial and investment advisory services to corporate clients and private individuals, primarily in the United States and the United Kingdom. Sky Capital Holdings was founded in or about January 2001 and incorporated under Delaware law on or about December 28, 2001. Between in or about July 2002 and in or about late 2006, SKH's stock was publicly traded on the Alternative Investment Market ("AIM") of the London Stock Exchange ("LSE"). As set forth more fully below, Sky Capital Holdings had several related

and subsidiary companies that purported to provide various related services.

2. Sky Capital LLC was a limited liability company organized under New York law, and a wholly-owned subsidiary of Sky Capital Holdings. On or about May 13, 2002, Sky Capital LLC obtained broker/dealer approval from the National Association of Securities Dealers Inc. ("NASD"). In or about 2004, Sky Capital LLC opened branch offices in Boca Raton, Florida and Red Bank, New Jersey. Sky Capital LLC purported to provide retail brokerage services, research, and equity and fixed income trading.

3. Sky Capital UK Limited ("Sky Capital UK") was a wholly-owned subsidiary of Sky Capital Holdings. Sky Capital UK was a securities broker-dealer with its principal place of business in London, England. Sky Capital UK purported to provide private client brokerage services, institutional sales and trading, and research activities.

4. Sky Capital Enterprises Inc. ("Sky Capital Enterprises" or "SKE") was a venture capital firm that purported to provide strategic advice, consulting services and financing to small and mid-size start-up and early stage companies. Sky Capital Enterprises was incorporated under Delaware law on or about August 1, 2002 under the name "Sky Venture Capital Inc."

Between in or about March 2004 and in or about late 2006, SKE's stock was publicly traded on the AIM.

5. Sky Capital Holdings, Sky Capital LLC, Sky Capital UK, and Sky Capital Enterprises were affiliated companies, and all but Sky Capital UK had a primary place of business at 110 Wall Street, New York, New York. (Sky Capital Holdings, Sky Capital LLC, Sky Capital UK and Sky Capital Enterprises are, unless otherwise specified, collectively referred to in this Indictment as the "Sky Capital Affiliated Companies" or "Sky Capital").

6. The Thornwater Company, L.P. ("Thornwater") was a firm formed under New York State law on or about March 3, 1994. Thornwater was a licensed broker-dealer and a member of the NASD. Thornwater's principal place of business was 99 Wall Street, New York, New York. Thornwater ceased operations in or about February 2003.

7. ROSS H. MANDELL, the defendant, controlled the Sky Capital Affiliated Companies. MANDELL founded Sky Capital and served as Chief Executive Officer of both Sky Capital Holdings and Sky Capital Enterprises. MANDELL also served as a member of the Board of Directors of the various Sky Capital Affiliated Companies. Due to MANDELL's disciplinary history in the securities industry, Sky Capital had agreed as a condition of its NASD membership that MANDELL would not supervise anyone or hold a

supervisory position. Nevertheless, at all times relevant to this Indictment, MANDELL exercised day-to-day management control over the Sky Capital companies and their employees either directly or through others.

8. Prior to founding Sky Capital, ROSS H. MANDELL, the defendant, worked at Thornwater, joining the firm in 1997 as a Senior Vice President. MANDELL gained ownership control of Thornwater in or about 1999 and continued to work at Thornwater until he purportedly left in early 2001. While at Thornwater, MANDELL held himself out as merely a broker and investment banker. In fact, however, MANDELL was an undisclosed principal of Thornwater who exercised day-to-day management control over Thornwater and its employees either directly or indirectly through others from at least in or about 1999 until Thornwater ceased operations.

9. GlobalSecure Holdings Ltd. ("GlobalSecure") was a privately owned company that was incorporated under Delaware law with its principal place of business in Silver Spring, Maryland. GlobalSecure was founded in March 2003 under the name "GlobalSecure, Ltd," to provide products and services related to the homeland security industry primarily in the United States. Since in or about July 2005, GlobalSecure has been known as Global Secure Corp. GlobalSecure is an affiliate of Sky Capital Enterprises, which, along with MANDELL, holds a controlling

interest in GlobalSecure. MANDELL was one of GlobalSecure's founders and has served on GlobalSecure's Board of Directors.

10. Advanced Spinal Technologies, Inc. ("AST") was a privately owned company that was incorporated under Delaware law with its principal place of business in Boca Raton, Florida. AST was founded in or about December 2004 to exploit and develop technology related to the treatment of back conditions. AST is an affiliate of Sky Capital Enterprises, which, along with MANDELL, holds a controlling interest in AST. MANDELL was one of AST's founders and has served on AST's Board of Directors.

11. STEPHEN SHEA, the defendant, joined Thornwater in or about April 1997. From in or about April 1999 until in or about July 2002, SHEA served as Thornwater's Operations Principal. In or about July 2002, SHEA left Thornwater to work at Sky Capital. SHEA served as President and Chief Operating Officer ("COO") of Sky Capital Holdings, as COO of Sky Capital LLC, and as a member of Sky Capital Enterprises' Board of Directors. As COO, SHEA oversaw all aspects of Sky Capital's business operations, including customer accounts, securities broker-dealer activities, and securities trading at Sky Capital LLC.

12. ADAM HARRINGTON, a/k/a "Adam Rukdeschel," the defendant, was a registered broker at Thornwater from in or about January 2000 until in or about August 2002. From in or about

August 2002 until in or about September 2005, HARRINGTON worked at Sky Capital as a registered broker. HARRINGTON was one of the more senior brokers at Sky Capital LLC and an active participant in soliciting customers to purchase Sky Capital securities and directing other brokers to do the same.

13. ARN WILSON, the defendant, was a registered broker at Thornwater from in or about July 1998 until in or about November 2002, when WILSON left Thornwater to work as a registered broker at Sky Capital. WILSON was a senior broker at Sky Capital LLC and an active participant in soliciting customers to purchase Sky Capital securities.

14. ROBERT GRABOWSKI, the defendant, joined Thornwater in or about April 1997 as a registered broker and General Securities Principal. In or about June 1998, GRABOWSKI was named Executive Vice President of Thornwater. From in or about July 2001 until Thornwater ceased operations, GRABOWSKI was listed as President and CEO of Thornwater, even though MANDELL in fact controlled Thornwater. In or about June 2003, GRABOWSKI joined Sky Capital as a registered broker. GRABOWSKI and ARN WILSON, the defendant, were partners at Sky Capital LLC and improperly shared the same registered representative number.

15. MICHAEL PASSARO, the defendant, was a registered broker at Thornwater from in or about November 2000 until in or about May 2002. While at Thornwater, PASSARO also held the

position of Vice President of Sales. In May 2002, PASSARO joined Sky Capital as a registered broker. After joining Sky Capital, PASSARO worked in both the New York and Boca Raton offices of Sky Capital LLC. PASSARO was an active participant in soliciting customers to purchase Sky Capital securities, and acted as a supervisory broker.

THE SCHEME TO DEFRAUD

16. From at least in or about 1998 through in or about 2006, ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants, and others known and unknown, participated in a scheme to defraud investors through the operations of Thornwater and Sky Capital. The defendants and others carried out this scheme by soliciting millions of dollars of funds under false pretenses, manipulating the market for SKH and SKE securities, failing to use investors' funds as promised, and misappropriating and converting investors' funds without the knowledge or authorization of the investors. In furtherance of the scheme, the defendants and others employed high-pressure sales tactics and used material misrepresentations and omissions to convince victims to invest millions of dollars first through Thornwater and then through Sky Capital.

17. In particular, ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT

GRABOWSKI, and MICHAEL PASSARO, the defendants, and others known and unknown, used material misrepresentations and omissions to convince victims to invest in a series of purported investment opportunities, including (a) private placement offerings, (b) offers to purchase restricted stock, and (c) Sky Capital securities, promising, among other things, large investment returns. As part of the scheme, the defendants and others told investors that their funds would be used for legitimate business purposes, including, but not limited to, acquiring business assets and bringing various companies public on a significant securities exchange. Contrary to what victims were told, however, investors' funds were used substantially for, among other things, enriching the defendants and others; paying excessive, undisclosed commissions to brokers, notwithstanding the brokers' fiduciary obligation to disclose such commissions; and paying off victims who had incurred losses through prior purported investment opportunities.

18. In furtherance of the scheme, the defendants and others also used deceptive and fraudulent means to manipulate the secondary market for SKH and SKE stock. This was done to (a) placate existing investors so that the scheme could continue; (b) induce customers to make further investments; and (c) enrich members of the scheme who had substantial holdings in Sky Capital.

19. In connection with the scheme, the defendants and others, acting primarily from Thornwater and Sky Capital's offices in New York, New York, raised a total of approximately \$140 million from investors.

Thornwater Private Placements

20. Between in or about 1998 and in or about 2002, members of the scheme, including ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants, promoted and directed others to promote a series of private placements in various entities that MANDELL controlled. These offerings included private placements to purchase "Units," "shares," or "Interests" of securities in companies named Raleigh Holdings LLC ("Raleigh"), Lanesborough Holdings LLC ("Lanesborough"), TicketPlanet.com, Inc. ("TicketPlanet"), St. James Holdings, LLC ("St. James"), Chipcards, Inc. ("Chipcards"), and Dorchester Holdings Ltd. ("Dorchester") (collectively the "Thornwater Private Placements"). According to written and oral representations made by the defendants and others to investors, Raleigh, Lanesborough, St. James and Dorchester were holding companies that purportedly were created to, among other things, make loans to Thornwater, acquire equity interests in broker-dealers and other financial and investment banking businesses, including Thornwater, and sell securities to the public in a

public offering and/or finance an initial public offering ("IPO") of an affiliated company. GRABOWSKI was listed as President of Raleigh, Lanesborough and St. James, and as the sole officer and director of Dorchester. TicketPlanet and Chipcards were corporations that purportedly were going to sell securities to the public in a public offering. In connection with the Thornwater Private Placements, the defendants and others acting at the defendants' direction and/or with the defendants' knowledge, promised investors substantial returns on their investments.

21. Despite the representations to investors, none of the Thornwater Private Placements ever resulted in a sale of securities to the public in a public offering, and individuals who invested in those private placements did not receive the returns that they had been promised. Instead, investors' money was used to enrich the defendants and to fund Thornwater's day-to-day operations. As select investors complained about their losses, some received shares in subsequent private placements (which also proved to be worthless) or other forms of compensation, which had been generated by the defendants and others acting at the defendants' direction from other subsequent investors. To convince investors to accept shares in the subsequent private placements as compensation for their losses,

ROSS H. MANDELL and ROBERT GRABOWSKI, the defendants, and others known and unknown, used high pressure tactics.

Use of Thornwater to Solicit Investors for Sky Capital

22. In or about 2001, ROSS H. MANDELL, the defendant, founded Sky Capital after purportedly leaving Thornwater. Although MANDELL was no longer employed by Thornwater, he continued to serve as a "consultant" to Thornwater and to act as an undisclosed principal. MANDELL also received payments from Thornwater, often in the form of cash or check delivered by ARN WILSON and ROBERT GRABOWSKI, the defendants, purportedly for "selling" customer accounts, but in fact as a means to misappropriate investor funds.

23. Following Sky Capital's founding, ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants, and others known and unknown, used Thornwater as a means to raise capital for Sky Capital, including through a private placement offering for Sky Capital Holdings and a subsequent solicitation in connection with Sky Capital Holdings' IPO on the AIM. In connection with the IPO, Sky Capital distributed a booklet entitled "Offer for Subscription and Admission to the Alternative Investment Market." That booklet falsely stated that MANDELL would "not be engaged in the management of Sky Capital's

securities business or the training, supervision [sic] of persons associated with Sky Capital and he will not . . . engage in activities that would require registration as a principal [of Sky Capital]." At that time and in the future, MANDELL was in fact engaged in such activities.

24. At or about the time that Thornwater brokers were soliciting investors for Sky Capital, they also were soliciting investors for Dorchester Holdings, as described above. In connection with that solicitation, brokers acting at the direction of ROSS H. MANDELL, the defendant, told investors, among other things, that they would receive an ownership interest in Thornwater and that their Dorchester shares would be exchanged on a "one-to-one" basis for SKH stock, which was expected to be issued at a higher value. Contrary to what investors were told, however, investors in Dorchester Holdings did not receive SKH stock on a "one-to-one" basis. In addition, in oral and written representations, including a private placement memorandum ("PPM") distributed in connection with the Dorchester Holdings private placement, investors were told that Dorchester Holdings funds would be used for legitimate business purposes and to make "subordinated loans" to Sky Capital. Instead, investors' funds were diverted to Sky Capital as direct payments (rather than loans) and misappropriated to enrich the defendants and others.

25. Among other things, such funds were used to pay Thornwater brokers, including ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI and MICHAEL PASSARO, the defendants, and others known and unknown, material undisclosed commissions in connection with the Sky Capital Holdings IPO. To conceal these payments, checks drawn on a Dorchester bank account, which were signed by ROBERT GRABOWSKI, the defendant, were falsely identified as "loans." To further conceal the payments, brokers who received these payments subsequently were instructed to sign "promissory notes" purporting to require them to repay Dorchester for these payments. In fact, the brokers were told that no "loans" would ever have to be repaid, and they in fact did not repay these "loans." In connection with the scheme, in or about July 2002, shares of SKH stock began to trade on the AIM.

26. Following the SKH IPO, ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants, and others known and unknown, also participated in a private placement for Sky Capital Enterprises (then known as "Sky Venture Capital Inc."). In or about March 2004, shares of SKE stock began to trade on the AIM.

Additional Solicitations at Sky Capital

27. Beginning in or about late 2002 and continuing until in or about late 2006, ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants, and others acting with the defendants' knowledge and at their direction conducted a series of private placements related to Sky Capital Holdings, which resulted in the issuance of additional SKH shares. During this same time period, the defendants and others also conducted a private placement related to GlobalSecure, and solicited investors to buy "units" of newly issued SKE stock that would trade on the AIM.

28. To induce purchasers to participate in these private placements and solicitations, ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants, and others acting with the defendants' knowledge and at their direction, made material misrepresentations and omissions regarding, among other things, how investor funds would be used, what profits investors would make from their investments, how investor funds had been used in the past, and the value of the securities that investors were purchasing. They also used assets held by Sky Capital, including GlobalSecure and AST, to lure customers to invest in these private placements.

29. For example, ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants, and others acting with the defendants' knowledge and at their direction, told investors that they were receiving an opportunity to purchase shares of SKH and SKE stock that had been "discounted" from the list price of those stocks on the AIM. In fact, as explained in more detail below, the price of this stock appeared to be "discounted" only because the defendants and others at Sky Capital had artificially inflated and maintained the list price of SKH and SKE through fraudulent means.

30. Moreover, ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants, and others acting with the defendants' knowledge and at their direction, told investors that the value of the SKH and SKE stock - and the investors' investments - would increase dramatically in the near future due to various "liquidity" events, such as an IPO or an acquisition by another entity. Investors were promised that such "liquidity" events were imminent, when in fact they were not.

31. As part of the scheme, ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants, and others acting with the defendants' knowledge and/or at their direction,

used Sky Capital's brokerage business as a means to attract investors. Among other things, they used cold-callers and brokers to initiate contact with potential investors who were typically approached in the first instance about investing in a non-Sky Capital stock that was trading on an American stock exchange, such as the New York Stock Exchange ("NYSE") or the National Association of Securities Dealers Automated Quotations System ("NASDAQ"). After a period of trading in these stocks, investors were then solicited to invest in a Sky Capital product, such as the publicly traded SKH and/or SKE stock, or in a private placement related to SKH, SKE or GlobalSecure. Investors were often encouraged by the defendants and others to sell their non-Sky Capital stock, even when that stock had been increasing in value.

**Manipulation of SKH and SKE Stock**

32. In furtherance of the scheme, ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants, and others manipulated the market for SKH and SKE stock and artificially inflated the share price of those stocks. They did so by enforcing firm-wide policies and practices designed to create the appearance of demand for SKE and SKH stock and to discourage investors from selling SKE and SKH stock. Such practices by the defendants and others included, among other

things: (a) using high-pressure sales tactics and materially false statements and omissions to induce investors to buy SKH and/or SKE stock; (b) using high-pressure sales tactics and materially false statements and omissions to discourage investors from selling SKH and/or SKE stock; (c) failing to execute customer orders to sell SKH and/or SKE stock; (d) enforcing a "no net sales" policy whereby brokers were instructed not to accept orders from Sky Capital customers to sell SKH or SKE stock unless a matching buy order could be generated on behalf of another Sky Capital customer in order to ensure that more SKH and SKE stock was purchased by Sky Capital's retail customers than sold; (e) improperly "crossing" SKH and/or SKE stock between and among Sky Capital customer accounts for the purpose of supporting and maintaining the market price of SKH and SKE; (f) "parking" stock in customer accounts, meaning placing SKH and/or SKE stock in an investor's brokerage account, often without the investor's consent, for the purpose of preventing a sale order from impacting the share price of the stock; (g) making unauthorized purchases of SKH and/or SKE stock on behalf of retail customers; (h) manipulating the order and timing of the execution of trades in SKH and/or SKE stock; (i) encouraging customers to liquidate portions of their brokerage accounts that were not invested in Sky Capital stocks so that the funds could be used to purchase more SKH and/or SKE stock; and (j) using Sky Capital's

proprietary or "error" accounts as a means of preventing a sale order from impacting the share price of SKH and/or SKE stock in cases in which a buyer for the stock could not be found. The purpose of these practices was to give the appearance that there was demand for the SKH and SKE stock (when in fact there was not), to control the market for trades in SKH and SKE stock, and thereby to maintain and increase the share price of those stocks.

**Bribes to Brokers**

33. To facilitate the manipulation of the market for SKH and SKE stock, ROSS H. MANDELL, STEPHEN SHEA, and ADAM HARRINGTON, a/k/a "Adam Rukdeschel," the defendants, and others offered excessive, undisclosed payments to Sky Capital brokers, including ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants. These payments were not disclosed to Sky Capital's customers, notwithstanding the fiduciary obligation owed by the brokers to these customers due to, among other things, the relationship of trust and confidence that existed between the brokers and the customers, and the de facto control and dominance that the brokers exercised over the customers' trading accounts. The brokers also affirmatively misrepresented the compensation they were receiving for trading SKH and SKE stock in oral statements and in written documents, including trade tickets and brokerage statements. To further conceal the undisclosed payments,

individuals at Sky Capital, including individuals acting at the direction of and with the knowledge of MANDELL, SHEA, and HARRINGTON, disguised the payments as "advances," "loans," or "special bonuses."

34. To generate funds for these payments and other undisclosed commissions, participants in the scheme, acting at the direction of ROSS H. MANDELL, the defendant, created a "spread" on SKH and SKE stock by negotiating to purchase large blocks of Sky Capital stock from Sky investors at discounted prices. The defendants and others acting at their direction and with their knowledge then solicited other Sky customers to purchase the same Sky Capital stock at the higher price, thereby creating a profit, which was split between Sky Capital and the brokers.

**Misappropriation of Investor Funds**

35. As explained above, Thornwater and Sky investors were told that their investments would be used for legitimate business purposes and that Thornwater and Sky Capital would use investor funds to provide a return on their investments. In fact, substantial portions of these funds were used to enrich ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants, and others. Investor funds also were used to pay excessive, undisclosed payments to brokers to induce them to

raise funds for Sky Capital and/or to buy SKH and SKE stock, and to provide brokers with additional undisclosed perks. In addition, investor funds and securities in SKE and SKH were used to pay off prior victims who had lost money investing through Thornwater and/or Sky Capital.

36. In some instances, to conceal the nature of payments, individuals who received cash or securities from Sky Capital, including prior victims and individuals who had provided ROSS H. MANDELL, the defendant, and others with personal services, were falsely described as "consultants" by Sky Capital, even though they did not, in fact, provide Sky Capital with consulting services. These individuals were asked to execute "consulting agreements" and were falsely described as "consultants" in various promotional materials distributed by Sky Capital to investors, including Sky Capital PPM's, even though they did not, in fact, provide Sky Capital with consulting services.

#### STATUTORY ALLEGATIONS

##### The Conspiracy

37. From at least in or about 1998 through in or about 2006, in the Southern District of New York and elsewhere, ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants, and others known and unknown, unlawfully, willfully,

and knowingly did combine, conspire, confederate, and agree together and with others to commit offenses against the United States, namely, (1) to commit fraud in connection with the purchase and sale of securities, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5; (2) to commit wire fraud, in violation of Title 18, United States Code, Section 1343; and (3) to commit mail fraud, in violation of Title 18, United States Code, Section 1341.

Objects of the Conspiracy

Securities Fraud

38. It was a part and an object of the conspiracy that ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants, and others known and unknown, unlawfully, willfully, and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, would and did use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making and causing to be made untrue statements of material facts and omitting to state

material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon the purchasers and sellers of Sky Capital and other securities, in violation of Title 15, United States Code, Sections 78j(b) and 78ff.

Wire Fraud

39. It was further a part and an object of the conspiracy that ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants, and others known and unknown, unlawfully, 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 and radio 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.

Mail Fraud

40. It was further a part and an object of the conspiracy that ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON,

a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants, and others known and unknown, unlawfully, 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, for the purpose of executing such scheme and artifice and attempting so to do, would and did place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, and would and did deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and would and did take and receive therefrom such matters and things, and would and did knowingly cause to be delivered, by mail and such carriers according to the directions thereon, and at the places at which they were directed to be delivered by the persons to whom they were addressed, such matters and things, in violation of Title 18, United States Code, Section 1341.

**Means and Methods of the Conspiracy**

41. Among the means and methods by which ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants, and their co-conspirators would and did carry out the conspiracy were the following:

a. Members of the conspiracy employed high-pressure sales tactics and used material misrepresentations and omissions to convince victims to invest millions of dollars first through Thornwater and then through Sky Capital.

b. Members of the conspiracy solicited retail customers to invest in private placements in various holding companies that MANDELL controlled.

c. Members of the conspiracy made materially false statements and omissions regarding how investors' funds would be used.

d. Members of the conspiracy engaged in conduct to manipulate the market for SKH and SKE stock and to artificially inflate the share price of those stocks.

e. To encourage brokers at Sky Capital to "support" SKH and SKE stock, MANDELL, SHEA, and HARRINGTON, and others acting at their direction, offered brokers, including WILSON, GRABOWSKI, PASSARO, HARRINGTON and others, excessive, undisclosed commissions, which were often disguised as "advances," "loans," or "special bonuses."

f. To generate funds to pay brokers for buying Sky Capital stock and to obtain additional money for Sky Capital, participants in the scheme created a "spread" on SKH and SKE stock by negotiating to purchase large blocks of Sky Capital stock from Sky investors at discounted prices. Members of the

conspiracy then solicited other Sky customers to purchase the same Sky Capital stock at the higher price, thereby creating a profit, which was split between Sky Capital and the brokers.

Overt Acts

42. In furtherance of the conspiracy and to effect its unlawful objects, ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants, and their co-conspirators, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about February 9, 1998, members of the conspiracy caused to be distributed materials related to Raleigh for the purpose of soliciting investors.

b. On or about September 25, 1998, members of the conspiracy caused to be distributed a PPM related to Lanesborough for the purpose of soliciting investors.

c. On or about October 1, 1999, members of the conspiracy caused to be distributed a PPM related to TicketPlanet for the purpose of soliciting investors.

d. On or about June 27, 2000, members of the conspiracy caused to be distributed a PPM related to St. James for the purpose of soliciting investors.

e. On or about August 17, 2001, members of the conspiracy caused to be distributed a PPM related to SKH for the purpose of soliciting investors.

f. On or about February 15, 2002, members of the conspiracy caused to be distributed a PPM related to Dorchester for the purpose of soliciting investors.

g. On or about June 3, 2002, members of the conspiracy caused to be distributed marketing materials related to SKH's IPO for the purpose of soliciting investors.

h. In or about June 2002, PASSARO deposited a check dated June 25, 2002, in the amount of \$1,500 that was signed by GRABOWSKI and drawn from a Dorchester bank account.

i. In or about July 2002, HARRINGTON deposited a check dated July 11, 2002, in the amount of \$15,000 that was signed by GRABOWSKI and drawn from a Dorchester bank account.

j. In or about July 2002, WILSON deposited a check dated July 17, 2002, in the amount of \$20,000 that was signed by GRABOWSKI and drawn from a Dorchester bank account.

k. In or about July 2002, HARRINGTON deposited a check dated July 19, 2002, in the amount of \$66,600 that was signed by GRABOWSKI and drawn from a Dorchester bank account.

l. In or about July 2002, WILSON deposited a check dated July 22, 2002, in the amount of \$10,000 that was signed by GRABOWSKI and drawn from a Dorchester bank account.

m. On or about September 2002, members of the conspiracy caused to be distributed a PPM related to an offer to purchase shares in SKE.

n. On or about April 1, 2003, MANDELL countersigned a "Consulting Agreement" that purported to retain an individual who had lost money through MANDELL as a consultant on behalf of Sky Capital.

o. On or about April 1, 2003, MANDELL countersigned a "Consulting Agreement" that purported to retain an individual who had sold MANDELL watches as a consultant on behalf of Sky Capital.

p. On or about April 24, 2003, MANDELL caused Sky Capital to issue a check in the amount of \$50,000 to an individual who had sold MANDELL watches.

q. On or about April 30, 2003, MANDELL countersigned a "Consulting Agreement" that purported to retain a an investor who had lost money in a prior investment as a consultant on behalf of Sky Capital.

r. On or about May 2, 2003, MANDELL caused Sky Capital to issue a check in the amount of \$33,233.18 to a company that had provided MANDELL and his family with personal travel services, including a private jet.

s. On or about May 20, 2003, MANDELL caused Sky Capital to issue a check in the amount of \$2,728.97 to a company

that had installed a home theater system in MANDELL'S home.

t. In or about June 2003, members of the conspiracy caused to be distributed a PPM related to a private placement in GlobalSecure.

u. In or about September 2003, members of the conspiracy caused to be distributed a PPM related to an offering to purchase SKH shares.

v. On or about January 1, 2004, MANDELL countersigned a "Consulting Agreement" that purported to retain an investor who had lost money in St. James as a consultant on behalf of Sky Capital.

w. On or about January 1, 2004, MANDELL countersigned a "Consulting Agreement" that purported to retain an investor who had lost money in Dorchester as a consultant on behalf of Sky Capital.

x. On or about January 1, 2004, MANDELL countersigned a "Consulting Agreement" that purported to retain an investor who had lost money in Raleigh as a consultant on behalf of Sky Capital.

y. On or about April 15, 2004, PASSARO caused to be executed a sell order of 2,400 shares of SKH on behalf of one customer and then crossed out that order with a buy order of 2,400 shares of SKH on behalf of another customer.

z. On or about September 9, 2004, MANDELL caused

Sky Capital to issue a check in the amount of \$20,521.15 to a company that had provided MANDELL and his family with personal travel services, including a private jet.

aa. On or about November 18, 2004, PASSARO caused to be executed a sell order of 10,000 shares of SKE on behalf of one customer and then crossed out that order with buy orders on behalf of four other customers totaling 10,000 shares of SKE.

bb. In or about January 2005, PASSARO deposited a check from Sky Capital LLC in the amount of \$6,547.68, which PASSARO had received on or about January 6, 2005, as payment for finding buyers for Sky Capital stock.

cc. In or about January 2005, HARRINGTON deposited a check from Sky Capital LLC in the amount of \$1,211.86, which HARRINGTON had received on or about January 6, 2005, as payment for finding buyers for Sky Capital stock.

dd. In or about January 2005, GRABOWSKI deposited a check from Sky Capital LLC in the amount of \$8,229.81, which GRABOWSKI had received on or about January 6, 2005, as payment for finding buyers for Sky Capital stock.

ee. In or about January 2005, WILSON deposited a check from Sky Capital LLC in the amount of \$8,229.81, which WILSON had received on or about January 6, 2005, as payment for finding buyers for Sky Capital stock.

ff. On or about May 11, 2005, SHEA reviewed and

authorized the payment of "special bonuses" to Sky Capital brokers as payments for finding buyers for Sky Capital stock.

gg. In or about May 2005, HARRINGTON deposited a check from Sky Capital LLC in the amount of \$1,767.38, which HARRINGTON had received on or about May 11, 2005, as payment for finding buyers for Sky Capital stock.

hh. In or about May 2005, GRABOWSKI deposited a check from Sky Capital LLC in the amount of \$3,063.45, which GRABOWSKI had received on or about May 11, 2005, as payment for finding buyers for Sky Capital stock.

ii. In or about May 2005, WILSON deposited a check from Sky Capital LLC in the amount of \$2,000, which WILSON had received on or about May 11, 2005, as payment for finding buyers for Sky Capital stock.

jj. On or about June 8, 2006, SHEA authorized a "bonus check" from Sky Capital LLC to a broker in the amount of \$2,500 as payment for the broker finding buyers for Sky Capital stock.

kk. On or about November 3, 2005, WILSON, GRABOWSKI, and a co-conspirator not named as a defendant herein engineered a series of trades to swap investors' stock holdings in SKE and SKH solely for the purpose of generating commissions and manipulating the market for SKE and SKH stock.

ll. On or about March 10, 2006, members of the

conspiracy, including WILSON and GRABOWSKI, solicited customers to purchase shares of SKE in the secondary market to cross out sales of SKE by a disgruntled investor, after MANDELL and SHEA had offered brokers an undisclosed commission.

mm. On or about September 26, 2006, PASSARO spoke to an investor and made material misrepresentations and omissions concerning, among other things, Sky Capital's practices regarding trading in Sky Capital stock.

(Title 18, United States Code, Section 371)

COUNT TWO

(Securities Fraud)

The Grand Jury further charges:

43. The allegations contained in paragraphs 1 through 36 and 41 through 42 of this Indictment are repeated and realleged as if fully set forth herein.

44. From in or about 1998 through in or about 2006, in the Southern District of New York and elsewhere, ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants, unlawfully, willfully, and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and

contrivances, as set forth above, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud, (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon purchasers and sellers of Sky Capital and other securities.

(Title 15, United States Code, Sections 78j(b) and 78ff;  
Title 17, Code of Federal Regulations, Section 240.10b-5;  
Title 18 United States Code, Section 2.)

COUNT THREE

(Wire Fraud)

The Grand Jury further charges:

45. The allegations contained in paragraphs 1 through 36 and 41 through 42 of this Indictment are repeated and realleged as if fully set forth herein.

46. From in or about 1998 through in or about 2006, in the Southern District of New York and elsewhere, ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants, and others known and unknown, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud investors and for obtaining investors' money

and property by means of false and fraudulent pretenses, representations and promises, did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, a writing, sign, signal, picture and sound for the purpose of executing such scheme and artifice, to wit, MANDELL, SHEA, HARRINGTON, WILSON, GRABOWSKI, and PASSARO, the defendants, solicited millions of dollars of funds under false pretenses, manipulated the market for SKH and SKE securities, failed to use investors' funds as promised, and misappropriated investors' funds through the use of telephones, emails, faxes and wire transfers, including the transfer of funds from investors into bank accounts in New York, New York.

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

**COUNT FOUR**

**(Mail Fraud)**

The Grand Jury further charges:

47. The allegations contained in paragraphs 1 through 36 and 41 through 42 of this Indictment are repeated and realleged as if fully set forth herein.

48. From in or about 1998 through in or about 2006, in the Southern District of New York and elsewhere, ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, the defendants, 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, to wit, a scheme to solicit millions of dollars of funds under false pretenses, manipulate the market for SKH and SKE securities, fail to use investors' funds as promised, and misappropriate investors' funds, for the purpose of executing such scheme and artifice and attempting so to do, unlawfully, willfully and knowingly did place in a post office and authorized depository for mail matter, matters and things to be sent and delivered by the Postal Service, and did deposit and cause to be deposited matters and things to be sent and delivered by any private or commercial interstate carrier, and did take and receive therefrom such matters and things, and did knowingly cause to be delivered by mail or such carrier according to the direction thereon, and at the place at which it was directed to be delivered by the person to whom it was addressed, such matters and things, to wit, MANDELL, SHEA, HARRINGTON, WILSON, GRABOWSKI, and PASSARO, the defendants, caused to be mailed investment offering documents, marketing materials, account statements, trade confirmations and stock certificates to investors; and mailed payments to credit card companies and private vendors using misappropriated funds.

(Title 18, United States Code, Sections 1341 and 2.)

FORFEITURE ALLEGATIONS

49. As a result of committing one or more of the offenses charged in Counts One, Two, Three and Four of this Superseding Indictment, to wit, conspiracy to commit securities fraud, wire fraud and mail fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Sections 371, 1343 and 1341 (Count One), securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2 (Count Two), wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2 (Count Three), and mail fraud, in violation of Title 18, United States Code, Sections 1341 and 2 (Count Four), ROSS H. MANDELL, STEPHEN SHEA, ADAM HARRINGTON, a/k/a "Adam Rukdeschel," ARN WILSON, ROBERT GRABOWSKI, and MICHAEL PASSARO, 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, any and all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the said offenses, including but not limited to a sum of money representing the proceeds obtained as a result of the charged conspiracy and securities, wire and mail fraud offenses alleged in this

Indictment.

Substitute Asset Provision

50. 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 18, United States Code, Section 982(b), and Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendants up to the value of the forfeitable property described above.

(Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).)

[REDACTED]

  
PREET BHARARA  
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- v. -

ROSS H. MANDELL,  
STEPHEN SHEA,  
ADAM HARRINGTON, a/k/a "Adam Rukdeschel,"  
ARN WILSON,  
ROBERT GRABOWSKI, and  
MICHAEL PASSARO,

Defendants.

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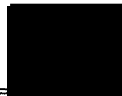
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INDICTMENT

S1 09 Cr. 662 (PAC)

18 U.S.C. § 371, 15 U.S.C. §§ 78j(b) and 78ff,  
and 17 C.F.R. § 240.10b-5

PREET BHARARA  
United States Attorney.



12/14/10  
WJ

Filed Indictment.

Pitmen  
U.S.M.J.



## U4 Employment History

Individual CRD#: 1219720

Individual Name: MANDELL, ROSS H

Office of Employment Address History							
From	To	Firm	CRD Branch Number	NYSE Branch Code Number	Firm Billing Code	Address	Type of Office
04/01/2004	12/31/2008	GRANTA CAPITAL GROUP LLC ( <u>114657</u> )	<u>136958</u>			433 PLAZA REAL SUITE 255 BOCA RATON, FL 33432	Locat At
10/01/2001	11/14/2005	SKY CAPITAL LLC ( <u>114657</u> )	Non Registered Location			433 PLAZA REAL SUITE 255 BOCA RATON, FL 33432	Locat At
04/03/1997	01/30/2001	THE THORNWATER COMPANY, L.P. ( <u>36195</u> )	Non Registered Location			99 WALL STREET 11TH FLOOR NEW YORK, NY 10016	Locat At
06/26/1995	04/02/1997	ROAN CAPITAL PARTNERS L.P. ( <u>33063</u> )	Non Registered Location			40 E 52ND ST NEW YORK, NY 10022	Locat At
05/21/1995	07/17/1995	ROAN CAPITAL PARTNERS L.P. ( <u>33063</u> )	Non Registered Location			900 THIRD AVENUE 27TH FLOOR NEW YORK, NY 10022	Locat At
10/22/1994	06/21/1995	JOSEPHTHAL LYON & ROSS INCORPORATED ( <u>3227</u> )	Non Registered Location		1060	6 E 43RD STREET 15TH FLOOR NEW YORK, NY 10017	Locat At
01/03/1994	09/25/1994	D. BLECH & COMPANY, INCORPORATED ( <u>26063</u> )	Non Registered Location			599 LEXINGTON AVE 41ST FL NEW YORK CITY, NY 10022	Locat At
07/20/1992	01/03/1994	REICH & CO., INC. ( <u>19611</u> )	Non Registered Location		M6	850 THIRD AVE. NEW YORK, NY 10022	Locat At
12/17/1990	08/17/1992	COMMONWEALTH ASSOCIATES ( <u>20833</u> )	Non Registered Location			733 3RD AVE NEW YORK, NY 10017	Locat At
09/22/1988	10/19/1990	RODMAN & RENSHAW INC. ( <u>724</u> )	Non Registered Location		008	444 MADISON AVENUE NEW YORK, NY 10022	Locat At

Please note that data contained in the U4 EMPLOYMENT HISTORY SCREEN is updated only by a U, not reflect any changes made by the filing of a U5.

<b>Employment History</b>							
<b>From</b>	<b>To</b>	<b>Name</b>	<b>Investment Related Business?</b>	<b>City</b>	<b>State</b>	<b>Country</b>	<b>Position</b>
04/2004	Present	SKY CAPITAL LLC	Y	BOCA RATON	FL	USA	REGISTERE REPRESENT
01/2001	03/2008	SKY CAPITAL HOLDINGS LTD.	N	NEW YORK	NY	US	PRESIDENT
10/2001	04/2004	SKY CAPITAL LLC	Y	NEW YORK	NY	US	BROKER
03/2000	01/2002	CHIPCARDS, INC.	N	SAN FRANCISCO	CA		CONSULTAI
01/2001	12/2001	THE THORNWATER COMPANY, L.P.	Y	NEW YORK	NY		CONSULTAI
04/1997	01/2001	THE THORNWATER COMPANY, L.P.	Y	NEW YORK	NY		SENIOR VIC
10/1999	10/2000	LISA'S INCREDIBLE EDIBLES, INC.	N	FORT LEE	NJ		CONSULTAI
05/1999	10/1999	TICKETPLANET.COM, INC.	N	SAN FRANCISCO	CA		CONSULTAI
06/1995	04/1997	ROAN CAPITAL PARTNERS L.P.	Y	NEW YORK	NY		SENIOR VIC PRESIDENT PARTNER
10/1994	06/1995	JOSEPH THAL LYON & ROSS INCORPORATED	Y	NEW YORK	NY		SENIOR VIC
01/1994	09/1994	D. BLECH & COMPANY, INCORPORATED	Y	NEW YORK CITY	NY		SENIOR VIC
08/1992	01/1994	REICH & CO., INC.	Y	NEW YORK	NY		SENIOR VIC
12/1990	08/1992	COMMONWEALTH ASSOCIATES	Y	NEW YORK	NY		SENIOR VIC

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## Exam Information

Individual CRD#: 1219720

Individual Name: MANDELL, ROSS H

Exam History							
Exam	Status	Status Date	Exam Date	Grade	Score	Window Begin Date	Window End Date
S7	Official Result	12/17/1983	12/17/1983	PASSED	78		
S24	Official Result	01/08/2002	01/07/2002	PASSED	80	11/22/2001	03/22/2002
	Withdraw	10/27/1994					
	Expired	08/11/1994			0		
S63	Official Result	01/11/1984	01/11/1984	PASSED	88		

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UNITED STATES DISTRICT COURT;  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA :

S1 09 Cr. 662 (PAC)

v. :

ROSS H. MANDELL and :  
ADAM HARRINGTON :  
Defendants. :

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 7-26-11

-----X  
PAUL A. CROTTY  
UNITED STATES DISTRICT JUDGE

**VERDICT FORM**

1. How do you find each Defendant as to Count One, with respect to:

A. The conspiracy to commit securities fraud?

	<u>Not Guilty</u>	<u>Guilty</u>
Ross H. Mandell	_____	_____ ✓
Adam Harrington	_____	_____ ✓

B. The conspiracy to commit wire fraud?

	<u>Not Guilty</u>	<u>Guilty</u>
Ross H. Mandell	_____	_____ ✓
Adam Harrington	_____	_____ ✓

C. The conspiracy to commit mail fraud?

	<u>Not Guilty</u>	<u>Guilty</u>
Ross H. Mandell	_____	_____ ✓
Adam Harrington	_____	_____ ✓

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2. How do you find each Defendant with respect to Count Two, securities fraud?

	<u>Not Guilty</u>	<u>Guilty</u>
Ross H. Mandell	_____	_____ ✓
Adam Harrington	_____	_____ ✓

3. How do you find each Defendant with respect to Count Three, wire fraud?

	<u>Not Guilty</u>	<u>Guilty</u>
Ross H. Mandell	_____	_____ ✓
Adam Harrington	_____	_____ ✓

4. How do you find each Defendant with respect to Count Four, mail fraud?

	<u>Not Guilty</u>	<u>Guilty</u>
Ross H. Mandell	_____	_____ ✓
Adam Harrington	_____	_____ ✓

Sign the form and notify the Court Security Officer that you have reached a verdict.

\_\_\_\_\_  
Foreperson

7-26-2011  
Date

C53WmanS

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

09 CR 662 (PAC)

5 ROSS H. MANDELL,

6 Defendant.

7 -----x  
8 New York, N.Y.  
9 May 3, 2012  
4:00 p.m.

10 Before:

11 HON. PAUL A. CROTTY,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the  
16 Southern District of New York

17 KATHERINE GOLDSTEIN

Assistant United States Attorney

18 HOFFMAN & POLLOK LLP

19 Attorneys for Defendant

20 JEFFREY C. HOFFMAN

21 SUSAN WOLFE  
22  
23  
24  
25

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1 I apologize for having misplaced that paper and for  
2 having to ask to stand up again before your Honor, and I  
3 appreciate it.

4 THE COURT: All right.

5 Mr. Mandell, this is your chance to speak.

6 THE DEFENDANT: Your Honor, I prepared some things to  
7 say.

8 THE COURT: Okay.

9 THE DEFENDANT: Would it be a problem if I used the  
10 men's room briefly?

11 THE COURT: Oh, no.

12 THE DEFENDANT: Thank you.

13 THE COURT: We'll take a short recess.

14 (Recess)

15 THE COURT: Please be seated.

16 All set, Mr. Mandell?

17 THE DEFENDANT: Yes, sir, Judge. Would it be okay if  
18 I stood over there?

19 THE COURT: Yes, of course.

20 THE DEFENDANT: Thank you.

21 THE COURT: Help yourself.

22 THE DEFENDANT: I want to thank my family and friends  
23 that are here today and those that couldn't be here today both  
24 for their support and their unconditional love that they've  
25 shown to me. I'm truly overwhelmed by the amount of support

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1 that's been revealed in my life, and I want to thank you,  
2 Judge, and I want to thank the Court, Marlon in particular, for  
3 your patience, and I want to thank Ms. Goldstein and some of  
4 the FBI agents here for their service as well because it's a  
5 good thing that you guys are doing. I appreciate that. And I  
6 just want to apologize in advance because I just might mess  
7 this up a little bit.

8 This is an overwhelming situation for me, probably for  
9 just about anybody that's been in my shoes and standing here  
10 right now. I've never been through anything like this in my  
11 life before. So I just want to say I'm sorry in advance.

12 As you know, I didn't testify at the trial. I've  
13 never really had the opportunity to speak directly to this  
14 Court. I've talked to you about certain facts that have been  
15 just blatantly misstated. I've talked to you about how I feel  
16 about what has happened, and I thank you very much, your Honor,  
17 for this opportunity. I'm extremely grateful.

18 On November 6, 2006, my life and the lives of my  
19 family, all the clients and investors and employees of Sky  
20 Capital, which, at times, your Honor, was a thousand people, in  
21 my tenure, at Sky Capital, I created in excess of 4,000 jobs.  
22 On that day, November 6, '06, we had a board meeting scheduled.  
23 Former United States senator, former member of Congress, former  
24 parliamentary appointee, and other very credible people were  
25 there. Roughly 40 FBI agents came in with guns drawn, parkas

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1 on, stormed the office at Sky Capital, to exercise a search  
2 warrant that day, and I see the two lead guys here now.

3 I want you to know since that day I haven't even had  
4 one minute of peace, not a minute. And I've been in a constant  
5 state of pain and discomfort, and I want to say something I  
6 haven't prepared. It's probably a mistake, but I got to say  
7 it. To me, court and this process should be about a search for  
8 the truth, search for justice, about decency and values, that  
9 we as Americans have and hold dearly. Ms. Goldstein just sat  
10 here, just stood here and told you something that was not true,  
11 whether she's being dishonest or she doesn't know the facts of  
12 the case or she's just lying, I don't know. She said this scam  
13 would have continued if the FBI, if law enforcement didn't come  
14 and shut down Sky Capital.

15 Judge Crotty, nobody ever shut down Sky Capital.  
16 Never. Special Agent Kurt Daniel is here, Special Agent Adam,  
17 I forget your last name, will testify to that if he has to  
18 right now. Nobody shut down Sky Capital. Ever. Nobody was  
19 indicted for 32 months, to my knowledge, until it was revealed  
20 right immediately prior to trial that they had, in fact, caught  
21 a couple of guys that committed crimes and at the time and all  
22 prior to the time that they were caught, there's testimony,  
23 there's tapes, sworn statements, all of it, that said that it  
24 was their crime. It was between them and another cooperator,  
25 named Mario Figueroa, CW1, Philip Pickell -- these names are

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1 all in the record -- that Ross Mandell doesn't know anything  
2 about any of this or he'd throw us all out. That's on tape,  
3 your Honor.

4 I wasn't going to say this. Law enforcement never  
5 shut down Sky Capital. I was allowed to leave Sky Capital,  
6 retire to go down to Florida, I was bought out by the guys who  
7 were some of the biggest investors in Sky Capital who then  
8 turned around and raised millions of dollars. One of the  
9 brokers that participated, man sitting in this room, Edward  
10 McMahon, who wrote you a letter that I just saw for the first  
11 time five minutes ago, and I'm shocked because this is supposed  
12 to be about the truth, and the people that cooperated here,  
13 they perjured themselves in front of you. They lied.

14 Jeff Hoffman got them to admit that they were lying in  
15 the cross-examination. One fellow, Mike Pissarro, you received  
16 a letter from his wife, unsolicited from me, that said he's a  
17 lying scumbag, that he's psychotic. He said he had a special  
18 deal with Ms. Goldstein and the government that wasn't revealed  
19 and only on redirect was she able to inform you of that. These  
20 are not quiet comments, but I'm just responding here.

21 Ms. Goldstein just said I couldn't sell my stock. My  
22 stock was worth between 40 and \$50 million for two and a half  
23 years, your Honor. I had 17 million shares. I didn't sell  
24 them. The government would have you believe I paid these  
25 cooperators, I paid them bribes to sell stock, someone else's

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1 stock, company stock, treasury stock, that I'm a criminal,  
2 created a scheme to defraud, and I had \$40 million of liquid  
3 stock in my pocket. I'm some criminal, let me tell you. The  
4 claim I made about seven or \$8 million with expenses over eight  
5 years.

6 Does anybody here read the newspapers? Lehman  
7 Brothers, \$40 million a year, bankrupt. Sky Capital never went  
8 bankrupt, sir. Sky Capital never got government assistance,  
9 never had a TARP program. We never failed. We were delisted  
10 when the FBI came in and the government refused to give comfort  
11 to London Stock Exchange that there would be no immediate  
12 indictments. Sky Capital voluntarily withdrew its membership  
13 to the association, the NASD, a year after I had already left.  
14 None of this is in the record, and this is supposed to be a  
15 search for truth, and that's probably my fault, but at least I  
16 got a chance to mention this today.

17 Immediately after that search, my life became a  
18 nightmare of uncertainty, fear, and insecurity. I was now  
19 thrown into a world as a sober man that's been foreign and  
20 brutal to me. I'm a father, I'm a husband, I'm a business  
21 person, and I'm a sponsor in Alcoholics Anonymous. And I've  
22 tried my best to keep up appearances. I keep my head up, keep  
23 my chest out. It's taken a huge toll on me, sir. During the  
24 summer of '07, about six months after the search, the raid,  
25 which law enforcement never closed Sky Capital, I started

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1 getting severe pains in my mid-section. Severe.

2           Ultimately, in August 2007, I was rushed to the  
3 hospital. I was diagnosed with severe diverticulitis, which I  
4 have today. They kept me there five nights. It's in the PSI  
5 report. They have the reports from the hospital. My blood  
6 tested positive for all kinds of things relative to stress,  
7 emotional pain. And surgery was strongly recommended, and  
8 against medical advice I haven't had it done because the  
9 recovery time of that kind of stomach surgery is extremely  
10 lengthy and it's very, very tough.

11           Your Honor, I got a wife and I got two little kids. I  
12 got eight sponsees in Alcoholics Anonymous that were men, four  
13 that are women. I man a suicide hotline four nights a week. I  
14 got people that depend on me. I can't afford to take that  
15 surgery right now. I don't have any help. We don't have  
16 money. It would be an unfair burden on my family.

17           On the second of November, about six months ago, I had  
18 a heart attack. I have some pretty severe damage to my heart.  
19 My heart is now operating at less than 50 percent efficacy, and  
20 I could tell you I don't think I could ever survive another  
21 one. The left wall of my heart has ischemia, which is not  
22 functioning properly. I don't feel well most of the time.

23           About eight weeks ago, on February 29, I finally had  
24 to give up and have hernia surgery. My intestines were coming  
25 through the wall of my stomach. The pain was unbearable. The

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1 only reason I bring this up is, as I mentioned in my private  
2 letter to you, I've been suffering, suffering for years, since  
3 November 6 of '06, and these ailments are all directly related  
4 to the emotional stress and the pain I feel as a result of all  
5 this, of this process over the events that have caused us to  
6 know each other. Over the course of the pretrial, the  
7 discovery, the trial, now the posttrial events, I've learned a  
8 great deal about my former business, about my former employees,  
9 and about some of the investors of Sky Capital. I was  
10 literally physically sickened listening to some of the  
11 testimony in this courtroom. I've been saddened by the outcry  
12 of some of these investors.

13 I'm an extremely empathetic person, sir, and I have  
14 been for 21-1/2 years, and the pain and suffering that they  
15 feel, having lost money and savings, is devastating to me.  
16 I've cried many nights over this. I thought I was cried out,  
17 but, you know, today, somehow, it's just an overwhelming  
18 situation, sir. I have read and reread and reread again the 23  
19 victim impact statements. I've read the comments on the  
20 Internet blogs, the newspaper stories. I am really deeply  
21 pained by this, so you know.

22 Throughout this whole ordeal, sir, I've remained a  
23 sober man. I'm a good father. And I'm a pretty solid husband.  
24 In October 1990, I swore off alcohol and drugs and I've  
25 remained clean and sober ever since. Judge Crotty, sobriety is

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1 a way of life. It's not just about not drinking and not using  
2 drugs. Certain steps have to be taken. Certain principles  
3 have to be adhered to, if one is going to try and stay clean.  
4 It's not about perfection, sobriety, but it is about  
5 openmindedness. It's about spiritual progress. It's about a  
6 willingness and it's about performing service to others, which  
7 is so critical. These are critical ingredients. Your Honor,  
8 as God is my witness, I have adhered to these steps and  
9 principles for the last 21-1/2 years.

10 The most important thing in my life, sir, is my  
11 family. My wife Stephanie, she's sitting right over here, you  
12 might recognize her. She was at trial every single day  
13 supporting me. Loving me. She knows the truth, and my two  
14 daughters, [REDACTED] she's [REDACTED] years old, sir. My daughter  
15 [REDACTED] is [REDACTED]. I would gladly trade my life or give my life  
16 if it would benefit them even a little bit, sir.

17 Over the course of the last five and a half years or  
18 so it's become very, very apparent that my family needs me. We  
19 get through health issues, we get through the stigma of gossip  
20 and innuendo, bad-mouthing, financial struggles. We were a  
21 God-blessed American family, sir. We love this country and we  
22 teach our children the values of love, respect, honesty,  
23 integrity, and decency. The most important thing to me is that  
24 they'll be okay, sir.

25 As a result of the negative press surrounding the raid

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1 of November of '06, 2006, the perp walk that was orchestrated  
2 by the U.S. Attorney's office, or somebody, both FBI agents  
3 leaned over to me immediately before the perp walk and  
4 whispered in my ear, It wasn't our office, sir, we didn't do  
5 it. I didn't even know what they were talking about. Today I  
6 understand. As a result of all this negativity, we live in a  
7 different world. I've got kids, sir. I did my best to try and  
8 diffuse the situation. I went public. The community seemed to  
9 embrace this effort. The people we live with, that we school  
10 with, and that we interact with on a daily basis, they know who  
11 we are as a family, and they know who I am as a person.

12 Ms. Goldstein says a lot about me, sir. So did  
13 Mr. Quinones. They've never had one conversation with me,  
14 ever. Ever. There were men that sat there, raised their right  
15 hand, and swore. They lied and lied. I'm not going to reargue  
16 the case, sir.

17 I want you to know we're a kind, loving, God-fearing  
18 American family and we're dealing with an overwhelming  
19 situation. We're trying to raise our daughters in a proper  
20 fashion. We have been overwhelmed by the kindness and the  
21 generosity of our community. My wife and daughters have  
22 suffered enormously. My oldest daughter has developed a  
23 [REDACTED] She has [REDACTED] [REDACTED] My youngest daughter  
24 has a [REDACTED] She's trying to struggle with what's  
25 happening and what's going on. My wife has been amazingly

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1 supportive. She now suffers medically and she's under a  
2 doctor's care. We all sleep in one room every night. We spent  
3 all our savings, all our assets, everything. We have virtually  
4 nothing left but each other. We're living off loans from  
5 family members and friends. No clear path to the future.  
6 We've been suffering already for many, many years, sir. I need  
7 the ability to provide for them, to protect them, and to be  
8 able to work to support them.

9 I've never taken money from unemployment or any other  
10 government assistance. One of the government's witnesses, a  
11 cooperator, he admitted lying, taking money from the 9/11  
12 relief fund, Red Cross, sacred money, said I wasn't involved, I  
13 didn't know about it. One of the only true things he said. I  
14 pray that this does not become my family's only option,  
15 assistance. We are truly at your mercy, your Honor. We're at  
16 your mercy.

17 I'm keenly aware of the charges that are brought  
18 against me. I understand the consequences of a guilty verdict.  
19 I understand I've been convicted. I just want you to know that  
20 it was never my intention to steal or cheat anybody. I've  
21 never taken anything from anybody, sir. It would have been the  
22 easiest thing in the world for me to do to sell my shares,  
23 bribe a couple brokers, the government says. Then she says I  
24 couldn't have sold my shares. Then she said, Well, I had a  
25 broker to sell shares. Which is it? The FBI raid came and Sky

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1 was delisted, I lost \$45 million, but I wasn't arrested. I  
2 wasn't charged. Sky Capital wasn't closed. We continued to  
3 fight on.

4 I spent 21 years doing countless hours of service  
5 work, charitable work in the world of alcoholism and addiction.  
6 I've spoken at meetings all over the world. I've had hundreds  
7 of sick and suffering addicts reach out to me for help. Last  
8 night, I spent two hours on the telephone counseling somebody  
9 that was suffering more than I was last night, while I was  
10 trying to organize my thoughts for court today, because they  
11 needed to speak to somebody right then, right there. And they  
12 happened to call me. I've never declined to help anyone that  
13 is less fortunate than me. Never.

14 I'm embarrassed telling you about this, sir. These  
15 are anonymous programs for a reason. But I'm fighting for my  
16 life, for the life of my family. I'm fighting lies, bad  
17 decisions, innuendo, corruption. I'm baring my soul to you.  
18 I'm begging you not to take me from my family, not for one  
19 second more than you have to, sir. I understand the  
20 seriousness of the crimes that I've been convicted of.

21 Oftentimes, distraught men and women come to me.  
22 They're facing life ending or very tragic circumstances due to  
23 alcoholism and drug addiction. I'm often faced with a very,  
24 very tough circumstance. I know my words, my advice, and my  
25 actions could very well determine the outcome of their entire

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1 lives. I don't take that lightly, your Honor. Oftentimes, I'm  
2 asked to intervene in situations that involve suicide,  
3 attempted suicide, suicidal thoughts, brought on by excessive  
4 substance abuse. Terrible circumstances, terrible, not unlike  
5 what I'm facing right now, right here. It's times like those I  
6 had to reach deep into my heart and throw the play book out the  
7 window because I was trying to preserve and save a life.  
8 Saving life is the only thing that matters.

9 I'm not asking you for leniency today, Judge Crotty.  
10 I'm begging you. I'm pleading with you to look past the  
11 guidelines, the arguments, to find true mercy in your heart.  
12 My family's suffered for years and years now. We've lost  
13 everything but each other. Please find in your heart and in  
14 your wisdom to allow me to stay with my family and support them  
15 as we pursue all of our legal remedies. Allow us to remain a  
16 family, to continue to contribute to our community rather than  
17 to become a drain on them and this country. Please give my  
18 daughters a chance, allow my daughters a chance of becoming  
19 healthy, contributing Americans.

20 I lastly want to say on a very personal note, my  
21 [REDACTED] daughter, [REDACTED], has spent the last year of her  
22 life rehearsing for a school play that's being put on at the  
23 school tomorrow night and Saturday night in Boca Raton,  
24 Florida. It's called Peter Pan. Please allow me the  
25 opportunity to go home and watch her perform. It would mean

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1 the world to our family, to her, and thank you from the bottom  
2 of my heart for your consideration, my sentencing. I thank you  
3 for the opportunity for allowing me to express myself so  
4 openly. May God bless you and yours, Judge Crotty.

5 THE COURT: Thank you, Mr. Mandell.

6 Anybody else want to add anything? Ms. Goldstein,  
7 Mr. Hoffman, Ms. Wolfe?

8 MS. GOLDSTEIN: No, your Honor.

9 MR. HOFFMAN: Nothing, your Honor.

10 THE COURT: I thank the parties for their submissions  
11 and for their advocacy here. It's now my function to impose  
12 sentence on Mr. Mandell. And before I do that, I'm going to  
13 give you the reasons for it. Again, before I impose the  
14 sentence, I'll tell you what it's going to be, Mr. Hoffman, so  
15 you can object to it if you want to object.

16 MR. HOFFMAN: Thank you.

17 THE COURT: The starting point, under Section 3553 of  
18 18 U.S.C., is what do the guidelines say. They're not binding.  
19 They're discretionary, but I have to review those guidelines,  
20 and that's the starting point. So the main challenges here are  
21 to the loss amount attributable to Mr. Mandell and also the  
22 number of victims who were adversely impacted by his conduct.

23 With respect to the loss amount, we look at  
24 Mr. Mandell's conduct at Thornwater and Sky Capital for the  
25 eight-year period of '98 through 2006. He ran the operations,

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1 and it's appropriate to hold him accountable for all the  
2 reasonably foreseeable acts and omissions of himself and others  
3 in furtherance of the jointly undertaken criminal activity.  
4 There is no doubt that Mr. Mandell and his associates were  
5 participating in the jointly undertaken criminal activity. The  
6 conduct of others at Thornwater and Sky Capital were both in  
7 furtherance of and reasonably foreseeable in connection with  
8 the criminal activity.

9         With respect to the loss amount attributable to  
10 Mr. Mandell's conduct, Mr. Mandell suggests and his counsel  
11 suggests that it has to be established with precision, and  
12 Mr. Mandell should be held accountable only for the losses of  
13 those who testified at trial and we should look only at the  
14 loss in value rather than the total loss, but I disagree. I  
15 don't think that's the law.

16         Under the Sentencing Guidelines, I have to make a  
17 reasonable estimate of the loss caused by Mr. Mandell's  
18 conduct. I do not have to do this with precision. I have to  
19 make a reasonable estimate. I sat through the trial. I heard  
20 the testimony. I've reviewed the documents. I can make an  
21 estimate, a fair and reasonable estimate, based on the evidence  
22 at trial.

23         Here, the government's loss analysis does not depend  
24 on the value of the publicly traded Sky stock. Rather, the  
25 focus is on the actual loss to purchasers on the private side.

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1 I can also consider more general factors, such as the scope and  
2 the duration of the offense. Here, we take a look at two  
3 private placements. One is Global Secure, which, between the  
4 period of August 25, '03, and October the first, 2004, raised  
5 some \$27 million in money for Global Secure. Sky Venture  
6 Capital, which was later renamed SKE and listed on the  
7 Alternate Investment Market in 2004, in the time period from  
8 March 16 of 2005 to May 22 of '06, raised some \$19 million.  
9 The Global Secure money is listed in GX5 and the Sky Capital  
10 Enterprise money is listed in GX6. Both exhibits showed the  
11 transfer of money into Sky Capital bank accounts for these two  
12 private placements.

13 The trial testimony and evidence at trial and the  
14 jury's deliberations and verdict made clear that there was  
15 fraud involved with both of these transactions, and, with  
16 respect to Global Secure, it was sold on the promise of  
17 enormous profits in a short time, which never materialized and  
18 nobody ever made any money on Global Secure, even though Global  
19 Secure is still a functioning entity, or may be a functioning  
20 entity.

21 Would that person turn off their cell phone, please.

22 With SKE, the people who bought those shares never had  
23 an opportunity to get to market because of various restrictions  
24 imposed, and I find were they able to get to market, the market  
25 had been foreclosed. It was, as one broker said, like pouring

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1 concrete in his book. Those two issuances together are \$46  
2 million. They do not include Advanced Spinal Tap, Lisa's  
3 Incredible Edibles, Ticket Plan, Plainsboro, Saint James, and  
4 Dorchester, and that's \$40 million more than Sky Capital, Sky  
5 Capital Holdings, Sky Capital Floatations, Dorchester and Sky  
6 Capital Holdings A and B. There's at least \$50 million in  
7 losses to investors, and these losses are attributable to  
8 Mr. Mandell's fraudulent conduct, as the jury found. He should  
9 be held accountable for these reasonably foreseeable acts in  
10 furtherance of the jointly undertaken criminal activity.

11 In many ways, this exercise is academic because even  
12 if contrary to my finding that there were \$50 million in  
13 losses, there were only \$20 million in losses, the enhanced  
14 level would be 22 as opposed to 24. And for just \$7 million  
15 the amount of money that Mr. Mandell made over the eight-year  
16 period, the enhanced level would be 20, which would be still  
17 substantial additions to the basic fraud count of seven.

18 With respect to the number of victims, I find that  
19 with GX5 and 6, you assume there is one wiring per entry on  
20 those documents in GX5 and 6, that's 56 victims. Investors in  
21 other private placements, just those 56 victims are entitled to  
22 a four-level enhancement. We get to the sixth level and more  
23 than 250 by considering the cross-trades in Sky Holdings and  
24 Sky Enterprises set forth in GX1 and GX2. Buyers on the  
25 cross-trades were solicited and there ensued false

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1 representations and material omissions. So I find that the  
2 amount of loss justifies an enhancement of at least \$50  
3 million, justifies an enhancement of 24, and given the number  
4 of victims of 250, an enhancement of six is possible. As  
5 Ms. Wolfe conceded, there are sophisticated means, four for  
6 leadership and four for broker-dealer, bringing us to a total  
7 of 47, an offense level of 47, which I find to be accurate.

8 Now, that 47 yields a greater than life imprisonment.  
9 The maximum sentence is 65 years, and I think, as the probation  
10 report suggests, there should be a downward departure or a  
11 variance. The fact of the matter is the sentence has to be  
12 reasonable and it can't be dictated by the guidelines, and the  
13 guidelines here are wildly out of balance with the crimes that  
14 Mr. Mandell committed.

15 The question then is what is the appropriate sentence.  
16 Here I have to consider the factors set forth in 3553(a), the  
17 nature and the circumstances of the offense and the history and  
18 characteristics of Mr. Mandell, the need for the sentence. I  
19 have to impose a sentence that reflects the seriousness of the  
20 offense, one that will promote respect for the law and provide  
21 just punishment for the offense. I have to afford adequate  
22 deterrence to criminal conduct. That's general deterrence, and  
23 specific deterrence to protect the public from future crimes of  
24 Mr. Mandell, and to provide Mr. Mandell with needed educational  
25 and vocational training, medical care, some other correctional

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1 treatment in the most effective manner, which I think is not  
2 applicable here.

3 I've looked at sentences because one of the reasons  
4 for the guidelines is disparate sentences, so I've considered  
5 the sentences of similar crimes of fraud and they're cited in  
6 Mr. Mandell's papers, which I've considered, and the  
7 government's papers as well. I find that this matter does not  
8 justify a life sentence. It doesn't justify the sentence which  
9 probation makes of 30 years, the sentence that Mr. Ebbers  
10 received for the great crimes he committed with regard to  
11 WorldCom, 25 years. Mr. Dreyer committed a crime of fraudulent  
12 Ponzi scheme where he raised over \$700 million, and he was  
13 given a sentence of 20 years. I take all those factors into  
14 consideration.

15 I've certainly considered the factors about  
16 Mr. Mandell and his history and his characteristics, and the  
17 numerous letters that he submitted attesting to his good  
18 conduct, and the life that he's led where he's provided  
19 considerable assistance to others. And while his activity here  
20 that we saw in the courtroom is substantially different, that  
21 does not mean that we shouldn't credit and recognize the good  
22 work that he's done, including his sobriety and the fact that  
23 he's able to assist others and does so on a voluntary and  
24 continuing basis, and he's done an awful lot of good.

25 While Mr. Mandell portrays himself as something of a

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1 victim here, I've also read the victim impact statements, and  
2 they raise serious questions. Many of the people who have been  
3 victimized by these crimes are suffering from many of the same  
4 symptoms that Mr. Mandell is experiencing. The picture that he  
5 paints of himself is not the picture that we have at trial. I  
6 won't go into all the trial evidence, but here we have  
7 substantial evidence which convinced the jury beyond a  
8 reasonable doubt that Mandell's conduct and the conduct of his  
9 associates was criminal, fraudulent, and caused substantial  
10 losses in excess of \$50 million to over 250 victims.

11 I've taken all that into consideration, and I'm going  
12 to impose a sentence of 144 months, 12 years and a term of  
13 supervised release of three years on all counts to run  
14 concurrently. This is subject to the mandatory conditions  
15 except the drug condition will be imposed, subject to the  
16 standard and special conditions.

17 The following special conditions are that Mr. Mandell  
18 shall provide the probation officer with access to any  
19 requested financial information. He shall not incur new credit  
20 charges or open additional lines of credit without the approval  
21 of the probation officer unless the defendant is in compliance  
22 with the installment payment schedule. He's to participate in  
23 a program approved by the probation office, which program may  
24 include testing to determine whether the defendant has reverted  
25 to using drugs or alcohol.

C53WmanS

1 I authorize the release of available drug treatment  
2 evaluations and reports to the substance abuse treatment  
3 provider as approved by the probation officer. The defendant  
4 will be required to contribute to the cost of services rendered  
5 in the form of copayment in an amount determined by the  
6 probation officer, based on ability to pay or the availability  
7 of third-party payments.

8 The defendant shall submit his person, residence,  
9 place of business, vehicle, or other premises under his control  
10 to search on the basis that the probation officer has a  
11 reasonable belief that contraband or evidence of a violation of  
12 the conditions of release may be found. The search has to be  
13 conducted at a reasonable time and in a reasonable manner.  
14 Failure to submit to a search may be grounds for revocation.  
15 The defendant shall inform any other residents that the  
16 premises may be subject to search pursuant to this condition.

17 As directed by the probation officer, the defendant  
18 shall notify third-parties of the risks that may be occasioned  
19 by defendant's criminal record or personal history or  
20 characteristics. The defendant shall permit the probation  
21 officer to make such notifications and to confirm the  
22 defendant's compliance with such notification requirements.

23 Mr. Mandell is to report to the nearest probation  
24 office within 72 hours of his release and he is to be  
25 supervised in the district of his residence. I must impose and

C53WmanS

1 I do impose a special assessment of \$400.

2 The government waives restitution, is that correct?

3 MS. GOLDSTEIN: No, your Honor. We request an  
4 additional 90 days to submit a list of identifiable victims  
5 with associated restitution amounts.

6 THE COURT: I'm going to impose a fine of \$10,000.

7 With respect to forfeiture, I have a forfeiture order.

8 You've received that, Mr. Hoffman, the forfeiture  
9 order?

10 MR. HOFFMAN: I don't think so, your Honor.

11 I just did.

12 THE COURT: Okay.

13 I'm including the forfeiture of \$50 million as I'm  
14 announcing the sentence, and I will include the forfeiture  
15 order directly and by reference in the judgment of conviction.

16 That's the sentence that I intend to impose. Any  
17 objections other than the ones you've already mentioned,  
18 Mr. Hoffman?

19 MR. HOFFMAN: Can I have one moment, your Honor.

20 THE COURT: Yes.

21 MR. HOFFMAN: The only point I would make, your Honor,  
22 is I believe that forfeiture should be in the amount that the  
23 defendant received as part of his illegal activity. I think  
24 we've spoken about seven million and change was the amount he  
25 received over the eight years, and I would ask the Court to

C53WmanS

1 limit the forfeiture to that amount.

2 THE COURT: Ms. Goldstein.

3 MS. GOLDSTEIN: We object. The forfeiture amount, we  
4 believe, is properly reflected as the amount of loss the Court  
5 just adopted.

6 THE COURT: I agree. The forfeiture amount is set at  
7 the \$50 million level. There will be no interest on the fine,  
8 and to the extent I haven't made it clear, the 144 months is to  
9 run on all counts concurrently. I mean, it takes care of all  
10 counts.

11 Do you want to be heard on voluntary surrender,  
12 Mr. Hoffman?

13 MR. HOFFMAN: I do, your Honor.

14 I'd ask the Court to allow voluntary surrender.  
15 Mr. Mandell has met his obligations consistently throughout the  
16 proceedings, including coming to court on the day of, when the  
17 jury was deliberating, knowing that there was going to be a  
18 verdict, and he continued to be here each day. When the  
19 verdict was reached, he continued to follow all the mandates of  
20 the Court. He came here today under his present bail knowing  
21 that the Department of Probation has requested a 30-year  
22 sentence and that the government was going to ask the Court for  
23 that same amount. So he actually sits here today having heard  
24 a 12-year sentence being significantly less than he was  
25 concerned he might receive, but he came here to receive it,

C53WmanS

1 and, by any measure, there's no reason to believe that he would  
2 not continue to meet the Court's mandates --

3 THE COURT: Do you want to suggest a date?

4 MR. HOFFMAN: -- and appear appropriately.

5 I would ask for 90 days, your Honor.

6 THE COURT: Ms. Goldstein.

7 MS. GOLDSTEIN: We would ask for something  
8 substantially shorter, your Honor. There's been a lengthy  
9 period between the jury's verdict and the date of sentencing.

10 THE COURT: Yes.

11 MS. GOLDSTEIN: The defendant has had ample time to  
12 put his affairs in order, and there's no reason that the  
13 defendant shouldn't need to surrender in a much shorter period  
14 of time. The government would respectfully request 30 days.

15 MS. WOLFE: Your Honor, may I just make an additional  
16 comment.

17 THE COURT: Yes.

18 MS. WOLFE: It usually takes about six weeks for the  
19 Bureau of Prisons to designate someone.

20 THE COURT: I'm told it's much shorter now.

21 MS. WOLFE: If that's true, and you're probably more  
22 in the know than I am, my only point being that if the period  
23 is too short, then he has to surrender to an administrative  
24 facility, and my understanding is that it isn't considered the  
25 same for security designation purposes as showing up at your

C53WmanS

1 designated facility.

2 THE COURT: Ms. Goldstein, what is the time for the  
3 Bureau of Prisons to designate a facility?

4 MS. GOLDSTEIN: Your Honor, I think it can happen as  
5 quickly as within eight days to two weeks. They do it as soon  
6 as they receive the judgment from the Court.

7 THE COURT: They will get the judgment tomorrow.

8 I'm going to set June 18 for the date of surrender.  
9 That will give you 46 days from today for the surrender. June  
10 18, for voluntary surrender. And I assume I'll make a  
11 recommendation for a place in Florida?

12 MR. HOFFMAN: Yes, your Honor.

13 THE COURT: That's the sentence I intend to impose.

14 MS. WOLFE: One more point.

15 THE COURT: Yes, Ms. Wolfe.

16 MS. WOLFE: On the forfeiture, I tried to read it  
17 quickly because I hadn't seen it before, I ask that the Court  
18 make the judgment and the forfeiture joint and several with all  
19 of the other defendants in this case because he's being held  
20 responsible for a sum total that far exceeds the amount he  
21 personally received. When it's joint and several, all of the  
22 defendants in the case will be contributing to that amount.

23 MS. GOLDSTEIN: We object. Each defendant will be  
24 sentenced separately in this case and will have their own order  
25 of forfeiture.

C53WmanS

1 THE COURT: What about in the unlikely event everybody  
2 has \$50 million? How much should be forfeited?

3 MS. GOLDSTEIN: Your Honor, these are the losses that  
4 were attributable to this defendant. So we respectfully submit  
5 this is the proper forfeiture order for this defendant. I'm  
6 not aware of authority for the forfeiture order to be entered  
7 jointly and severally with respect to other defendants.

8 THE COURT: The request is denied.

9 Anything else, Ms. Wolfe? Mr. Hoffman?

10 MR. HOFFMAN: No, your Honor.

11 THE COURT: The sentence is imposed.

12 Now that the sentence is imposed, I have to advise  
13 Mr. Mandell that after sentencing I have to advise him of his  
14 right to appeal the sentence. The Court must advise  
15 Mr. Mandell if he's unable to pay appeal costs, he has the  
16 right to ask for permission to appeal in forma pauperis. If he  
17 so requests, my deputy, Mr. Ovalles, will immediately prepare  
18 and file a notice of appeal on his behalf.

19 The judgment and conviction will be entered by  
20 tomorrow morning, before noontime. You have 14 days in which  
21 to file an appeal from the entry of judgment and conviction.  
22 So, Mr. Hoffman and Ms. Wolfe, you can advise Mr. Mandell  
23 further.

24 MR. HOFFMAN: Can we have one moment, your Honor.

25 THE COURT: Yes, you may.

C53WmanS

1 MS. WOLFE: Your Honor, one of the issues that's come  
2 up several times is the continuation of our representation of  
3 Mr. Mandell because of his indigency, and we will, as we always  
4 do in situations, if necessary, file the notice of appeal for  
5 him. And one of the other issues that's probably going to come  
6 up is a bail pending appeal motion and it has to be made to the  
7 District Court first. It doesn't have to be made right now,  
8 but certainly his counsel, whoever it is, is going to have to  
9 be on top of that. So we've made the motion previously and we  
10 ask the Court to at this point relieve us as counsel and to  
11 appoint Mr. Mandell counsel so that he can be assured that the  
12 notice is filed and also be assured that his interest in making  
13 a submission for bail pending appeal are taken care of.

14 THE COURT: You can make the motion, and I'll consider  
15 it promptly. You can make the motion tomorrow or sometime this  
16 week. I'll attend to it as soon as you make the motion,  
17 Ms. Wolfe.

18 MS. WOLFE: Thank you.

19 THE DEFENDANT: Can I --

20 THE COURT: Yes, Mr. Mandell?

21 THE DEFENDANT: I'm sorry. It's overwhelming. The  
22 motion, I'm unaware of my exact rights at this point regarding  
23 the motion to file an appeal, whether or not Mr. Hoffman and  
24 Ms. Wolfe will represent me. As far as you're concerned, in  
25 that motion for bail pending appeal, it's, there's a lot, a lot

C53WmanS

1 of moving parts to a civilian, and I'm not following.

2 THE COURT: Mr. Hoffman and Ms. Wolfe can advise you  
3 on your rights. They want to be relieved. They were your  
4 counsel for trial. It's customary when there's been a  
5 conviction that you get new counsel for appeal. So they can  
6 advise you on how to do that. If they're down in magistrate's  
7 court for the assignment of counsel, you can do that.

8 MR. HOFFMAN: I would also think, your Honor, just to  
9 protect the jurisdictional aspect of filing a notice of appeal,  
10 since Mr. Mandell has filed affidavits of indigency, perhaps  
11 just to make sure he's covered, that the clerk of the court  
12 file a notice of appeal on his behalf on an indigent basis so  
13 we don't have to worry about that issue.

14 THE COURT: All right. If that's his request, we'll  
15 do it. That's what the rules call for.

16 THE DEFENDANT: So Marlon will do that?

17 THE COURT: Yes.

18 THE DEFENDANT: So I don't have to?

19 THE COURT: We'll enter a notice of appeal on your  
20 behalf, as soon as we enter the judgment.

21 MR. HOFFMAN: Thank you.

22 THE DEFENDANT: Will I be notified in the mail?

23 THE COURT: It will be posted on ECF. You can get it  
24 from Mr. Hoffman.

25 THE DEFENDANT: Thank you, your Honor.

C53WmanS

1 THE COURT: Anything else?

2 MR. HOFFMAN: That's it. Thank you, your Honor.

3 MS. WOLFE: Thank you, your Honor.

4 THE COURT: Thank you.

5 (Proceedings adjourned)

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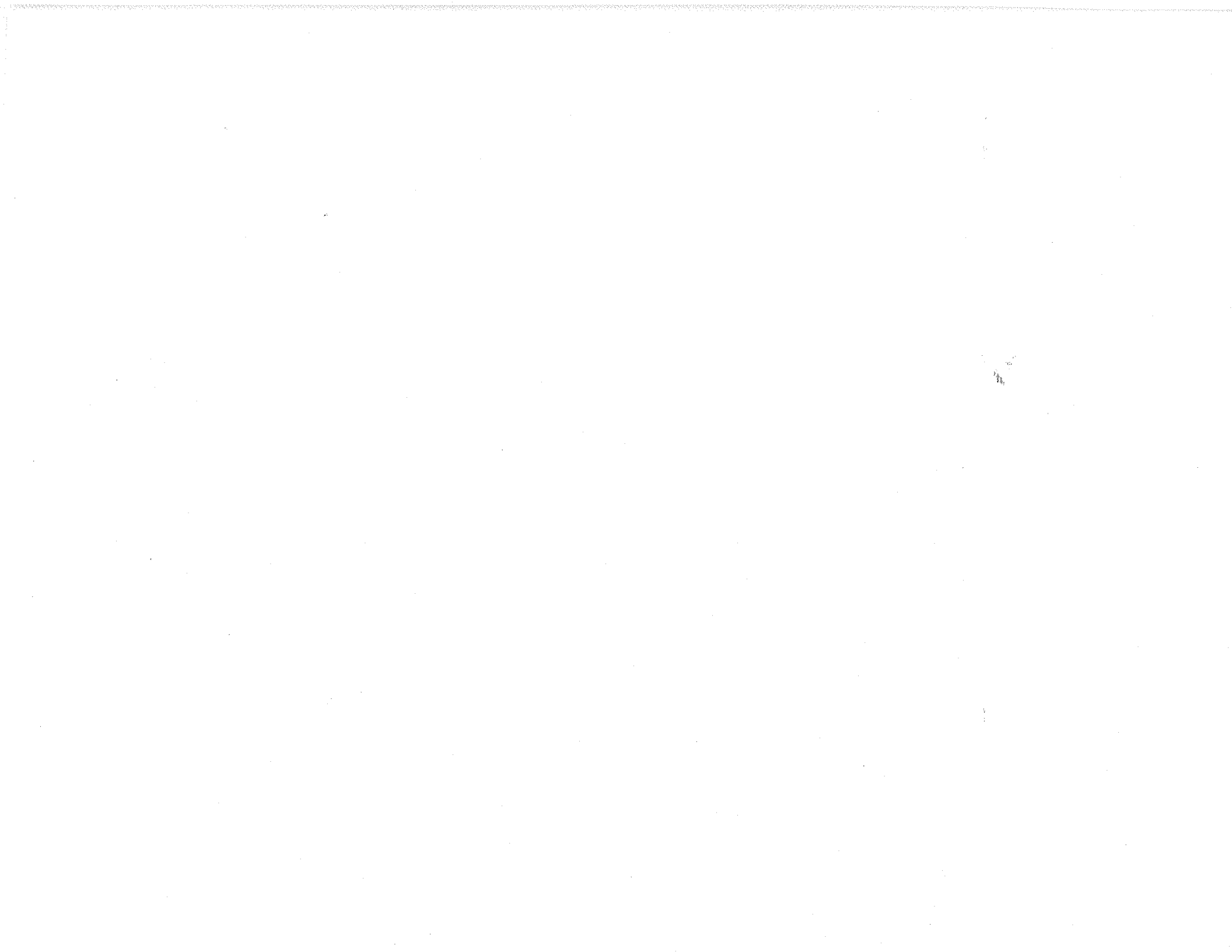
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DOC #:  
DATE FILED: 5-7-12

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
:  
UNITED STATES OF AMERICA  
:  
-v.-  
:  
ROSS H. MANDELL,  
:  
Defendant.  
:  
----- x

ORDER OF FORFEITURE  
S1 09 Cr. 662 (PAC)

WHEREAS, on or about December 14, 2010, ROSS H. MANDELL (the "defendant"), was charged in a four-count Indictment, 09 Cr. 662 (PAC) (the "Indictment"), with conspiracy to commit securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff, 17 C.F.R. § 240.10b-5 and 18 U.S.C. § 371 (Count One); securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff, 17 C.F.R. § 240.10b-5 and 18 U.S.C. § 2 (Count Two); wire fraud, in violation of 18 U.S.C. §§ 1343 and 2 (Count Three); and mail fraud, in violation of 18 U.S.C. §§ 1341 and 2 (Count Four);

WHEREAS, the Indictment included a forfeiture allegation, seeking forfeiture to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, of any and all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses alleged in Counts One through Four of the Indictment;

WHEREAS, on or about July 26, 2011, the jury returned a guilty verdict against the defendant as to Counts One through Four of the Indictment;

WHEREAS, the defendant was sentenced on or about May 3, 2012;

WHEREAS, the Court has determined that the defendant obtained \$50,000,000 in proceeds as a result of the offenses alleged in Counts One through Four of the Indictment, and is therefore liable for a criminal forfeiture money judgment in such amount, pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461, and Rule 32.2(b)(1) of the Federal Rules of Criminal Procedure; and

WHEREAS, Rule 32.2(c)(1) of the Federal Rules of Criminal Procedure provides that "no ancillary proceeding is required to the extent that the forfeiture consists of a money judgment;"

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. As a result of the offenses charged in Counts One through Four of the Indictment, of which the defendant has been convicted, a money judgment in the amount of \$50,000,000 in United States currency (the "Money Judgment") shall be entered against the defendant.

2. Pursuant to Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure, upon entry of this Order of Forfeiture, this Order is final as to the defendant, ROSS H. MANDELL, and shall be

deemed part of the sentence of the defendant, and shall be included in the judgment of conviction therewith.

3. All payments on the outstanding Money Judgment shall be made by postal money order, bank or certified check, made payable, in this instance to the United States Marshals Service, and delivered by mail to the United States Attorney's Office, Southern District of New York, Attn: Asset Forfeiture Unit, One St. Andrew's Plaza, New York, New York 10007 and shall indicate the defendant's name and case number.

4. Upon execution of this Order of Forfeiture, and pursuant to 21 U.S.C. § 853, the United States Marshals Service shall be authorized to deposit the payments on the Money Judgment in the Assets Forfeiture Fund, and the United States shall have clear title to such forfeited property.

5. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, upon entry of this Order, the United States Attorney's Office is authorized to conduct any discovery needed to identify, locate or dispose of forfeitable property, including depositions, interrogatories, requests for production of documents and the issuance of subpoenas, pursuant to Rule 45 of the Federal Rules of Civil Procedure.

6. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Rule 32.2(e) of the Federal Rules of Criminal Procedure.

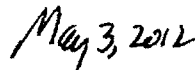
7. The Clerk of the Court shall forward three certified copies of this Order to Assistant United States Attorney Sharon Cohen Levin, Chief of the Asset Forfeiture Unit, United States Attorney's Office, One St. Andrew's Plaza, New York, New York 10007.

8. The signature page of this Order may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

SO ORDERED:



HONORABLE PAUL A. CROTTY  
UNITED STATES DISTRICT JUDGE



DATE

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9-26-12

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
United States of America

v.

Ross Mandell,

*Defendant.*  
-----X

**Order of Restitution**

**S1 09 Cr. 662 (PAC)**

Upon the application of the United States of America, by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, Katherine R. Goldstein, Assistant United States Attorney, of counsel; the presentence report; the Defendant's conviction on Counts One through Four of the above Indictment; and all other proceedings in this case, it is hereby ORDERED that:

*including defendant's report of 9/24/2002*


**1. Amount of Restitution.** Ross Mandell, the Defendant, shall pay restitution in the total amount of \$24,880,460 to the victims of the offenses charged in Counts One through Four. The names, addresses, and specific amounts owed to each victim are set forth in the Schedule of Victims attached hereto. Upon advice of a change of address, the Clerk of the Court is authorized to send payments to the new address without further order of this Court.

**2. Joint and Several Liability.** Defendant's liability for restitution shall be joint and several with that of any other defendant ordered to make restitution for the offenses in this matter, specifically Adam Harrington. Defendant's liability for restitution shall continue unabated until either the Defendant has paid the full amount of restitution ordered herein, or every victim has been paid the total amount of his loss from all the restitution paid by the Defendant and co-defendants in this matter.

**3. Sealing.** Consistent with 18 U.S.C. §§ 3771(a)(8) & 3664(d)(4) and Federal Rule of Criminal Procedure 49.1, to protect the privacy interests of victims, the Schedule of Victims attached hereto shall be filed under seal, except that copies may be retained and used or disclosed by the Government, the Clerk's Office, and the Probation Department, as need be to effect and enforce this Order, without further order of this Court.

Dated: New York, New York

September 26, 2012  
~~September 14, 2012~~

  
\_\_\_\_\_  
The Honorable Paul A. Crotty  
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA  
SECURITIES AND EXCHANGE COMMISSION

Administrative Proceeding

File No. 3-14981

-----X

In the Matter of  
ROSS MANDEL

-----X

Held at 3 World Financial Center, New York, New York 10281, on September 11, 2012,  
commencing at 10:35 o'clock a.m.

B E F O R E:

HON. CAMERON ELLIOT,  
Administrative Law Judge

21 MR. MANDEL: But isn't that --

22 JUDGE ELLIOT: Let me finish. Let me

23 finish. Hold on, I'm not done yet.

24 The other reason we need to proceed is

25 that it is very likely that you are actually

0015

1 mistaken about all the various limitations imposed

2 upon you by your bail conditions, and by, you

3 know, whatever restrictions are imposed upon you

4 by Pretrial Services, or Probation, or whoever it

5 is who is supervising you now.

6 Because the specific details of what

7 the Division is seeking, which is what we call an

8 associational bar, are not necessarily exactly the

9 same as what has been imposed against you, and is

10 currently imposed against you.

11 In addition, there is also the fact

12 that a bar by the Commission would be a bar by the

13 Commission, rather than by a Court.

14 And the Commission wants to have the

15 ability to, in essence, have some say, their own

16 say, in your participation in the securities

17 industry.

18 So the issues that are raised in this

19 case are not necessarily, in fact, they are almost

20 certainly not identical to what are at issue in  
21 your criminal case, or in the civil case, whether  
22 it's still alive at this point or not.

23         So we are really talking about a very  
24 similar, it's true, a very similar kind of  
25 proceeding, with very similar sort of relief that

0016

1 the Division is requesting, but it's not exactly  
2 the same.

3         So you're not going to convince me on  
4 this phone call to stay this case.

5         If you want to try to convince me to  
6 stay the case, I can't stop you from filing a  
7 motion to stay. I'm not suggesting that you  
8 should, necessarily, but if you want to, you can.

9         But as I've just explained, it is  
10 extremely unlikely that you will convince me, in  
11 any event, and you're certainly not going to do so  
12 just on the telephone like this.

13         Go ahead.

14         MR. MANDEL: Well, I would love the  
15 opportunity to convince you, because it's  
16 sensible, it's legitimate, and the law is agreeing  
17 with me.

18         I mean, that's the only reason.

19 I'm not trying to convince you because  
20 I'm trying to be persuasive and get my way.  
21 The only reason the Second Circuit,  
22 three very prestigious Judges, all in line to go  
23 to the Supreme Court, overturned Judge Crotty's  
24 Order to send me to prison was because he's wrong,  
25 because in the law, he's wrong.

0017

1 And I would assume, sir, that this is  
2 about the law, not about, you know, who you work  
3 for, or what the Commission has ordered.

4 And I would love the opportunity to  
5 present the law to you in a motion.

6 Again, I'm not an attorney, but there  
7 will be a brief filed within the next two weeks or  
8 so, or less, that pretty well states the position.

9 And I do believe that that brief, along  
10 with what else I might be able to present to you,  
11 you very well might concur that, at the very  
12 least, a stay in regard -- that takes the decision  
13 out until this sort of imposed time line that you  
14 say, which is, I think, 270 days -- you know,  
15 that, to me -- if you had considered all these  
16 matters, as a matter of law and process, and then  
17 come to the decision that a stay is not warranted,

18 there's nothing I can do except appeal to a higher  
19 court at some time.

20 But I would love that opportunity.

21 I don't -- excuse my language, sir, and  
22 I mean it with no disrespect whatsoever -- I don't  
23 want to be railroaded for something that I did not  
24 do, and that did not happen, just because, you  
25 know, that's what goes on every day in today's

0018

1 world. It doesn't make it right.

2 And I'm deeply concerned that I'm being  
3 wronged here.

4 I don't think it's sensible to proceed  
5 based on the fact that I am barred right now, I am  
6 not involved in the securities business  
7 whatsoever.

8 And if I'm going to lose my appeal, it  
9 doesn't matter, really, what the SEC does to me,  
10 I'll be in prison for twelve years, there will be  
11 a \$50 million forfeiture against me, and what not.

12 So I'm happy to, if you can give me  
13 sixty days or so to draft a motion for your  
14 consideration, I would consider that a privilege.

15 Additionally, I would insist on seeing  
16 the discovery material, including the

17 investigative file.

18 I know Ms. Keyes was involved and sat  
19 in many of the interviews that occurred, many of  
20 which I have seen the 302's, but some of which I  
21 might not have in the investigative phase of the  
22 case.

23 I know that in the recent Squawk Box  
24 case, the SEC did not release, and the Southern  
25 District lapsed in its obligation of showing those  
0019

1 SEC depositions to the Court, and therefore, the  
2 Second Circuit placed a misconduct charge on the  
3 prosecutors. And I suspect that could happen  
4 here, in this case, sir.

5 So I just -- there's a number of  
6 factors here, and because I don't have counsel  
7 sitting with me right now, I would really  
8 appreciate the opportunity, the privilege, to  
9 present to you this in writing.

10 JUDGE ELLIOT: All right. Well, let me

UNITED STATES DISTRICT COURT

SOUTHERN

District of

NEW YORK

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

ROSS H. MANDELL

1: (S1) 09 CR 00662 - 1 (PAC)

Case Number:

USM Number:

62490-054

Jeffrey C. Hoffman & Susan C. Wolfe ---212-679-2900  
Defendant's Attorney

THE DEFENDANT:

X was found guilty on count(s) One (1), Two (2), Three (3) & Four (4)  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
(18 USC 371) CLASS D FELONY	CONSPIRACY TO COMMIT SECURITIES FRAUD, WIRE FRAUD, AND MAIL FRAUD	07/08/2009	1
(15 USC 78j(b) and 78ff; 17 CFR 240.10b-5; and 18 USC 2) CLASS C FELONY	SECURITIES FRAUD	07/08/2009	2
18 USC 1001, Class D felony	WIRE FRAUD	07/08/2009	3
(18 USC 1343 AND 2) CLASS C FELONY	MAIL FRAUD	07/08/2009	4

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)

Count(s)

X Underlying

Motion(s)

is

X is

is

are

are

are

dismissed on the motion of the United States.

dismissed on the motion of the United States.

denied as moot.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 5-7-12

May 3, 2012

Date of Imposition of Judgment

Signature of Judge

Paul A. Crotty, United States District Judge

Name and Title of Judge

May 7, 2012

Date Signed

DEFENDANT: ROSS H. MANDELL  
CASE NUMBER: 1: (S1) 09 CR 00662 - 1 (PAC)

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **Total: One Hundred and Forty Four Months (144)**

All counts to run concurrently:

- Count 1: 60 months
- Count 2: 144 months
- Count 3: 144 months
- Count 4: 144 months

The court makes the following recommendations to the Bureau of Prisons:

That Mr. Mandell be designated to a facility close to his family in Southern Florida.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district on or before

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on June 18, 2012

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ROSS H. MANDELL  
CASE NUMBER: 1: (S1) 09 CR 00662 - 1 (PAC)

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **3 years on each count (all terms must run concurrently)**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

**STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: ROSS H. MANDELL  
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### SPECIAL CONDITIONS OF SUPERVISION

The defendant shall provide the probation officer with access to any requested financial information.

The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with the installment payment schedule.

The defendant will participate in a program approved by the United States Probation Office, which program may include testing to determine whether the defendant has reverted to using drugs or alcohol. The Court authorizes the release of available drug treatment evaluations and reports to the substance abuse treatment provider, as approved by the probation officer. The defendant will be required to contribute to the costs of services rendered (co-payment), in an amount determined by the probation officer, based on ability to pay or the availability of third-party payment.

The defendant shall submit his person, residence, place of business, vehicle, or any other premises under his control to a search on the basis that the probation officer has reasonable belief that contraband or evidence of a violation of the conditions of the release may be found. The search must be conducted at a reasonable time and in reasonable manner. Failure to submit to a search may be grounds for revocation. The defendant shall inform any other residents that the premises may be subject to search pursuant to this condition.

As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics. The defendant shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

The defendant is to report to the nearest probation office within 72 hours of release from custody.

The defendant to be supervised by the district of residence.

DEFENDANT: ROSS H. MANDELL  
 CASE NUMBER: 1: (S1) 09 CR 00662 - 1 (PAC)  
**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 400.00	\$10,000.00	\$ T.B.D

The determination of restitution is deferred until \_\_\_\_\_ . An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

**X** The defendant must make forfeiture (\$50,000,000) as indicated in the May 3, 2012 Order of Forfeiture .

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ _____	\$0.00	\$ _____	\$0.00
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- Restitution amount ordered pursuant to plea agreement \_\_\_\_\_
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- X** The court determined that:
  - X** the interest requirement is waived for  fine  restitution.
  - the interest requirement for  fine  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ROSS H. MANDELL  
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### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A  Lump sum payment of \$ 400.00 due immediately, balance due
- not later than \_\_\_\_\_, or  
 in accordance  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time;
- F  Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.