

Approved: Andrea M. Griswold 15 MAG 3449
ANDREA M. GRISWOLD
Assistant United States Attorney

Before: HONORABLE MICHAEL H. DOLINGER
United States Magistrate Judge
Southern District of New York

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: SEALED COMPLAINT
UNITED STATES OF AMERICA :
: Violations of
- v. - : 15 U.S.C. §§ 78j(b), 78ff;
: 17 C.F.R. § 240.10b-5;
WILLIAM J. WELLS, : 18 U.S.C. §§ 1343 & 2.
:
Defendant. : COUNTY OF OFFENSE:
: NEW YORK
- - - - - x

SOUTHERN DISTRICT OF NEW YORK, ss.:

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

COUNT ONE
(Securities Fraud)

1. From at least in or about September 2009 through the present, in the Southern District of New York and elsewhere, WILLIAM J. WELLS, the defendant, 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, used and employed 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 untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in 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, WELLS, on behalf of his investment company, Promitor Capital LLC, solicited more than \$1.5 million in funds from investors purportedly for the purpose

of purchasing securities when, in truth and in fact, WELLS converted some of the money to his own use and used some of the money to pay purported returns to other investors to whom he falsely reported positive trading results and account balances.

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

COUNT TWO
(Wire Fraud)

2. From at least in or about September 2009 through the present, in the Southern District of New York and elsewhere, WILLIAM J. WELLS, the defendant, 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, transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, WELLS, on behalf of his investment company, Promitor Capital LLC, solicited more than \$1.5 million in funds from investors purportedly for the purpose of purchasing securities when, in truth and in fact, he converted some of the money to his own use and he used some of the money to pay purported returns to other investors to whom he falsely reported positive trading results and account balances via email and other interstate wires.

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

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

3. I have been a Special Agent with the FBI for approximately twelve years. I am currently assigned to a squad within the FBI that is responsible for investigating violations of the federal securities laws, as well as wire, bank, and mail fraud laws and related offenses. I have participated in numerous investigations of these offenses, and I have made and participated in making arrests of numerous individuals for committing such offenses.

4. The information contained in this affidavit is based upon my personal knowledge, as well as information obtained during this investigation, directly or indirectly, from other sources, including documents and information provided to me by

others. Because this affidavit is prepared for limited purposes, I have not set forth each and every fact I have learned in connection with this investigation. Where conversations and events are referred to herein, they are related in substance and in part. Where dates, figures, and calculations are set forth herein, they are approximate.

Background

5. Based on interviews of victim witnesses, a review of documents provided by victim witnesses, a review of electronic communications between WILLIAM J. WELLS, the defendant, and others, and a review of bank and brokerage account records for accounts affiliated with WELLS and his firm, Promitor Capital LLC, I have learned, among other things, the following:

a. At all times relevant to this Complaint, WELLS claimed to be the principle investment manager of Promitor Capital Management LLC ("Promitor Capital"), a New York limited liability company formed in September 2009 and operated as a private investment vehicle for individuals (the "Promitor Fund").

b. At all times relevant to this Complaint, WELLS was the only employee associated with Promitor Capital. At various times relevant to this Complaint, WELLS operated Promitor Capital from an apartment in Manhattan, New York and from his home in New Jersey.

c. WELLS solicited investments for the Promitor Fund and for so-called individual trading accounts, described by WELLS as "sub-accounts," for which WELLS purported to execute individualized trading strategies (the "Promitor Sub Accounts").

d. WELLS told investors in the Promitor Fund that the investment strategy included investing in U.S.-based equities and, in times of market volatility, options trading. He marketed the Promitor Sub Accounts as individually-tailored strategies.

Overview of the Scheme to Defraud

6. From September 2009 through the present, WELLS raised more than \$1.5 million from more than thirty investors, many of whom were friends, colleagues, or family members, by falsely representing to investors that he had achieved consistently positive returns trading in the U.S. equity markets, including

through the successful use of options to hedge risk. In truth and in fact, and as WELLS knew, WELLS' trading was remarkably unsuccessful. Between 2009 and the present, WELLS realized trading losses every year and, in total, trading losses in excess of \$500,000. In fact, as of September 2015, Promitor Capital had less than \$1,000 under management. In addition, no Sub Accounts were funded on behalf of any Promitor Capital clients.

7. Moreover, of the money he did not lose in securities trading, WELLS routinely converted Promitor Capital client funds to his own use in the form of cash withdrawals and to pay personal expenses, including more than \$500,000 for, among other things, credit card bills, payments for WELLS' automobile, and for private school tuition.

8. In addition, between 2009 and the present, to hide his trading losses and continue to fund his personal lifestyle, WELLS used new investor funds to pay back other investors in a Ponzi-like fashion. In total, WELLS distributed less than approximately \$500,000 back to investors. Redemptions were often paid only after investors threatened to file a lawsuit or report WELLS to the authorities.

9. To prevent or forestall redemptions, and continue to raise money to fund his scheme, WELLS generated fictitious account statements and also made oral and written misrepresentations that his trading strategies were generating consistently positive returns.

Victim Investors

10. Based on interviews I have conducted with several of the victims of WILLIAM J. WELLS, the defendant, a review of documents provided by these victims, and a review of electronic communications between these victims, WELLS, and others, I have learned the following:

Victim-1 Invests with WELLS

a. Victim-1, a professional at a research company based in New Jersey, attended college with WELLS.

b. In or about September 2009, WELLS contacted Victim-1 regarding a potential investment in the Promitor Fund. In or about April 2010, Victim-1 invested \$50,000 in the Promitor Fund.

c. Beginning in July 2010, Victim-1 began to receive quarterly statements from WELLS, via email, on Promitor Capital letterhead.¹ By September 2010, Victim-1's statement reflected gains of more than \$10,000. Subsequently, in or about October 2010, Victim-1 invested an additional \$50,000 in the Promitor Fund. In or about April 2011, Victim-1 invested an additional \$50,000 in the Promitor Fund. Between August 2011 and November 2011, Victim-1 invested an additional \$150,000 in a purported Promitor Sub Account (the "Victim-1 Sub Account") for which Victim-1 also received quarterly statements.

d. WELLS represented to Victim-1 that the Victim-1 Sub Account would be managed exclusively for Victim-1 and would be invested in the stocks of individual companies, as identified by WELLS. After Victim-1 requested information about the holdings in the Victim-1 Sub Account, on or about April 30, 2013, WELLS sent Victim-1 a purported statement (the "Sub Account Statement") reflecting a net account balance of \$192,365.50. The Sub Account Statement was accompanied by a summary sheet entitled "Top Holdings - Period Ending 3/31/13," which indicated that the account held five specific stocks and provided the quantity, closing price and market value for each holding. In truth, as of March 31, 2013, none of the accounts held by Promitor or WELLS held positions in any of the five listed stocks. After receiving the Sub Account Statement, Victim-1 invested an additional \$100,000 in the Victim-1 Sub Account.

e. The quarterly statements for Victim-1's investment in the Promitor Fund consistently reflected positive quarterly performance returns of between 2.9 and 14.9%. The quarterly statements for the Victim-1 Sub Account reflected profits for all but three quarters. In truth, however, WELLS realized trading losses every year since 2009.

f. In or about December 2014, Victim-1 advised WELLS that Victim-1 wanted to close out the Victim-1 Sub Account and transfer the funds to the Promitor Fund. Over the course of more than four months, between January 2015 and May 2015, Victim-1 sent WELLS multiple text messages and emails asking to transfer the Sub Account funds and, later, to redeem his investments. WELLS repeatedly promised to repay Victim-1 and, on several occasions, WELLS falsely stated that he had wired

¹ In certain quarters, WELLS failed to provide an account statement to Victim-1.

money to Victim-2 when, in truth, he had not. The following are excerpts from text messages exchanged between Victim-1 and WELLS between January 20, 2015 and April 2, 2015:

January 20

Victim-1: I need that 200k asap. Will you cut a check or wire it?

January 29

WELLS: Closing it out. Trying to get you at least 100k tomorrow.

February 23-24

Victim-1: Update?

WELLS: \$50k set up for today. The rest is pending approval. Probably just due to the amount. I'll keep u posted.

February 25-26

Victim-1: Didn't get the 50k. I got a transfer from promitor capital for \$211.20.²

WELLS: Good, [t]hat was a test.

March 6

Victim-1: I have received 0.00 dollars. What is the story? Any idea what happened?

WELLS: No. I have cases logged with Citi wire dept. Headed to Citi now.³

² To date, Victim-1 has received \$60,211.20 in redemptions from WELLS, which includes an approximately \$50,000 wire on or about April 1, 2015. Prior to this wire, the account from which WELLS sent the wire had a balance of less than \$7,000. WELLS was only able to fund the wire to Victim-1 after receiving \$100,000 from another investor.

³ One of WELLS's bank accounts is maintained at Citibank. Based on a review of records for that account, WELLS never attempted to send these wires.

March 23-26

WELLS: I apologize for the delay. I'll get you squared away. Trades are going well.

Victim-1: I want the entire amount that was in the sub account wired to me. Not just the 200k originally discussed almost 3 months ago.

March 27

Victim-1: You running a Ponzi scheme? Why the heck is this going down like this?

April 2, 2015

Victim-1: So where is the money? This looks like you do not have it. Which is extremely concerning. I asked you to sell everything and wire the cash. That should take 2 days at most. I have not been given an explanation at all as to why you are unable to do this.

WELLS: My explanation is that I'm an idiot and was trying to get some big trades to hit. To make you more money.

g. Throughout the period of these communications, WELLS continued to provide statements to Victim-1 reflecting positive performance in the Promitor Fund and net gains for Victim-1 on his Promitor investments. Most recently, on or about April 1, 2015, Victim-1 received quarterly statements from WELLS which reflected total net account balances of more than \$683,000. In truth, as of August 2015, the value of the Wells and Promitor Capital trading and bank accounts was less than \$1,000.

Victim-2 Invests with Wells

h. Victim-2 worked at the same media company as WELLS between approximately 2007 and 2011.

i. In or about October 2009, after being approached by WELLS, Victim-2 invested \$25,000 in the Promitor Fund.

j. Beginning in January 2010, Victim-2 began to receive quarterly statements from WELLS, via email, on the

letterhead of Promitor Capital.⁴ In or about May 2010, Victim-2 invested an additional \$20,000 in the Promitor Fund. By September 2010, Victim-2's quarterly statement reflected gains of more than \$8,000.

k. In addition to his investments in the Promitor Fund, Victim-2 also invested \$26,500 in purported Promitor Sub Accounts between March 2011 and August 2013.⁵

l. WELLS sent Victim-2 emails indicating positive trading results. For example, on December 18, 2012, after Victim-2 sent an email asking for his account statement, WELLS responded: "Results are solid. Remaining conservative until the fiscal cliff passes then looking for a good 2013 for equities." In truth, as noted above, WELLS had realized trading losses every year since 2009.

m. On January 1, 2015, Victim-2 received a quarterly statement from WELLS for his investment in the Promitor Fund. The statement reflected a total net account balance of more than \$92,000.⁶

n. On several occasions between 2009 and 2015, WELLS asked Victim-2 if Victim-2 could introduce him to potential investors for Promitor. In or about May 2015, a close friend of Victim-2 ("Victim-3") invested approximately \$15,000 with WELLS after meeting WELLS through Victim-2. This amount was a significant portion of Victim-3's savings.

o. In or about January 2015, Victim-2 submitted the first in a series of requests in 2015 to redeem his investments in Promitor Capital, which were then, according to account statements, valued at over \$135,000. In February 2015, and again in April 2015, Victim-2 sent emails to WELLS demanding to redeem these funds.

p. In or about May 2015, Victim-2 went to WELLS' residence in New Jersey to speak with him. WELLS assured

⁴ In certain quarters, WELLS failed to provide an account statement to Victim-2.

⁵ On or about January 1, 2012, Victim-2 successfully redeemed \$55,000 from his investment in the Promitor Fund.

⁶ Victim-2 requested but never received statements for his investments in the purported Promitor Sub Accounts.

Victim-2, in sum and substance, that his money was safe and told Victim-2 that WELLS had been distracted by personal issues but would promptly repay Victim-2. Victim-2 provided WELLS with his bank wiring instructions.

q. Victim-2 did not receive any funds from WELLS in response to the repeated redemption requests made by Victim-2 in 2015.

r. In September 2015, after unsuccessful attempts to redeem his own investment, Victim-2 repaid Victim-3 with his own money.

Victims-4 -5 and -6 Invest with WELLS

s. In or about February 2015, Victim-4, a pharmacist who had been referred to WELLS by another pharmacist, invested \$10,000 in a purported Promitor Sub Account. In or about April 2014, Victim-4 invested \$25,000 in the Promitor Fund. The \$25,000 was wired to WELLS from an account controlled by Victim-4's mother ("Victim-5"), a public employee. Shortly after WELLS received the \$25,000 wire from Victim-5 (on behalf of Victim-4), WELLS called Victim-5 to solicit additional investments.

t. Victim-5 told WELLS that she and her husband, a public high school teacher ("Victim-6") were victims of Hurricane Sandy and, because they did not have flood insurance, had lost more than \$100,000 and were working to rebuild their retirement funds.

u. In or about May 2015, WELLS visited Victim-5 and Victim-6 at their residence in Queens, New York. Victim-5 showed WELLS recent brokerage statements for her retirement accounts and WELLS stated, in sum and substance, that he could generate better returns. When Victim-5 expressed concern about being invested in anything too risky, WELLS suggested a Promitor Sub Account. When WELLS left, Victim-5 had tentatively agreed to invest with WELLS. On or about July 1, 2015, Victim-5 and Victim-6 wired \$20,000 to WELLS.

v. Between July 2015 and September 2015, Victim-5, who had planned to wire more money to WELLS, unsuccessfully attempted to contact WELLS via phone, email and text message to request, among other things, account statements indicating the performance of Victim-4's account as well as confirmation of the positions in which she and her family members were currently invested.

w. Shortly thereafter, on or about September 11, 2015, WELLS emailed Victim-5 account statements for each of the accounts held by a member of her family. Each statement reflected a modest profit. In addition, the account in the name of Victim-5 and Victim-6 was accompanied by a summary sheet entitled "Top Holdings" and dated "through 9/1/15." The Summary indicated that the account held: (1) 50 shares of Walt Disney Company; (2) 50 shares of JPMorgan Chase & Co; and (3) 100 shares of OPK Health Inc ("OPK"). In truth, as of September 1, 2015, none of the accounts held by Promitor Capital or WELLS held positions in Disney, JPMorgan Chase or OPK.

11. On or about September 21, 2015, at the direction of law enforcement, Victim-4, Victim-5 and Victim-6 made a consensually recorded call to the cellphone number known to be associated with WELLS. From my review of the recording, and from speaking with Victims-5, I know that on that call WELLS stated, in sum and substance:

a. The account statements WELLS emailed to Victim-5 on September 11, 2015, including the account balances and summary of holdings, remained accurate and the family's investments with WELLS were "up for the year."

b. WELLS believed the family's investment in Disney was "going to be the home run."

c. In addition, when Victim-5 indicated that she did not want to engage in risky investments because she and her husband were approaching retirement, WELLS responded, in sum and substance: "I want to keep you guys safe."

Other Victims

12. In addition to the Victims discussed above, I have spoken with more than a dozen other victim investors who have invested with WILLIAM J. WELLS, the defendant, since 2009. From speaking with other investors, I have learned, among other things, the following:

a. Throughout the scheme, WELLS asked many of his investors to introduce him to potential additional investors and certain investors did so.

b. As recently as September 2015, WELLS provided investors with false and misleading account statements reflecting net positive investment returns.

c. WELLS told several investors that he would redeem their investments by the end of the fiscal quarter ending September 30, 2015. In truth, as noted above, the accounts held by WELLS and Promitor Capital are nearly depleted.

Wells Uses New Investor Funds to Pay Back Earlier Investors in a Ponzi-like Fashion

13. From September 2009 to the present, WILLIAM J. WELLS, the defendant, and/or Promitor Capital maintained several brokerage trading accounts and bank accounts (the "Promitor Capital Records"). Based on my review of the Promitor Capital Records, I have identified numerous examples in which WELLS used new investor funds to pay redemptions to earlier investors.

14. For example, on or about February 26, 2014, one of the Promitor brokerage accounts ("Brokerage Account-1") received a \$25,000 wire from an investor ("Victim-7").

15. From speaking with Victim-7, I have learned, among other things, the following:

a. WILLIAM J. WELLS, the defendant, told Victim-7 he would be invested in a Promitor Sub Account that would invest in the stock of Vera Bradley, a publicly-traded handbag and luggage manufacturer. WELLS also told Victim-7 the stock was trading around \$20 per share and WELLS believed it would likely go as high as \$40 per share.

b. Between February 2014 until December 2014 when WILLIAM J. WELLS, the defendant, stopped communicating with Victim-7, WELLS continued to represent to Victim-7 that Victim-7's money was invested in Vera Bradley.

16. From my review of the trading activity of Brokerage Account-1, I have learned, among other things, the following:

a. Before the \$25,000 was received by Brokerage Account-1 from Victim-7, Brokerage Account-1 had a balance of approximately \$64.

b. On or about February 26, 2014, WILLIAM J. WELLS, the defendant, purchased approximately \$2,100 in Vera Bradley call options contracts.

c. The next day, on February 27, 2014, WELLS sold all of the options contracts, resulting in a small loss.

d. The same day, WELLS wired \$8,000 from Brokerage Account-1 to an account held in his own name.

e. On February 28, 2014, WELLS wired \$10,000 - the majority of Victim-7's remaining money - to the bank account of another victim investor.

17. In total, based on my review of Promitor Capital Records, of the more than \$1.5 million in investor funds received by WILLIAM J. WELLS, the defendant, approximately \$500,000 was used, not to buy and sell securities, but to meet redemption demands of other investors.

Wells's Misappropriation Of Funds

18. Based on my review of the Promitor Capital Records, I have learned that WILLIAM J. WELLS, the defendant, converted a significant portion of investor funds to his own use.

19. With respect to the Promitor Sub Accounts, a review of the relevant trading and bank accounts indicates that none of the so-called Sub Accounts that WILLIAM J. WELLS, the defendant, purportedly established for his clients were actually funded on behalf of any clients.

20. During the course of the scheme, from September 2009 through the present, WILLIAM J. WELLS, the defendant, also misappropriated Promitor Capital's investors' funds for his personal use, including the following:⁷

a. more than \$325,000 in ATM withdrawals and debit card purchases;

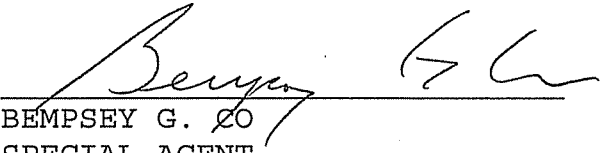
b. more than \$120,000 in credit card payments;

c. more than \$45,000 in car payments, including for a BMW driven by WELLS; and

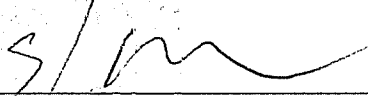
d. more than \$12,000 to a preschool in New Jersey.

⁷ Some of WELLS' bank accounts were jointly held with his wife.

WHEREFORE, I respectfully request that an arrest warrant be issued for WILLIAM J. WELLS, the defendant, and that he be arrested and imprisoned or bailed, as the case may be.


BEMPSEY G. CO
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

Sworn to before me this
28th day of September, 2015


HONORABLE MICHAEL H. DOLINGER
CHIEF UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK