 AUSA Sunil R. Harjani (312) 353-9353

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

MICHAEL MORAWSKI and
FRANK CONSTANT

CRIMINAL COMPLAINT

CASE NUMBER:

I, the undersigned complainant, being duly sworn on oath, state that the following is true and correct to the best of my knowledge and belief:

COUNT ONE

Beginning no later than June 2006 and continuing until April 2011, at Palatine, in the Northern District of Illinois, Eastern Division, and elsewhere, MICHAEL MORAWSKI and FRANK CONSTANT defendants herein:

> devised and participated in a scheme to defraud and to obtain money from investors, by means of materially false and fraudulent pretenses, representations, promises and omissions, and in furtherance thereof, on or about August 19, 2010, did knowingly cause to be sent by United States Mail, according to the directions thereon, an envelope addressed to Investor A, which envelope contained a check in the amount of approximately $920.99 made payable to Investor A and that constituted a monthly interest payment on Individual A's investment;

in violation of Title 18, United States Code, Section 1341.

COUNT TWO

Beginning no later than June 2006 and continuing until April 2011, at Palatine, in the Northern District of Illinois, Eastern Division, and elsewhere, MICHAEL MORAWSKI and FRANK CONSTANT defendants herein:

> devised and participated in a scheme to defraud and to obtain money from investors, by means of materially false and fraudulent pretenses, representations, promises and omissions, and in furtherance thereof, on or about December 31, 2008, did knowingly cause to be sent by wire transfer approximately $47,300 from Investor D through the interstate Fedwire system to Highland Bank and Trust, Illinois, which funds represented Investor D's investment in the Michael Franks Alternative Fund;

in violation of Title 18, United States Code, Section 1343.

I further state that I am a Special Agent with the Federal Bureau of Investigation, and that this complaint is based on the facts contained in the Affidavit which is attached hereto and incorporated herein.

Signature of Complainant
A. WESLEY NEVENS
Special Agent, Federal Bureau of Investigation

Sworn to before me and subscribed in my presence,

May 10, 2011 at Chicago, Illinois
Date City and State

Honorable Sheila Finnegan, U.S. Magistrate Judge
Name & Title of Judicial Officer

Signature of Judicial Officer

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, A. Wesley Nevens, being duly sworn, state the following under oath:

INTRODUCTION

1. I am a Special Agent with the Federal Bureau of Investigation (FBI) and have been so employed for approximately one year. As a Special Agent, I have completed FBI training in fraud investigation methods, financial analysis and asset forfeiture. As a result, I am familiar with schemes involving the use of false statements to promote the sales of investments. I am currently assigned to the Chicago Division of the FBI, and had previously been assigned to a squad investigating white collar crimes.

2. The following statements are based on my personal knowledge, conversations with other Special Agents, reports of interviews with witnesses, as well as records obtained from various sources. This information contained in this affidavit is submitted for the limited purpose of establishing probable cause for the complaint charging MICHAEL MORAWSKI and FRANK CONSTANT with mail fraud in violation of Title 18, United States Code, Section 1341 (Count One) and wire fraud in violation of Title 18, United States Code, Section 1343 (Count Two). As such, this affidavit does not contain all of the information that I have gathered during the investigation.

OVERVIEW

3. As further described below, the FBI's investigation has revealed that in 2006, MORAWSKI and CONSTANT formed a real estate investment company named Michael Franks LLC. The FBI has learned that MORAWSKI and CONSTANT, in addition to Michael Franks LLC, also operated related entities such as Michael Franks Holdings LLC and Assurance Property Management LLC (herein collectively referred to as "Michael Franks"). Michael

Franks was located at 800 East Northwest Highway, Suite 201, Palatine, Illinois 60074, and offered investors passive ownership in multi-family residential properties, including apartment building complexes located in, among other places, Illinois, Texas and Alabama. The FBI has learned that MORAWSKI and CONSTANT offered two types of investments to the public: (1) MORAWSKI and CONSTANT represented to investors that their funds would be used to acquire, improve and operate specific apartment complex properties for a period of three to five years, and for the most part, investors were told they would earn between 7% and 9% annual interest returns, and potentially more upon the sale of the property; and (2) MORAWSKI and CONSTANT offered real estate-based "funds" to investors, which were executed using promissory notes, and often offered an annual interest payment of between 8% and 30% per annum to the investor. Through these investments, as further described below, MORAWSKI and CONSTANT raised over $16 million of funds from over 300 investors.

4. As described below, I believe there is probable cause to believe that MORAWSKI and CONSTANT, through Michael Franks, engaged in a scheme to defraud investors about the nature of their investments and their use of investor funds. In particular, there is probable cause to believe that MORAWSKI and CONSTANT engaged in a Ponzi scheme. That is, MORAWSKI and CONSTANT continually used funds raised through the offer and sale of investment interests to new investors to pay purported returns to earlier investors, all of which defendants concealed from both new and earlier investors.

INFORMATION OBTAINED FROM CONSTANT

5. I have reviewed a signed statement by CONSTANT that was prepared on or about April 27, 2011. This statement was signed by CONSTANT in my presence, and after

CONSTANT had participated in two voluntary interviews with the FBI. CONSTANT was represented by counsel in preparing and signing this statement.

6. CONSTANT stated that from in or around 2006 through in or around 2010, he and MORAWSKI raised over $16 million from over 300 investors. MORAWSKI primarily dealt with raising money from investors and CONSTANT oversaw the management of all of the properties and the operations of Michael Franks, including its finances. However, CONSTANT also met with investors and MORAWSKI was also involved with CONSTANT in managing the company and its finances. He and MORAWSKI were the only principals of the company and the ultimate decision-makers about the purchase of real estate and the use of investor funds.

7. CONSTANT stated that, in general, he and MORAWSKI provided investors two investment options at Michael Franks. The first was an agreement for investors to invest funds into a specific real estate property, such as the Bear Creek project, the Bridgeport property, etc., which identified an annual return that often was to be paid monthly or quarterly to the investor and which forecasted a return of approximately 25% upon the sale of the real estate property. The second was the Michael Franks Alternative Fund ("Alternative Fund"), which allowed investors to invest money in a real estate-based investment fund, which provided for annual interest payments of up to 14%, and which was to be paid quarterly to the investor. Investors were provided promissory notes or investment agreements when they invested, which they signed and which he and MORAWSKI kept at the Michael Franks office. Investors were also provided prospectuses or brochures about the real estate projects they were investing in or about the Alternative Fund. Investors either mailed in their investment checks to the Michael Franks office or sent their money via a wire transfer to one of their bank accounts. Michael Franks sent investors their monthly or quarterly interest payment checks by mail.

8. According to CONSTANT, shortly after the creation of Michael Franks, new investor money coming in was often used to make the monthly or quarterly interest payments owed to old investors. This was because many of the properties were not generating revenue and had significant debt. According to CONSTANT, he and MORAWSKI did not have the funds to pay investors their interest payments. He and MORAWSKI had to use new investor money that was coming in for the new real estate projects in order to pay old investors their interest payments.

9. According to CONSTANT, he stated that the Alternative Fund was also not generating revenue. He and MORAWSKI used new investor money coming into the Alternative Fund to pay the old investors' interest payments. The new investor money was used either to pay an old investor in the Alternative Fund or to pay an old investor in another real estate project.

10. CONSTANT stated that none of the payments from new investors to old investors were disclosed to any of the old investors. According to CONSTANT, he knew that this was wrong, and that he and MORAWSKI did it to keep Michael Franks afloat.

11. CONSTANT stated that certain real estate projects were performing poorly and not generating enough revenue to meet its operating expenses. He and MORAWSKI took investor money that was designated for a new real estate project and often transferred the funds to the poorly-performing real estate project. He and MORAWSKI did this because the money was needed to meet the operating expenses of the poorly-performing real estate project. According to CONSTANT, he knew that these transfers of funds were wrong and not consistent with the representations that he and MORAWSKI made to investors. Investors were told their money would go into a specific real estate property, but he and MORAWSKI often used their

money to support other poorly-performing real estate properties and this wasn't disclosed to the investors.

12. According to CONSTANT, he stated that he had numerous discussions with MORAWSKI about using investor funds in a way that was inconsistent with the representations that he and MORAWSKI made to investors. He and MORAWSKI talked about how they could not tell investors about all of the transfers among different bank accounts. He and MORAWSKI also talked about the use of new investor funds to make old investors' interest payments. MORAWSKI told CONSTANT that everything would be fine, and he and MORAWSKI agreed that one day they would try to fix everything.

13. According to CONSTANT, he stated that MORAWSKI also operated a number of funds that MORAWSKI primarily controlled, including the Structured Equities Fund LLC ("Structured Equities") and Stone Creek Ventures LLC ("Stone Creek"). MORAWSKI had investors invest in these funds in the same way as the Alternative Fund and represented to the investors that their money would be used for real estate investment. Investors were also promised quarterly or periodic interest payments on their investment from these funds. However, he and MORAWSKI used some of that new money deposited from investors into Structured Equities to fund interest payments to old investors in other Michael Franks real estate projects.

14. CONSTANT stated that in or around October 2010, things became more desperate as he and MORAWSKI were unable to keep the business operating and make investor payments. According to CONSTANT, MORAWSKI told CONSTANT that he could not go to jail. In or around November 2010, he and MORAWSKI turned over Michael Franks, the real estate projects, and the Alternative Fund to Commercial Recovery Associates to act as

trustee/receiver. According to Constant, he and MORAWSKI could no longer meet the expenses of Michael Franks, pay investors back their principal, and make the monthly interest payments to investors.

INFORMATION OBTAINED FROM INDIVIDUAL A

15. I have interviewed Individual A, the former Director of Finance and Operations at Michael Franks. According to Individual A, Michael Franks was owned by MORAWSKI and CONSTANT. Michael Franks' primary business was to acquire, improve and operate apartment complex properties, and then resell for a profit. Individual A was responsible for the books and records of Michael Franks beginning in or around late 2007.

16. According to Individual A, MORAWSKI was the primary person who solicited investors to invest in specific apartment complex properties. CONSTANT primarily worked on property management and operations of Michael Franks. According to Individual A, when Michael Franks was short on funds to pay interest to investors in a specific apartment complex property, MORAWSKI and CONSTANT told Individual A to borrow funds from a different Michael Franks apartment complex property account or real estate fund account. MORAWSKI and CONSTANT asked Individual A what the current bank balances were in each apartment complex property account or real estate fund account. Individual A would then be instructed by MORAWSKI and CONSTANT to transfer an amount from one entity to another in their accounting software. CONSTANT then transferred the funds himself via online banking. According to Individual A, during management meetings or weekly staff meetings, MORAWSKI and CONSTANT also discussed that if Michael Franks obtained a large investor investing in a project, then the large investor's money could be used to pay certain liabilities, including paying other investors their monthly or quarterly interest payments. According to

Individual A, MORAWSKI and CONSTANT directed the movement of investor funds among the accounts. In addition, according to Individual A, Michael Franks never sold an apartment complex property to earn profits for investors.

17. According to Individual A, the Bridgeport Apartment complex was a highly anticipated acquisition for Michael Franks. However, Michael Franks was unable to obtain mortgage financing and Michael Franks lost substantial amounts of money on the Bridgeport transaction. As a result of this loss, Bridgeport investors were paid their monthly interest payments from either other investors' money or a loan from another Michael Franks apartment property or real estate fund.

18. According to Individual A, the Alternative Fund was a pool of investor money that was supposed to be invested in real estate, but was used by MORAWSKI and CONSTANT however they saw fit. The Alternative Fund was to pay investors between 10% and 14% annual interest; however the Alternative Fund never generated a profit. Funds from other Michael Franks entities and money from other Alternative Fund investors were used to pay out the 10% to 14% annual interest to investors. Individual A had weekly conversations with MORAWSKI and CONSTANT about paying investors their interest. According to Individual A, if there were insufficient funds in an account to make interest payments, MORAWSKI or CONSTANT would tell Individual A when a new investor was expected to come in. At that point, MORAWSKI or CONSTANT would tell Individual A when there would be sufficient funds to make the interest payments to other investors.

19. According to Individual A, the Alternative Fund was also used for payroll expenses for employees of Michael Franks, to make commission payments to individuals who raised investor money for Michael Franks, to make payments to MORAWSKI and CONSTANT,

and to make payments to BMW Financial Services for CONSTANT's company car. In addition, Elgin Country Club received payments from the Alternative Fund, and certain friends of MORAWSKI were made loans from the Alternative Fund.

20. Individual A provided the FBI with a list of all investors and the amounts each investor has invested that was maintained at Michael Franks. According to this document, it appears that over 300 investors have invested over $16 million into the different Michael Franks investment programs.

INFORMATION OBTAINED FROM INDIVIDUAL B

21. I have interviewed Individual B, the Managing Director at Commercial Recovery Associates, located in Chicago, Illinois. According to Individual B, MORAWSKI and CONSTANT voluntarily ceded control of almost all the LLCs under the control of Michael Franks and their assets to Individual B as a trustee/receiver on or about November 15, 2010 because MORAWSKI and CONSTANT no longer had the funds to operate Michael Franks or return investor funds.

22. According to Individual B, he/she is in the process of marshalling the remaining assets of Michael Franks and its businesses in order to recoup any remaining funds for the investors. According to Individual B, many of the real estate properties have gone into foreclosure and the lending banks will likely take possession of the properties, and any proceeds from a foreclosure sale, because they are the secured lender. According to Individual B, investors stand to lose much, if not all, of their principal that they invested in Michael Franks.

23. According to Individual B, while almost all of the LLC's and their assets discussed above are under the control of the receiver, Structured Equities and Stone Creek are not because MORAWSKI has not voluntarily ceded control of this entity to Individual B.

According to Individual B, MORAWSKI continues to control the Structured Equities bank account at Fifth Third Bank.

INFORMATION OBTAINED FROM INVESTORS IN MICHAEL FRANKS

24. As part of the investigation, I have interviewed numerous investors who invested in either the specific real estate projects or the real estate funds offered by Michael Franks. As described below, MORAWSKI and CONSTANT made specific representations about how these investor's funds would be used, but instead used those funds either to make ponzi-type interest payments, to fund the general expenses of Michael Franks, or to fund other unrelated expenses that were not disclosed to the investor. According to these investors, none of them were aware that their investment funds were used for ponzi-type payments or that their funds were being used for anything other than real estate investment.

25. I interviewed Investor A on or about November 19, 2010. According to Investor A, he/she met MORWASKI and CONSTANT prior to investing. Investor A mostly dealt with MORAWSKI and all sales of investments came from MORAWSKI. In or around May 2009, Investor A received and signed subscription documents to invest in the Bridgeport apartment complex in Dallas, Texas, which was also signed by CONSTANT. Investor A invested $157,844 into Bridgeport, but the transaction to purchase the apartment complex never closed. On or around March 2010, MORAWSKI told Investor A to transfer his/her investment to the Village of Post Oak ("VOPO") project, which was a 384-unit garden style apartment community also located in Euless, Texas. Investor A received and signed subscription documents for VOPO and transferred his/her investment in Bridgeport to VOPO. According to Investor A, he/she initially received monthly interest checks via United States Mail from the Bridgeport Oaks bank account, but the payments stopped in or around October 2010. Investor A attempted to contact

MORAWSKI and CONSTANT on numerous occasions to recoup her funds, but was unsuccessful. According to Individual A, he/she has filed a complaint in the Circuit Court of Cook County against MORAWSKI and CONSTANT, among others, for the loss of his/her investment. As part of my investigation, I have reviewed the accounting records maintained by Michael Franks and bank records for Michael Franks accounts held at Highland Park Bank & Trust. My preliminary review has revealed that Investor A, and other Bridgeport investors, were paid their interest payments from investors' own deposits. Furthermore, accounting and banking records do not show that Investor A's approximately $157,000 investment was transferred from the Bridgeport account to the VOPO account, pursuant to the representations made by MORAWSKI in or around March 2010. Rather, the records shows that, along with other Bridgeport investor deposits, the funds were used for, among other things, commission payments and referral fees to two Michael Franks' employees and to fund the operational expenses of Michael Franks.

26. I interviewed Investor B on or about February 22, 2011. According to Investor B, on or about March 6, 2010, MORAWSKI emailed Investor B about Stone Creek, a real estate-based fund, and how he/she could take advantage of the real estate foreclosure market by investing in Stone Creek. After reviewing the information, Investor B invested $30,000 on or about April 19, 2010 in Stone Creek through a promissory note that paid 30% annual interest. The note was signed by MORAWSKI. The note was due on or about January 31, 2011. However, Investor B never received the first interest payment due on or about September 30, 2010. On or about December 6, 2010, MORAWSKI told Investor B that Stone Creek was "going slow" and that Stone Creek had bought one property and hoped to resell it to start paying back investors. Investor B never received the second interest payment and principal that was due

on or about January 31, 2011. On or about February 23, 2011, MORAWSKI spoke with Investor B and said Stone Creek had numerous properties on the market for sale, including a property in Elgin, Illinois. MORAWSKI told Investor B that all of the Stone Creek investor money was spent on foreclosed homes. According to Investor B, he has asked for his principal back and his interest payments from Michael Franks with no success. As part of my investigation, I have reviewed the accounting records maintained by Michael Franks. Records indicate that Stone Creek never acquired any real estate properties, and that Investor B's investment of $30,000 was not used to acquire any properties under Stone Creek. Furthermore, records show that 12 investors, including Investor B's funds, had their total funds of $555,000 deposited into the Stone Creek account at Highland Park Bank & Trust between on or about March 17, 2010 and June 23, 2010. Records also show that $543,500 was transferred out of the Stone Creek account to the Michael Franks account between on or about March 19, 2010 and June 25, 2010, and some of that money was used for Michael Franks employee payroll, health and life insurance; ponzi-type interest payments to Alternative Fund investors; transferred to an account in the name of Lanis Securities, a planned securities broker-dealer under the rubric of Michael Franks and then used for those employees' payroll, health insurance and legal fees; to refund a Bridgeport investor's principal; for checks paid directly to MORAWSKI and CONSTANT; and to pay Michael Franks operational expenses.

27. I interviewed Investor C on or about February 22, 2011. Investor C was introduced to Michael Franks in or around early 2007. After meeting with MORAWSKI in or around December 2007, Investor C invested $25,000 into the apartment property named Southern Manor, LLC and $50,000 into the apartment property named Westernview Townhomes, LLC. According to Investor C, in or around late 2009, Investor C committed to

MORAWSKI that he/she would invest $100,000 in Bear Creek. Later, Investor C approached MORAWSKI about investing a smaller amount in Bear Creek because he/she wanted to use the difference to invest outside of Michael Franks. MORAWSKI responded by soliciting Investor C to invest the full $100,000 in or around December 2009. Investor C received and signed subscription documents. After the $100,000 investment was made, Investor C didn't receive an update until in or around March 2010, and was told by MORAWSKI that Michael Franks was ready to acquire the Bear Creek properties. As part of my investigation, I have reviewed the accounting records maintained by Michael Franks. Records indicate that the Bear Creek properties in Euless, Texas were never acquired by Michael Franks. Furthermore, records show that Investor C's deposit of $100,000 was received on or about December 4, 2009 into the Bear Creek account at Highland Park Bank & Trust. On or about the previous day, December 3, 2009, the balance in the Bear Creek account was $219.06. On or about the same day as Investor C's deposit, $100,000 was transferred from the Bear Creek account to the Michael Franks account, and was used for, among other things, payments to MORAWSKI and CONSTANT, ponzi-type interest payments to other investors, and payroll expenses for other Michael Franks employees.

28. I interviewed Investor D on or about April 22, 2011. In or around November 2008, Investor D attended a Michael Franks prospective investor and investor meeting and learned about Bridgeport and the Alternative Fund. Investor D determined that he/she would invest in both Bridgeport and the Alternative Fund. Investor D received and signed subscription documents for Bridgeport and a promissory note on the Alternative Fund, which were both also signed by CONSTANT. On or about December 31, 2008, Investor D had his/her self-directed retirement company wire transfer $52,628 to the Bridgeport bank account, and also wire transfer

$47,300 to the Alternative Fund bank account. On or about December 26, 2008, five days prior to Investor D's deposit, the balance in the Alternative Fund account at Highland Park Bank & Trust was $3,626.61. From on or about December 27, 2008 to on or about January 30, 2009, a total of $77,300 from Alternative Fund investors, including Investor D, was deposited into the Alternative Fund account. In addition, $57,585.70 was net transferred into the Alternative Fund account ultimately from a $2,450,000 investor deposit into the Sequoia Bend account, another Michael Franks property. No other money, identifiable as revenue from the Alternative Fund, was seen deposited into the Alternative Fund account. In or around the same time period discussed above, records indicate 73 investor interest and return of principal checks were written from the Alternative Fund account that totaled $99,002.87. All checks were cashed. Without using Investor D and other Michael Franks investor deposits, there were insufficient funds in the account to make ponzi-type interest payments to other Alternative Fund investors. Investor D has attempted to get his/her investment back, with no success.

29. I interviewed Investor E on or about April 22, 2011. Investor E was introduced to Michael Franks in or around June 2010. He/she met with MORAWSKI to discuss Michael Franks and investment opportunities, and decided to invest in Structured Equities, a real estate-based fund, and VOPO. Investor E received and signed subscription documents for Structured Equities and VOPO. On or about June 15, 2010, Investor E wire transferred $200,000 into the Structured Equities account at Fifth Third Bank. In or around July 2010, Investor E had his/her funds of $200,000 deposited into the VOPO account at Highland Park Bank & Ttrust. Finally, on or about August 9, 2010, Investor E wire transferred $99,975 into the Structured Equities account at Fifth Third Bank. Recently, on or about April 18, 2011, Investor E spoke with MORAWSKI. According to Investor E, MORAWSKI stated that he was still trying to make

Structured Equities work, and that the worst case scenario would be a return of original capital to Investor E over the next three to five years. Investor E received and deposited the last quarterly dividend from his/her Structured Equities investment sometime in or around March 2011. According, it appears that MORAWSKI continues to control the Structured Equities bank account and continues to make interest payments to investors.

INVESTMENT OFFERING DOCUMENTS FROM MICHAEL FRANKS

30. As part of my investigation, I have reviewed investment offering documents obtained from Michael Franks. According to CONSTANT, the documents described below were provided to prospective investors and investors. As further described below, these documents contain representations about how MORAWSKI and CONSTANT, through Michael Franks, would use the investors' funds.

A. Documents Concerning Investment in Specific Real Estate Projects

31. I have reviewed offering materials provided to investors who invested in specific real estate projects. For example, the Operating Agreement of Bridgeport Apartments, LLC ("Bridgeport") stated that investors' funds were to be used to "own, operate, improve, hold for investment, mortgage, manage, lease, sell or exchange the real property commonly known as 5440 Jim Miller Road, Dallas, Texas 75227 ("Property")." Furthermore, the Operating Agreement stated that Bridgeport intended to raise approximately $3.3 million and that a 7% annualized preferred return on investors initial capital contribution would be made from the net cash flow generated from the apartment property. According to the Operating Agreement, interest payments to the investor were to be made monthly.

32. I have also reviewed the Confidential Private Placement Memorandum for Bear Creek Partners I, LLC ("Bear Creek") that was provided to investors. According to this

Memorandum, funds provided by investors were intended to acquire "apartments together known as the Bear Creek Properties ('Properties'), as comprised of the Enclave Apartments ('Enclave') and Overlook Apartments ('Overlook')" located in Euless, Texas. The Memorandum further provided that Bear Creek intended to raise $900,000 and stated a total annual return on invested capital of 9% would be made from the net cash flow from operating the apartment properties. The Memorandum did not set a schedule for payout on investor returns.

33. I have reviewed the Restated Confidential Private Placement Memorandum for the Bridgeport Oaks Fund, LLC ("Bridgeport Oaks") that was provided to investors, which stated that funds provided by investors were to be used to acquire and operate income-producing, multi-family residential real property, or invest in other real estate investment opportunities. According to the Memorandum, Bridgeport Oaks identified one property for acquisition, the Village on Post Oak, LLC ("VOPO") property. The Memorandum stated that VOPO was "a 384-unit garden style apartment community located in Euless, Texas, consisting of 26 buildings situated on 12.52 acres of land." The Memorandum further provided that the fund intended to raise $15 million to finance its acquisition of VOPO, and other as yet unidentified properties, through the sale of Series A 12%, Series B 10% and Series C 10% notes. According to this Memorandum, a Series A Note investor would earn 12% annual interest over approximately four years (4% deferred until maturity), with 20% profit participation; a Series B Note investor would earn 10% annual interest over approximately four years (2% deferred until maturity), also with 20% profit participation; and a Series C Note investor would earn 10% annual interest over approximately four years, with no profit participation. Furthermore, the Memorandum shows that interest payments to the investor were to be made quarterly and that the notes were collateralized by the manager's pledge of 100% of the assets of the fund.

34. I have reviewed the Confidential Private Placement Memorandum for the VOPO property that was provided to investors. The VOPO property was offered concurrently with Bridgeport Oaks described above. The VOPO Memorandum stated that funds provided by investors were to be used to "acquire and operate the [VOPO] Apartments, a 384-unit garden style apartment community located in Euless, Texas, consisting of 26 one, two, and three story buildings situated on 12.52 acres of land." According to this Memorandum, VOPO intended to raise $3 million. The Memorandum also stated that a total annual return of 8% on net original capital would be made from the net cash flow generated from the apartment property. A promotional brochure for VOPO stated that the "preferred annualized return of 8% will also be paid on a monthly basis." The Memorandum further provided that funds provided by investors, until required in connection with the acquisition of the property, "may be invested in short-term, highly-liquid investments including government obligations, bank certificates of deposits, short-term debt obligations and interest-bearing accounts."

B. Documents Concerning Investments in Michael Franks Real Estate-Based Funds

35. I have reviewed the offering materials provided to investors for the real estate-based funds offered by Michael Franks. According to the offering materials for the Alternative Fund, the fund was described as a "short-term investment vehicle (2 years) made-up of a variety of investment properties." The fund advertised "high yields" and a "guaranteed return" of up to 14%. According to the brochure, the guarantee "is a personal guarantee" and "is leveraged against personal net worth into the millions, secured by a AAA-rated insurance policy." In addition, the offering documents asked investors to use their retirement funds and represented that investors would "get higher returns" than the stock market. According to the Alternative Fund Secured Promissory Note and Guaranty, which was the promissory note signed by the

investors, MORAWSKI and CONSTANT "unconditionally, absolutely and irrevocably guaranty, for the benefit of Lender and each and every present and future holder or holders of the Note or assignee or assignees of the Loan Documents, the due, punctual and full payment of the indebtedness evidenced by the Note, including the interest thereon and all monies due or which may become due thereunder or under the Loan Documents." Furthermore, the Secured Promissory Note stated that interest payments to the investor were to be made quarterly, commencing at the end of the sixth month following the execution date of the agreement.

36. I have also reviewed the offering documents for Stone Creek Ventures, LLC (referred to herein as "Stone Creek"). According to these documents, funds provided by investors were to be used to "invest in real estate assets primarily in the greater Chicago MSA and collar counties." Furthermore, the offering documents stated the company "plans to invest in assets that present 'value add' opportunities. These opportunities typically arise from homes needing renovation, improved marketing or may be priced well below the market when the lender needs to raise capital. Once the 'value add' aspect is remedied, the asset will be immediately resold." According to the offering documents, Stone Creek intended to raise $1.5 million and projected annual returns of 30%, with the "potential for greater returns." According to the Stone Creek Secured Promissory Note and Guaranty, which was the promissory note signed by investors, the assets of Stone Creek guaranteed all investor funds. Furthermore, the Secured Promissory Note stated that interest payments to the investor were to be made in two installments: (1) at the end of the fifth month from the date of the execution of the agreement; and (2) at maturity, which typically was nine months after execution of the agreement.

37. I have also reviewed the Confidential Private Placement Memorandum for the Structured Equities Fund, LLC (referred to herein as "Structured Equities"). According to this

memorandum, Structured Equities intended to raise $8 million to "capitalize upon distressed real estate opportunities available in the current market by acquiring and operating income-producing, multi-family residential real property with the potential for appreciation in value." According to this memorandum, a Series A Note investor would earn 8% annual interest over two years, with no profit participation; a Series B Note investor would earn 12% annual interest over two years (4% deferred until maturity), also with no profit participation; and a Series C Note investor would earn 14% annual interest over four years (4% deferred until maturity), and receive 20% profit participation. Furthermore, the memorandum shows that interest payments to the investor were to be made quarterly and that the notes were collateralized by the manager's pledge of 100% of the assets of the company.

USE OF INVESTOR FUNDS

38. I have reviewed bank records for accounts under the control of Michael Franks, MORAWSKI, and CONSTANT and the accounting books and records of Michael Franks. My preliminary review of these documents show that new investor funds were often used to make ponzi-type payments to other investors, and thus this use of investor funds was contrary to representations made to investors by MORAWSKI and CONSTANT.

39. My preliminary review of these documents also reveals that investor money was transferred wherever it was needed, and in particular, that certain of the Michael Franks properties did not have sufficient income to meet its operating expenses, and thus investor funds in one property project were often used to fund the debt of another property project. It appears that this use of investor funds was also contrary to representations made by MORAWSKI and CONSTANT.

40. A preliminary review of records obtained from Highland Park Bank & Trust and Fifth Third Bank show that MORAWSKI and CONSTANT were the signatories on numerous Michael Franks apartment property accounts, including Bridgeport, Bridgeport Oaks, and Alternative Fund accounts, discussed herein, as well as the main Michael Franks bank account.

41. On or about August 25, 2009, records show an investor in Bridgeport had his/her funds in the amount of $52,628 deposited into the Bridgeport bank account. This investor received and signed Bridgeport subscription documents, which were also signed by CONSTANT. On the day prior to the investor deposit, on or about August 24, 2009, the balance in the Bridgeport account was $5,427.98. Between on or about August 25, 2009 and on or about September 10, 2009, records show 42 Bridgeport investor checks, written from the Bridgeport account, were cashed that totaled $12,835.92. Without the investor deposit of $52,628, there were not enough funds in the Bridgeport account to make the distribution of investor interest. As shown above, some of this investor's funds were not used to invest in the Bridgeport property, but were used for ponzi-type payments to other Bridgeport investors.

42. On or about February 26, 2010, an investor in Bridgeport Oaks wire transferred $125,000 into the Bridgeport Oaks reserve bank account. This investor received and signed Bridgeport Oaks subscription documents. On the day prior to the investor deposit, on or about February 25, 2010, the balance in the Bridgeport Oaks reserve account was $56.67. Then on or about March 1, 2010, $125,000 was transferred from the Bridgeport Oaks reserve account to the Bridgeport Oaks main account. On the day prior to the transfer, on or about February 28, 2010, the balance in the Bridgeport Oaks main account was $6,828.22. Furthermore, on or about March 1, 2010, $125,000 was transferred from the Bridgeport Oaks main account to the Michael Franks account. On the day prior to the subsequent transfer, on or about February 28, 2010, the

balance in the Michael Franks account was $2,999.39. Furthermore, on or about March 1, 2010, $16,000 was transferred from the Michael Franks account to the Bridgeport account. On the day prior to the subsequent transfer, on or about February 28, 2010, the balance in the Bridgeport account was $1.65. Between on or about March 2, 2010 and on or about March 10, 2010, 47 Bridgeport investor checks were written from the Bridgeport account were cashed that totaled $14,625.83. Without the investor deposit of $125,000 into the Bridgeport Oaks reserve account, and subsequent transfers, there were not enough funds in the Bridgeport account to cover the distribution of investor interest. As shown above, some of this Bridgeport Oaks investor's funds were used for ponzi-type payments to other Bridgeport investors.

43. On or about September 29, 2008, records show an investor in the Alternative Fund had his/her funds in the amount of $25,000 deposited into the Alternative Fund bank account. This investor received and signed the Alternative Fund Secured Promissory Note, which was also signed by CONSTANT. On the day prior to the investor deposit, on or about September 28, 2008, the balance in the Alternative Fund account was $6,061.69. Then, between on or about September 29, 2008 and September 30, 2008, records show 46 checks were written to pay investor interest payments and return of principal from the Alternative Fund account that totaled $51,830.12. All checks were cashed. Without the investor deposit of $25,000, and two subsequent Alternative Fund investor's deposits on or about October 3, 2008 of approximately $200,000 (which covered the negative balance in the account), there were not enough funds in the Alternative Fund account to make the distribution of investor interest and return of principal. As shown above, this investor's funds were completely used for ponzi-type payments to other Alternative Fund investors.

44. On or about September 4, 2009, records show an investor in the Alternative Fund had his/her funds in the amount of $25,000 deposited into the Alternative Fund bank account. This investor received and signed the Alternative Fund Secured Promissory Note, which was also signed by CONSTANT. On the day prior to the investor deposit, on or about September 3, 2009, the balance in the Alternative Fund account was $25,224.79. Then, between on or about September 7, 2009 and September 9, 2009, records show 34 checks were written from the Alternative Fund account to pay investor interest payments that totaled $36,242.83. All checks were cashed. Without the investor deposit of $25,000, there were not enough funds in the Alternative Fund account to make the distribution of investor interest. As shown above, some of this investor's funds were used for ponzi-type payments to other Alternative Fund investors.

45. I have also reviewed Fifth Third Bank records, including Structured Equities, through on or about March 31, 2011. Interviews conducted by the FBI have revealed that MORAWSKI directed some of the Structured Equities investors to make their investment checks payable to an entity called Great Rooms Development ("Great Rooms") in or around November and December 2010. Great Rooms appears to be another investment entity controlled by MORAWSKI. Records show that MORAWSKI had signatory authority on the Great Rooms account at Fifth Third Bank. Bank records from Fifth Third Bank show that the Great Rooms account was opened on or about November 9, 2010. Bank records also show a Structured Equities investor deposited $100,000 into the Great Rooms account on or about the same day. Then, two additional investor deposits totaling $100,000 were deposited into the Great Rooms account in or about December 2010, with no further deposits, of any kind, in or around January and February 2011. On or about February 13, 2011, the balance in the Structured Equities account was $883.42. Records then show that $30,000 was transferred from the Great Rooms

account to the Structured Equities account on or about February 14, 2011. However, on or about February 12, 2011, 29 investor checks were written from the Structured Equities account that totaled $31,665, which were cashed and which were covered by the $30,000 transfer from the Great Rooms account. Each of the checks memo lines stated "4th Quarter 2010 Interest Payment." Without the investor deposits in November and December 2001, and subsequent transfer of $30,000, there were not enough funds in the Structured Equities account to cover the distribution of investor interest. As shown above, some of these investors' funds were used for ponzi-type payments to Structured Equities investors as recently as February 2011.

REGULATORY ACTION AGAINST MORAWSKI AND CONSTANT

46. I have reviewed records obtained from the Illinois Department of Securities. On or about December 2, 2009, the Illinois Department of Securities issued a Temporary Order of Prohibition that found that MORAWSKI and CONSTANT, through their offer and sale of promissory notes, were engaging in the unregistered sale of securities in Illinois and prohibited Michael Franks, MORAWSKI and CONSTANT from offering or selling securities in or from Illinois until further order.

47. I have reviewed records obtained from Michael Franks and found that Michael Franks continued to offer and sell investments to the public after December 2, 2009, including raising money in Bridgeport Oaks, VOPO, the Alternative Fund, Stone Creek and Structured Equities. In total, after on or about December 2, 2009, Michael Franks raised at least an additional $2.4 million in new investments.

EXECUTION OF THE SCHEME

48. According to Investor A, Investor A received in the mail at an address in Western Springs, Illinois a check for $920.99, dated on or about August 19, 2009, from the Bridgeport

account at Highland Park Bank & Trust. According to Investor A, the check was a monthly distribution of interest on his/her Bridgeport investment, and he/she received that check by U.S. Mail from Michael Franks. As described earlier, a new Bridgeport investors' deposit of $52,628, made on or about August 25, 2009, made this distribution of interest to Investor A, as well as several other Bridgeport investors, possible.

49. According to Investor D and bank account records, Investor D sent a wire transfer of $47,300 through the interstate Fedwire system from his/her self directed retirement account custodian located in California, on or about December 31, 2008, to the Alternative Fund bank account at Highland Park Bank & Trust in Illinois representing Investor D's investment in the Alternative Fund.

CONCLUSION

50. Based on the above information, I believe there is probable cause to believe that MORAWSKI and CONSTANT have committed violations of Title 18, United States Code, Section 1341 (mail fraud) and Title 18, United States Code, Section 1343 (wire fraud).

FURTHER AFFIANT SAYETH NOT

____
A. WESLEY NEVENS
Special Agent, Federal Bureau of Investigation

Sworn to and subscribed before me on this 10th day of May, 2011.

____
HONORABLE SHEILA FINNEGAN
United States Magistrate Judge
Northern District of Illinois