



*United States Attorney
Southern District of New York*

**FOR IMMEDIATE RELEASE
FEBRUARY 25, 2009**

**CONTACT: U.S. ATTORNEY'S OFFICE
YUSILL SCRIBNER,
REBEKAH CARMICHAEL,
JANICE OH
PUBLIC INFORMATION OFFICE
(212) 637-2600**

**FBI
JIM MARGOLIN, MONICA McLEAN
PUBLIC INFORMATION OFFICE
(212) 384-2720, 2715**

FUND MANAGER ARRESTED FOR FRAUD

LEV L. DASSIN, the Acting United States Attorney for the Southern District of New York, and JOSEPH M. DEMAREST, JR., the Assistant Director-In-Charge of the New York Field Office of the Federal Bureau Of Investigation ("FBI"), announced that JAMES NICHOLSON, 42, the manager of investment firm Westgate Capital Management LLC, was arrested today on charges of securities fraud and bank fraud. According to the criminal Complaint filed in Manhattan federal court:

Founded in August 1999, Westgate Capital was an institutional money management firm with offices in Pearl River, New York, and New York City. NICHOLSON was the President and General Partner of Westgate Capital. Commencing in at least 2004, NICHOLSON engaged in a scheme to defraud investors in various funds managed by Westgate Capital. It appears that investors have invested at least \$100 million with various Westgate Funds since 2004.

Among various acts in furtherance of the scheme, 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 stated that the Fund was audited by an independent accounting firm located in New York, New York; in fact, located at the address provided by Westgate for the accounting firm is a business known as "The New York City Virtual Presence" where NICHOLSON, in 2004, leased "virtual space" for the accounting firm and arranged, for a time, for an answering service to direct calls for the accounting firm to telephone numbers NICHOLSON

provided. Marketing brochures for the Strategic Growth Fund claimed also positive returns for each month from January 2004 through August 2008, and a similar brochure for another Westgate fund shows, except for September 2001, uniformly positive returns every month from October 1999 through December 2007. However, the performance of the funds was materially lower than what NICHOLSON represented to investors.

In December 2008, triggered in large measure by the disclosure of charges against BERNARD MADOFF, numerous investors in funds controlled by Westgate Capital began seeking to redeem their investments. Nearly two dozen investors thereupon received checks totaling, collectively, nearly \$5 million. All of those checks were returned for insufficient funds. Other investors have unsuccessfully sought to redeem funds totaling in excess of \$10 million.

NICHOLSON was arrested this morning at his residence in Saddle River, New Jersey. He is expected to be presented in Magistrate Court in Manhattan federal court later today.

NICHOLSON is charged with one count of securities fraud and one count of bank fraud. The securities fraud count carries a maximum sentence of 20 years in prison and a maximum fine of the greater of \$5 million or twice the gross gain or loss from the offense. The bank fraud count carries a maximum sentence of 30 years in prison and a maximum fine of \$1 million or twice the gross gain or loss from the offense.

Mr. DASSIN praised the investigative work of the FBI. He also thanked the SEC for their assistance in the investigation of this case. Additionally, Mr. DASSIN thanked the Rockland County District Attorney's Office for their participation in the investigation. He added that the investigation is continuing.

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

09-042

###