Department of Justice

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THREE FORMER EXECUTIVES CHARGED IN $200 MILLION FRAUD SCHEME INVOLVING FAIR FINANCIAL COMPANY INVESTORS

WASHINGTON – Three former executives of Fair Financial Company, an Ohio financial services business, were arrested today and charged in an indictment filed in the Southern District of Indiana for their roles in a scheme to defraud approximately 5,000 investors of more than $200 million, announced Assistant Attorney General Lanny A. Breuer of the Criminal Division; Timothy M. Morrison, First Assistant U.S. Attorney for the Southern District of Indiana; and Special Agent in Charge Michael E. Welch of the FBI in Indiana.

The indictment, returned by a federal grand jury on March 15, 2011, and unsealed today, charges Timothy S. Durham, 48; James F. Cochran, 55; and Rick D. Snow, 47, with one count of conspiracy to commit wire and securities fraud, 10 counts of wire fraud and one count of securities fraud. Durham was arrested in Los Angeles, and Cochran and Snow were arrested in Indianapolis.

According to the indictment, Durham and Cochran purchased Fair, whose headquarters were in Akron, Ohio, in 2002. Durham was the chief executive officer of Fair and a member of the board of directors, Cochran was the chairman of the board of Fair, and Snow, a certified public accountant, served as the chief financial officer of Fair.

The indictment alleges that between approximately February 2005 through the end of November 2009, Durham, Cochran and Snow executed a scheme to defraud Fair's investors by making and causing others to make false and misleading statements about Fair's financial condition and about the manner in which they were using Fair investor money. The indictment further alleges that Durham, Cochran and Snow executed the scheme to enrich themselves, to obtain millions of dollars of investors' funds through false representations and promises, and to conceal from the investing public Fair's true financial condition and the manner in which Fair was using investor money.

According to the indictment, when Durham and Cochran purchased Fair in 2002, Fair reported debts to investors from the sale of investment certificates of approximately $37 million and income producing assets in the form of finance receivables of approximately $48 million. The indictment alleges that in November 2009, after Durham and Cochran had owned the company for seven years, Fair's debts to investors from the sale of investment certificates had grown to more than $200 million, while Fair's income producing assets consisted only of the loans to Durham and Cochran, their associates and the businesses they owned or controlled, which they claimed were worth approximately $240 million, and finance receivables of approximately $24 million.

"These former executives are charged with engaging in fraudulent and deceptive business practices to hide from investors and regulators Fair's true financial condition and their misuse of the company's funds," said Assistant Attorney General Breuer. "As alleged in the indictment, by using investors' money to fund their failing business ventures and personal lifestyles, they perpetrated a $200 million fraud. Today's charges and arrests reflect that investigating and prosecuting financial fraud is a Justice Department priority."

"This has been an arduous journey, as are most large white collar cases," said First Assistant U.S. Attorney Morrison. "But we now welcome the opportunity to prove the indictment's allegations against these three men beyond a reasonable doubt."

"These arrests follow the largest corporate fraud investigation in the history of the FBI in Indiana which resulted in over 5,000 victims and an estimated loss of $200 million dollars," said Special Agent in Charge Welch.

According to the indictment, when Durham and Cochran bought Fair in 2002 its primary business was purchasing and collecting finance receivables. Fair financed its purchase of finance receivables by selling investment certificates to investors. Investors who purchased investment certificates were promised regular interest payments for a set period of time, at the end of which they were entitled to the return of their principal investment.

In order to sell its investment certificates, Fair was required to register the investment certificates with the State of Ohio Division of Securities. Fair did so by submitting registration documents and a proposed "offering circular" to the Division of Securities that was required to contain truthful and accurate disclosures about Fair's business.

The indictment alleges that after Durham and Cochran acquired Fair, they changed the manner in which the company operated and used its funds. Rather than using the funds Fair raised from investors primarily for the purpose of purchasing finance receivables, Durham and Cochran caused Fair to extend loans to themselves, their associates and businesses they owned or controlled, which caused a steady and substantial deterioration in Fair's financial condition.

According to the indictment, companies owned or controlled by Durham and Cochran, including DC Investments LLC (DCI) and Obsidian Enterprises Inc., as well as other businesses controlled through Obsidian and DCI, were among the primary beneficiaries of the loans Durham and Cochran made with Fair investor money. Durham and Cochran allegedly loaned money through Obsidian and DCI to a variety of struggling businesses and start-up ventures, including a car magazine, restaurants, a surgery center, trailer manufacturers, internet companies, a race car team, a replica vintage car manufacturer, a rubber reclaiming plant and a luxury bus leasing business. The indictment further alleges that after receiving loans from Fair, many of these businesses failed and were never able to repay the money they borrowed, while others, with the benefit of continued loans from Fair, struggled as unprofitable entities for years. In addition, Durham and Cochran allegedly took loans of Fair investor money for themselves, and used a significant portion of the proceeds of the loans to maintain their lifestyles and to pay for personal expenses.

According to the indictment, Durham, Cochran and Snow terminated Fair's independent accountants who, at various points during 2005 and 2006, told the defendants that many of Fair's loans were impaired or did not have sufficient collateral. The indictment alleges that after firing the accountants, the defendants never released audited financial statements for 2005, and never obtained or released audited financial statements for 2006 through September 2009. The indictment further alleges that with independent accountants no longer auditing Fair's financial statements, the defendants were able to conceal from investors Fair's true financial condition.

The indictment also alleges that Durham, Cochran and Snow falsely represented, in registration documents and offering circulars submitted to the Division of Securities and in offering circulars distributed to investors, that the loans on Fair's books were assets that could support Fair's sale of investment certificates. According to the indictment, the defendants knew that in reality, the loans were worthless or grossly overvalued; producing little or no cash proceeds; supported by insufficient or non-existent collateral to assure repayment; and in part advances, salaries, bonuses and lines of credit for Durham and Cochran's personal expenses.

The indictment alleges that the defendants engaged in a variety of other fraudulent activities to conceal from the Division of Securities and from investors Fair's true financial health and cash flow problems, including making false and misleading statements to concerned investors who either had not received principal or interest payments on their certificates from Fair or who were worried about Fair's financial health, and directing employees of Fair not to pay investors who were owed interest or principal payments on their certificates. According to the indictment, even though Fair's financial condition had deteriorated and Fair was experiencing severe cash flow problems, Durham and Cochran continued to funnel Fair investor money to themselves for their personal expenses, to their family, friends and acquaintances, and to the struggling businesses that they owned or controlled.

An indictment is only a charge and is not evidence of guilt. A defendant is presumed innocent and is entitled to a fair trial at which the government must prove guilt beyond a reasonable doubt.

Also today, the U.S. Securities and Exchange Commission filed civil securities charges against Durham, Cochran and Snow.

This case is being prosecuted by Assistant U.S. Attorneys Winfield D. Ong and Joe H. Vaughn of the Southern District of Indiana and Assistant Chief Robertson Park and Trial Attorney Henry P. Van Dyck of the Fraud Section of the Criminal Division. The investigation was led by the FBI in Indianapolis.

Durham, Cochran and Snow each face a maximum of five years in prison for the conspiracy count, 20 years in prison for each wire fraud count and 20 years in prison for the securities fraud count. Additionally, each defendant could be fined $250,000 for each count of conviction. An initial hearing was held today in Indianapolis before a U.S. Magistrate Judge Kennard Foster for Cochran and Snow, and an initial hearing for Durham will be held in Los Angeles.

This prosecution is part of efforts underway by President Barack Obama's Financial Fraud Enforcement Task Force. President Obama established the interagency Financial Fraud Enforcement Task Force to wage an aggressive, coordinated and proactive effort to investigate and prosecute financial crimes. The task force includes representatives from a broad range of federal agencies, regulatory authorities, inspectors general and state and local law enforcement who, working together, bring to bear a powerful array of criminal and civil enforcement resources. The task force is working to improve efforts across the federal executive branch, and with state and local partners, to investigate and prosecute significant financial crimes, ensure just and effective punishment for those who perpetrate financial crimes, combat discrimination in the lending and financial markets, and recover proceeds for victims of financial crimes. For more information about the task force visit: www.stopfraud.gov.

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