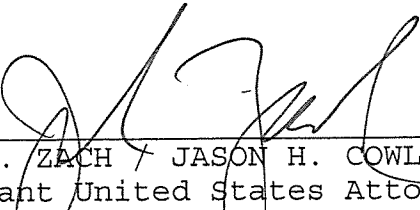


Approved:  _____
JOHN T. ZACH / JASON H. COWLEY
Assistant United States Attorneys

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

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:
UNITED STATES OF AMERICA
:
- v. -
:
JASON J. KONIOR,
:
Defendant.
:
----- x

SEALED COMPLAINT

Violations of
15 U.S.C. §§ 78j(b) & 78ff;
17 C.F.R. § 240.10b-5; &
18 U.S.C. §§ 1343 & 2

COUNTY OF OFFENSE:
NEW YORK

SOUTHERN DISTRICT OF NEW YORK, ss.:

PATRICK M. SHAW, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI"), and charges as follows:

COUNT ONE
(Securities Fraud)

1. From at least in or about late 2011, up through and including in or about May 2012, in the Southern District of New York and elsewhere, JASON J. KONIOR, the defendant, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of 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 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, to wit, KONIOR represented to investors that he would establish brokerage accounts using those investors' funds when, in fact, KONIOR had

misappropriated the funds to pay off, among other things, certain of KONIOR's prior investors.

(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 late 2011, up through and including in or about May 2012, in the Southern District of New York and elsewhere, JASON J. KONIOR, the defendant, willfully and knowingly, having devised and intended to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, transmitted and caused to be transmitted by means of a wire, radio, and television communication in interstate commerce, writings, signs, signals, pictures, and sounds for purposes of executing such scheme and artifice, to wit, a Florida-based hedge fund sent wire transfers to KONIOR in New York City based on KONIOR's representations that he would utilize the funds to open a brokerage account on behalf of the hedge fund, when, in fact, KONIOR used the funds to pay off certain of his prior investors.

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

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

3. I am a Special Agent with the New York Office of the Federal Bureau of Investigation of the Department of Justice ("FBI") and I have been personally involved in the investigation of this matter. I have been a Special Agent with the FBI working on white collar investigations for approximately two years. During this time, my responsibilities have included the investigation of violations of the securities fraud and wire fraud statutes, among others, and I have participated in numerous investigations of offenses involving such violations.

4. This affidavit is based on my conversations with other agents of the FBI, attorneys and staff of the United States Securities and Exchange Commission ("SEC"), and others, including investors who provided funds to JASON J. KONIOR, the defendant. It is also based on my review of numerous documents, including, but not limited to, e-mails, text messages and bank records. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all of the

facts that I have learned during the course of my 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.

Relevant Individuals and Entities

5. JASON J. KONIOR, the defendant, is the founder of various corporate entities, including the following:

a. KONIOR is the managing general partner and investment advisor of Absolute Fund Advisors, LLC ("AFA"). AFA is a New York limited liability company with its principal place of business in Manhattan. AFA was formed by KONIOR in or about 2006.

b. KONIOR is the principal manager and member of Absolute Fund Management, LLC ("AFM"). AFM is a New York limited liability company with its principal place of business in Manhattan. AFM is a general partner and investment manager of Absolute.

c. "Absolute" is a New York limited liability partnership with its principal place of business in Manhattan. Absolute was formed by KONIOR on or about July 15, 2006. For purposes of this Complaint, these entities will be referred to collectively as "ABSOLUTE".

6. Hedge Fund A is a small hedge fund based in Florida.

7. Hedge Fund B is a small hedge fund based in New York City.

8. Hedge Fund C is a small hedge fund based in New York City.

Overview of the Scheme

10. JASON J. KONIOR, the defendant, organized and managed a Ponzi scheme whereby KONIOR misappropriated approximately \$2 million in funds KONIOR solicited from three investor hedge funds. KONIOR falsely represented to these hedge funds that ABSOLUTE would provide up to nine times the amount of the investors' capital contribution. KONIOR claimed that he would place the combined funds (the additional funds to be provided by ABSOLUTE and the investors' capital) in a sub-account at a brokerage firm designated by ABSOLUTE. According to KONIOR,

the investor hedge funds would then be able to trade securities as part of a "first loss" investment program, described below, utilizing that brokerage account. Instead, KONIOR misappropriated the funds provided to him by the investors for the purpose, among others, of paying redemptions to prior investors, making payments to himself, and paying various personal and business expenses.

ABSOLUTE's "First Loss" Investment Program

11. Based on interviews I have conducted with the managers of the three victim hedge funds and my review of documents, I learned that JASON J. KONIOR, the defendant, through ABSOLUTE, purported to offer to investors a so-called "first loss" investment program. ABSOLUTE's "first loss" investment program was touted, and generally implemented, as follows:

a. KONIOR represented that ABSOLUTE provided trading leverage to new and emerging hedge funds. Hedge fund investors could purchase limited partnership interests in ABSOLUTE and, in return, ABSOLUTE would generally match their investments at a ratio of up to 9 to 1. That is, if a hedge fund were to invest, for example, \$1,000,000 in ABSOLUTE, ABSOLUTE would contribute up to \$9,000,000, thus yielding a potential total of \$10,000,000 in capital. KONIOR then claimed that those investment funds (the combined investment funds and additional capital provided by ABSOLUTE) would be placed in an ABSOLUTE sub-account at a brokerage firm that the hedge fund investor would manage on its own.

b. The hedge fund investor then, subject to certain risk parameters, would be able to trade in the brokerage account at its own discretion. However, any trading losses in the sub-account incurred by the hedge fund investor would be entirely allocated to the hedge fund investor (that is, the hedge fund investor bore 100% of any losses). To the extent there were trading profits, the hedge fund investor would typically receive between 50% and 70% of the profit, depending on the terms negotiated with ABSOLUTE, and ABSOLUTE would retain the remaining profit.

KONIOR Defrauds Hedge Fund A

12. Based on interviews I have conducted with the manager of Hedge Fund A and my review of various documents and bank records, I learned that, beginning in or about November 2011, Hedge Fund A began wiring funds to JASON J. KONIOR, the defendant, as part of a \$500,000 investment with ABSOLUTE to

participate in ABSOLUTE's "first loss" investment program. Specifically, as its investment, Hedge Fund A made the following wire transfers from its bank in Florida to a bank account held by ABSOLUTE in New York City (the "Absolute Account"):

a. On or about November 23, 2011, Hedge Fund A wired approximately \$300,000 to the Absolute Account.

b. On or about December 23, 2011, Hedge Fund A wired approximately \$100,000 to the Absolute Account.

c. On or about February 17, 2012, Hedge Fund A wired approximately \$100,000 to the Absolute Account.

13. Based on my review of an investment agreement and "side letter" executed on or about February 13, 2012, between JASON J. KONIOR, the defendant, on behalf of ABSOLUTE, and Hedge Fund A, I learned the following:

a. In the investment agreement, KONIOR claimed that ABSOLUTE "has established a brokerage account" and "transferred assets in the form of cash to the Clearing Broker," which is the broker that Hedge Fund A was purportedly going to utilize to conduct trading on its own behalf.

b. In the side letter, KONIOR claimed that Hedge Fund A's capital contribution shall be a "Side Pocket Investment," which is a segregated "Investment Account at one of the firm's Prime Brokerage relationships" under the custody of ABSOLUTE and in which Hedge Fund A could direct securities trades.

c. In both the investment agreement and the side letter, KONIOR claimed that ABSOLUTE would allocate \$2.5 million to the brokerage account for Hedge Fund A to trade. Hedge Fund A would cover 100% of the first losses and receive 70% of the monthly net profit in the account. The remaining 30% of net profit would belong to ABSOLUTE.

14. Based on interviews I have conducted with the manager of Hedge Fund A and my review of documents, I learned that JASON J. KONIOR, the defendant, repeatedly represented to the manager of Hedge Fund A that he (KONIOR) was opening a brokerage account in which Hedge Fund A would be able to conduct securities trades utilizing the promised funds. Examples of such representations are as follows:

a. In an email dated on or about December 12,

2011, KONIOR wrote to the manager of Hedge Fund A that "[w]e will have you set up as soon as we receive the balance of the wire to trade live." As set forth above in paragraph 12, at this time, Hedge Fund A had transferred \$300,000 to ABSOLUTE. Thereafter, on December 23, 2011 and February 17, 2012, Hedge Fund A transferred an additional \$200,000 to ABSOLUTE for placement in the brokerage account that Hedge Fund A expected KONIOR to establish for it.

b. In an email dated on or about March 2, 2012, KONIOR wrote to the manager of Hedge Fund A that "we are set to have you trading next week."

c. On or about March 13, 2012, the manager of Hedge Fund A sent an e-mail to KONIOR and his assistant noting that "I have not heard from anyone on the account setup." In response, the next day, KONIOR's assistant e-mailed the manager of Hedge Fund A (and copied KONIOR on the e-mail) stating that "Jason [KONIOR] will connect with you today to begin set up" of the brokerage account, presumably so that Hedge Fund A could begin conducting trading in securities utilizing both its \$500,000 in investment funds and the additional funds KONIOR claimed that ABSOLUTE would be providing to Hedge Fund A.

d. In an e-mail dated on or about April 4, 2012, KONIOR e-mailed the manager of Hedge Fund A and asked "how did your demo go?" Prior to that e-mail, KONIOR had represented to the manager of Hedge Fund A that he (KONIOR) was opening a brokerage account at which Hedge Fund A could begin trading as part of the "first loss" investment program. The "demo" refers to a demonstration of the brokerage's trading system that was provided to Hedge Fund A in advance of the brokerage account purportedly being opened.

e. In response to KONIOR's e-mail, on or about April 6, 2012, the manager of Hedge Fund A wrote that "the demo looks good" and that he/she was "comfortable with it and ready to go," meaning that the Hedge Fund A manager was prepared to begin trading in the brokerage account.

f. In an e-mail dated on or about April 9, 2012, KONIOR wrote, in response to the April 6 e-mail from the manager of Hedge Fund A, that KONIOR would "come back to [the manager of Hedge Fund A] with next steps this should be up and running today-tmw," meaning that Hedge Fund A should be able to begin trading its investment and the additional funds provided by ABSOLUTE on or about April 9 or April 10, 2012. However, the brokerage account was not opened for Hedge Fund A on April 9 or

April 10 or anytime thereafter.

g. In an e-mail dated on or about April 24, 2012, the manager of Hedge Fund A wrote KONIOR asking "[c]an you call me and provide an update as this is getting frustrating?" The manager of Hedge Fund A went on to state "I was hoping to be logged in [to the brokerage account] so that I could buy [a technology company's stock] before [the technology company] reported today." In response to the e-mail, KONIOR wrote that he was "dragged to . . . a[n] event and just arrived home" and told the manager of Hedge Fund A to call him "1st thing in the am."

h. On or about May 2, 2012, Hedge Fund A submitted a redemption request to KONIOR for the return of its \$500,000 investment. To date, no funds have been returned to Hedge Fund A.

15. Based on my review of bank records from the Absolute Account, I learned that, contrary to his representations to Hedge Fund A, JASON J. KONIOR, the defendant, did not place Hedge Fund A's funds into a brokerage account.

a. On or about February 17, 2012, the starting balance in the Absolute Account was approximately \$112,023. The third wire transfer from Hedge Fund A in the amount of \$100,000 was sent to the Absolute Account on that same day. By this time, KONIOR already had diverted a large portion of the prior \$400,000 provided to him by Hedge Fund A for unauthorized purposes.

b. On or about February 17, 2012, after receiving the \$100,000 in funds from Hedge Fund A, KONIOR paid out \$200,000 to a former investor. Thereafter, among other things, KONIOR paid himself approximately \$14,000 from the Absolute Account.

c. As of March 5, 2012, the Absolute Account had a balance of approximately \$12,367. None of the \$500,000 that KONIOR had obtained from Hedge Fund A was placed in a brokerage account for Hedge Fund A to trade securities, nor was any additional capital provided to Hedge Fund A pursuant to the "first loss" investment program.

KONIOR Defrauds Hedge Fund B

16. Based on interviews I have conducted with the manager of Hedge Fund B and my review of documents, I learned the following:

a. Hedge Fund B contacted ABSOLUTE beginning in or about January 2012. Hedge Fund B was interested in utilizing the "first loss" investment program that was being touted by JASON J. KONIOR, the defendant.

b. On or about February 2, 2012, the manager of Hedge Fund B had a conversation with KONIOR. During that conversation, KONIOR stated that if Hedge Fund B invested \$300,000 with ABSOLUTE, ABSOLUTE would provide \$2,700,000 in additional funds for Hedge Fund B to trade. KONIOR further stated that the \$300,000 provided by Hedge Fund B would serve as the "first loss" protection (to be covered by Hedge Fund B). Any profit generated from Hedge Fund B's trading would be split between them, with the majority of the profit going to Hedge Fund B and the remainder going to ABSOLUTE.

c. On or about February 27, 2012, Hedge Fund B signed an agreement and side letter with ABSOLUTE, whose terms were similar to those set forth above in paragraph 12.

d. On or about March 12, 2012, Hedge Fund B wired approximately \$290,000 to KONIOR. Shortly thereafter, Hedge Fund B provided KONIOR with a check in the amount of \$10,000 to complete Hedge Fund B's investment with ABSOLUTE. KONIOR advised the manager of Hedge Fund B that Hedge Fund B would be able to begin trading in a brokerage account established by ABSOLUTE by on or about March 15, 2012.

e. On or about March 15, 2012, the manager of Hedge Fund B contacted an employee of ABSOLUTE to determine whether KONIOR had opened the brokerage account. The employee stated that the paperwork had been sent to the brokerage firm and that the manager of Hedge Fund B should have access to the brokerage account within the next three days.

f. Over the course of approximately one week after the conversation on or about March 15, 2012 set forth above in paragraph 16(e), the manager of Hedge Fund B repeatedly checked to see if the brokerage account had been set up by KONIOR (it was not). During that same time period, the manager of Hedge Fund B repeatedly attempted to contact KONIOR via telephone, but KONIOR would not return any calls.

g. On or about March 21, 2012, Hedge Fund B sent KONIOR a termination notice and sought to have its \$300,000 investment returned. KONIOR called the manager of Hedge Fund B back in response. On that call, KONIOR claimed that the delay in setting up the brokerage account stemmed from his attempts to

open the account with a new brokerage firm. Thereafter, KONIOR made repeated claims that he was setting up a brokerage account for Hedge Fund B, but never in fact did so.

h. On or about April 2, 2012, the manager of Hedge Fund B sent a text message to KONIOR stating "I want my money back. What did you do to it anyway? Are you going to tell me or do you want the SEC to find out?"

i. Later that same day, KONIOR responded to Hedge Fund B's manager via text message and wrote "[w]e have your funds in our acct. Where else would they be?" As set forth below in paragraph 17, at the time that KONIOR sent the text message, he had already used Hedge Fund B's funds to pay off other investors, to pay himself, and to pay other expenses.

j. On or about April 26, 2012, Hedge Fund B again submitted a redemption request for the return of the \$300,000. In addition, the manager of Hedge Fund B again advised KONIOR that he/she would contact the authorities if Hedge Fund B's investment funds were not repaid.

k. In an e-mail dated on or about April 30, 2012, KONIOR claimed that he had expedited the wiring of the \$300,000 back to Hedge Fund B. In another email sent on or about May 1, 2012, KONIOR promised hedge Fund B that "we will have [the funds] for you today".

l. On or about May 3, 2012, KONIOR's legal counsel informed Hedge Fund B that ABSOLUTE had until May 31, 2012, to honor Hedge Fund B's redemption request and that Hedge Fund B would be required to execute a general release of legal claims as a condition to obtaining its funds on an expedited basis.

m. The \$300,000 in investment funds was never returned to Hedge Fund B, nor was Hedge Fund B ever provided with the additional \$2.7 million in trading funds that KONIOR had promised.

17. Based on my review of bank records for the Absolute Account, I learned that JASON J. KONIOR, the defendant, did not place the funds in a brokerage account for Hedge Fund B. Rather, after receiving the initial wire of \$290,000 from Hedge Fund B on March 12, 2012, KONIOR immediately used those funds to pay off prior investors, pay himself, and pay his business expenses.

a. Prior to receiving Hedge Fund B's wire of \$290,000 on or about March 12, 2012, the balance in the Absolute Account was approximately \$49,107. Shortly thereafter, Hedge Fund B provided an additional \$10,000 to ABSOLUTE for a total investment of \$300,000.

b. Beginning on or about March 12, 2012 and continuing through on or about March 14, 2012, KONIOR used the \$300,000 in investment funds sent to him by Hedge Fund B, and most of the prior balance in the Absolute Account of approximately \$49,107, to pay approximately \$300,000 to prior investors in Absolute, approximately \$6,000 to himself, and approximately \$18,000 in other business expenses.

c. As of on or about March 19, 2012, the Absolute Account had a balance of approximately \$18,992 and Hedge Fund B's investment funds were gone.

KONIOR Defrauds Hedge Fund C

18. Based on interviews I have conducted with the manager of Hedge Fund C and my review of documents and bank records, I learned the following:

a. In or about early 2012, the manager of Hedge Fund C had discussions with JASON J. KONIOR, the defendant, relating to Hedge Fund C's participation in ABSOLUTE's "first loss" investment program. Hedge Fund C ultimately decided to invest \$700,000 in its own funds and ABSOLUTE agreed to provide at least \$1.8 million in additional investment capital to Hedge Fund C to trade with in the brokerage account that KONIOR stated he would open for Hedge Fund C.

b. Prior to providing the \$700,000 to KONIOR, the manager of Hedge Fund C worked with ABSOLUTE to set up a brokerage account to expedite trading once the funds were transferred. In addition, around this same time, the manager of Hedge Fund C and an attorney for Hedge Fund C had a discussion over the telephone with KONIOR and an attorney for ABSOLUTE. On this phone call, the manager for Hedge Fund C expressed concern about wiring Hedge Fund C's investment directly to ABSOLUTE. Instead, the manager of Hedge Fund C proposed that the funds be wired directly to the brokerage account being set up for Hedge Fund C. KONIOR responded, in sum and substance, that the funds must first be wired directly to ABSOLUTE, that ABSOLUTE had many clients in the past who were much larger than Hedge Fund C and that, if those clients could wire the money directly to ABSOLUTE, so could Hedge Fund C.

c. On or about April 11, 2012, Hedge Fund C wired \$700,000 to KONIOR. Thereafter, KONIOR made numerous representations to Hedge Fund C that he was attempting to open and fund Hedge Fund C's brokerage account.

d. On or about April 19, 2012, the manager for Hedge Fund C contacted one of the brokers who KONIOR previously had referred to in their discussions. The manager was informed that that broker no longer did business with KONIOR. Shortly thereafter, Hedge Fund C demanded that its funds be returned.

e. In response to Hedge Fund C's redemption request, in an e-mail dated on or about April 19, 2012, KONIOR wrote "I will turn around your funds ASAP." KONIOR, however, did not return those funds, nor did he provide the additional capital that he had promised.

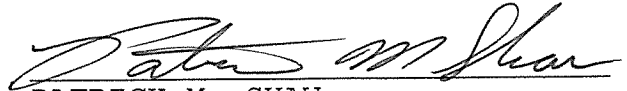
f. On or about May 3, 2012, in response to KONIOR's failure to return its funds, Hedge Fund C filed a lawsuit against KONIOR and ABSOLUTE in New York State court.

19. Based on my review of bank records for the Absolute Account, I learned that JASON J. KONIOR, the defendant, did not place the funds in a brokerage account for Hedge Fund C.

a. On or about April 11, 2012, prior to receiving the wire of \$700,000 from Hedge Fund C, the opening balance in the Absolute Account was approximately \$81,517.

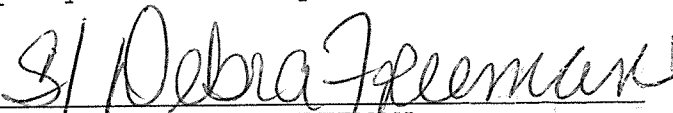
b. Thereafter, KONIOR used most of those funds (and additional funds obtained from other investors after receiving the \$700,000 from Hedge Fund C) to pay off prior investors, pay himself, and pay his business expenses. As of April 30, 2012, the balance of the Absolute Account was approximately \$138,673. As of the date of this complaint, Hedge Fund C has not been repaid the funds it invested with ABSOLUTE.

WHEREFORE, deponent prays that JASON J. KONIOR, the defendant, be arrested and imprisoned, or bailed, as the case may be.



PATRICK M. SHAW
Special Agent
Federal Bureau of Investigation

Sworn to before me this
__ day of February, 2013



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

FEB 07 2013