UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	**HON. MARK FALK**
	:	
v.	:	**Magistrate No. 11-3750**
	:	
SCOTT KUPERSMITH	:	**COMPLAINT**

I, Joel DeCapua, being duly sworn, state the following is true and correct to the best of my knowledge and belief. From in or about 2008 through in or about April 2011, in the District of New Jersey and elsewhere, the defendant SCOTT KUPERSMITH did:

SEE ATTACHMENT A

I further state that I am a Special Agent with the Federal Bureau of Investigation, and that this complaint is based on the following facts:

SEE ATTACHMENT B

continued on the attached page and made a part hereof.

Joel DeCapua
Joel DeCapua, Special Agent
Federal Bureau of Investigation

Sworn to before me and subscribed in my presence,

October 24, 2011 at Newark, New Jersey
Date City and State

HONORABLE MARK FALK
United States Magistrate Judge
Name & Title of Judicial Officer

Mark Falk
Signature of Judicial Officer

ATTACHMENT A

Count 1
(Securities Fraud)

Knowingly and willfully, by use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly, in connection with the purchase and sale of securities, use and employ 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.

In violation of 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 2
(Wire Fraud)

Knowingly and intentionally devise and intend to devise a scheme and artifice to defraud, and to obtain money by means of false and fraudulent pretenses, representations, and promises, and, in furtherance of that scheme, caused to be transmitted in interstate commerce writings, signs, signals, and sounds, as described in paragraph 11 below.

In violation of Title 18, United States Code, Section 1343, and Title 18, United States Code, Section 2.

ATTACHMENT B

I, Joel DeCapua, have been a Special Agent of the Federal Bureau of Investigation ("FBI") for approximately two years, and I have been personally involved in the investigation of this matter. The information contained in this Complaint is based upon my personal knowledge, as well as information obtained from other sources, including: a) statements made or reported by various witnesses with knowledge of relevant facts; b) my review of publicly available information relating to SCOTT KUPERSMITH, the defendant; and c) my review of business records, bank records, brokerage records and other documents. Because this Complaint is being submitted for the limited purpose of establishing probable cause, it does not include every fact that I have learned during the course of the investigation. Where the content 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.

The Free-Riding Scheme

1. From at least in or about 2008 through in or about April 2011, defendant SCOTT KUPERSMITH and others engaged in a securities fraud scheme sometimes referred to as "free-riding." "Free-riding" is a scheme in which a customer buys or sells securities in a brokerage account without the cash or securities to cover the trades. For example, in a typical free-riding scheme, the "free-rider" will place an order to sell shares of a security in a brokerage account without actually owning the shares and then "cover" the sale by purchasing shares of the same security on the same day through another brokerage firm. The "free-rider" attempts to profit from short-term changes in the market prices of securities without placing personal assets at risk. In this case, defendant SCOTT KUPERSMITH made numerous material misrepresentations to brokerage firms in New Jersey and elsewhere in order to execute the free-riding scheme.

2. In 2008 and 2009, SCOTT KUPERSMITH and his associates opened multiple brokerage accounts. Between in or about June 2009 and in or about October 2009 alone, SCOTT KUPERSMITH and his associates opened nine separate brokerage accounts at multiple brokerage firms located in New Jersey and elsewhere. Four of these brokerage accounts were opened by defendant SCOTT KUPERSMITH in the name of "Atlantic Southern Capital, Inc.," a company that defendant SCOTT KUPERSMITH incorporated in or about April 2009.

3. In opening these brokerage accounts, defendant SCOTT KUPERSMITH specifically requested that each account be opened as a delivery-versus-payment or "DVP" account. A DVP account allows clients to buy or sell securities in an account at one firm and then settle those trades with cash or securities held at an account at a different firm. In most instances, the customer has a short window – usually three days – to produce the cash or securities needed to settle the trades. Generally, brokerage firms permit only institutional customers or very high-net-worth individuals to open DVP accounts. In order to induce the brokerage firms to open these DVP accounts, defendant SCOTT KUPERSMITH falsely represented that Atlantic Southern Capital was a successful hedge fund that had a liquid net worth of approximately $10 million or $20 million, and that he had a personal net worth of approximately $5 million.

4. Once the DVP accounts were opened, defendant SCOTT KUPERSMITH actively traded a number of securities, including shares of the stocks Baidu, Inc. ("Baidu") and CME Group, Inc. ("CME"). Initially, defendant SCOTT KUPERSMITH settled the trades that he made. An analysis of the brokerage accounts revealed, however, that defendant SCOTT KUPERSMITH would settle these trades not with existing cash or securities, but rather by making a corresponding trade at another brokerage firm. For example, defendant SCOTT KUPERSMITH would sell 5,000 shares of Baidu at Brokerage Firm #1, then, on the same day, buy 5,000 shares of Baidu at Brokerage Firm #2, which he would then use to cover the previous sale. In essence, defendant SCOTT KUPERSMITH used the mechanism of the DVP account to trade stocks on margin without permission from the brokerage firms to do so.

5. Beginning in or about October 2009, however, defendant SCOTT KUPERSMITH failed to settle many of the trades that he made that were not profitable. For example, between on or about November 3, 2009 and on or about November 20, 2009, defendant SCOTT KUPERSMITH placed orders to sell approximately 48,700 shares of Baidu in Atlantic Southern Capital's brokerage accounts at Brokerage Firm #1 and Brokerage Firm #2. Acting on defendant SCOTT KUPERSMITH's instructions, Brokerage Firm #1 and Brokerage Firm #2 executed these sale orders, and sold approximately 48,700 shares of Baidu for a total purchase price of approximately $15,015,091. Defendant SCOTT KUPERSMITH failed to deliver any of the shares of Baidu that he had agreed to sell. As a result, Brokerage Firm #1 and Brokerage Firm #2 were forced to buy 48,700 shares of Baidu on the open market to cover these trades on defendant SCOTT KUPERSMITH's behalf, resulting in losses to Brokerage Firm #1 and Brokerage Firm #2 of more than $600,000.

6. In order to further perpetuate the scheme, defendant SCOTT KUPERSMITH misappropriated the personal identification information of a family member and a friend, and used that information to open additional DVP accounts at a number of brokerage firms in New Jersey and elsewhere. Once he opened these brokerage accounts, defendant SCOTT KUPERSMITH communicated with the brokers at these brokerage firms and placed orders to buy and sell shares of stock, while pretending to be his family member or friend. An analysis of brokerage records for these accounts revealed that defendant SCOTT KUPERSMITH once again traded securities without sufficient cash or assets to cover the trades and, when the trades were not profitable, failed to settle the trades at all.

7. As a result of the above-described securities fraud scheme, numerous brokerage firms in New Jersey and elsewhere were forced to cover defendant SCOTT KUPERSMITH's failed trades using their own funds, leading to losses of more than $1 million.

The Investment Fraud Scheme

8. From in or about April 2009 to in or about February 2010, defendant SCOTT KUPERSMITH solicited investors to invest in a hedge fund that he claimed to control. To induce investors to invest, defendant SCOTT KUPERSMITH made numerous material misrepresentations concerning his alleged hedge fund. Among other things, defendant SCOTT KUPERSMITH falsely represented that his hedge fund achieved an annual return on its investments of approximately 30 percent and that he personally made over $1 million in the past year.

9. Defendant SCOTT KUPERSMITH represented to investors that their investment funds would be used by his hedge fund to make legitimate securities trades. In addition, to further induce investors to invest, defendant SCOTT KUPERSMITH falsely represented to investors that they would receive extraordinary returns. For example, defendant SCOTT KUPERSMITH represented to at least one prospective investor that he would receive a return on his investment of approximately 43 percent every three months. Defendant SCOTT KUPERSMITH also represented to prospective investors that their principal investment was "guaranteed."

10. Based on these, and other, misrepresentations, defendant SCOTT KUPERSMITH raised approximately $500,000 from investors in New Jersey and elsewhere. Contrary to defendant SCOTT KUPERSMITH's representations, however, the investigation has revealed that defendant SCOTT KUPERSMITH did not use investors' funds to make legitimate securities trades. Instead, the investigation has revealed that defendant SCOTT KUPERSMITH used a small portion of investors' funds to fund the above-described free-riding scheme, and spent the bulk of investors' funds either (1) on personal expenditures, including flights, private limousine services, luxury hotel rooms, and adult entertainment clubs, or (2) to make principal and interest payments to existing investors in Ponzi-scheme fashion.

Wire Fraud

11. In or about April 2009, defendant SCOTT KUPERSMITH solicited an investor (hereinafter, "Investor #1") to invest in his supposed hedge fund. Defendant SCOTT KUPERSMITH falsely represented to Investor #1 that his funds would be used to settle several profitable securities trades that defendant SCOTT KUPERSMITH already had made. Based on this representation, on or about April 23, 2009, Investor #1 wired approximately $18,000 from his bank account in New Jersey to a bank account controlled by defendant SCOTT KUPERSMITH.

12. Contrary to his representations to Investor #1, defendant SCOTT KUPERSMITH did not use Investor #1's money to settle any securities trade, but instead used the majority of that money (1) to pay personal expenses, including flights, hotel rooms, and meals at high-end restaurants, and (2) to make principal and interest payments to an existing investor.