UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA	:	**SUPERSEDING INDICTMENT**
- v.-	:	S1 11 Cr. 416 (CS)
LLOYD BARRIGER,	:	
Defendant.	:	

- - - - - - - - - - - - - - - - - - - X

COUNT ONE
(Conspiracy to Commit Mail Fraud)

The Grand Jury charges:

Relevant Persons and Entities

1. At all times relevant to this Indictment, Gaffken & Barriger Fund LLC ("the Fund") was a limited liability company organized under Delaware law with its principal place of business in Monticello, New York. The Fund purportedly invested primarily in real estate collateralized commercial mortgage loans, other mortgage and real estate related assets and a limited amount of non-real-estate assets. The Fund raised capital for its purported operations through sales of securities to public investors. Such securities included Preferred Interests of the Fund, which were referred to as Preferred Interests and/or Preferred Units (the "Preferred Interests").

2. At all times relevant to this Indictment, LLOYD BARRIGER, the defendant, was the president of the Fund; the

principal shareholder, director and officer of G&B Partners, Inc., which was the Fund's managing member and sole common shareholder; and a 25% owner of the entity that underwrote and serviced the Fund's loans ("Entity 1").

3. From in or about April 2005 through in or about September 2008, a co-conspirator not named as a defendant herein ("CC-1"), was the vice president of the Fund, a principal of G&B Partners, Inc., and a 25% owner, the President and the Chief Executive Officer of Entity 1.

4. At all times relevant to this Indictment, the Fund was managed by G&B Partners, Inc. ("G&B Partners"), a New York limited liability company wholly owned and controlled by LLOYD BARRIGER, the defendant, with its principal place of business in Monticello, New York. G&B Partners appointed Bridgeville Management, LLC to manage the Fund's investments.

5. At all times relevant to this Indictment, Bridgeville Management, LLC ("Bridgeville Management"), a New York limited liability company wholly owned and controlled by LLOYD BARRIGER, the defendant, managed the investment of the assets of the Fund. Bridgeville Management's principal place of business was Monticello, New York. Prior to January 1, 2007, Bridgeville Management received a monthly fee, from the Fund, equal to .0833% of the ending Net Asset Value of assets under management. On January 1, 2007, Bridgeville Management increased

its monthly fee to .1250% of the ending Net Asset Value of assets under management. From in or about January 2007 through on or about March 3, 2008, the Fund paid approximately $650,000 in management fees to Bridgeville Management.

6. In January 2006, the Fund received a line of credit, initially in the amount of $15,000,000, from a commercial lender ("Lender 1"). Lender 1 was given a lien on all assets of the Fund, which were pledged to secure full and prompt repayment of all obligations incurred under the line of credit. Under the terms of the line of credit, if the Fund defaulted on the line of credit, Lender 1 had the right to seize all of the Fund's assets and dispose of them to recover Lender 1's advances under the line of credit and prohibit any distributions to investors holding the Preferred Interests while a default was ongoing.

7. At all times relevant to this Indictment, Entity 1 acted as the servicer of the Fund's loans - collecting loan payments and remitting payments to Lender 1 to repay funds borrowed through the line of credit. As of January 1, 2007, Entity 1 received a fixed monthly fee of $30,000 for performing these collection activities, regardless of the size of the loans or the total assets. From January 2007 through in or about March 2008, the Fund paid Entity 1 approximately $420,000 in fees.

8. At all times relevant to this Indictment, the Fund allocated net profits on a monthly basis to each investor in

Preferred Interests in an amount equal to the current value of the investor's Preferred Interests multiplied by an annualized rate of 8 percent. The Fund made monthly distributions and permitted Preferred Interest holders to reinvest the distributions instead of receiving them on a current basis. The Fund allocated the net losses of the Fund to a Common Interests' capital account (the "capital account") - an account of LLOYD BARRIGER, the defendant.

THE SCHEME TO DEFRAUD

9. As described more fully below, from in or about July 2006 through on or about March 5, 2008, LLOYD BARRIGER, the defendant, perpetrated a scheme to defraud investors by soliciting millions of dollars in investments under false pretenses and committed overt acts in furtherance of this scheme, in the Southern District of New York, as set forth in paragraphs 12 through 51 below. During this time period, the Fund raised approximately $12.6 million from new and existing investors. Specifically, from in or about July 2006 through on or about March 5, 2008, the Fund obtained approximately $6.9 million in additional investments from approximately 38 existing investors and raised approximately $5.7 million from approximately 35 new investors.

10. LLOYD BARRIGER, the defendant, defrauded prospective investors in the Fund by presenting the Fund as a

relatively safe and liquid investment that paid a minimum return of 8% per year - a return that was referred to as the "Preferred Return," was reported to investors as income on periodic account statements produced by the Fund and mailed to investors, and was supposed to be funded by the Fund's net income and thus subject to the Fund's actual performance - when Barriger knew that the Fund's actual performance did not justify these performance claims.

11. LLOYD BARRIGER, the defendant, fraudulently induced victims to invest and reinvest their money. As summarized in the paragraphs below, among other things, BARRIGER failed to inform investors that: (1) the Fund had incurred a loss of $600,000 in 2005; (2) the Fund lacked sufficient income to support the promised 8% return, and was continuing to pay the promised return, when it actually paid the return rather than simply credit it to investors' accounts, by funding payments with investor capital, rather than income, and disguised the lack of income by creating a large and growing deficit in BARRIGER's capital account with the Fund; (3) as a result of the failure of its borrowers to repay their loans, the Fund experienced a severe liquidity crunch and could not meet any substantial amount of withdrawal requests; (4) the Fund had defaulted on its $20 million line of credit with a third party lender - Lender 1 - in March 2007 and remained in default for much of the period

thereafter, which entitled Lender 1 to prohibit distributions on the Preferred Interests and to seize the Fund's assets; and (5) delinquencies on the Fund's loan portfolio spiked to over approximately 25% in July 2007 and increased to approximately 34% in November 2007.

Barriger Raises Funds by Misleading Investors About the Fund's Financial Performance

12. In a letter dated September 21, 2005 and mailed to investors, LLOYD BARRIGER, the defendant, stated that investors should have a "'floor' of a basic return on [their] money," which would be accomplished by investors "receiv[ing] 8% per year paid on a monthly basis." BARRIGER informed investors that if the Fund earned less than 8%, then his capital account would absorb the deficit.

13. In a letter dated January 31, 2006 and mailed to investors, LLOYD BARRIGER, the defendant, informed investors that Lender 1 had extended the Fund a $15 million line of credit.

14. LLOYD BARRIGER, the defendant, and CC-1 allocated to investors Preferred Returns totaling approximately $1 million during 2005, notwithstanding that the Fund actually had a loss for that year of almost $600,000. In or about June 2006, during their review of the Fund's financial statements, the Fund's independent accountants, Accounting Firm 1 (hereinafter "the auditors"), reversed the allocation of the 8% return to investors for 2005 as part of their "Accountants' Review Report" for the

year ending December 31, 2005. In light of the Fund's 2005 loss, the auditors required that the allocation of the Preferred Return to investors' equity be reversed, thereby reducing the value of those investors' equity collectively by approximately $1 million. In addition, the auditors advised that going forward, before any returns could be allocated to investors, the Fund's income would have to be sufficient to make up the loss.

15. On June 16, 2006, CC-1 forwarded to LLOYD BARRIGER, the defendant, a copy of the "Gaffken & Barriger Fund, LLC Financial Statements - December 31, 2005 and Accountants' Review Report", which showed that the Fund had incurred a loss of nearly $600,000 for 2005 and reflected the auditors' reversal of the allocation for that year of $1 million in Preferred Returns.

16. In or about February 2007, the auditors advised CC-1 that the returns allocated to investors in 2006 were not supported by the Fund's income and were not allowed under Generally Accepted Accounting Principles ("GAAP"). Although the Fund earned a profit in 2006, the auditors determined that there was a shortfall of approximately $775,000 in shareholders' equity, meaning that the amount of "income" the Fund had allocated to investors during 2006 was overstated by approximately $775,000. Accordingly, the auditors directed CC-1 to reduce the investors' preferred equity account by that amount on the Fund's 2006 audited financial statements. Such financial

statements were not provided to investors or prospective investors, however, and investors were not otherwise informed that the Preferred Return reflected on their account statements did not reflect the actual return on their investment.

17. Even after the auditors advised, in or about June 2006, that the allocation of the Preferred Return was not supported by the Fund's financial condition, LLOYD BARRIGER, the defendant, and CC-1 continued to send out periodic account statements to investors reporting "income" on their investments and failed to disclose that the reported "income" was not supported by the Fund's financial condition and performance. For example, BARRIGER's July 7, 2006 letter to investors accompanying their quarterly account statements assured investors there were no new developments and that all was well. The letter stated: "I am pleased to tell you that we have continued to make progress in our ongoing efforts to improve our portfolio and operations. There is not a great deal new or different to report to you, except that [a newspaper] was kind enough to feature our business in a very nice article, which gave us good publicity."

18. In or about September 2006, the Fund produced a brochure that was received by investors stating that the Fund's returns - from 1998 to 2006 - "compared favorably" with those of stock exchanges and a stock exchange index, the S&P 500. The document also stated that "management's policy has also been to

provide ready liquidity to any of the partners who may from time to time need to withdraw money." The document made no reference to the fact that the Fund had actually incurred a loss for 2005.

19. In or about October 2006, the Fund produced a brochure that was received by investors that stated that its average annual return was over 9% and exceeded the returns of United States Treasury bonds and certificate of deposits. The brochure stated that the Fund "provides flexible investment options to investors looking for consistent returns . . . [and] pays a fixed rate of 8% annually." It also stated that "[a]lthough not required to do so, the managing partner maintains a policy of permitting investors to add or withdraw money from the fund at any time, allowing them to achieve a good return while keeping their assets liquid."

The Fund's Financial Condition Deteriorates and the Fund is in Default on its Credit Agreement with Lender 1

20. According to its January 1, 2007 private placement memorandum offering the sale of a maximum of $25,000,000 of Preferred Interests to investors who were willing to invest a minimum of $200,000, the Fund's stated purpose was "to hold primarily real estate collateralized commercial mortgage loans . . . and other mortgage and real estate related assets . . . and a limited amount of non-real estate assets." As disclosed in its private placement memorandum, the Fund's primary strategy was "hard money lending" - making short-term bridge

loans at high interest rates to real estate developers (initially in Sullivan County, New York, and ultimately nationwide) who could not obtain traditional bank financing. In accordance with that strategy, the Fund primarily made short term loans (typically for twelve months or less) to real estate developers, collateralized by the underlying real estate, with a loan-to-value ratio purportedly of at least 70%. Most of the projects financed by the Fund were in the development stage and thus were not generating income. As a result, the borrowers generally were unable to make the periodic payments on their loans. When the loans were made, a portion of the loan proceeds was used to establish a pre-funded "interest reserve" account from which interest payments were drawn during an initial period of the loan (ranging from three to twelve months) because there would not be any income until the project was developed and completed. Repayment of the loan principal at maturity required a successful exit strategy for the borrower, specifically, the sale of the property or finding replacement financing.

21. As the real estate market deteriorated in 2007, the Fund's borrowers began to default in increasing numbers, and the Fund began to experience significant liquidity problems which were not fully disclosed to investors until after the Fund was frozen on or about March 5, 2008. This liquidity crunch was exacerbated by the terms of the Fund's credit agreement with

Lender 1. Under the agreement, whenever a loan pledged as collateral became delinquent, the Fund was required to remove it from the collateral pool (the "borrowing base"), and either repay Lender 1 the amount it had borrowed against the loan, thereby reducing the outstanding balance on the credit line, or substitute a new, performing loan. Faced with a dearth of eligible borrowers to whom it could make new loans in the deteriorating real estate market, and lacking the cash to do so even if it could have found qualified borrowers, the Fund increasingly found itself in the position of having to raise new cash with which to repay Lender 1. Moreover, when 10% or more of the Fund's borrowing base became delinquent, the Fund was in default under the credit agreement.

22. In an effort to stave off default and improve the Fund's liquidity, in the first half of 2007, CC-1 engaged in transactions pursuant to which the Fund purportedly "sold" loans to other hard money lenders, but in fact agreed to guarantee payment of principal and interest should the borrowers default, and further agreed to repurchase the loans on demand at the discretion of the purchaser. Although they temporarily moved these loans out of the Fund's borrowing base and raised immediate cash, as a practical matter these transactions did not improve the Fund's financial position because the Fund remained obligated for the full amount of principal and interest on the loans.

Moreover, these transactions were costly to the Fund because it was obligated to pay interest to the purchasers, at a rate of 12% per annum. From January to May 2007, the Fund raised approximately $3.7 million by "selling" four such loans, two of which it subsequently repurchased at face value in late 2007 for $2 million. During 2007, the Fund paid the purchasers of the four loans interest of approximately $366,000, $207,000 of which it paid on the two loans it repurchased.

23. On or about January 4, 2007, CC-1 emailed LLOYD BARRIGER, the defendant, and others stating: "We have a very small % of past due loans that [Lender 1] will permit us to have. Once we exceed this percentage, we are in default of our line of credit and it can be shut down. In theory [Lender 1] could work with us if we ran into this problem, but I wouldn't count on it based on their current frame of mind toward our type of business."

24. On or about January 27, 2007, CC-1 emailed LLOYD BARRIGER, the defendant, and others and stated: "[O]ur history shows that when we take a very short interest reserve and it comes time for the borrower to make payments we end up with a past due loan. We can't afford this, a few of these loans and [Lender 1] can pull the plug on us."

25. On or about March 23, 2007, in an email to LLOYD BARRIGER, the defendant, and another individual, CC-1 stated,

after informing the recipients that the payments on one of the Fund's outstanding loans had "bounced": "As of today we are officially in default of our line of credit [with Lender 1]."

Barriger Mails Letters Containing Positive Statements About the Fund's Financial Performance

26. Notwithstanding the March 23, 2007 email in which CC-1 informed LLOYD BARRIGER, the defendant, that the Fund had defaulted on its line of credit with Lender 1, in a letter dated April 2, 2007 that was mailed to investors, BARRIGER stated that: the events that were the subject of "the great deal of negative news recently regarding sub-prime mortgages" had no impact on the Fund, because "what is making headlines is residential mortgages of lower quality, we are commercial property bridge lenders and consequently are really in a different business." In that letter, BARRIGER also informed investors that the Fund's line of credit with Lender 1 was now $20 million and the Fund's total assets exceeded $32 million. BARRIGER failed to disclose in this letter that a substantial percentage of the Fund's bridge loans went to developers of residential property. Barriger also failed to disclose that the Fund was in default on its line of credit to Lender 1.

27. On April 18, 2007, November 16, 2007 and July 28, 2008, Lender 1 sent LLOYD BARRIGER, the defendant, letters advising BARRIGER that the Fund was in default on its line of

credit because the Fund had failed to comply with its obligation that the delinquency rate in the Fund's loan portfolio not exceed 10%. These letters advised BARRIGER that the Fund had been in default on the line of credit since March 2007.

28. On April 20, 2007, CC-1 copied LLOYD BARRIGER, the defendant, on an email to Lender 1 in which CC-1 explained why there was a difference between the Fund's audited financial statements and management's "internal figures": "In summary, the difference is simply due to the fact that we adjust the preferred equity accounts by the exact 8% return regardless of income or loss whereas [Generally Accepted Accounting Principles] limits the adjustment on any type of equity accounts to no more than the amount of income or loss for that fiscal year."

29. In a letter dated June 30, 2007 and mailed to investors, LLOYD BARRIGER, the defendant, stated: "There has been measurable progress in every one of the quantifiable areas by which we rate our Fund. I am very pleased with the way all the indicators point." BARRIGER also stated that the Fund had grown to over $40 million.

The Fund's Financial Condition Further Deteriorates Because of Rising Delinquencies in its Loan Portfolio

30. As of on or about July 16, 2007, the percentage of the Fund's loans past due had increased to approximately 26% of the loans outstanding.

31. On August 11, 2007, in an email titled "Liquidity Crunch", from CC-1 to LLOYD BARRIGER, the defendant, and another individual, CC-1 stated that: "If we don't receive payments from [two individuals] by Tuesday we are going to have a tremendous problem with our line of credit. This will put us overline at the exact time [Lender 1's] participating bank is entertaining our request [for a larger line of credit]."

32. On August 15, 2007, in an email titled "Issues," from CC-1 to LLOYD BARRIGER, the defendant, and another individual, CC-1 stated: "Just found out the lender that [Lender 1] was going to participate with turned us down due to our delinquencies . . . . When we get our delinquency level down we will make another attempt. In the interim we will attempt to collect on loans and raise capital."

33. On August 22, 2007, LLOYD BARRIGER, the defendant, emailed CC-1 and another individual and stated: "Just so you are a little updated on our situation, as [CC-1] indicated we are struggling (as usual!) We have a high rate of slow-pays which makes it impossible for us to use leverage, since after x-many days past due we have to remove them from our borrowing base. We are in survival mode now just to weather the storm . . . ."

34. On August 31, 2007, CC-1 emailed LLOYD BARRIGER, the defendant, and a loan broker ("Broker 1"). CC-1 informed Broker 1 that "We have to close [the loan] quickly. I have a

strong feeling [Lender 1] is going to shut us down so I would like to get the funds requested and your loan closed before we end up looking bad."

35. In late September 2007, LLOYD BARRIGER, the defendant, and CC-1 met with a potential investor ("Investor 1") at the Fund's offices in Monticello, New York. BARRIGER told Investor 1 that the Fund was, in sum and substance, a money market fund that offered a minimum return of 8%. In addition, BARRIGER told Investor 1 that BARRIGER would personally guarantee the refund of Investor 1's principal. On September 27, 2007, Investor 1 invested $2,000,000 in the Fund.

36. On September 27, 2007, after Investor 1 invested $2,000,000 with the Fund, the Fund transferred approximately $2,115,000 to Lender 1.

37. As of on or about September 30, 2007, the deficit in the capital account - the account of LLOYD BARRIGER, the defendant, to which Fund allocated its net losses - according to the Fund's method of accounting - was approximately $1,413,639.

38. Notwithstanding the poor financial condition of the Fund, on or about October 1, 2007, LLOYD BARRIGER, the defendant, and CC-1 mailed a letter to investors announcing their intention to "do a series of dinners for potential new investors." They also stated that: "We believe that positive progress continues to be made in a number of key areas."

39. As of on or about October 31, 2007, the deficit in the capital account - according to the Fund's method of accounting - was approximately $1,509,465.

40. As of on or about November 27, 2007, the percentage of the Fund's loans past due had increased to approximately 34% of the loans outstanding.

41. As of on or about November 30, 2007, the deficit in the capital account - according to the Fund's method of accounting - was approximately $2,387,237.

42. As of on or about December 31, 2007, the deficit in the capital account - according to the Fund's method of accounting - was approximately $2,656,497. According to a later audit performed in 2008 by an external accounting firm, the deficit in the capital account, on December 31, 2007, was approximately $2,709,293.

43. On or about December 31, 2007, LLOYD BARRIGER, the defendant, mailed a letter to investors stating: "the housing-asset bubble with related credit repercussions has begun to affect the entire real estate sector and the banking world, creating significant challenges. Whereas we were in an expansionary mode last year, now we are in a batten-down-the-hatches mode. Our immediate goal is to keep our balance sheet and liquidity as strong as possible during this storm . . . . Despite the difficult environment we have continued, as we promised you,

to pay the "floor" of 8% on your money and to maintain your principal balances. Those two items remain our priorities."

Despite a Lack of Liquidity and an Over $3 Million Deficit in the Capital Account, Barriger Issues a Positive Report and a Special Distribution Bonus

44. On January 21, 2008, LLOYD BARRIGER, the defendant, emailed CC-1 and employees of Lender 1. BARRIGER stated to Lender 1's employees that: "It is unquestionably a difficult time for us . . . [O]ur most pressing problem is our illiquidity. We would be most appreciative if you would consider helping us over the next several months work our way out of this crisis . . . ."

45. As of on or about January 31, 2008, the deficit in the capital account - according to the Fund's method of accounting - was approximately $3,073,311.

46. On or about January 31, 2008, LLOYD BARRIGER, the defendant, and CC-1 mailed a letter to investors in which the Fund declared a "special [.25%] distribution bonus for all partners of the Gaffken & Barriger Fund, effective today . . . . This bonus represents a tangible expression of . . . (1) Our increasing CONFIDENCE in the Fund's future and profitability . . . . "

47. In or about February 2008, the fund received approximately $34,000 in investments from three investors.

The Fund Collapses

48. On or about March 3, 2008, $20,000 was transferred from one of the Fund's accounts to Bridgeville Management's bank account. On or about March 4, 2008, $18,000 was transferred from Bridgeville Management's bank account to one of the personal bank accounts of LLOYD BARRIGER, the defendant.

49. On or about March 4, 2008, an investor invested $1,855 with the Fund.

50. In a letter dated March 5, 2008 that was mailed to investors, LLOYD BARRIGER, the defendant, stated: "The repayment speed on our commercial real estate loans (which comprise the bulk of our portfolio) has slowed and the value of some of our real estate collateral has dropped. Just in the last couple of weeks this trend has greatly intensified . . . . This forces me - I have no choice - to make a painful and disappointing decision: we must temporarily stop all partner withdrawals, including the monthly checks. Until we are able to work through this, we cannot continue to credit the 8% to your accounts."

51. In a letter dated May 30, 2008 that was mailed to investors, LLOYD BARRIGER, the defendant, stated that the Fund has been forced to write down the value of the portfolio by approximately 40% and that there was a total reduction in investors' capital accounts from $25,538,530 to $15,003,208.

STATUTORY ALLEGATION

52. From in or about July 2006 through on or about March 5, 2008, in the Southern District of New York and elsewhere, LLOYD BARRIGER, the defendant, and others known and unknown, knowingly and willfully did combine, conspire, confederate, and agree together and with each other, to commit an offense against the United States, to wit, mail fraud, in violation of Title 18, United States Code, Section 1341.

53. It was a part and an object of the conspiracy that LLOYD BARRIGER, the defendant, and others known and unknown, knowingly and willfully, 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, would and did place in a post office and authorized depository for mail matter, a matter and thing to be sent and delivered by the Postal Service, and deposit and cause to be deposited a matter and thing to be sent and delivered by private and commercial interstate carriers, and take and receive therefrom, such matter and thing, and cause to be delivered by mail and such carriers according to the direction thereon, and at the place at which it was directed to be delivered by the person

to whom it was addressed, such matter and thing, in violation of Title 18, United States Code, Section 1341.

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

COUNT TWO
(Mail Fraud)

The Grand Jury further charges:

54. The allegations contained in paragraphs 1 through 51 above are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

55. From in or about July 2006 through on or about March 5, 2008, in the Southern District of New York and elsewhere, LLOYD BARRIGER, the defendant, knowingly and willfully, 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 so to do, placed in a post office and authorized depository for mail matter, a matter and a 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 carriers, and took and received therefrom, such matter and thing, and caused to be delivered by mail and such carriers according to the direction thereon, and at the place at which it was directed to be delivered by the person

to whom it was addressed, such matter and thing, to wit, BARRIGER sent and caused to be sent letters and other materials containing false statements about the Fund's performance.

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

COUNT THREE
(Conspiracy to Commit Securities Fraud)

The Grand Jury further charges:

56. The allegations contained in paragraphs 1 through 51 are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

57. From in or about July 2006 up to and including on or about March 5, 2008, in the Southern District of New York and elsewhere, LLOYD BARRIGER, 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, violations of Title 15, United States Code, Sections 78j(b) and 78ff and Title 17, Code of Federal Regulations, Section 240.10b-5.

Object of the Conspiracy

58. It was a part and an object of the conspiracy that LLOYD BARRIGER, the defendant, and others known and unknown, willfully and knowingly would and did directly and indirectly, by the use of means and instrumentalities of interstate commerce and of the mails, and of a facility of a national securities

exchange, use and employ, in connection with the purchase and sale of a security, a manipulative and deceptive device and contrivance in contravention of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing a device, scheme, and artifice to defraud, (b) making an untrue statement of material fact and omitting to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading, and (c) engaging in an act, practice, and course of business which operated and would operate as a fraud and deceit upon a person, in violation of Title 15, United States Code, Sections 78j(b) and 78ff and Title 17, Code of Federal Regulations, Section 240.10b-

Overt Acts

59. In furtherance of the conspiracy and to effect its unlawful object, LLOYD BARRIGER, the defendant, and his co-conspirators, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about April 2, 2007, BARRIGER drafted and caused to have mailed to investors, a letter stating that: the events that were the subject of "the great deal of negative news recently regarding sub-prime mortgages" had no impact on the Fund, because "what is making headlines is residential mortgages of lower quality, we are commercial property bridge lenders and consequently are really in a different business."

b. On or about June 30, 2007, BARRIGER drafted and caused to have mailed to investors, a letter stating: "There has been measurable progress in every one of the quantifiable areas by which we rate our Fund. I am very pleased with the way all the indicators point."

c. In late September 2007, BARRIGER and CC-1 met with Investor 1 at the Fund's offices in Monticello, New York, and BARRIGER made statements to Investor 1, including that BARRIGER would personally guarantee the refund of Investor 1's principal.

d. on or about October 1, 2007, BARRIGER and CC-1 drafted and caused to have mailed to investors a letter announcing their intention to "do a series of dinners for potential new investors" and further stating, "[w]e believe that positive progress continues to be made in a number of key areas."

e. On or about December 31, 2007, BARRIGER drafted and caused to have mailed to investors a letter stating: "the housing-asset bubble with related credit repercussions has begun to affect the entire real estate sector and the banking world, creating significant challenges. Whereas we were in an expansionary mode last year, now we are in a batten-down-the-hatches mode. Our immediate goal is to keep our balance sheet and liquidity as strong as possible during this storm . . . . Despite the difficult environment we have continued, as we

promised you, to pay the "floor" of 8% on your money and to maintain your principal balances. Those two items remain our priorities."

f. On or about January 31, 2008, BARRIGER and CC-1 drafted and caused to have mailed to investors a letter declaring a "special [.25%] distribution bonus for all partners of the Gaffken & Barriger Fund, effective today . . . . This bonus represents a tangible expression of . . . (1) Our increasing CONFIDENCE in the Fund's future and profitability . . . . "

(Title 18, United States Code, Section 371.)

COUNT FOUR
(Securities Fraud)

The Grand Jury further charges:

60. The allegations contained in paragraphs 1 through 51 above are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

61. From in or about July 2006 through on or about March 5, 2008, in the Southern District of New York and elsewhere, LLOYD BARRIGER, the defendant, willfully, and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce and of the mails, and of a facility of a national securities exchange, did use and employ, in connection with the purchase and sale of a security, a

manipulative and deceptive device and contrivance in contravention of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing a device, scheme, and artifice to defraud, (b) making an untrue statement of material fact and omitting to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading, and (c) engaging in an act, practice, and course of business which operated and would operate as a fraud and deceit upon a person, namely purchasers of the Preferred Interests.

(Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; Title 18, United States Code, Section 2.)

FORFEITURE ALLEGATION

62. As the result of conspiring to violate Title 18, United States Code, Sections 1341 (mail fraud) as alleged in Count One of this Indictment; committing mail fraud, in violation of Title 18, United States Code, Section 1341 as alleged in Count Two of this Indictment; conspiring to violate Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5 (securities fraud), as alleged in Count Three of this Indictment; committing securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5, as alleged in Count Four of this Indictment,

LLOYD BARRIGER, 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, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses, including but not limited to the following:

a. At least $12,600,000 in United States currency, in that such sum in aggregate is property representing the amount of proceeds obtained as a result of the offenses charged in Counts One through Four of this Indictment.

Substitute Assets Provision

63. If any of the above-described forfeitable property, 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 party;

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 divided without difficulty;

it is the intent of the United States, pursuant to Title 21,

United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

(Title 15, United States Code, Sections 78j(b) and 78ff;
Title 17, Code of Federal Regulations, Section 240.10b-5;
Title 18, United States Code, Sections 981(a)(1)(C) and 1349;
Title 21, United States Code, Section 853(p); and
Title 28, United States Code, Section 2461.)

FOREPERSON

PREET BHARARA
UNITED STATES ATTORNEY

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

LLOYD BARRIGER,
Defendant.

INDICTMENT

S1 11 Cr. 416

(In Violation of Title 18, United States Code, Sections 1341 and 1349)
(In Violation of Title 18, United States Code, Sections 371)
(In Violation of Title 15, United States Code, Sections 78j(b) and 78ff)
(In Violation of Title 17, Code of Federal Regulations , Sections 240.10b-5)

PREET BHARARA
United States Attorney.

A TRUE BILL

Foreperson.