



*United States Attorney
Southern District of New York*

FOR IMMEDIATE RELEASE

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Please note: The maximum potential prison term for Count Three charging mail fraud is 20 years.

WESTGATE CAPITAL FUND MANAGER INDICTED FOR PONZI SCHEME

LEV L. DASSIN, Acting United States Attorney for the Southern District of New York, announced that JAMES NICHOLSON, 42, the President, Senior Portfolio Manager, and sole managing member of investment firm Westgate Capital Management LLC, was indicted today on four felony charges, including securities fraud and investment adviser fraud, involving losses of at least \$150 million.

According to the Indictment filed in Manhattan federal court, as well as an earlier criminal Complaint unsealed against NICHOLSON upon his arrest on February 25, 2009:

Westgate Capital, a money management firm with offices in Pearl River, New York, and New York City, was founded in August 1999. NICHOLSON's fraud on Westgate Capital investors commenced in approximately 2004. Among other things, NICHOLSON represented to investors that Westgate Capital had assets under management ranging from \$600 to \$900 million when, in fact, the true value of its assets was materially less. Westgate Capital also provided a private offering memorandum to investors in one of its funds, Westgate Strategic Growth Fund, LP, that falsely stated that the Fund was audited by an independent accounting firm located in New York, New York. Marketing brochures for the Strategic Growth Fund also claimed positive returns for each month from January 2004 through August 2008, and a similar brochure for another Westgate fund showed uniformly positive returns for every month (except September 2001) from October 1999 through December 2007. In fact, performance of the funds was materially lower than represented. In addition, from 2006 to 2008, NICHOLSON also withdrew a total of over \$400,000 from various Westgate accounts, structuring the transactions into more than 50 withdrawals of less than \$10,000, spread over three accounts, to avoid currency transaction reporting requirements.

In December 2008, numerous investors in funds controlled by Westgate Capital began seeking to redeem their investments. Nearly two dozen investors thereupon received from NICHOLSON checks totaling nearly \$5 million; however, all of those checks were returned for insufficient funds. Other investors have unsuccessfully sought to redeem funds totaling millions of dollars.

The offenses charged in the Indictment and their maximum penalties are set forth below:

| COUNT | OFFENSE | MAXIMUM PENALTY |
|-------|--------------------------|---|
| One | Securities Fraud | 20 years in prison Fine of greater of \$5 million or twice gross gain or loss from offense |
| Two | Investment Adviser Fraud | 5 years in prison Fine of \$10,000 |
| Three | Mail Fraud | 20 years in prison Fine of greater of \$1 million or twice gross gain or loss from offense |
| Four | Structuring | 10 years in prison Fine of greater of \$500,000 million or twice gross gain or loss from offense |

The Indictment also includes allegations seeking forfeiture of the proceeds of and property involved in the charged crimes, including at least \$150,000,000 in United States currency and five pieces of property.

Mr. DASSIN praised the investigative work of the Federal Bureau of Investigation and thanked the United States Securities and Exchange Commission for its assistance in the investigation of this case. He added that the investigation is continuing.

Assistant United States Attorneys MARIA DOUVAS and JOSHUA KLEIN are in charge of the prosecution.

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