

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No. 12-
 :
 : 18 U.S.C. § 1349
 v. :
 : INFORMATION
 :
 MICHAEL J. SPAK :

The defendant having waived in open court prosecution by Indictment, the United States Attorney for the District of New Jersey charges:

Relevant Individuals and Entities

1. At all times relevant to this Information:
 - a. Defendant MICHAEL J. SPAK resided in Burlington County, New Jersey, and was employed as the Chief Executive Officer, managing member, and senior partner of Osiris Partners LLC.
 - b. P.Z., who is named as a coconspirator but not as a defendant herein, resided in Monmouth County, New Jersey, and was employed as the Chief Investment Officer, managing member, and senior partner of Osiris Partners LLC.
 - c. Osiris Partners LLC (“Osiris Partners”) was a limited liability company with headquarters in Jersey City, New Jersey. Osiris Partners was a general partner and the investment manager of a purported hedge fund known as the Osiris Fund Limited Partnership (“Osiris Fund” or the “Fund”), which also was headquartered in Jersey City, New Jersey.

THE CONSPIRACY

2. From at least as early as in or about April 2009, through in or about February 2012, in Hudson County, in the District of New Jersey and elsewhere, defendant

MICHAEL J. SPAK

did knowingly and intentionally conspire and agree with coconspirator P.Z. and others to devise a scheme and artifice to defraud investors in the Osiris Fund, and to obtain money and property by means of materially false and fraudulent, pretenses, representations and promises, and for the purpose of executing such scheme and artifice, to transmit and cause to be transmitted by means of wire communications in interstate commerce certain writing, signs, signals, and sounds, contrary to Title 18, United States Code, Section 1343.

Object of the Conspiracy

3. The object of the conspiracy was for defendant MICHAEL J. SPAK, P.Z. and others to fraudulently obtain money from investors by making materially false and fraudulent representations, including false and fraudulent representations relating to the Osiris Fund's net asset value.

Manner and Means of the Conspiracy

4. It was part of the conspiracy that defendant MICHAEL J. SPAK, P.Z. and others solicited investors to invest in the Osiris Fund, which they described as a hedge fund for the "little guys" and "moms and pops."

5. It was further part of the conspiracy that defendant MICHAEL J. SPAK, P.Z. and others represented to investors that the Osiris Fund would concentrate its trading activities in highly liquid, large capitalization stocks and limit individual positions in the Fund's portfolio to no more than thirty percent of the portfolio's value.

6. It was further part of the conspiracy that defendant MICHAEL J. SPAK, P.Z. and others represented that the Osiris Partners would charge investors a management fee of no more than three percent of the Osiris Fund's net worth.

7. From in or about June 2009 through in or about November 2011, approximately seventy-six investors invested approximately \$12 million in the Osiris Fund.

8. It was further part of the conspiracy that, at various times from in or about June 2009 through in or about September 2011, defendant MICHAEL J. SPAK, P.Z. and others sent Osiris Fund investors monthly and/or quarterly financial statements purportedly reflecting, among other things, the performance of the Fund, the Fund's allocation of assets, and the Fund's net asset value.

Diversion of Osiris Fund Assets

9. It was further part of the conspiracy that, starting in or about January 2010, defendant MICHAEL J. SPAK, P.Z. and others began improperly diverting assets of the Osiris Fund to the principals and associates of Osiris Partners. Defendant MICHAEL J. SPAK, P.Z. and others classified these diverted payments on the Osiris Fund's internal books and records either as "loans" to Osiris Partners or "inter-company transfers."

10. For example, in or about January and February 2010, defendant MICHAEL J. SPAK, P.Z. and others transferred approximately \$300,000 from the Osiris Fund to Osiris Partners, which funds were then used to purchase a luxury sport-fishing boat called the "Fintastic." Defendant MICHAEL J. SPAK, P.Z. and others classified this purchase on the Osiris Fund's internal books and records as a "loan" from the Fund to Osiris Partners.

11. It was further part of the conspiracy that defendant MICHAEL J. SPAK, P.Z. and others fraudulently characterized these diverted payments as "assets" of the Osiris Fund on the monthly and quarterly financial statements sent to Osiris Fund investors.

12. In total, in 2010 and 2011, MICHAEL J. SPAK, P.Z. and others fraudulently diverted more than approximately \$4 million of investors' monies from the Osiris Fund to Osiris Partners.

Undisclosed Trading Losses

13. In or about April and May 2010, the Osiris Fund incurred trading losses of approximately \$4.5 million dollars, which represented approximately 50% of the Fund's net asset value at the time.

14. It was further part of the conspiracy that defendant MICHAEL J. SPAK, P.Z. and others failed to disclose these trading losses to investors or prospective investors of the Osiris Fund. To the contrary, defendant MICHAEL J. SPAK, P.Z. and others took affirmative steps to hide these trading losses from the Fund's investors and prospective investors.

Falsified Financial Statements

15. It was further part of the conspiracy that, shortly after the April and May 2010 trading losses, defendant MICHAEL J. SPAK, P.Z. and others added to the financial statements sent to Osiris Fund investors a fictitious \$5 million "asset." By failing to disclose the approximate \$4.5 million in trading losses and then adding a fictitious \$5 million asset to the financial statements sent to the Fund's investors, defendant MICHAEL J. SPAK, P.Z. and others grossly overstated the Fund's net asset value.

16. For example, the May 2010 monthly statement that was sent to Osiris Fund investors falsely stated that the Osiris Fund's net asset value was approximately \$9.6 million, when, in truth, it was less than approximately \$4.3 million.

Fraudulently Inflated Management Fees

17. It was further part of the conspiracy that defendant MICHAEL J. SPAK, P.Z. and others fraudulently inflated the management fees charged to the Fund's investors by calculating the management fee as a percentage of the Fund's net asset value as fraudulently reported to investors, i.e., including the fictitious \$5 million "asset," rather than as a percentage of the Fund's actual net asset value.

18. For example, in or about May 2010, defendant MICHAEL J. SPAK, P.Z. and others calculated the management fee charged to investors as three percent of the net asset

value of the Fund as fraudulently reported to investors, approximately \$9.6 million, rather than the Fund's actual net asset value at the time, approximately \$4.3 million. As a result, for the month of May 2010 alone, defendant MICHAEL J. SPAK, P.Z. and others fraudulently overcharged investors approximately \$172,000 in management fees.

19. In total, as a result of the fraudulent inflation of management fees by defendant MICHAEL J. SPAK, P.Z. and others, from in or about January 2010 through in or about October 2011, defendant MICHAEL J. SPAK, P.Z. and others received approximately \$3.9 million to which they were not entitled.

20. By late 2011, as a result of the improper diversion of Osiris Fund assets, inflated management fees, trading losses and payments to investors, the Fund's net asset value was approximately zero. Nonetheless, defendant MICHAEL J. SPAK, P.Z. and others sent a financial statement to investors for the third quarter of 2011 which falsely stated that the Fund's net asset value was approximately \$9.6 million.

Interstate Wires

21. It was further part of the conspiracy that defendant MICHAEL J. SPAK, P.Z. and others caused the fraudulent financial statements referenced in paragraphs 11, 15, 16 and 20, supra, to be sent via e-mail from Osiris Partners' headquarters in New Jersey to numerous victim investors, including victim investors outside of New Jersey.

All in violation of Title 18, United States Code, Section 1349.

PAUL J. FISHMAN
United States Attorney