

Approved: Bonnie Jonas  
BONNIE JONAS/ZACHARY FEINGOLD  
Assistant United States Attorneys

Before: THE HONORABLE SARAH NETBURN  
United States Magistrate Judge  
Southern District of New York

12 MAG 3307

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UNITED STATES OF AMERICA : SEALED COMPLAINT  
  
-v.- : Violation of  
18 U.S.C. § 1349  
  
CHAN MING FON, :  
  
Defendant. : COUNTY OF OFFENSE:  
NEW YORK

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SOUTHERN DISTRICT OF NEW YORK, ss.:

THOMAS W. MCDONALD, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI") and charges as follows:

COUNT ONE

(Conspiracy to Commit Wire Fraud)

1. From at least in or about 2004, up to and including in or about 2010, in the Southern District of New York and elsewhere, CHAN MING FON, the defendant, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States, to wit, wire fraud, in violation of Title 18, United States Code, Section 1343.

2. It was a part and an object of the conspiracy that CHAN MING FON, the defendant, and others known and unknown, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

OVERT ACTS

3. In furtherance of the conspiracy, and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York, and elsewhere:

a. In or about 2009, CHAN MING FON, the defendant, faxed a confirmation of an investment portfolio's net asset value and list of assets to an outside auditor for Olympus Corporation ("Olympus").

b. On or about March 31, 2010, Olympus caused \$455,000,000 to be wire transferred, through the New York, New York branch of an international financial institution ("Bank-1") to an entity controlled by CHAN.

c. On or about April 7, 2010, Olympus caused \$100,000,000 to be wire transferred, through the New York, New York branch of Bank-1, to an entity controlled by CHAN.

d. On or about April 27, 2010, an entity controlled by CHAN wire transferred approximately 32 billion yen from an account held at Bank-1 to an entity controlled by Olympus.

e. On or about June 23, 2010, an entity controlled by CHAN wire transferred \$1,000,000 to CHAN through the New York, New York branch of Bank-1.

(Title 18, United States Code, Section 1349.)

The bases for my knowledge and the foregoing charges are, in part, as follows:

4. I have been a Special Agent with the FBI for approximately five years. I am currently assigned to a squad responsible for investigating various fraud offenses. I have been involved in investigations of these offenses and in arresting individuals for participating in such offenses. I have been involved personally in the investigation of an accounting fraud scheme perpetrated by CHAN MING FON, the defendant, and others known and unknown. I am familiar with the facts and circumstances set forth below from my personal participation in the investigation, including interviews of witnesses, my examination of Olympus records, emails, faxes, financial statements and disclosures; documents from financial institutions; and the December 6, 2011 Investigative Report

issued by Olympus, among other reports and documents; and my conversations with other law enforcement officers and other individuals. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, unless noted otherwise.

#### Relevant Parties and Entities

5. Olympus is, and was at all times relevant to this Complaint, a manufacturer of medical devices and cameras. Olympus common stock is listed on the Tokyo Stock Exchange. In addition, Olympus American Depository Receipts are traded in the United States. Olympus owns, both fully and in part, numerous subsidiaries and related companies located in many countries, including the United States.

6. From in or about 1995 through in or about 2004, CHAN MING FON, the defendant, was employed at two different international financial institutions -- first at Bank-1 and then at Bank-2.

7. Two co-conspirators not charged herein ("CC-1" and "CC-2") were employed in various senior positions within the finance and accounting departments at Olympus.

8. Easterside Investments Limited ("Easterside") was an entity based in the British Virgin Islands since in or about 2000. Easterside was controlled by Olympus. Easterside obtained hundreds of millions of dollars in loans from Bank-2 that had been secured by Olympus's cash deposits at Bank-2.

9. SG Bond Plus Fund ("SG Bond") was an entity established by CHAN MING FON, the defendant, in the Cayman Islands in or about early 2005. SG Bond functioned as a private fund that invested primarily in low-risk bonds and fixed income securities. CHAN MING FON was the investment manager of SG Bond.

#### Overview Of The Scheme To Defraud

10. As described herein, from at least in or about 2004 up to and including in or about 2010, CHAN MING FON, the defendant, and others known and unknown, caused Olympus and related companies to engage in transactions that they knew would result in erroneous accounting entries in the books and records of Olympus. These accounting entries caused Olympus's financial

statements to give the misleading and false impression to, among others, investors and shareholders, that the company maintained a stronger financial condition than it actually did.

11. Specifically, CHAN submitted, and caused to be submitted, false and misleading documents to Olympus's outside auditor ("Auditor") regarding hundreds of millions of dollars' worth of assets purportedly maintained by CHAN at SG Bond for the benefit of Olympus. CHAN made, and caused to be made, representations to the Auditor that Olympus had invested in hundreds of millions of dollars' worth of safe securities such as government bonds (the "Investment Portfolio"). Contrary to these representations, however, CHAN in fact had transferred the Investment Portfolio to Easterside, which, as described above, was an Olympus-controlled entity based in the British Virgin Islands. CHAN understood that Easterside then liquidated the Investment Portfolio and used the hundreds of millions of dollars in proceeds for other purposes, including repaying an undisclosed, outstanding loan that Easterside owed to Bank-2. In consideration for his involvement in this accounting fraud scheme, CHAN received from Olympus, or entities controlled by Olympus, in excess of \$10,000,000.

#### The Accounting Fraud Scheme

12. I have reviewed various documents provided by Olympus, Bank-1 and Bank-2, among other materials described in paragraph 4. Based on my review of certain of these documents, as well as witness interviews, I believe, in sum and substance, and in relevant part, that in or about 2004 CHAN MING FON, the defendant, was instructed by CC-1 (a senior official at Olympus) to establish SG Bond as an entity that Olympus could use to transfer assets to Olympus-related entities.

a. For example, on or about November 24, 2004, CHAN MING FON, the defendant, sent an email (with attachments) to CC-1 and another Olympus employee with a subject titled "SG Bond Plus Fund." In the email, CHAN wrote that he had met with representatives of Bank-2 the previous day, and that they had requested CHAN to provide CC-1 with the two attached letters.

b. The first attachment was an unsigned letter from CC-1 and CC-2 that was addressed to the trust company providing administrative services to Easterside. The letter requested that Easterside enter into a bond lending agreement with a private fund, which I believe was a reference to SG Bond. Under this bond lending agreement, SG Bond was to loan certain bonds to Easterside, which Easterside could then sell. Further,

Easterside would then use the proceeds from this sale of bonds to repay all existing loans and liabilities owed by Easterside to Bank-2.

c. The second attachment was an unsigned letter to CHAN, to be signed on behalf of Olympus by CC-1 and CC-2, and countersigned by CHAN. The letter directed CHAN to, among other things, establish an entity to be incorporated in the Cayman Islands, which I believe to be a reference to SG Bond.

13. I have reviewed documents provided by Olympus, Bank-1 and Bank-2, among other materials described in paragraph 4. Based on my review of certain of these documents, I believe, in sum and substance, and in relevant part, that CHAN MING FON, the defendant, prepared and sent documentation that failed to disclose the fact that the Investment Portfolio purportedly held by SG Bond on behalf of Olympus had been conveyed to Easterside and was no longer held at SG Bond.

a. On or about June 2, 2009, an employee of CHAN emailed to CHAN an unsigned confirmation letter addressed to Bank-1. The email also attached a list of assets and their net asset value, purportedly held by SG Bond on behalf of Olympus. According to these documents, the net asset value of the Investment Portfolio was approximately 60 billion yen as of March 31, 2009. However, none of these documents reflected that the Investment Portfolio actually had been transferred to Easterside (or any other entity), or that Easterside had liquidated the Investment Portfolio.

b. On or about June 3, 2009, CHAN forwarded the attachments referenced in paragraph 13(a) to an Olympus employee. As discussed in paragraph 13(a), the attachments reflected that the net asset value of SG Bond was approximately 60 billion yen as of March 31, 2009. The materials omitted any mention of the fact that the Investment Portfolio had been transferred to Easterside or any other entity, or that Easterside had liquidated the Investment Portfolio.

c. On or about June 3, 2009, CHAN emailed an attachment to an Olympus employee. The subject line of the email stated "Confirmation to [the Auditor] June 2009 - [Bank-1] FAX". The attachment to the email contained a letter on Bank-1 letterhead indicating that Bank-1 had faxed three items to the Auditor: a signed letter of confirmation, a net asset valuation statement as of March 31, 2009, and a list of assets contained in the Investment Portfolio as of March 31, 2009.

14. In the course of this investigation, I have reviewed bank statements provided by Olympus and Bank-1, as well as other items set forth in paragraph 4. From reviewing certain of these materials, I believe that in or about 2010 Olympus transferred hundreds of millions of dollars through several entities to an entity controlled by CHAN MING FON, the defendant. In turn, CHAN used these funds to purchase bonds and other securities that were similar to the assets that originally had comprised the Investment Portfolio in or about 2005. Upon acquiring these bonds and securities, CHAN transferred the assets to Easterside, which in turn transferred the assets to SG Bond in order to replace the Investment Portfolio that SG Bond had purportedly held for Olympus since 2005. Some of these relevant transactions included the following:

a. On or about March 31, 2010, Olympus caused \$455,000,000 to be wire transferred, through the New York, New York branch of Bank-1, to an entity controlled by CHAN for the purpose of replacing a portion of the Investment Portfolio.

b. On or about April 7, 2010, Olympus caused \$100,000,000 to be wire transferred, through the New York, New York branch of Bank-1, to an entity controlled by CHAN for the purpose of purchasing bonds and thereby replacing a portion of the Investment Portfolio.

c. On or about April 27, 2010, a CHAN-controlled entity wire transferred approximately 32 billion yen from an account held at Bank-1 to Easterside for the purpose of replacing a portion of the Investment Portfolio.

#### CHAN MING FON'S STATEMENTS TO THE FBI

15. On two separate occasions, first on December 17, 2012 and then on December 18, 2012, I, along with another FBI agent, interviewed CHAN MING FON, the defendant. CHAN told me, in substance and in part:

a. Several years ago, CHAN had been employed as a vice president at Bank-2 in Singapore. One of CHAN's primary responsibilities at Bank-2 had been to service accounts maintained by Olympus.

b. As part of his relationship with Olympus, in or about 2000, CHAN facilitated Bank-2's issuance of a loan to Easterside for hundreds of millions of dollars.

c. CHAN subsequently left his employment at Bank-2. CHAN is presently in the private equity business in Singapore.

d. At or around the time of his departure from Bank-2, CHAN established SG Bond. In or about early 2005, CHAN caused SG Bond to purchase approximately 60 billion yen of safe and secure investments, including Japanese Government bonds, for the benefit of Olympus. The funds for SG Bond's purchase of the Investment Portfolio were provided by Olympus, purportedly as an investment in SG Bond.

e. CHAN then caused SG Bond to transfer the Investment Portfolio to Easterside, purportedly as a loan. CHAN understood that Easterside would and did liquidate the Investment Portfolio, and that it received hundreds of millions of dollars in proceeds from the sale of the Investment Portfolio. CHAN understood that Easterside used these proceeds to, among other things, satisfy Bank-2's loan to Easterside.

f. CHAN, as SG Bond's principal, prepared and provided false and misleading quarterly confirmations of the Investment Portfolio's net asset value to CC-1 and others at Olympus. Specifically, CHAN did not disclose in these confirmations that the Investment Portfolio had been transferred to Easterside, nor did he disclose that Easterside had liquidated the Investment Portfolio and used hundreds of millions of dollars of the proceeds to repay Bank-2's loan to Easterside. CHAN knew that these false and misleading net asset value statements would be provided to the Auditor.

g. In addition, in or about 2009, CHAN faxed a confirmation of the Investment Portfolio's net asset value and a list of assets that were purportedly part of the Investment Portfolio to the Auditor. At CC-1's direction, CHAN forged a signature on the confirmation to make it appear that it had been signed by a Bank-1 representative. CHAN submitted these false and misleading documents, with the forged signature, to deceive the Auditor into believing that Olympus's purported investment of approximately 60 billion yen was safe and secure at SG Bond. In truth and in fact, and as CHAN well knew, the Investment Portfolio had been transferred to Easterside as a purported loan and liquidated to repay Easterside's outstanding debt to Bank-2, among other things.

h. CHAN understood that by providing the Auditor with false and misleading confirmations and information about the Investment Portfolio, investors in Olympus were misled about the

hundreds of millions of dollars that were purportedly held for Olympus at SG Bond. Specifically, CHAN understood that Olympus led investors to believe that this purported investment of hundreds of millions of dollars remained in safe and secure bonds, even though CHAN knew that these funds had been transferred to a different entity and liquidated.

i. CHAN controlled several other entities that maintained accounts at Bank-1. Several years after SG Bond transferred the Investment Portfolio to Easterside, one of these accounts received hundreds of millions of dollars from an investment that CHAN was directed to make by CC-1. At the direction of CC-1, these funds were used to buy bonds. These bonds were subsequently transferred to SG Bond in an attempt to replenish the Investment Portfolio that SG Bond, under CHAN's control, had transferred to Easterside several years earlier.

j. At or around the same time, another Bank-1 account controlled by CHAN received approximately \$14,500,000 from Olympus. CC-1 directed CHAN to transfer more than \$6,000,000 to a company located in the Phillipines, with which CHAN complied. CC-1 also instructed CHAN to take millions of dollars of funds for himself as a token of appreciation for the work that CHAN had done for Olympus over the years. CHAN subsequently transferred approximately \$8,000,000 to himself and to entities that he controlled.<sup>1</sup> In addition, Olympus paid CHAN a management fee of \$1,200,000 per year.

k. CHAN acknowledged that it was wrong to assist Olympus in deceiving its Auditor.

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<sup>1</sup> Based on my review of records obtained from Bank-1 and Olympus, I know that from on or about May 5, 2010 through on or about August 19, 2010, an entity controlled by CHAN wire transferred a total of \$8,000,000 to CHAN and other entities controlled by CHAN through the New York, New York branch of Bank-1. These records also reflect that, on or about April 28, 2010, an entity controlled by CHAN wire transferred \$6,500,000 from its Bank-1 account to an account in the Phillipines through the New York, New York branch of Bank-1.

WHEREFORE, deponent prays that a warrant be issued for the arrest of CHAN MING FON, the defendant, and that he thereafter be imprisoned or bailed, as the case may be.

18/  
THOMAS W. MCDONALD  
Special Agent  
Federal Bureau of Investigation

Sworn to before me this  
20th day of December, 2012

S/ Sarah Netburn  
THE HONORABLE SARAH NETBURN  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF NEW YORK