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EASTERN DISTRICT OF LA
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FELONY

**BILL OF INFORMATION FOR
CONSPIRACY TO COMMIT SECURITIES FRAUD**

UNITED STATES OF AMERICA

*

CRIMINAL NO.

09-1187

v.

*

SECTION:

SECT. J MAG 3

DAVID LESTER MCFADDEN

*

VIOLATIONS: 18 U.S.C. § 371

* * *

The United States Attorney charges that:

COUNT 1

A. AT ALL TIMES MATERIAL HEREIN:

1. The defendant **DAVID LESTER MCFADDEN** ("MCFADDEN"), under the name Diversified Financial Services ("DFS"), was the assigned securities broker for Company A beginning in 1997. **MCFADDEN** received commission income derived from the sale of securities products through Company A.

2. The Securities and Exchange Commission (SEC) was an independent agency of the United States government charged with the duty to regulate and monitor the trading of securities within the United States.

3. The Financial Industry Regulatory Authority ("FINRA"), formerly known as The National Association of Securities Dealers, was a private self-regulatory industry association charged with enforcing the rules of fair practice in the purchase and sale of securities.

4. As a broker and dealer, the defendant **MCFADDEN** was required to be registered with FINRA and as such he was required to follow all rules and regulations set forth.

5. The Internal Revenue Service was an agency of the United States government that promulgated Rule 72(t) which allowed for penalty free, early withdrawals from retirement accounts. This allowed an individual to begin receiving money from a retirement account before reaching age 59½ without the normal 10 percent penalty. Individuals were obligated to make withdrawals for five years or until the individual reached age 59½ whichever was longer.

6. The United States Department of Labor, Employee Benefits Security Administration ("DOL"), was an agency charged with investigating actions involving 401(k) retirement/pension plans which were established pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA") qualified pension plans. The DOL investigated the misuse of 72(t) early withdrawals from ERISA plans. Investigations revealed that certain financial planners used the 72(t) Rule to support the term "early retirement" in their pitch to obtain control of clients' funds. In certain

situations, the transfer of funds from protected ERISA plans to annuities and stocks was not in the best interest of the individual seeking to "retire." The transfer was simply a means to obtain commissions by the financial planner through the sale of annuities and stocks.

7. The Louisiana Public Accountancy Board ("CPA Board") was a state regulatory agency that had oversight authority on the licensing of certified public accounts. **MCFADDEN**, once licensed as a CPA, had not been a licensed CPA since 1987. In early 1990, the CPA Board warned the defendant **MCFADDEN** about his continued misuse of the certification of CPA after his name.

B. THE CONSPIRACY

Beginning at a time unknown but prior to January 1999, and continuing to September 2006, in the Eastern District of Louisiana and elsewhere, the defendant, **DAVID MCFADDEN**, did knowingly and willfully conspire, confederate and agree with persons known and unknown to the Grand Jury, to willfully and knowingly, by use of means and instrumentalities of interstate commerce and of the mails, directly and indirectly, use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of a security, violating the Rules and Regulations promulgated by the United States Securities and Exchange Commission, and did employ a device, scheme and artifice to defraud, make untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in light of the circumstance under which they were made, not misleading, and engage in acts, practices and a course of business

which would and did operate as a fraud and deceit upon his clients in connection with the purchase of stocks, all in violation of Title 15, United States Code, Section 78j(b).

C. THE SCHEME:

At various times, but beginning prior to January 1999 and continuing through September 2006, in the Eastern District of Louisiana, and elsewhere, the defendant **MCFADDEN**, with others known and unknown to the grand jury, in order to put himself in the position to sell high commission variable annuities and mutual funds to clients, made material misrepresentations and omissions related to his qualifications, the diversification of stocks, and the investment returns he would achieve.

It was part of the scheme and artifice to defraud that the defendant **MCFADDEN** promoted his qualifications and credentials as a CPA and financial planner, when in truth and fact, the defendant **MCFADDEN** knew that he was not a licensed CPA and had not been licensed since 1987.

It was further part of the scheme and artifice to defraud that the defendant **MCFADDEN** used the term CPA on numerous seminar slides, business cards, promotional materials, financial plans and in correspondence to clients.

It was further part of the scheme and artifice to defraud that the defendant **MCFADDEN** falsely represented to clients, "with my 25 years of CPA experience, together we can implement tax

strategies to help keep as much of your assets as possible out of Uncle Sam's hands," when he knew that he did not have 25 years experience as a licensed CPA.

It was further part of the scheme and artifice to defraud that the defendant **MCFADDEN** falsely represented to his clients in seminars and in correspondence that DFS had other licensed CPAs working for DFS when he and his associates knew that they were not licensed CPAs.

It was further part of the scheme and artifice to defraud that the defendant **MCFADDEN** did not provide a complete and balanced description of his expertise despite knowing that his clients did not have detailed experience in the buying and selling of stocks, other than reviewing their 401(k) monthly statements, and would rely upon his representations regarding his CPA experience and expertise.

It was further part of the scheme and artifice to defraud that, based upon the defendant **MCFADDEN's** false representations, **MCFADDEN'S** clients believed that the defendant **MCFADDEN** was a CPA and a financial planner with the expertise and desire to manage their retirement investments and look after their financial affairs in a manner consistent with their best interests.

It was further part of the scheme and artifice to defraud that based upon the defendant **MCFADDEN's** false representations, **MCFADDEN'S** clients believed that **MCFADDEN** was purchasing well-diversified investments when in truth and fact in some instances **MCFADDEN** had

placed almost 90% of the client's funds in one area of high volatile stocks which was unsuitable in view of his client's financial situation and investment objectives.

It was further part of the scheme and artifice to defraud that clients relied upon the defendant **MCFADDEN**'s false representation as a CPA and financial planner in believing **MCFADDEN** when he told them they had enough money to retire and take 72(t) withdrawals of approximately 9 percent of their principal for a minimum of 5 years and thereafter be able to take withdrawals in an amount sufficient to support an equivalent, inflation-adjusted lifestyle.

It was further part of the scheme and artifice to defraud that the defendant **MCFADDEN** provided seventeen clients with financial opinions and/or letters which contained the wording, "David L. McFadden, MBA, CPA."

It was further part of the scheme and artifice to defraud that the defendant **MCFADDEN** bought and sold securities in these seventeen clients' names earning residual trailing commissions of approximately \$16,711.

OVERT ACTS:

In furtherance of the conspiracy and to effect the unlawful objects thereof, and in a manner and fashion consistent with the misrepresentations stated above, in the Eastern District of Louisiana, and elsewhere, the defendant **MCFADDEN**, and others known and unknown to the Grand Jury, committed and caused to be committed the following Overt Acts, among others:

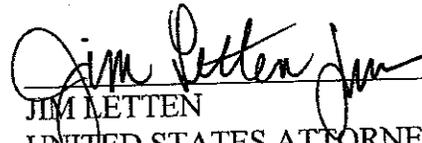
1. On or about May 17, 2004, the defendant, **DAVID LESTER MCFADDEN, JR.**, mailed to Client A.A., in Mandeville, Louisiana, a lulling letter regarding the continuation of Client

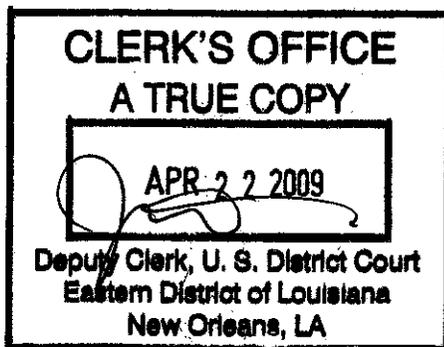
A.A.'s estate planning which **MCFADDEN** had previously recommended under the guise of being a licensed CPA;

2. From October 14, 2004 through August 7, 2006, the defendant **MCFADDEN** received trailing commissions totaling approximately \$16,711 based upon the purchase and sale of securities for clients he obtained using the false CPA designation;

3. From April 23, 2004 through June 28, 2004, the defendant **MCFADDEN** purchased high volatile securities, through sub-accounts, which were inappropriate for the clients who relied upon his expertise as a CPA in hiring him as their broker.

All in violation of Title 18, United States Code, Section 371.


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New Orleans, Louisiana
April 23, 2009