

08 MAG 2676

Approved: Raymond J. Lohier
RAYMOND J. LOHIER
JONATHAN R. STREETER
Assistant United States Attorneys

Before: HONORABLE DEBRA FREEMAN
United States Magistrate Judge
Southern District of New York

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UNITED STATES OF AMERICA	:	<u>SEALED COMPLAINT</u>
- v. -	:	Violation of
MARC DREIER,	:	15 U.S.C. §§ 78j(b),
	:	78ff; 17 C.F.R. §
Defendant.	:	240.10b-5; 18 U.S.C.
	:	§§ 1343, 2.
	:	COUNTY OF OFFENSE:
	:	NEW YORK

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SOUTHERN DISTRICT OF NEW YORK, ss.:

JAMES J. OTTEN, being duly sworn, deposes and says that he is a Criminal Investigator with the United States Attorney's Office for the Southern District of New York and charges as follows:

COUNT ONE
(Securities Fraud)

1. From at least in or about October 2008 through at least on or about December 3, 2008, in the Southern District of New York and elsewhere, MARK DREIER, the defendant, unlawfully, wilfully and knowingly, by the use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly, would and did use and employ manipulative and deceptive devices and contrivances 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 persons in connection with the purchase and sale of securities, to wit, DREIER participated in the sale of fictitious notes that purported to have been issued by a real estate development company and also

participated in falsifying financial statements and other documents in connection with those sales, which totaled in excess of \$100 million.

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

COUNT TWO
(Wire Fraud)

2. From at least in or about October 2008 up through and including on or about December 3, 2008, in the Southern District of New York, MARK DREIER, the defendant, 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, unlawfully, willfully and knowingly would and did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds, to wit, DREIER, while in New York, New York, spoke by telephone to prospective note purchasers located in Connecticut in connection with the sale of certain fictitious notes that purported to have been issued by a real estate development company and falsified or caused to be falsified financial statements and other documents in connection with the sale of such fictitious notes, which totaled in excess of \$100 million.

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

The bases for my knowledge and the foregoing charges are, in part, as follows:

3. I have been a Criminal Investigator with the United States Attorney's Office for the Southern District of New York for approximately seven years. During that time, I have been assigned to the Securities and Commodities Fraud Task Force, and I have been personally involved in the investigation of this matter. The information contained in this Complaint is based upon my personal knowledge, as well as information obtained from other sources, including: a) statements made or reported by various witnesses with knowledge of relevant facts; b) my review of documents supplied to me by witnesses and entities during the course of this investigation; and c) recorded undercover telephone calls between a cooperating informant and MARC DREIER, the defendant. Because this Complaint is being submitted for the limited purpose of establishing probable cause, it does not include every fact that I have learned during the course of the investigation. Where the contents of documents and the actions, statements and

conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

4. I have reviewed the publicly available web site of a law firm called Dreier LLP, which states the following: (a) that MARC DREIER, the defendant, is the founder and managing partner of Dreier LLP; and (b) that Dreier LLP is a law firm of more than 250 attorneys with its principal office in New York, New York and additional offices in Los Angeles and Santa Monica, California; Albany, New York; Stamford, Connecticut; and Pittsburgh, Pennsylvania.

5. I have interviewed a senior managing director (the "Managing Director") at a hedge fund located in Connecticut ("Hedge Fund #1"). The Managing Director informed me of the following:

a. In or about early October 2008, MARC DREIER, the defendant, informed employees of Hedge Fund #1 that a real estate development company headquartered in New York, New York (the "Developer") had a \$500 million so-called "note program." Dreier explained to these individuals at Hedge Fund #1 that, pursuant to this program, the Developer had promissory notes available to sell to various investors, including hedge funds. DREIER informed individuals at Hedge Fund #1 that certain of the hedge funds that had originally purchased the notes sought to sell those notes because they needed cash due to the recent financial crisis. DREIER stated that he represented both the selling hedge funds and the Developer, and that Hedge Fund #1 could purchase those notes at a significant discount from their face value.

b. Starting in or about October 2008, employees of Hedge Fund #1 began to perform research, or "due diligence," to determine whether to purchase the \$25 million note that DREIER had offered to sell on behalf of the holder of the note. During the course of that due diligence, DREIER sent to Hedge Fund #1 documents that DREIER claimed were audited financial statements of the Developer and certain companies affiliated with the Developer. The financial statements that DREIER transmitted to Hedge Fund #1 included management letters that purported to be issued by an accounting firm located in New York, New York ("Accounting Firm"). These letters stated that the Accounting Firm had audited the attached financial statements of the Developer. Moreover, the letters bore the Accounting Firm's logo and purported to be signed by a specific partner at the firm (the "Accountant").

c. In or about late October 2008, the Managing Director negotiated with DREIER to have Hedge Fund #1 purchase a \$25 million dollar note issued by the Developer for approximately 54 percent of its face value. Much of the negotiation about the

sale of the note occurred in telephone calls between Hedge Fund #1's offices in Connecticut and DREIER's office located in New York, New York. During the negotiations, DREIER sent to Hedge Fund #1 a promissory note, which I have reviewed, that purported to be signed by the Chief Executive Officer ("CEO") of the Developer. On or about October 29, 2008, in order to finalize the purchase of the note and at DREIER's direction, Hedge Fund #1 wired approximately \$13.5 million to an account designated and controlled by DREIER, located in New York, New York (the "Dreier Account").

6. I have also interviewed a portfolio manager (the "Portfolio Manager") at a hedge fund located in New York, New York ("Hedge Fund #2"). The Portfolio Manager has informed me of the following:

a. In or about October 2008, MARC DREIER, the defendant, informed Hedge Fund #2 that the Developer had a so-called "notes program" in which various hedge funds had participated. DREIER further stated that certain of those hedge funds needed cash, and that they were offering to sell notes issued by the Developer at a substantial discount. DREIER offered to sell certain notes to Hedge Fund #2. During the course of Hedge Fund #2's due diligence on the potential purchase, DREIER sent to Hedge Fund #2 the same purportedly audited financial statements and signed letters from the Accounting Firm described above in paragraph 5(b).

b. Also in or about October 2008, during the course of his/her negotiations with DREIER, the Portfolio Manager asked to speak to someone who was actually employed by the Developer about those financial statements. DREIER arranged a conference call between the Portfolio Manager, DREIER, and a person using the name of the actual CEO of the Developer. During that conference call, the person representing himself as the CEO of the Developer answered questions concerning the financial statements described above, and a telephone number and email address at which he could be contacted was supplied.

c. In or about between the end of October 2008 and the beginning of November 2008, Hedge Fund #2 agreed to buy the notes offered by DREIER for a total of approximately \$100 million. During that process, DREIER supplied Hedge Fund #2 with various notes, the face value of which totaled \$100 million. Each note contained what purported to be the signature of the CEO of the Developer. Between on or about October 24, 2008 and on or about November 7, 2008, at DREIER's direction, Hedge Fund #2 wired a total of approximately \$100 million to the Dreier Account.

7. I have interviewed the actual CEO of the Developer whose name was used during the conference call described in paragraph 5(b) above and who purportedly signed the notes described above. The CEO has informed me of the following:

a. The Developer did not issue any of the notes described above and has no "note program." MARC DREIER, the defendant, is not and has never been responsible for managing or selling any notes on behalf of the Developer. Although DREIER used to represent the Developer on various litigation matters, DREIER has not represented the Developer in any legal or other matter in 2008.

b. Each of the signatures purporting to be that of the CEO on the notes that DREIER sold to Hedge Fund #2 is forged. In addition, the financial statements that DREIER provided to employees of Hedge Fund #1 and Hedge Fund #2 and that DREIER claimed were financial statements of the Developer were in fact not those of the Developer and were entirely fabricated.

c. The CEO never had a telephone conference call with the Portfolio Manager of Hedge Fund #2 and DREIER.

d. In or about October 2008, DREIER falsely told a receptionist at the Developer's offices in New York, New York, that he and three other individuals were authorized by the CEO to enter the Developer's offices in order to attend a meeting with the CEO. In fact, the CEO had not scheduled such a meeting, but the CEO subsequently observed DREIER having an unauthorized meeting with three individuals in a conference room at the Developer's offices.

8. I have spoken to another Criminal Investigator with the United States Attorney's Office for the Southern District of New York ("Investigator 1"), who interviewed the Accountant at the Accounting Firm. Investigator 1 informed me that the Accountant stated the following:

a. The Accounting Firm did not audit the financial statements that MARK DREIER, the defendant, provided to Hedge Fund #1 and Hedge Fund #2 and that are described above in paragraphs 5(b) and 6(a). The cover letters that purported to be from the Accounting Firm, that bore the Accounting Firm's company logo, and to which these financial statements were attached, were not created by the Accounting Firm. The signature on each of those letters, which purported to be the Accountant's signature, was forged.

b. In or about October 2008, DREIER provided false information to an employee at the Accounting Firm in order to gain

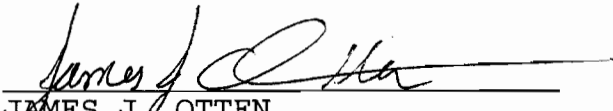
unauthorized entry into a conference room at the Accounting Firm, while the Accountant was out of the office.

9. I have reviewed records that show that the telephone number supplied for the person representing himself to be the CEO of the Developer during the conference call arranged by MARC DREIER, the defendant (described in paragraph 6(b) above), is actually a telephone number subscribed to by Dreier LLP. In addition, the email address supplied for the person representing himself to be the CEO of the Developer during the same conference call is registered to an individual at Dreier LLP.

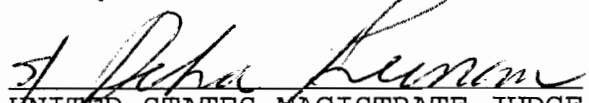
10. In or about November 2008, acting at the direction of the Criminal Investigators with the United States Attorney's Office for the Southern District of New York, a cooperating witness associated with the Accounting Firm made several consensually recorded calls with MARC DREIER, the defendant. During those recorded telephone calls, which I have reviewed, DREIER admitted that, at the time he was negotiating with Hedge Fund #1, he knew that the financial statements he provided to Hedge Fund #1 were false, that the letter purporting to be from the Accounting Firm was also fabricated, and that he (DREIER) participated in the fabrication of these documents. DREIER further stated that he was "ashamed" of his role in fabricating the documents and that it was "very serious what's happened here."

11. On or about December 3, 2008, I was informed by representatives of another hedge fund ("Hedge Fund #3") that MARC DREIER, the defendant, was arrested on or about December 2, 2008, in or around Toronto, Canada, by the Toronto City Police for impersonating an employee of a Canadian entity in connection with the sale to Hedge Fund #3 of notes the face value of which totaled approximately \$44.7 million. The representatives of Hedge Fund #3 informed me that DREIER offered to sell the notes to Hedge Fund #3 for approximately \$33 million.

WHEREFORE, deponent prays that an arrest warrant be issued for MARC DREIER, the defendant, and that he be arrested and imprisoned, or bailed, as the case may be.


JAMES J. OTTEN
Criminal Investigator
United States Attorney's Office
Southern District of New York

Sworn to before me this
~~DEC 04 2008~~ of December, 2008


UNITED STATES MAGISTRATE JUDGE
~~SOUTHERN DISTRICT OF NEW YORK~~
DEBRA FREEMAN
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK