

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No. 10-  
 :  
 v. : 18 U.S.C. §§ 1343 and 2  
 :  
 ROBERT J. SUCARATO :  
 : I N F O R M A T I O N

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

The Defendant

1. At all times relevant to this Information:

a. Defendant ROBERT J. SUCARATO was a resident of New Jersey and was the owner and President of New York Financial Company ("NYFC") which purportedly was a capital management and financial consulting firm with offices in New York City and Chicago.

b. Defendant ROBERT J. SUCARATO established two hedge funds, the NYFC Strategic Fund and the NYFC Diversified Strategic Fund (the "Funds"), which purportedly invested in a variety of security instruments, including commodities futures contracts and options on commodity futures.

The Commodity Futures Trading Commission

2. At all times relevant to this Information:

a. The United States Commodity Futures Trading Commission ("CFTC") was an independent federal agency of the

United States charged with administering and enforcing the provisions of the Commodity Exchange Act ("CEA"), 7 U.S.C. § 1 et seq., and the CFTC Regulations, 17 C.F.R. § 1.1 et seq. As part of its duties, the CFTC regulated transactions involving the trading of commodity futures contracts.

b. A commodity pool operator ("CPO") was any person engaged in a business in the nature of an investment trust or similar form of enterprise and who solicited, accepted, or received funds from others for the purpose of trading in commodity futures contracts. 7 U.S.C. § 1a(5). Typically, the funds received from investors by a CPO were combined in commodity pools and used to trade in commodity futures contracts. Any person acting as a CPO was required to be registered with the CFTC or comply with the CPO exemption requirements under the CEA and the CFTC Regulations.

c. Neither defendant ROBERT J. SUCARATO nor NYFC were registered with the CFTC as CPOs and were never exempt from being registered as CPOs in accordance with the CEA and the CFTC Regulations.

d. CPOs were prohibited from using the mails or any other means of interstate commerce to (A) employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant, or (B) engage in any transaction, practice, or course of business which operated as a

fraud or deceit upon any client or participant or prospective client or participant. 7 U.S.C. § 6.o(1).

**The Scheme to Defraud**

3. From at least as early as in or about September, 2004 to on or about August 1, 2007, in Camden and Monmouth Counties, in the District of New Jersey and elsewhere, the defendant

ROBERT J. SUCARATO,

did knowingly and willfully devise and intend to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, which scheme and artifice was in substance as set forth below.

4. It was a part of the scheme and artifice that defendant ROBERT J. SUCARATO solicited individuals to invest in the Funds in person and through his website ([www.nyfc.net](http://www.nyfc.net)) and in doing so:

a. falsely claimed that he had managed the Funds since 1993 with over \$7.2 billion in assets under management;

b. falsely asserted that the Funds had achieved a ten-year compounded return exceeding 1800% and outperformed the market;

c. created a false audit report purportedly prepared by a major accounting firm which falsely indicated that

NYFC had a net worth of approximately \$798 million;

d. misrepresented that NYFC was registered as an investment advisor and portfolio manager;

e. misrepresented his educational and professional background;

f. falsely listed certain individuals as officers and managers of NYFC when in fact they were not; and

g. otherwise created the false impression that NYFC was a successful, well-established and "leading capital management and financial consulting firm" with offices in New York and Chicago," with superior management and a staff of "over 20 experienced traders."

5. It was further part of the scheme and artifice that defendant ROBERT J. SUCARATO provided the investors with an Offering Memorandum (the "Offering Memorandum") which falsely claimed that NYFC was registered as an investment advisor and portfolio manager, and which falsely listed certain individuals as officers and directors of NYFC, each purporting to have impressive credentials.

6. It was further part of the scheme and artifice that defendant ROBERT J. SUCARATO established a "virtual office" in New York City which allowed SUCARATO to claim that NYFC had a prestigious mailing address. In reality, this virtual office space was nothing more than rented, shared office space for a

nominal fee which shared receptionists, conference rooms, and office areas with many other companies.

7. It was further part of the scheme and artifice that defendant ROBERT J. SUCARATO caused the investors to provide SUCARATO with checks which he deposited into bank accounts in the name of NYFC which SUCARATO controlled and caused the investors to wire their money into those bank accounts.

8. It was further part of the scheme and artifice that defendant ROBERT J. SUCARATO opened two individual accounts in his own name at Refco, LLC and Interactive Brokers, LLC - two Futures Commission Merchants ("FCMs") registered with the CFTC. SUCARATO did not open or maintain any commodity futures or options accounts in the names of the Funds or NYFC at any of the FCMs registered with the CFTC.

9. It was further part of the scheme and artifice that defendant ROBERT J. SUCARATO deposited some of the investors' money into his two individual FCM accounts for purposes of trading commodities futures and options. Contrary to claims SUCARATO made to the investors, SUCARATO consistently experienced net losses trading commodity futures and options.

10. It was further part of the scheme and artifice that defendant ROBERT J. SUCARATO provided investors with false account "statements" pertaining to the Funds in order to maintain the investors' confidence in their investment with NYFC. These

statements falsely reported to the investors that their investments were growing in value due to SUCARATO's profitable trading.

11. It was further part of the scheme and artifice that defendant ROBERT J. SUCARATO diverted some of the investors' money used to invest in the Funds to his personal use.

12. As a result of the above-acts, defendant ROBERT J. SUCARATO caused the investors to provide SUCARATO with more than \$1.6 million.

13. On or about October 10, 2006, for the purpose of executing the aforesaid scheme and artifice, in the District of New Jersey and elsewhere, the defendant

ROBERT J. SUCARATO,  
did knowingly and willfully cause writings, signs, signals, pictures, and sounds to be transmitted by means of wire communications in interstate commerce through New Jersey, in that he caused Investor R.L. to wire transfer \$600,000 from Santa Barbara Bank located in California to NYFC's Citibank bank account.

In violation of Title 18, United States Code, Section

1343, and Title 18, United States Code, Section 2.

  
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PAUL J. FISHMAN  
UNITED STATES ATTORNEY

CASE NUMBER: 2007RO0845

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**United States District Court  
District of New Jersey**

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UNITED STATES OF AMERICA

v.

ROBERT J. SUCARATO

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**INFORMATION**

Title 18, United States Code, Sections 1343 and 2

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