

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

WHILEON CHAY,

Defendant.

INDICTMENT

14 Cr.

COUNT ONE

(Commodities Fraud)

The Grand Jury charges:

Relevant Entities and Individuals

1. At all times relevant to this Indictment, 4X Solutions, Inc., (“4X Solutions”), was a New York corporation with its principal place of business listed as New York, New York.

2. At all times relevant to this Indictment, 4X Solutions, Inc., Nevada (“4X Nevada”), was a Nevada corporation with its principal place of business listed as New York, New York.

3. At all times relevant to this Indictment, Ark Atlantic Corporation (“Ark Atlantic”), was a Panamanian corporation with its principal place of business listed as Panama City, Panama.

4. At all times relevant to this Indictment, Golden Gateway International, S.A. (“Golden Gateway”), was a Panamanian corporation with its principal place of business listed as Panama City, Panama.

5. At all times relevant to this Indictment, The Global Gateway, Inc. (“Global Gateway”), was a Las Vegas corporation with its principal place of business listed as Ship Bottom, New Jersey.

6. At all times relevant to this Indictment, Zheng Formulas LLC (“Zheng Formulas”), was a limited liability company registered in Nevada with its principal place of business listed as Las Vegas, Nevada.

7. At all times relevant to this Indictment, 4X Solutions, 4X Nevada, Ark Atlantic, Golden Gateway, Global Gateway, and Zheng Formulas (collectively, the “4X Entities”) acted as unregistered commodity pool operators, and purported to operate as investment firms engaged in the trading of off-exchange leveraged or margined foreign currency contracts (“forex”), gold, and other commodities. The 4X Entities from time to time did business under other names, including Ark Atlantic Bank, Ark Gateway Foundation, and Ark Services.

8. At all times relevant to this Indictment, WHILEON CHAY, the defendant, was an incorporator, organizer, officer, and manager of the 4X Entities.

The Scheme to Defraud

9. From at least in or about 2007 through at least in or about 2011, in the Southern District of New York and elsewhere, WHILEON CHAY, the defendant, engaged in a scheme to defraud investors in the 4X Entities. As part of the scheme, CHAY solicited more than \$5 million from investors, ostensibly for the purpose of participating in pooled investment vehicles that traded forex, gold, and other commodities. Instead, CHAY misappropriated investor money and converted it to his own use, whether by using one investor’s funds to pay another investor’s redemption request, thereby perpetuating the fraud, or simply stealing it for his own personal enrichment.

10. To effectuate the fraudulent scheme, WHILEON CHAY, the defendant, made oral representations and prepared and disseminated, and caused others to prepare and disseminate, written documentation containing false representations about, among other things, the historical

and prospective performance of forex, gold, and other investments made by the 4X Entities, in an effort to solicit investors in the pooled investment vehicles.

11. Specifically, WHILEON CHAY, the defendant, made and caused to made representations to investors and potential investors, including in the Southern District of New York, that a portion of their investment would be traded in forex (or would be used as collateral for forex trading), while the rest would be invested in gold. According to documents disseminated to investors, “[t]his means that the majority of the AU [*i.e.*, gold] is sitting safely on the sidelines. This is one of the ways that we use to control risk, make predictable returns, and hedge any downside on the value of the AU. It also means that the underlying asset is growing quantitatively at + or - 2% per month.” At other times, written materials disseminated to investors indicated that CHAY had “added precious metals into ‘the basket’ [] as a hedge against all the currencies loosing real value,” and that “[t]here is no risk in this activity.” In fact, however, these representations were false. CHAY did not purchase gold or other precious metals on behalf of his investors, and to the extent he engaged in forex or other commodities trading with investors’ money, those trades were neither hedged nor did they make predictable returns. Rather, to the extent that CHAY engaged in any trading with investor money, those trades lost more than approximately \$2 million.

12. As a result of the material misrepresentations and omissions made by WHILEON CHAY, the defendant, investors transferred more than \$5 million to the 4X Entities. CHAY instructed, and caused others to instruct, investors that in order to invest they should send checks made payable to the 4X Entities or wire funds directly to corporate accounts held by the 4X Entities. In addition, and especially after CHAY became aware that federal investigators were

examining the business of the 4X Entities, CHAY instructed, and caused others to instruct, investors to purchase and physically give to CHAY or others gold coins and bars.

13. Of the millions of dollars transferred to the 4X Entities for investment in forex, gold, and other commodities, WHILEON CHAY, the defendant, deployed less than half of those funds for actual commodities trading. Between in or about 2007 through at least in or about 2010, CHAY and others trading on behalf of the 4X Entities at CHAY's direction lost virtually all of the funds that were deployed for commodities trading, or more than approximately \$2.3 million.

14. WHILEON CHAY, the defendant, did not, however, tell his investors that their money had been lost. Rather, and in furtherance of the fraudulent scheme, CHAY issued, and caused to be issued by others, monthly account statements as to the performance of the 4X Entities. The purported monthly account statements contained false representations, including fictitious reports on earnings and increased account values in nearly every month during the relevant period. In addition, CHAY caused correspondence to be sent to investors in Ark Atlantic that, among other things, claimed that “[w]e have never had a losing [sic] month.”

Other correspondence to Ark Atlantic investors similarly claimed:

For the last 4 years Ark Atlantic has enjoyed consistent returns for clients. During this period earnings to clients have averaged about 2.2% per month with an accumulative bonus due to compounding. These returns have occurred in a period of historic and catastrophic turbulence that has devastated the portfolios of the vast majority of investors in all asset categories. Whileon Chay the program director and chief trader has been successfully trading the 4x for 15 years. During this period his clients have never experienced a month that did not make money.

As of in or about 2011, the aggregate purported assets under management for the 4X Entities – that is, the total amount of assets reflected in the account statements issued to CHAY's investors – was approximately \$16.5 million. In fact, however, the 4X Entities suffered significant trading

losses, and did not have assets approaching \$16.5 million. The monthly account statements were at various times during the relevant period mailed to investors, including in the Southern District of New York, and made available to investors online.

15. Also in furtherance of the fraudulent scheme, WHILEON CHAY, the defendant, used investor funds not deployed for trading to pay other investors, issuing, or causing to be issued by others, checks purporting to represent returns on investments in the pooled investment vehicles. The checks were drawn on corporate bank accounts held by the 4X Entities and were in some cases signed by CHAY. The payments were made despite the fact that the 4X Entities were suffering significant trading losses and, as a result, the funds returned to investors were not investment returns but, instead, represented the principal invested by other investors.

16. WHILEON CHAY, the defendant, also misappropriated a significant portion of the funds invested in the 4X Entities' pooled investment vehicles for his personal use, including to pay his personal expenses and to maintain a lavish lifestyle, which he flaunted to potential investors. For example, CHAY drove a different luxury car virtually every time he met with one particular investor. CHAY also misappropriated investor funds for other purposes, including more than \$150,000 to pay for his wife, who passed away in or about 2009, to be cryogenically frozen.

Statutory Allegations

17. From at least in or about 2007 through at least in or about 2011, in the Southern District of New York and elsewhere, WHILEON CHAY, the defendant, while acting as a commodity pool operator and associated person of a commodity pool operator, willfully and knowingly, by use of the mails, and of the means and instrumentalities of interstate commerce, directly and indirectly, (a) employed devices, schemes, and artifices to defraud clients and

participants, and prospective clients and participants; and (b) engaged in transactions, practices, and courses of business which operated as a fraud and deceit upon clients and participants, and prospective clients and participants, to wit, CHAY engaged in a scheme to defraud investors in the 4X Entities by making material misrepresentations to existing and potential investors concerning, among other things, how their investments would be used and their returns on investment.

(Title 7, United States Code, Sections 60(1), 13(a)(1), and 13(a)(5);
Title 18, United States Code, Section 2.)

COUNT TWO

(Wire Fraud)

The Grand Jury further charges:

18. The allegations contained in paragraphs 1 through 16 of this Indictment are repeated and realleged as if fully set forth herein.

19. From at least in or about 2007 through at least in or about 2011, in the Southern District of New York and elsewhere, WHILEON CHAY, the defendant, 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, transmitted and caused to be transmitted by means of wire and radio communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, CHAY engaged in a scheme to defraud investors in the 4X Entities by making material misrepresentations, including by means of e-mail and internet communications, to existing and potential investors concerning, among other things, how their investments would be used and their returns on investment.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT THREE

(Mail Fraud)

The Grand Jury further charges:

20. The allegations contained in paragraphs 1 through 16 of this Indictment are repeated and realleged as if fully set forth herein.

21. From at least in or about 2007 through at least in or about 2011, in the Southern District of New York and elsewhere, WHILEON CHAY, the defendant, 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, for the purpose of executing such scheme and artifice, and attempting to do so, placed in a post office and authorized depository for mail matter, a matter and thing to be sent and delivered by the Postal Service and deposited and caused to be deposited a matter and thing to be sent and delivered by private and commercial interstate carrier, and took and received therefrom, such matter and thing, and knowingly caused to be delivered by mail and such carrier according to the directions thereon, such matter and thing, to wit, CHAY engaged in a scheme to defraud investors in the 4X Entities by making material misrepresentations, including in communications sent by mail, to existing and potential investors concerning, among other things, how their investments would be used and their returns on investment.

(Title 18, United States Code, Sections 1341 and 2.)

FORFEITURE ALLEGATION

22. As a result of committing one or more of the offenses charged in Counts One through Three of this Indictment, WHILEON CHAY, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code,

Section 2461(c), any and all property, real or personal, which constitutes or is derived from proceeds traceable to the commission of the offenses charged in Counts One through Three of this Indictment.

Substitute Asset Provision

23. If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), Title 21, United States Code, Section 853(p), and Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property.

(Title 18, United States Code, Section 981(a)(1)(C), Title 21, United States Code, Section 853(p), Title 28, United States Code, Section 2461(c).)



FORFEITPERSON

Preet Bharara

PREET BHARARA
United States Attorney

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7 U.S.C. §§ 6o(1), 13(a)(1), and 13(a)(5);
18 U.S.C. §§ 1341, 1343, and 2.

PREET BHARARA
United States Attorney.

A True Bill


foreperson

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